



Classification of Films Act 1991

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Queensland

Classification of Films Act 1991

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Classification of Films Act 1991

An Act relating to classification of films, and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Classification of Films Act 1991*.

2 Object of Act

- (1) The object of this Act is to give effect to the scheme for the classification of publications, films and computer games mentioned in the Commonwealth Act, section 3, but only to the extent that the scheme relates to films.
- (2) The object is to be achieved by—
 - (a) providing for the enforcement of classification decisions for films made under the Commonwealth Act; and
 - (b) prohibiting the publication of certain films.

2A Application of Act

- (1) This Act does not apply to a film that is an exempt film.
- (2) Also, this Act does not apply in relation to a relevant showing of a film to the extent the film is subject to a conditional cultural exemption in relation to the relevant showing.

3 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

3A Meaning of *sell*

In this Act—

sell, in relation to a film, means—

- (a) sell, whether by wholesale or retail; or
- (b) let on hire; or
- (c) under or in connection with a commercial arrangement—
 - (i) exchange or distribute; or
 - (ii) enable or assist an exchange or distribution, even if the exchange or distribution is not, by itself, a commercial arrangement; or
- (d) offer or agree to do an act mentioned in paragraphs (a) to (c); or
- (e) invite to treat or expose for an act mentioned in paragraphs (a) to (c); or
- (f) cause or permit to be done an act mentioned in paragraphs (a) to (e).

Example of paragraph (c)(ii)—

Paragraph (c)(ii) applies if a person, for profit, establishes or maintains, or participates in the establishment or maintenance, of a club, association or business for the exchange of films by other persons (whether or not the exchange is for profit by them), for example by providing—

- (a) services assisting the exchange in return for payment of club membership or other fees; or
- (b) entrance, on payment of a fee, to premises where exchanges may take place.

3B Treatment of single device consisting only of classified films

- (1) For this Act, a film—
 - (a) contained on a single device; and
 - (b) consisting only of 2 or more classified films;is to be treated as if each of the classified films were on a separate device.
- (2) Subsection (1) applies despite any other provision of this Act.

4 Inspectors

- (1) For the purposes of this Act, the chief executive may appoint any of the following persons to be an inspector—
 - (a) a public service officer;
 - (b) a police officer.

Note—

A proposed appointment of a police officer must have the approval of the commissioner of the police service under the *Police Powers and Responsibilities Act 2000*, section 13.

- (2) The chief executive may appoint a person mentioned in subsection (1)(a) to be an inspector only if the chief executive believes the person has the necessary expertise or experience to be an inspector.
- (3) The chief executive may issue an identity card to an inspector who is not a police officer.
- (4) The identity card must—
 - (a) contain a recent photograph of the inspector; and
 - (b) be in the approved form.
- (5) A person who ceases to be an inspector must, as soon as practicable, return his or her identity card to the chief executive.

Maximum penalty for subsection (5)—5 penalty units.

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- (4) Subsection (3) does not apply in relation to an alteration or addition of a film that consists of a modification mentioned in the Commonwealth Act, section 20A(2)(a) to (e) or 21(2)(a) to (d) or (3).

21A Classified films—exhibiting advertisements for other films

A person must not exhibit, or attempt to exhibit, a classified film that contains an advertisement relating to—

- (a) if the film is classified as a G film—a film classified as a PG, M, MA 15+, R 18+, X 18+ or RC film or an unclassified film; or
- (b) if the film is classified as a PG film—a film classified as an M, MA 15+, R 18+, X 18 + or RC film or an unclassified film; or
- (c) if the film is classified as an M film—a film classified as an MA 15+, R 18+, X 18+ or RC film or an unclassified film; or
- (d) if the film is classified as an MA 15+ film—a film classified as an R 18+, X 18+ or RC film or an unclassified film; or
- (e) if the film is classified as an R 18+ film—a film classified as an X 18+ or RC film or an unclassified film; or
- (f) an unclassified film, unless the advertisement is allowed under the Commonwealth Act.

Maximum penalty—10 penalty units.

Note for paragraph (f)—

The Commonwealth Act, section 31 provides for the Commonwealth Minister, by legislative instrument, to determine a scheme for the advertising of unclassified films.

22 Attendance of certain minors at exhibition of certain films—offence by exhibitor

- (1) A person must not exhibit, or attempt to exhibit, in a public place a film classified as an MA 15+ film if a minor who has reached 2 years but not 15 years and who is not accompanied by an adult is, or will be, present at any time during the exhibition of the film.

Maximum penalty—10 penalty units.

- (2) A person must not exhibit, or attempt to exhibit, in a public place a film classified as an R 18+ film if a minor who has reached 2 years is, or will be, present at any time during the exhibition of the film.

Maximum penalty—50 penalty units.

- (3) A person does not commit an offence against subsection (1) if the person or the person's employee or agent believes on reasonable grounds that the minor concerned—
- (a) has reached 15 years or has not reached 2 years; or
 - (b) is, or will be, accompanied by an adult during the exhibition of the film.
- (4) A person does not commit an offence against subsection (2) if the person or the person's employee or agent believes on reasonable grounds that the minor concerned has reached 18 years or has not reached 2 years.

23 Attendance of minor at exhibition of certain films—offence by other persons

- (1) A person who has reached 18 years must not—
- (a) cause or permit, or attempt to cause or permit, a minor who—
 - (i) has reached 2 years; and
 - (ii) is in his or her care, custody and control; to attend; or

- (b) accompany and assist, or attempt to accompany and assist, a minor who has reached 2 years to attend;

the exhibition in a public place of a film classified as an R 18+ film or an objectionable film.

Maximum penalty—

- (a) in the case of a film classified as an R 18+ film—10 penalty units; or
 - (b) in the case of an objectionable film—100 penalty units.
- (2) A person does not commit an offence against subsection (1) if the person believes on reasonable grounds that the minor concerned has reached 18 years or has not reached 2 years.

