

South Australia



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ELIZABETHAE II REGINAE
A.D. 2002

**CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES)
(ON-LINE SERVICES) AMENDMENT ACT 2002**

No. 30 of 2002

[Assented to 7 November 2002]

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

SUMMARY OF PROVISIONS

- 1. Short title
- 2. Commencement
- 3. Insertion of Part

**PART 7A
ON-LINE SERVICES**

- 75A. Interpretation
- 75B. Application of Part
- 75C. Making available or supplying objectionable matter on on-line service
- 75D. Making available or supplying matter unsuitable for minors on on-line service
- 75E. Recklessness

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) (On-Line Services) Amendment Act 2002*.

(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.

Insertion of Part

3. The following Part is inserted after Part 7 of the principal Act:

**PART 7A
ON-LINE SERVICES**

Interpretation

75A. In this Part—

"access" has the same meaning as in the Commonwealth Broadcasting Act;

"Internet content" has the same meaning as in the Commonwealth Broadcasting Act;

"matter unsuitable for minors" means Internet content consisting of a film that is classified R, or that would, if classified, be classified R, or an advertisement for any such film consisting of or containing an extract or sample from the film comprising moving images;

"objectionable matter" means Internet content consisting of—

- (a) a film that is classified X or that would, if classified, be classified X; or
- (b) a film or computer game that is classified RC or that would, if classified, be classified RC; or
- (c) an advertisement for a film or computer game referred to in paragraph (a) or (b); or
- (d) an advertisement that has been, or would be, refused approval under section 29(4) of the Commonwealth Act;

"on-line service" means an Internet carriage service within the meaning of the Commonwealth Broadcasting Act and includes a bulletin board.

Application of Part

75B. (1) This Part applies to an on-line service other than an on-line service, or an on-line service of a class, prescribed by regulation.

(2) Nothing in this Part makes it an offence to make available or supply objectionable matter or matter unsuitable for minors by means of an on-line service to a person, or class of persons, prescribed by regulation.

(3) A person is not guilty of an offence under this Part by reason only of the person—

- (a) owning, or having the control and management of the operation of, an on-line service; or
- (b) facilitating access to or from an on-line service by means of transmission, down loading, intermediate storage, access software or similar capabilities.

Making available or supplying objectionable matter on on-line service

75C. A person must not, by means of an on-line service, make available, or supply, to another person, objectionable matter—

- (a) knowing that it is objectionable matter; or
- (b) being reckless as to whether or not it is objectionable matter.

Maximum penalty: \$10 000.

Making available or supplying matter unsuitable for minors on on-line service

75D. (1) A person must not, by means of an on-line service, make available or supply to another person any matter unsuitable for minors—

- (a) knowing that it is matter unsuitable for minors; or
- (b) being reckless as to whether or not it is matter unsuitable for minors.

Maximum penalty: \$10 000.

(2) It is a defence to a prosecution for an offence against this section to prove that—

- (a) an approved restricted access system operated, at the time of the offence, in relation to access by means of the on-line service to the matter unsuitable for minors; or
- (b) the defendant intended, and had taken reasonable steps to ensure, that such a system would so operate and any failure of the system to so operate did not result from any act or omission of the defendant.

(3) In this section—

"approved restricted access system" means—

- (a) a restricted access system within the meaning of the Commonwealth Broadcasting Act; or

- (b) any other system of limiting access declared by the Minister, by notice published in the *Gazette*, to be an approved restricted access system for the purposes of this definition.

(4) A notice declaring a system of limiting access to be an approved restricted access system may be varied or revoked by the Minister by subsequent notice published in the *Gazette*.

Recklessness

75E. (1) A person is reckless as to whether matter is objectionable matter or matter unsuitable for minors if—

- (a) the person is aware of a substantial risk that the matter is objectionable matter or matter unsuitable for minors; and
- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(2) The question of whether taking a risk is unjustifiable is one of fact.