

South Australia



ANNO QUINQUAGESIMO
ELIZABETHAE II REGINAE
A.D. 2001

**CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES)
(MISCELLANEOUS) AMENDMENT ACT 2001**

No. 29 of 2001

[Assented to 3 August 2001]

An Act to amend the Classification (Publications, Films and Computer Games)
Act 1995.

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SCHEDULE*Further Amendments of Principal Act*

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Classification (Publications, Films and Computer Games) (Miscellaneous) Amendment Act 2001*.

(2) The *Classification (Publications, Films and Computer Games) Act 1995* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 4—Interpretation

3. Section 4 of the principal Act is amended by inserting after the definition of "Commonwealth Act" the following definition:

"Commonwealth Broadcasting Act" means the *Broadcasting Services Act 1992* of the Commonwealth, as amended from time to time, or an Act enacted in substitution for that Act;

Amendment of s. 6—Application

4. Section 6 of the principal Act is amended by striking out subsection (2).

Amendment of s. 14—Powers

5. Section 14 of the principal Act is amended—

(a) by striking out subparagraph (i) of subsection (1)(c) and substituting the following subparagraph:

(i) to furnish in writing, within a specified time, specified information, verified (if the Council so requires) by statutory declaration; or;

(b) by inserting in subsection (1)(c)(ii) "at a specified time" after "attend before the Council";

(c) by inserting in subsection (1)(c)(iii) ", within a specified time," after "produce";

(d) by striking out paragraph (d) of subsection (1).

Amendment of s. 36—Attendance of minor at MA film—offence by exhibitor

6. Section 36 of the principal Act is amended by inserting in subsection (2)(a) "in order to use refreshment or other facilities provided within the premises in which the film is being exhibited for persons attending the exhibition of the film" after "film".

Amendment of s. 45—Possession or copying of film for purpose of sale or exhibition

7. Section 45 of the principal Act is amended by striking out from subsection (2) "made 10" and substituting "was in possession of or made three".

Amendment of s. 46—Sale of unclassified or RC publications

8. Section 46 of the principal Act is amended—

(a) by striking out from subsection (1) ", knowing that it is such a publication";

(b) by striking out from subsection (2) ", knowing that it is such a publication";

(c) by inserting after subsection (2) the following subsection:

(2a) It is a defence to a prosecution for an offence against subsection (1) or (2) to prove that the defendant believed on reasonable grounds that the publication was not classified RC or was not a submittable publication, as the case may be.

Amendment of s. 48—Category 2 restricted publications

9. Section 48 of the principal Act is amended—

(a) by striking out paragraphs (c) and (d) of subsection (1);

(b) by striking out from subsection (2) ", deliver or publish" and substituting "or deliver";

(c) by inserting after subsection (2) the following subsections:

(2a) A publication that is classified Category 2 restricted must not be—

(a) delivered to a person unless it is contained in a package made of opaque material; or

(b) published unless it bears the determined markings.

(2b) A person must not deliver or publish a publication in contravention of subsection (2a).

Maximum penalty: \$5 000.

Expiation fee: \$315.;

(d) by striking out from subsection (3) "subsection (1)(d)" and substituting "subsection (2a)(b)".

Amendment of s. 65—Possession or copying of computer game for purpose of sale or demonstration

10. Section 65 of the principal Act is amended by striking out from subsection (2) "made 10" and substituting "was in possession of or made three".

Amendment of s. 66—Certain advertisements not to be published

11. Section 66 of the principal Act is amended—

(a) by striking out paragraphs (c) and (d);

(b) by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) A person must not publish an advertisement for a film, publication or computer game—

(a) if the advertisement is approved under this Act or the Commonwealth Act, in an altered form to the form in which it is approved; or

- (b) if the advertisement is approved under this Act or the Commonwealth Act subject to conditions, except in accordance with those conditions.

Maximum penalty: \$5 000.

Expiation fee: \$315.