24 Minors not to be present at exhibition of certain films—offence by minor

A minor who has reached 15 years must not be present, or attempt to be present, at the exhibition, in a public place, of a film that is classified as an R 18+ film.

25 Power to require particulars of name, address and age

- (1) This section applies only to the exhibition of an MA 15+ or R 18+ film.
- (2) If an inspector, exhibitor or an exhibitor's employee or agent (the *inquirer*) has reasonable grounds for suspecting any of the circumstances mentioned in subsection (3) in relation to a person, the inquirer may require the person to give the particulars mentioned in subsection (4).
- (3) The suspected circumstances are—
 - (a) that a person seeking admission, or who has been admitted, to the theatre where the film is about to be, or is being, exhibited has in the person's care and control, or is accompanying, a minor who has reached—
 - (i) if the film is an MA 15+ film—2 years but not 15 years; or

- (ii) if the film is an R 18+ film—2 years; or
- (b) that a person who has been admitted to the theatre where the film has just been exhibited had in the person's care and control, or accompanied, at any time during the exhibition a minor who had reached—
 - (i) if the film is an MA 15+ film—2 years but not 15 years; or
 - (ii) if the film is an R 18+ film—2 years; or
- (c) that a person seeking admission, or who has been admitted, to the theatre where the film is about to be, or is being exhibited, or who has been admitted to the theatre where the film has just been exhibited, is a minor who has reached—
 - (i) if the film is an MA 15+ film—2 years but not 15 years; or
 - (ii) if the film is an R 18+ film—2 years.
- (4) The required particulars are—
 - (a) in relation to a person mentioned in subsection (3)(a) or (b)—
 - (i) the person's correct name and address; and
 - (ii) to the person's best knowledge—the minor's correct name, address and age; or
 - (b) in relation to a person mentioned in subsection (3)(c)—the person's correct name, address and age.

25A Proof of particulars may be required

- (1) If an inspector, exhibitor or an exhibitor's employee or agent (the *inquirer*) has reasonable grounds to believe that any of the particulars given by a person under section 25 are false, the inquirer may require the person to produce evidence of the correctness of the particulars.

-
- (2) The inquirer may also require a person who is required to provide particulars under section 25 to complete and sign a statement of the particulars in the approved form.

25B Offences relating to particulars

- (1) A person must not fail, without reasonable excuse—
- (a) to give particulars required under section 25; or
 - (b) to produce evidence of the correctness of particulars required under section 25A(1); or
 - (c) to complete and sign a statement required under section 25A(2).

Maximum penalty—1 penalty unit.

- (2) A person does not commit an offence against subsection (1), despite a failure to do an act required by the subsection, if the person—
- (a) has not, at the time of the failure, attended the exhibiting of the MA 15+ or R 18+ film concerned; and
 - (b) leaves the theatre immediately after the failure.
- (3) A person must not provide false or misleading—
- (a) particulars in response to a requirement under section 25; or
 - (b) evidence in response to a requirement under section 25A(1); or
 - (c) particulars in a statement given in response to a requirement under 25A(2).

Maximum penalty—5 penalty units.

25C Person may be required to leave theatre

- (1) An exhibitor or an exhibitor's employee or agent (the *refuser*) may refuse to admit a person to a theatre, or may require a person to leave a theatre, if the refuser believes on reasonable grounds—

[s 25CA]

- (a) that the exhibitor would commit an offence if the exhibitor allowed the person to be, or to continue to be, present in the theatre; or
 - (b) that the person has committed an offence against section 25B.
- (2) A person must not—
- (a) enter, or attempt to enter, a theatre after being refused entry under subsection (1); or
 - (b) fail to leave a theatre after being required to leave under subsection (1).

Maximum penalty—5 penalty units.

25CA Calling in unclassified film for classification

- (1) This section applies if—
- (a) the director has reasonable grounds to believe an unclassified film is not an exempt film; and
 - (b) the film is being published in Queensland, or the director has reasonable grounds to believe the film will be published in Queensland; and
 - (c) if the film is being published in Queensland—the film is not subject to a conditional cultural exemption in relation to the publication.
- (2) The director may, by written notice given to the publisher of the film, require the publisher to submit an application for its classification.
- (3) The notice has effect only if it is published in the Commonwealth gazette.
- (4) The publisher must comply with the notice within 3 business days after receiving it.
- Maximum penalty—20 penalty units.
- (5) It is a defence to a prosecution for an offence against subsection (4) for the defendant to prove that the defendant

did not intend to publish the film, or cause it to be published, in Queensland.

25CB Calling in film for reclassification

- (1) This section applies if—
 - (a) the board proposes to reclassify a film under the Commonwealth Act, section 39; and
 - (b) the publisher of the film resides in Queensland or has an office in Queensland.
- (2) The director may, by written notice given to the publisher, require the publisher to submit a copy of the film for the purpose of reclassifying it.
- (3) The publisher must comply with the notice within 3 business days after receiving it.

Maximum penalty—20 penalty units.
- (4) It is a defence to a prosecution for an offence against subsection (3) for the defendant to prove that the defendant did not have a copy of the film.

25CC Obtaining copies for review

- (1) This section applies if—
 - (a) an application is made for a review of a classification decision under the Commonwealth Act by a person who is not the original applicant for classification of the film concerned; and
 - (b) the board or review board does not have a copy of the film and a copy is not available to it; and
 - (c) the original applicant or the publisher of the film resides in Queensland or has an office in Queensland.
- (2) The convenor may, by written notice given to the original applicant or publisher, require the original applicant or publisher to make a copy of the film available for the purpose of the review.

[s 25D]

- (3) A person to whom the notice is given must comply with the notice within 3 business days after receiving it.

Maximum penalty—20 penalty units.

- (4) It is a defence to a prosecution for an offence against subsection (3) for the defendant to prove that the defendant did not have a copy of the film.

25D Power to require certain advertisements to be submitted for approval

- (1) The director may, by written notice given to the publisher of a classified film that is being published in Queensland, or that the director reasonably believes will be published in Queensland, require the publisher to submit to the board for approval a copy of each advertisement used or intended to be used in connection with the publication.