Amendment of s. 80—Powers of entry, seizure and forfeiture

12. Section 80 of the principal Act is amended—

- (a) by inserting in subsection (2) ", copying for sale" after "sale";
- (b) by striking out from subsection (4) "A court" and substituting "Subject to subsection (4a), a court";
- (c) by inserting after subsection (4) the following subsection:
- (4a) If—
- (a) a film, publication or computer game is seized under this section; and
- (b) a person is convicted of a relevant offence in relation to the film, publication or computer game,

the film, publication or computer game is forfeited to the Crown on conviction.;

- (d) by inserting after subsection (6) the following subsection:

(7) In this section—

"relevant offence" means an offence against section 30, 34(1), 38, 42(1), 44(1), 45, 46(1), 48(2), 51(1), 52(1), 53(1), 56, 58(1), 59, 62(1), 64(1) or 65.

Insertion of ss. 80A, 80B and 80C

13. The following sections are inserted after section 80 of the principal Act:

Powers of authorised persons in Australian Public Service

80A. (1) The Minister may, by notice published in the *Gazette*, authorise a person or class of persons appointed under the Commonwealth Public Service Act to issue expiation notices in relation to offences against this Act or specified offences against this Act.

(2) The Minister may, by subsequent notice in the *Gazette*, vary or revoke a notice under this section.

(3) This section does not derogate from section 6(3) of the *Expiation of Offences Act 1996*.

(4) A person authorised to issue expiation notices under this section may exercise any power of a member of the police force under section 80.

(5) If a person authorised to issue expiation notices under this section has reasonable cause to suspect that a person has committed or is about to commit an offence against this Act, the authorised person may require the person to state his or her full name and usual place of residence.

(6) If a person authorised to issue expiation notices under this section has reasonable cause to suspect that a name or address as stated in response to a requirement under subsection (5) is false, the person may require the person making the statement to produce evidence of the correctness of the name or address as stated.

(7) A person must not—

- (a) hinder or obstruct a person authorised to issue expiation notices under this section, in the exercise of the powers under this section; or
- (b) refuse or fail to comply with a requirement made of the person in accordance with this section.

Maximum penalty: \$5 000.

(8) A person authorised to issue expiation notices under this section must carry identification in a form approved by the Minister and must produce it at the request of a person in relation to whom the authorised person has exercised, or intends to exercise, powers under this section.

(9) In this section—

"Commonwealth Public Service Act" means the *Public Service Act 1999* of the Commonwealth, as amended from time to time, or an Act enacted in substitution for that Act.

Forfeiture of other seized films, publications and computer games

80B. (1) Subject to the making of an order under this section, if—

- (a) proceedings are commenced for prescribed offences relating to 10 or more different products; and
- (b) the products were seized on the same day from the same premises,

any other products seized on that day from those premises may be retained by the Crown and, if 10 or more different products are forfeited to the Crown as a result of those proceedings, all of the other products not the subject of those proceedings are, at the expiry of the prescribed period, also forfeited to the Crown.

(2) The owner of any products liable to forfeiture under this section (or the owner's legal representative) must, on making a written request to the Commissioner of Police within two months after the prescribed date, be allowed to view the products at a time and place fixed by the Commissioner of Police.

(3) The owner of any products liable to forfeiture under this section may, within the prescribed period, apply to the Magistrates Court for an order for return of the products.

(4) An applicant for an order under this section must give notice of the application to the Commissioner of Police.

(5) The Commissioner of Police is a party to any proceedings for an order under this section.

(6) If an application is made for an order under this section, the products may be retained by the Crown until the application is determined but in all other respects the operation of subsection (1) is suspended until the application is determined.

(7) The Magistrates Court may, on an application under this section, order that a product to which the application relates be returned to its owner if satisfied, on the balance of probabilities—

(a) that the product—

(i) in the case of a film—is classified with a classification other than X or RC; or

(ii) in the case of a publication—is not a submittable publication or is classified with a classification other than RC; or

(iii) in the case of a computer game—is classified with a classification other than RC; or

(b) that a prescribed offence was not committed in relation to the product.

(8) In this section—

"**prescribed date**" means the date on which a conviction is recorded, or an order made, as a result of which the total number forfeited of the products seized on the same day from the same premises first equals or exceeds 10;

"**prescribed offence**" means an offence against section 38, 45, 46, 48(2), 53, 56(1), or 65;

"**prescribed period**" means two months after the prescribed date or, if the owner of the products (or the owner's legal representative) requests that he or she be allowed to view the products, two months from the time fixed by the Commissioner of Police for the viewing;

"**products**" means copies of films, publications or computer games, and includes a combination of such products.