- (2) A person to whom a notice under this section is given must comply with the notice within 3 business days after receiving it.

Maximum penalty—20 penalty units.

25E Defence to prosecution under s 25D

It is a defence to a prosecution for an offence under section 25D, in relation to a classified film the director reasonably believes will be published in Queensland, for the defendant to prove that the defendant did not intend to publish, or authorise or cause someone else to publish, the publication in Queensland.

Part 4 Advertising and supply of films

26 Prohibition against publishing certain advertisements

- (1) A person must not publish, or attempt to publish, an advertisement for an objectionable or unclassified film, unless the advertisement is allowed under the Commonwealth Act.

Maximum penalty—

- (a) for an objectionable film—60 penalty units; or
- (b) for another film—10 penalty units.

Note—

The Commonwealth Act, section 31 provides for the Minister, by legislative instrument, to determine a scheme for the advertising of objectionable or unclassified films.

- (2) A person must not publish an advertisement for a film if, under the Commonwealth Act—
- (a) an application for approval of the advertisement—
 - (i) has not been made; and
 - (ii) if it were made, would be refused; or
 - (b) approval of the advertisement is refused.

Maximum penalty—60 penalty units.

- (3) A person may publish an advertisement for a film only in the form in which it is approved under the Commonwealth Act.

Maximum penalty—60 penalty units.

- (4) If an advertisement for a film is approved under the Commonwealth Act on conditions, a person may publish the advertisement only in accordance with the conditions.

Maximum penalty—60 penalty units.

27 Advertisement to contain determined markings and consumer advice

- (1) A person must not publish an advertisement for a classified film unless its determined markings and consumer advice (if any) are—
- (a) contained in the advertisement; and
 - (b) displayed—
 - (i) in the way determined under the Commonwealth Act; and
- Note—*
- See the Commonwealth Act, section 8.
- (ii) so they are clearly visible, having regard to the advertisement's size and nature.

Maximum penalty—10 penalty units.

- (2) Subsection (3) applies if—
- (a) the board reclassifies a film under the Commonwealth Act, section 39; or
 - (b) the board revokes—
 - (i) a classification or consumer advice for a film under the Commonwealth Act, section 22B(3); or
 - (ii) a classification for a film under the Commonwealth Act, section 22CH(1).
- (3) Display of the determined markings and consumer advice that applied to the film before the reclassification or revocation is sufficient compliance with subsection (1) for the period of 30 days after the day the reclassification or revocation takes effect.

Note—

See the Commonwealth Act, sections 22CH(7) and 28 in relation to when the reclassification or revocation takes effect.

28 False advertising of films prohibited

- (1) A person must not publish, or attempt to publish, an advertisement for a classified film that indicates—
- (a) that the film is unclassified; or
 - (b) that the film has a classification other than its classification under the Commonwealth Act.

Maximum penalty—60 penalty units or imprisonment for 6 months.

- (2) Subsection (3) applies if the board—
- (a) reclassifies a film under the Commonwealth Act, section 39; or
 - (b) revokes a classification for a film under the Commonwealth Act, section 22B(3) or 22CH(1).
- (3) Indicating the film has the classification that applied to the film before the reclassification or revocation is sufficient compliance with subsection (1) for the period of 30 days after the day the reclassification or revocation takes effect.

Note—

See the Commonwealth Act, sections 22CH(7) and 28 in relation to when the reclassification or revocation takes effect.

29 Markings and consumer advice on containers

- (1) A person must not display for sale or sell, or attempt to display for sale or sell, a film unless the container, wrapping or casing in which the film is so displayed or sold bears the determined markings for its classification and its consumer advice (if any).

Maximum penalty—10 penalty units.

- (2) Subsection (3) applies if—
- (a) the board reclassifies a film under the Commonwealth Act, section 39; or
 - (b) the board revokes—

- (i) a classification or consumer advice for a film under the Commonwealth Act, section 22B(3); or
 - (ii) a classification for a film under the Commonwealth Act, section 22CH(1).
- (3) Bearing the determined markings and consumer advice that applied to the film before the reclassification or revocation is sufficient compliance with subsection (1) for the period of 30 days after the day the reclassification or revocation takes effect.

Note—

See the Commonwealth Act, sections 22CH(7) and 28 in relation to when the reclassification or revocation takes effect.

30 Display of information about classification

- (1) A person who sells, or attempts to sell, a classified film on premises open to the public must keep a classifications notice displayed in accordance with subsection (2).

Maximum penalty—10 penalty units.

- (2) The notice must be displayed in a conspicuous place and in a way that it can be conveniently read by any person on the premises.

31 Classified films containing advertisements for other films

A person must not sell or display for sale, or attempt to sell or display for sale, a classified film that contains an advertisement relating to—

- (a) if the film is classified as a G film—a film classified as a PG, M, MA 15+, R 18+, X 18+ or RC film; or
- (b) if the film is classified as a PG film—a film classified as an M, MA 15+, R 18+, X 18+ or RC film; or
- (c) if the film is classified as an M film—a film classified as an MA 15+, R 18+, X 18+ or RC film; or

- (d) if the film is classified as an MA 15+ film—a film classified as an R 18+, X 18+ or RC film; or
- (e) if a film is classified as an R 18+ film—a film classified as an X 18+ or RC film; or
- (f) an unclassified film, unless the advertisement is allowed under the Commonwealth Act.

Maximum penalty—10 penalty units.

Note for paragraph (f)—

The Commonwealth Act, section 31 provides for the Commonwealth Minister, by legislative instrument, to determine a scheme for the advertising of unclassified films.

32 Display for sale of MA 15+ or R 18+ film

A person who displays, or attempts to display, for sale—

- (a) a film classified as an MA 15+ or R 18+ film; or
- (b) an advertisement for a film classified as an MA 15+ or R 18+ film;

must comply with the conditions that may be prescribed by regulation for the purposes of this section.