(9) For the purposes of this section, copies of a film, publication or computer game do not constitute different products.

Classification of seized items at request of defendant**80C. (1) If—**

- (a) a film, publication or computer game has been seized under this Act and is in the possession or control of the prosecution; and
- (b) the owner of the film, publication or computer game, or a person charged with an offence relating to the film, publication or computer game, wishes to submit an application for classification of the film, publication or computer game to the National Board,

the prosecution must, at the request of the person, forward the person's application with the film, publication or computer game, or a copy of the film, publication or computer game, to the National Board on behalf of the person.

(2) However, the prosecution may refuse to forward the application until all fees that will be payable to the National Board and the postage costs associated with the application are provided to the prosecution.

Amendment of s. 83—Evidence**14. Section 83 of the principal Act is amended—**

- (a) by striking out from subsection (1) "a certificate signed, or purporting to be signed," and substituting "an apparently genuine document purporting to be a certificate, or copy of a certificate, signed";
- (b) by inserting after paragraph (b) of subsection (1) the following paragraph:
 - (ba) a film, publication or computer game was not, at a date specified in the certificate, classified under the Commonwealth Act or was, at a date specified in the certificate, classified under the Commonwealth Act at a classification specified in the certificate; or;
- (c) by striking out from subsection (2) "a certificate signed, or purporting to be signed," and substituting "an apparently genuine document purporting to be a certificate, or copy of a certificate, signed";
- (d) by inserting after paragraph (b) of subsection (2) the following paragraph:
 - (ba) a film, publication or computer game was not, at a date specified in the certificate, classified under Part 3 or was, at a date specified in the certificate, classified under Part 3 at a classification specified in the certificate; or.

Insertion of ss. 83A and 83B**15. The following sections are inserted after section 83 of the principal Act:****Proof of classification by consent**

83A. (1) Subject to subsection (2), if a person is charged with an offence against this Act, the prosecution may, prior to the trial of the matter, serve on the defendant a notice under this section.

(2) This section does not apply where the offence with which a person is charged involves an allegation that a film, publication or computer game was unclassified but would, if classified, be classified at a classification other than X or RC.

(3) A notice under this section must—

(a) set out—

- (i) the title or apparent title (if any) of the film, publication or computer game the subject of the notice; and
- (ii) particulars of the offence in relation to which the notice is served; and

(b) state that the defendant (or his or her legal representative) is entitled to view the film, publication or computer game; and

(c) invite the defendant to indicate, by completing and signing a statement to that effect contained in the notice, that the defendant agrees that, on a specified date, the film, publication or computer game—

- (i) was classified at the specified classification; or
- (ii) was unclassified but would, if classified, have been of the specified classification; or
- (iii) was unclassified,

(as the case may require); and

(d) state that if the notice is not received, completed and signed by the defendant, at the address specified in the notice within the period specified in the notice (being not less than the prescribed period), the defendant will, if found guilty of the offence in relation to which the notice is served, be liable to pay an amount equal to—

- (i) if the offence in relation to which the notice is served involves an allegation that, on a specified date, a film, publication or computer game was unclassified but would, if classified, have been of a particular classification—the fee for classification of the film, publication or computer game; or
- (ii) if the offence in relation to which the notice is served involves an allegation that, on a specified date, a film, publication or computer game was classified at a particular classification or was unclassified—the fee for obtaining a certificate of a kind described in section 83 specifying the classification of the film, publication or computer game at that date or stating that the film, publication or computer game was unclassified at that date.

(4) A person served with a notice under this section (or the person's legal representative) must, on making a written request to the prosecution within 14 days from the date of service of the notice, be allowed to view the film, publication or computer game the subject of the notice at a time and place fixed by the prosecution.

(5) In proceedings for an offence against this Act, an apparently genuine document purporting to be a notice under this section containing a statement, completed and signed by the defendant, that the defendant agrees that, on a specified date, the film, publication or computer game—

- (a) was classified at a specified classification; or
- (b) was unclassified but would, if classified, have been of a specified classification; or
- (c) was unclassified,

will constitute sufficient proof of the matter so agreed without other evidence (in the absence of evidence that the document is not a notice under this section completed and signed by the defendant).