Maximum penalty—10 penalty units.

33 Sale of MA 15+ or R 18+ film to certain minors prohibited

- (1) A person must not sell or deliver, or attempt to sell or deliver, a film classified as an MA 15+ film to a minor who has not reached 15 years unless the minor is accompanied by an adult.

Maximum penalty—20 penalty units.

- (2) A person must not sell or deliver, or attempt to sell or deliver, a film classified as an R 18+ film to a minor.

Maximum penalty—100 penalty units.

- (3) A person does not commit an offence against subsection (1) if the person or the person's employee or agent believes on

reasonable grounds that the minor concerned has reached 15 years or is accompanied by an adult.

- (4) A person does not commit an offence against subsection (2) if the person or the person's employee or agent believes on reasonable grounds that the minor concerned has reached 18 years.
- (5) A person does not commit an offence against subsection (1) or (2) if—
 - (a) the minor concerned is employed by a person in a business of selling films; and
 - (b) the delivery takes place in the course of the employment.

34 Display and sale of objectionable and unclassified films prohibited

A person must not display for sale or sell, or attempt to display for sale or sell, an objectionable or unclassified film.

Maximum penalty—

- (a) for a film that, if it were classified, would be classified as a G, PG or M film—10 penalty units; or
- (b) for a film that, if it were classified, would be classified as an MA 15+ film—50 penalty units; or
- (c) for a film that, if it were classified, would be classified as an R 18+ film—100 penalty units; or
- (d) for an X 18+ film or an unclassified film that, if classified, would be an X 18+ film—150 penalty units; or
- (e) for an RC film or an unclassified film that, if classified, would be an RC film—200 penalty units.

35 Display and sale of improperly marked unclassified films prohibited

A person must not display for sale or sell, or attempt to display for sale or sell, an unclassified film if the container, wrapping or casing in which the film is displayed or sold bears a marking or other matter that indicates or suggests that the film has been classified.

Maximum penalty—60 penalty units or imprisonment for 6 months.

36 Display and sale of improperly marked classified films

- (1) A person must not display for sale or sell, or attempt to display for sale or sell, to a person a classified film if the container, wrapping or casing in which the film is contained bears a mark or other matter indicating that the film is not classified or that the film has a classification other than its classification under the Commonwealth Act.

Maximum penalty—60 penalty units or imprisonment for 6 months.

- (2) Subsection (3) applies if the board—
- (a) reclassifies a film under the Commonwealth Act, section 39; or
 - (b) revokes a classification for a film under the Commonwealth Act, section 22B(3) or 22CH(1).
- (3) Indicating the film has the classification that applied before the reclassification or revocation is sufficient compliance with subsection (1) for the period of 30 days after the day the reclassification or revocation takes effect.

Note—

See the Commonwealth Act, sections 22CH(7) and 28 in relation to when the reclassification or revocation takes effect.

36A Prohibition against sale of certain films

- (1) A person must not display for sale or sell, or attempt to display for sale or sell, a film unless the film is displayed for sale or sold with the same title as the title under which it is classified.

Maximum penalty—50 penalty units.

- (2) Subsection (1) does not apply to a film contained on a single device consisting only of 2 or more classified films.

- (3) A person must not display for sale or sell, or attempt to display for sale or sell, a classified film other than in the form, without alteration or addition, in which it is classified.

Maximum penalty—50 penalty units.

- (4) Subsection (3) does not apply in relation to an alteration or addition of a film that consists of a modification mentioned in the Commonwealth Act, section 20A(2)(a) to (e) or 21(2)(a) to (d) or (3).

Part 5 Objectionable films

37 Public exhibition of objectionable film

A person must not exhibit, or attempt to exhibit, an objectionable film in such a way that it can be seen by persons in a public place.

Maximum penalty—20 penalty units.

38 Exhibition of an R 18+ or objectionable film before a minor

- (1) A person must not exhibit, or attempt to exhibit, a film classified as an R 18+ film in a place that is not a public place in the presence of a minor unless the person is a parent or

guardian of the minor or has the consent of a parent or guardian of the minor.

Maximum penalty—50 penalty units.

- (2) A person must not exhibit, or attempt to exhibit, an objectionable film in a place that is not a public place in the presence of a minor.

Maximum penalty—100 penalty units.

39 Display and sale of objectionable film prohibited

A person must not display for sale or sell, or attempt to display for sale or sell, an objectionable film.

Maximum penalty—

- (a) in the case of a film that is or would, if classified, be classified as an X 18+ film under the Commonwealth Act—60 penalty units or imprisonment for 6 months; or
- (b) in any other case—250 penalty units or imprisonment for 2 years.

40 Keeping together of classified and objectionable films prohibited

A person must not, on any premises on or from which classified films are sold or displayed for the purposes of sale, keep or have possession of an objectionable film.

Maximum penalty—

- (a) in the case of a film that is or would, if classified, be classified as an X 18+ film under the Commonwealth Act—60 penalty units or imprisonment for 6 months; or
- (b) in any other case—250 penalty units or imprisonment for 2 years.

41 Possession of objectionable film

- (1) A person must not have possession of an objectionable film for the purpose of sale.

Maximum penalty—

- (a) in the case of a film that is or would, if classified, be classified as an X 18+ film under the Commonwealth Act—60 penalty units or imprisonment for 6 months; or
- (b) in any other case—250 penalty units or imprisonment for 2 years.

- (2) A person must not have possession of an objectionable film for the purpose of exhibition in a public place.

Maximum penalty—250 penalty units or imprisonment for 2 years.

- (3) A person must not knowingly have possession of a child abuse film.

Maximum penalty—150 penalty units or 12 months imprisonment.

42 Making objectionable film

- (1) A person must not, for the purpose of gain, make or produce, or attempt to make or produce, an objectionable film.

Maximum penalty—250 penalty units or imprisonment for 2 years.

- (2) A person must not, for the purpose of gain, copy, or attempt to copy, an objectionable film.

Maximum penalty—250 penalty units or imprisonment for 2 years.

- (3) A person must not make, or attempt to make, a child abuse film.

Maximum penalty—1000 penalty units or imprisonment for 5 years.

- (4) A person must not copy, or attempt to copy, a child abuse film.

Maximum penalty—800 penalty units or imprisonment for 3 years.

43 Procurement of minor for objectionable film

A person must not procure, or attempt to procure, a minor to be in any way concerned in the making or production of an objectionable film.

Maximum penalty—800 penalty units or imprisonment for 3 years.

44 No liability in certain circumstances

- (2) A person is not guilty of an offence against section 41 or 42(1) in relation to an objectionable film of a kind mentioned in subsection (3) if—
- (a) the person took all reasonable steps to obtain classification of the film, having regard to the stage of making or production of the film or the time that has elapsed since making or production of the film; and
 - (b) the person believes on reasonable grounds that the film will be classified other than X 18+ or RC.
- (3) For subsection (2), the kinds of objectionable film are—
- (a) a film that would be classified RC because it depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a way that it offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that it should not be classified; and
 - (b) a film that would be classified X 18+ because it—
 - (i) explicitly depicts sexual activity between adults, where there is no sexual violence, coercion or nonconsent of any kind, in a way that it is likely to offend a reasonable adult; and
 - (ii) is unsuitable for a minor to view.

Part 6 Investigation and enforcement

45 Inspector to produce identity card

An inspector who is not a police officer is not entitled to exercise powers under this part in relation to another person unless the inspector first produces the inspector's identity card for inspection by the person.

46 Entry and search—monitoring compliance

- (1) Subject to subsection (2), an inspector may, for the purpose of finding out whether the requirements of this Act are being complied with—
 - (a) enter or board any place; and
 - (b) exercise the powers set out in section 48.
- (2) An inspector must not enter or board a place, or exercise a power under subsection (1), unless—
 - (a) the occupier of the place (if any) consents to the entry or boarding or exercise of the power; or
 - (b) a warrant under section 49 authorises the entry or exercise of the power; or
 - (c) the place is premises, or that part of premises, to which the public are admitted (whether or not for consideration) and the entry is made when members of the public attend or the premises are open for admission by the public.
- (3) An inspector who is permitted by this section to enter or board a vehicle, vessel or aircraft may, for the purpose of effecting the entry or boarding and for the purpose of exercising any powers that the inspector is permitted to exercise, stop and detain the vehicle, vessel or aircraft.

47 Entry and search—evidence of offences

- (1) Subject to subsection (3), if an inspector has reasonable grounds for suspecting that there is in or on a place a particular thing (*the evidence*) that may afford evidence of the commission of an offence against this Act, the inspector may—
 - (a) enter or board the place; and
 - (b) exercise the powers set out in section 48.
- (2) If an inspector enters or boards the place and finds the evidence, the following provisions have effect—
 - (a) the inspector may seize the evidence;
 - (b) subject to section 63, the inspector may keep the evidence for 1 year or, if a prosecution for an offence against this Act in the commission of which the evidence may have been used or otherwise involved is instituted within that period, until the completion of the proceedings for the offence and of any appeal from the decision in relation to the proceedings;
 - (c) if the evidence is a document—while the inspector has possession of the document, the inspector may take extracts from and make copies of the document but must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the inspector's possession.
- (3) An inspector must not enter or board the place or exercise a power under subsection (1) unless—
 - (a) the occupier (if any) of the place consents to the entry or boarding or exercise of the power; or
 - (b) a warrant under section 50 that was issued in relation to the evidence authorises the entry or boarding or exercise of the power.
- (4) If in the course of searching the place under subsection (1) under a warrant under section 50, an inspector—

- (a) finds a thing that the inspector believes, on reasonable grounds to be—
 - (i) a thing (other than the evidence) that will afford evidence of the commission of the offence mentioned in subsection (1); or
 - (ii) a thing that will afford evidence of the commission of another offence against this Act; and
- (b) the inspector believes, on reasonable grounds, that it is necessary to seize the thing to prevent—
 - (i) its concealment, loss or destruction; or
 - (ii) its use in committing, continuing or repeating the offence mentioned in subsection (1), or the other offence, as the case may be;

subsection (2) applies to the thing as if it were the evidence.

48 General powers of inspector in relation to places

- (1) The powers an inspector may exercise under section 46(1)(b) or 47(1)(b) in relation to a place are as follows—
 - (a) to search any part of the place;
 - (b) to inspect or examine anything in or on the place;
 - (c) to take extracts from, and make copies of, any documents in or on the place;
 - (d) to take into or onto the place such equipment and materials as the inspector requires for the purpose of exercising any powers in relation to the place;
 - (e) to require the occupier or any person in or on the place to give to the inspector reasonable assistance in relation to the exercise of the inspector's powers mentioned in paragraphs (a) to (d).
- (2) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1)(e).

Maximum penalty—10 penalty units.

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- (3) It is a reasonable excuse for a person to fail to answer a question or produce a document if answering the question, or producing the document, might tend to incriminate the person.

49 Monitoring warrants

- (1) An inspector may apply to a magistrate for a warrant under this section in relation to a particular place (other than a dwelling or that part of premises used as a dwelling).
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that it is reasonably necessary that the inspector should have access to the place for the purpose of finding out whether the requirements of this Act are being complied with.
- (3) If the magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the magistrate must not issue the warrant unless the inspector or some other person has given the information to the magistrate in the form (either orally or by affidavit) that the magistrate requires.
- (4) The warrant must—
- (a) authorise the inspector, with such assistance and by such force as is necessary and reasonable—
 - (i) to enter the place; and
 - (ii) to exercise the powers set out in section 48; and
 - (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
 - (d) state the purpose for which the warrant is issued.