(6) If—

- (a) a person served with a notice under this section fails to deliver the notice, duly completed and signed, to the address specified in the notice within the period specified in the notice; and
- (b) the person is found guilty of the offence in relation to which the notice was served,

the prosecution is entitled, on application to the court making the finding of guilt, to recover from the person an amount equal to the fee described in the notice.

(7) In proceedings in which an application referred to in subsection (6) is made, a certificate signed, or purporting to be signed, by the Commissioner of Police and stating—

- (a) that a person was served with a notice set out in the certificate and failed to deliver the notice, duly completed and signed, to the address specified in the notice within the period specified in the notice; and
- (b) that a specified amount was paid as the fee described in the notice,

is evidence of, and in the absence of evidence to the contrary is proof of, the facts stated in it.

(8) If—

- (a) a notice is served under this section in relation to an offence involving an allegation that, on a specified date, a film, publication or computer game was unclassified but would, if classified, have been of a specified classification; and

- (b) the person served with the notice fails to deliver the notice, duly completed and signed, to the address specified in the notice within the period specified in the notice; and
- (c) the film, publication or computer game is subsequently classified at a higher classification than the classification specified in the notice,

this section applies as if the notice had specified that higher classification.

(9) In this regulation—

"prescribed period" means 14 days from the date of service of the notice or, if the person served with the notice (or the person's legal representative) requests that he or she be allowed to view the film, publication or computer game the subject of the notice, 14 days from the time fixed by the prosecution for the viewing of the film, publication or computer game.

Proof of classification required

83B. (1) In proceedings for an offence against this Act involving an allegation that, on a specified date, a film, publication or computer game would, if classified, have been classified at a specified classification, that allegation may only be proved—

- (a) by proof that the film, publication or computer game has been subsequently classified at that classification; or
- (b) in accordance with section 83A.

(2) If a film, publication or computer game that was unclassified on a specified date is subsequently classified at a particular classification, then it will be taken to be the case that the film, publication or computer game would, if it had been classified at that specified earlier date, have been classified at that classification.

Substitution of s. 85

16. Section 85 of the principal Act is repealed and the following section is substituted:

Commencement of prosecution for offence

85. A prosecution for an offence against this Act may be commenced not later than two years after the date on which the offence is alleged to have been committed.

Amendment of s. 86—Proceeding against body corporate

17. Section 86 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) Where a body corporate is guilty of an offence against this Act, each director of the body corporate is guilty of an offence and liable to the same penalty as is imposed for the principal offence when committed by a natural person unless it is proved that the director could not, by the exercise of reasonable diligence, have prevented the commission of that offence.

Further amendments of principal Act

18. The principal Act is further amended as set out in the Schedule.

Transitional provisions

19. Section 80B of the principal Act applies in relation to proceedings for prescribed offences commenced after the commencement of that section whether the offences were committed before or after the commencement of that section.

SCHEDULE
Further Amendments of Principal Act

Provision Amended	How Amended
Long title	Strike out "to repeal the Classification of Films for Public Exhibition Act 1971 and the Classification of Publications Act 1974; to amend the Classification of Theatrical Performances Act 1978;".
Section 2	Strike out this section.
Section 14(2)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000.
Section 27(2)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000.
Section 28	Strike out the penalty provision and substitute: Maximum penalty: \$5 000. Expiation fee: \$315.
Section 29	Strike out the penalty provision and substitute: Maximum penalty: \$1 250. Expiation fee: \$160.
Section 30	Strike out the penalty provision and substitute: Maximum penalty: \$10 000.
Section 31(3)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500.
Section 32	Strike out the penalty provision and substitute: Maximum penalty: \$2 500.
Section 33	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 34(1)	Strike out the penalty provision and substitute: Maximum penalty: \$20 000.
Section 34(2)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000.
Section 35(1)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000.
Section 36(1)	Strike out the penalty provision and substitute: Maximum penalty: \$1 250.