50 Offence-related warrants

- (1) An inspector may apply to a magistrate for a warrant under this section in relation to a particular place.
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, in or on the place a particular thing (*the evidence*) that may afford evidence of the commission of an offence against this Act.
- (3) If the magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the magistrate must not issue the warrant unless the inspector or some other person has given the information to the magistrate in the form (either orally or by affidavit) that the magistrate requires.
- (4) The warrant must—
 - (a) authorise the inspector, with such assistance and by such force as is necessary and reasonable—
 - (i) to enter the place; and
 - (ii) to exercise the powers set out in section 48; and
 - (iii) to seize the evidence; and
 - (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (c) specify the day (not more than 7 days after the issue of the warrant) on which the warrant ceases to have effect; and
 - (d) state the purposes for which the warrant is issued.

51 Offence-related warrant may be granted by telephone

- (1) If, because of circumstances of urgency, an inspector considers it necessary to do so, the inspector may, under this section, apply by telephone for a warrant under section 50.

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- (2) Before applying for the warrant, the inspector must prepare an information of the kind mentioned in section 50(2) that sets out the grounds on which the issue of the warrant is sought.
 - (3) If it is necessary to do so, an inspector may apply for the warrant before the information has been sworn.
 - (4) If the magistrate is satisfied—
 - (a) after having considered the terms of the information; and
 - (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;that there are reasonable grounds for issuing the warrant, the magistrate may, under section 50, complete and sign such warrant as the magistrate would issue under that section if the application had been made under that section.
 - (5) If the magistrate completes and signs the warrant—
 - (a) the magistrate must—
 - (i) tell the inspector what the terms of the warrant are; and
 - (ii) tell the inspector the day on which and the time at which the warrant was signed; and
 - (iii) record on the warrant the reasons for granting the warrant; and
 - (b) the inspector must—
 - (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
 - (ii) write on the form of warrant the name of the magistrate and the day on which and the time at which the magistrate signed the warrant.
 - (6) The inspector must also, not later than the day after the day of expiry or execution of the warrant (whichever is the earlier), send to the magistrate—

- (a) the form of warrant completed by the inspector; and
 - (b) the information mentioned in subsection (2), which must have been duly sworn.
- (7) When the magistrate receives the documents mentioned in subsection (6), the magistrate must—
- (a) attach them to the warrant that the magistrate completed and signed; and
 - (b) deal with them in the way in which the magistrate would have dealt with the information if the application for the warrant had been made under section 50.
- (8) A form of warrant duly completed by the inspector under subsection (5) is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the magistrate authorises.
- (9) If—
- (a) it is material, in a proceeding, for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised by this section; and
 - (b) the warrant completed and signed by the magistrate authorising the exercise of power is not produced in evidence;
- the court must assume, unless the contrary is proved, that the exercise of power was not authorised by such a warrant.

52 Additional power of inspector to seize films

- (1) This section applies if—
- (a) a person makes a complaint to an inspector about a film; and
 - (b) the inspector reasonably believes the film is an objectionable film.
- (2) The inspector may seize the film from any place the inspector may lawfully enter or board.

- (3) An inspector who seizes a film under subsection (2) must, as soon as practicable, submit the film to the board for classification.
- (4) If a film seized under subsection (2) is classified, the inspector must, as soon as practicable after it is classified, return the film to the person who appears to be entitled to it.
- (5) Subsection (4) does not apply if the film is classified as an X 18+ or RC film.

53 Inspector may require name and address

- (1) An inspector who—
 - (a) finds a person committing, or finds a person that the inspector reasonably suspects of having committed, an offence against this Act; or
 - (b) is making inquiries or investigations with a view to establishing whether or not an offence against this Act has been committed by a person; or
 - (c) reasonably believes that the name and address of a person is required for the purpose of—
 - (i) giving effect to a provision of this Act; or
 - (ii) enabling the inspector to carry out the inspector's functions under this Act;

may require the person to state the person's name and address and, if the inspector has reasonable grounds to believe that the name or address given is false, may require evidence of its correctness.

- (2) A person who is required under subsection (1) to state the person's name or address must not—
 - (a) fail to comply with the requirement; or
 - (b) state a false name or address.

Maximum penalty—50 penalty units.

- (3) A person who is required under subsection (1) to give evidence of the correctness of a name or address must not fail to give the evidence or give false evidence.

Maximum penalty—50 penalty units.

54 Obstruction etc. of inspectors

A person must not, without reasonable excuse, obstruct, hinder or resist an inspector in the exercise of a power under this Act.

Maximum penalty—50 penalty units.

55 False or misleading statements

A person must not—

- (a) make a statement to an inspector that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to an inspector any matter or thing without which the statement is, to the knowledge of the person, misleading in a material particular; or
- (c) give to an inspector a document containing information that the person knows is false, misleading or incomplete in a material particular without—
 - (i) indicating to the inspector that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
 - (ii) providing correct information to the inspector if the person has, or can reasonably obtain, the correct information.

Maximum penalty—50 penalty units.

Part 8 Miscellaneous

60 Evidentiary provisions

- (1) In a proceeding for an offence against this Act, a document purporting to be a certificate given by the director or the convenor under the Commonwealth Act, section 25 or 87 and stating any of the following matters is evidence of the matter—
 - (a) whether a stated film has been classified;
 - (b) if a stated film has been classified—the classification given to the film;
 - (c) whether a stated advertisement has been approved, or refused approval, under the Commonwealth Act, section 29.
- (2) In a proceeding for an offence against this Act, it is not necessary to prove the complainant's authority to start the proceeding.

61 Indictable offences and summary offences

- (1) An offence—
 - (a) against section 43 (Procurement of minor for objectionable film); or
 - (b) against another provision of this Act involving a child abuse film;is punishable on indictment.
- (2) Any other offence against this Act is punishable summarily.
- (3) An indictable offence against this Act may, at the election of the defendant, be heard and determined summarily.
- (4) A complaint under the *Justices Act 1886* for a summary offence against this Act may be made only by a person authorised in writing by the Minister.