Section 37	Strike out the penalty provision and substitute: Maximum penalty: \$5 000. Expiation fee: \$315.
Section 38	Strike out the penalty provision and substitute: Maximum penalty: \$10 000.
Section 39	Strike out the penalty provision and substitute: Maximum penalty: \$1 250. Expiation fee: \$160.
Section 40(1)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500. Expiation fee: \$210.
Section 40(2)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500. Expiation fee: \$210.
Section 40(3)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500. Expiation fee: \$210.
Section 41(1)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000. Expiation fee: \$315.
Section 42(1)	Strike out the penalty provision and substitute: Maximum penalty: \$20 000.
Section 42(2)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000.
Section 42(5)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 42(6)	Strike out the penalty provision and substitute: Maximum penalty: \$1 250.
Section 43(3)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 43(5)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 44(1)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000.

Section 44(2)	Strike out the penalty provision and substitute: Maximum penalty: \$1 250.
Section 45(1)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000.
Section 46(1)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000.
Section 46(2)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000.
Section 47(1)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000. Expiation fee: \$315.
Section 48(2)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000.
Section 49	Strike out the penalty provision and substitute: Maximum penalty: \$750. Expiation fee: \$105.
Section 50(1)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500. Expiation fee: \$210.
Section 50(2)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500. Expiation fee: \$210.
Section 51(1)	Strike out the penalty provision and substitute: Maximum penalty: \$20 000.
Section 51(2)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000.
Section 52(1)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000.
Section 52(2)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000.
Section 53(1)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000.

Section 53(2)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000.
Section 54	Strike out the penalty provision and substitute: Maximum penalty: \$5 000. Expiation fee: \$315.
Section 55	Strike out the penalty provision and substitute: Maximum penalty: \$1 250. Expiation fee: \$160.
Section 56(1)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000.
Section 56(2)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 57	Strike out the penalty provision and substitute: Maximum penalty: \$1 250.
Section 58(1)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000.
Section 58(2)	Strike out the penalty provision and substitute: Maximum penalty: \$1 250.
Section 59(1)	Strike out the penalty provision and substitute: Maximum penalty: \$20 000.
Section 60(1)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500. Expiation fee: \$210.
Section 60(2)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500. Expiation fee: \$210.
Section 60(3)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500. Expiation fee: \$210.
Section 61(1)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000. Expiation fee: \$315.
Section 62(1)	Strike out the penalty provision and substitute: Maximum penalty: \$20 000.

Section 62(2)	Strike out the penalty provision and substitute: Maximum penalty: \$1 250.
Section 63(3)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 63(5)	Strike out the penalty provision and substitute: Maximum penalty: \$750.
Section 64(1)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000.
Section 64(2)	Strike out the penalty provision and substitute: Maximum penalty: \$1 250.
Section 65(1)	Strike out the penalty provision and substitute: Maximum penalty: \$10 000.
Section 66	Strike out the penalty provision and substitute: Maximum penalty: \$5 000.
Section 67(1)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000. Expiation fee: \$315.
Section 68	Strike out the penalty provision and substitute: Maximum penalty: \$2 500. Expiation fee: \$210.
Section 69(1)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500. Expiation fee: \$210.
Section 70	Strike out the penalty provision and substitute: Maximum penalty: \$2 500. Expiation fee: \$210.
Section 71	Strike out the penalty provision and substitute: Maximum penalty: \$2 500. Expiation fee: \$210.
Section 72(1)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500. Expiation fee: \$210.
Section 73(1)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500. Expiation fee: \$210.

Section 73(2)	Strike out the penalty provision and substitute: Maximum penalty: \$2 500. Expiation fee: \$210.
Section 74(1)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000. Expiation fee: \$315.
Section 74(3)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000. Expiation fee: \$315.
Section 75	Strike out the penalty provision and substitute: Maximum penalty: \$2 500. Expiation fee: \$210.
Section 80(5)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000.
Section 82(1)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000.
Schedule 1	
Clause 1(3)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000. Expiation fee: \$315.
Clause 2(3)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000. Expiation fee: \$315.
Clause 3(2)	Strike out the penalty provision and substitute: Maximum penalty: \$5 000. Expiation fee: \$315.
Schedule 2	
Clause 1	Strike out this clause.
Clause 2	Strike out subclauses (1) to (8) (inclusive). Strike out subclauses (10) and (11).
Clause 3	Strike out this clause.