- (5) For subsection (4), the Minister may authorise a person either generally or in relation to a stated complaint.

62 Forfeiture

- (1) If a person is convicted of an offence against this Act that relates to an objectionable film, the court by or before which the person is convicted may, in addition to imposing any penalty, order that the film or anything used in connection with the commission of the offence be forfeited.
- (2) A film or thing that is forfeited under subsection (1) may be destroyed or otherwise dealt with as directed by the Minister.

63 Return of seized films

- (1) An inspector who seizes a film must, unless otherwise ordered by a court, return the film to the person who is entitled to possession of it if—
 - (a) it is not required as evidence in a proceeding for an offence against this or any other Act; and
 - (b) all proceedings (if any) instituted for an offence in relation to the film are finally determined (whether or not on appeal) and no person has been convicted of an offence against this or any other Act in relation to the film.
- (2) Subsection (1) does not apply to a child abuse film.

64 Certain classified films not indecent or obscene

- (1) A classified film is not an indecent or obscene publication for the purposes of the Criminal Code.
- (2) Subsection (1) does not apply to a film classified X 18+ or RC.
- (3) Also, to the extent a film is subject to a conditional cultural exemption in relation to a relevant showing, the film is not

indecent or obscene material for the purposes of the Criminal Code.

65 Regulation-making power

- (1) The Governor in Council may make regulations for the purposes of this Act.
- (2) A regulation may make provision with respect to—
 - (a) the appointment of a registrar for the purposes of this Act; and
 - (b) the registration and the cancellation of the registration of exhibitors and persons who sell films; and
 - (c) the fees to be paid for the purposes of this Act.
- (3) A regulation may prescribe penalties of fines of not more than 20 penalty units for offences against a regulation.
- (4) A regulation may prohibit the exhibition, or sale of films by persons who are not registered under the regulations.

66 Chief executive may approve forms

- (1) The chief executive may approve a form for use under this Act.
- (2) A person may request the chief executive to give the person a document setting out a form approved under subsection (1).
- (3) The chief executive must promptly comply with a request under subsection (2).

66A Protection of officials from criminal liability

- (1) An official is not criminally liable for an act done honestly and without negligence in the performance of the official's functions under this Act.
- (2) In this section—

official means any of the following persons—

- (a) the convenor;
- (b) the director;
- (c) an inspector;
- (d) a public service employee assisting a person mentioned in paragraph (c).

Part 9 Savings and transitional provisions

Division 1 Classification of Films Amendment Act 1993 No. 15

67 Existing regulations

A regulation in force immediately before the commencement of this section continues to have effect after the commencement as if it had been made immediately after the commencement.

68 Transitional provisions relating to “MA” films

A film that, between 1 May 1993 and the commencement of this section, is classified—

- (a) as an “M” film under section 9; and
- (b) as an “MA” film under the *Classification of Publications and Films Act* of the Northern Territory;

is, after the commencement, taken to be classified as an “MA” film under this Act.

Division 2 **Consumer Law and Other Justice
Legislation (Miscellaneous
Provisions) Act 1996 No. 56**

69 Existing classifications

- (1) A film classified “G”, “PG”, “M”, “MA”, “R” or “X” under this Act before the commencement of this section is taken, from the commencement, to be, for the purposes of this Act, a film classified as “G”, “PG”, “M”, “MA”, “R” or “X”, respectively, under the Commonwealth Act.
- (2) A film refused classification under this Act before the commencement of this section is taken, from the commencement, to be, for the purposes of this Act, a film classified as “RC” under the Commonwealth Act.
- (3) If, under this Act and before the commencement of this section, an advertisement for a film—
 - (a) is approved—the advertisement is taken, from the commencement, to be, for the purposes of this Act, an advertisement approved under the Commonwealth Act for the film; or
 - (b) is not approved—the advertisement is taken, from the commencement, not to be, for the purposes of this Act, an advertisement approved under the Commonwealth Act for the film immediately after the commencement.
- (4) If an application for classification or approval is made under this Act and is not decided before the commencement of this section, the application is taken, from the commencement, to be, for the purposes of this Act, an application made under the Commonwealth Act.

Division 3 Tourism, Fair Trading and Wine Industry Development Legislation Amendment Act 2005

70 Conversion of particular classifications of films to equivalent new classifications

- (1) This section applies if, immediately before the commencement of this section, a film had a classification (the *original classification*) under this Act mentioned in column 1 of the following table—

Table

Column 1	Column 2
MA	MA 15+
R	R 18+
X	X 18+

- (2) From the commencement, the film is taken to have the classification under this Act set out opposite the original classification in column 2 of the table (the *new classification*).
- (3) From the commencement, a reference in an Act or document to an original classification may, if the context permits, be taken to be a reference to the new classification.
- (4) A change from an original classification to the new classification does not affect a proceeding for an offence alleged to have been committed before the commencement, whether the proceeding is started before or after the commencement, in relation to a film described by reference to the original classification.

Division 4 Justice Legislation Amendment Act 2008

71 Definitions for div 4

In this division—

amending Act means the *Justice Legislation Amendment Act 2008*, part 3.

commencement means the commencement of this section.

previous, followed by a provision number, means the provision as in force immediately before the commencement.

72 Existing exemptions for advertisements given under the Commonwealth Act

- (1) This section applies to an advertisement for a film in relation to which a certificate of exemption given under the Commonwealth Act as mentioned in previous section 26(2) is in force immediately before the commencement.
- (2) On the commencement, the certificate of exemption continues to have effect for this Act.

73 Existing appeals

- (1) This section applies to an appeal started under previous section 59(2) but not ended before the commencement.
- (2) The appeal may continue and be decided as if the amending Act had not been enacted.

74 Existing entitlements to appeal

- (1) This section applies if, immediately before the commencement—
 - (a) a person was entitled to appeal against a decision mentioned in section 59(1) and had not started the appeal; and

- (b) the period mentioned in the section for starting the appeal had not ended.
- (2) This Act as amended by the amending Act applies to the appeal.

75 Existing proceedings for offences relating to advertisements for films

- (1) This section applies if a proceeding for an offence against a provision of part 4 was started, but had not ended, before the commencement of the amending Act, section 16(2).
- (2) Despite the Criminal Code, section 11, the proceeding may continue, and the provision may be enforced, as if the amending Act, section 16(2) had not been enacted.

Division 5 Classification of Computer Games and Images and Other Legislation Amendment Act 2013

76 Definitions for div 5

In this division—

amending Act means the *Classification of Computer Games and Images and Other Legislation Amendment Act 2013*.

77 Applications for exemption under s 57

- (1) This section applies to an application for an exemption under section 57 made but not decided before the commencement of this section.
- (2) Sections 58 and 59 as in force immediately before the commencement of this section continue to apply in relation to the application as if the amending Act had not commenced.

78 Existing exemptions under s 58

- (1) This section applies to an exemption given under section 58 that was in force immediately before the commencement of this section.
- (2) The exemption continues in force as if it had been granted under section 57 as in force from the commencement.

79 Entitlement to review by QCAT

- (1) This section applies if, immediately before the commencement, a person could have applied to QCAT under section 59 for the review of a decision mentioned in section 59(1)(c).
- (2) The application may be made and decided as if the amending Act had not commenced.

80 Review by QCAT

- (1) This section applies to an application, made under section 59 but not decided before the commencement of this section, for the review by QCAT of a decision mentioned in section 59(1)(c).
- (2) The application may continue and be decided as if the amending Act had not commenced.

**Division 6 Court and Civil Legislation
Amendment Act 2017**

81 Application of particular modifications of films for ss 21 and 36A

To remove any doubt, it is declared that, for sections 21(4) and 36A(4), an alteration or addition of a film may consist of a modification mentioned in the Commonwealth Act, section 20A(2)(a), (d) or (e) or 21(2)(ba) or (3) only if the film is classified on or after 1 January 2013.

Note—

See the *Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Act 2014* (Cwlth), schedule 4, part 2.

82 Ending of exemptions given under repealed s 57 or 59A

- (1) This section applies if, immediately before the commencement, an exemption given under either of the following provisions was in force for an entity—
 - (a) repealed section 57;
 - (b) repealed section 59A.
- (2) On the commencement, the exemption ends.
- (3) In this section—

repealed, if followed by a provision number, means the provision of that number as in force from time to time before the commencement.

Schedule 1 Dictionary

section 3

advertisement, for a film, has the meaning given by the Commonwealth Act, section 5, definition *advertisement*, to the extent the definition relates to an advertisement for a film.

approved, for an advertisement, means approved under the Commonwealth Act.

approved form means a form approved by the chief executive under section 66.

arrangement includes scheme, agreement, understanding, promise or undertaking (whether express or implied).

board means the Classification Board established under the Commonwealth Act.

chief executive means the chief executive of the department.

child abuse film means a film that is an objectionable film because it depicts a person who is, or who looks like, a child under 16 years (whether the person is engaged in sexual activity or not) in a way that is likely to cause offence to a reasonable adult person.

classifications notice, for a film, means a notice in the form approved under the Commonwealth Act, section 8A about classifications for films.

classified means classified or reclassified under the Commonwealth Act.

Commonwealth Act means the *Classification (Publications, Films and Computer Games) Act 1995* (Cwlth).

Commonwealth gazette means the Commonwealth of Australia Gazette.

computer game see *Classification of Computer Games and Images Act 1995*, schedule 2.

consumer advice, for a film, means the consumer advice about the film decided by the board under the Commonwealth Act.

Note—

Under the Commonwealth Act, section 22CF(5), particular consumer advice determined by an approved classification tool is taken to be consumer advice determined by the board under section 20 of that Act.

convenor means the convenor of the review board.

determined markings, for a film, means the markings for the film determined under the Commonwealth Act.

director means the director of the board.

exempt film see the Commonwealth Act, section 5.

exhibit, a film, means project or screen the film.

exhibitor means a person who exhibits a film in a theatre.

film see the Commonwealth Act, section 5.

inspector means a person appointed to be an inspector under section 4(1).

international flight, of an aircraft, means a flight that passes through the air space over the territory of more than 1 country and includes any part of the flight that happens within Australia.

international voyage, of a vessel, means a voyage, whether direct or indirect, between a place in Australia and a place outside Australia and includes any part of the voyage that happens within Australia.

objectionable film means—

- (a) a film classified X 18+ or RC; or
- (b) a film that—
 - (i) is not classified, or has become unclassified under the Commonwealth Act; and
 - (ii) if it were classified, would be classified X 18+ or RC.

occupier, in relation to a place, includes a person in charge of the place.

place includes—

- (a) vacant land or premises; and
- (b) a vehicle, vessel or aircraft, other than a vessel on an international voyage or an aircraft on an international flight.

possession, in relation to a film, includes—

- (a) custody or control of the film; and
- (b) an ability or right to obtain custody or control of the film.

premises includes—

- (a) a building or structure, or a part of a building or structure, of any kind; and
- (b) the land on which a building or structure is situated; and
- (c) a vehicle, vessel or aircraft, other than a vessel on an international voyage or an aircraft on an international flight.

public place means any place that—

- (a) the public is entitled to use; or
- (b) is open to, or used by, the public (whether or not on payment of money).

publish includes demonstrate, display, distribute, exhibit, let on hire, offer for sale, and sell.

reclassified means reclassified under the Commonwealth Act.

relevant showing has the meaning given by the Commonwealth Act, sections 6C and 6E.

review board see the Commonwealth Act, section 5.

sell has the meaning given by section 3A.

subject to a conditional cultural exemption has the meaning given by the Commonwealth Act, section 5.

theatre means a building, room, public hall, house, garden or other place—

- (a) where a film is about to be, is being or has been exhibited; and
- (b) to which admission is, or may be, gained by ticket or by payment of money or any other consideration.