



ANNO VICESIMO TERTIO

**ELIZABETHAE II REGINAE**

A.D. 1974

\*\*\*\*\*

**No. 23 of 1974**

An Act to provide for the classification of publications, to amend the Police Offences Act, 1953-1973 ; and for other purposes.

[Assented to 11th April, 1974]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

**PART I  
PRELIMINARY**

PART I

1. This Act may be cited as the "Classification of Publications Act, 1973-1974". Short title.

2. This Act shall come into operation on a day to be fixed by proclamation. Commence-  
ment.

3. This Act is arranged as follows:—

Arrangement  
of Act.

PART I—PRELIMINARY

PART II—THE BOARD AND THE REGISTRAR

PART III—CLASSIFICATION OF PUBLICATIONS

PART IV—MISCELLANEOUS.

4. In this Act, unless the contrary intention appears—

Interpretation.

"adult" means a person of or above the age of eighteen years:

"legal practitioner" means a person admitted and enrolled as a practitioner of the Supreme Court of South Australia:

PART I

“minor” means a person under the age of eighteen years:

“publication” means any book, paper, magazine, film, slide or other written or pictorial matter that is available, or intended to be made available for exhibition, display, sale or distribution to members of the public but does not include a film to which a classification has been assigned in accordance with the provisions of the Film Classification Act, 1971-1974:

“restricted publication” means a publication classified as a restricted publication by the Board in pursuance of this Act:

“sell” means—

(a) sell, barter or exchange;

or

(b) agree or offer to sell, barter or exchange,

and “sale” has a corresponding meaning:

“the Board” means the Classification of Publications Board constituted under this Act.

PART II

## PART II

## THE BOARD AND THE REGISTRAR

Establishment  
of Board.

5. (1) There shall be a board entitled the “Classification of Publications Board”.

(2) The Board shall consist of six members appointed by the Governor of whom—

(a) one shall be a legal practitioner;

(b) one shall be a person skilled in the field of child psychology;

(c) one shall be a person with wide experience in education;

and

(d) the three remaining members shall be persons who possess, in the opinion of the Governor, other proper qualifications to participate in the deliberations and functions of the Board.

(3) The Governor may appoint one of the members of the Board to be chairman of the Board.

6. (1) Subject to this Act, a member of the Board shall be appointed for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment, and, upon the expiration of his term of office, shall be eligible for re-appointment.

Terms and conditions of office.

(2) The Governor may appoint a suitable person to be a deputy of a member of the Board, and such a person, while acting in the absence of the member of whom he has been appointed a deputy, shall be deemed to be a member of the Board and shall have all the powers, authorities, duties and obligations of the member of whom he has been appointed a deputy.

(3) The Governor may remove a member of the Board from office for—

- (a) mental or physical incapacity;
  - (b) neglect of duty;
  - (c) dishonourable conduct;
- or
- (d) any other cause considered sufficient by the Governor.

(4) The office of a member of the Board shall become vacant if—

- (a) he dies;
  - (b) his term of office expires;
  - (c) he resigns by written notice addressed to the Governor;
- or
- (d) he is removed from office by the Governor pursuant to subsection (3) of this section.

(5) Upon the office of a member of the Board becoming vacant a person shall be appointed, in accordance with this Act, to the vacant office, but where the office of a member of the Board becomes vacant before the expiration of the term for which he was appointed, the person appointed in his place shall be appointed only for the balance of the term of his predecessor.

7. (1) Three members of the Board shall constitute a quorum of the Board, and no business shall be transacted at a meeting unless a quorum is present.

Quorum, etc.

(2) A decision carried by a majority of the votes cast by the members present at a meeting of the Board, shall be a decision of the Board.

**PART II**

(3) The chairman shall preside at a meeting of the Board and, in addition to a deliberative vote, shall, in the event of an equality of votes, have a second or casting vote.

(4) In the absence of the chairman from a meeting of the Board, the members present shall elect one of their number to be chairman for that meeting and a member so elected shall perform and discharge the functions and obligations of the chairman at that meeting.

(5) Subject to this Act, the business of the Board shall be conducted in such manner as the Board determines.

Validity of  
acts of Board  
and immunity  
of its members.

**8.** (1) An act or proceeding by the Board shall not be invalid by reason only of a vacancy in its membership, and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding shall be as valid and effectual as if the member had been duly nominated or appointed.

(2) No liability shall attach to a member of the Board for any act or omission by him, or by the Board, in good faith and in the exercise or purported exercise of his or its powers or functions, or in the discharge or purported discharge of his or its duties under this Act.

Allowances and  
expenses.

**9.** The members of the Board shall be entitled to receive such allowances and expenses as may be determined by the Governor.

The Registrar.

**10.** (1) There shall be a Registrar of the Board.

(2) The Registrar shall be appointed subject to and in accordance with, the Public Service Act, 1967-1972.

(3) The office of the Registrar may be held in conjunction with any other office in the public service of the State.

**PART III****PART III****CLASSIFICATION OF PUBLICATIONS**

**11. (1)** The Board may, of its own motion, or at the request of any person, meet for the purpose of considering the classification to be assigned to a publication. Meetings of the Board.

**(2)** The Board shall meet to consider the classification to be assigned to any publication referred by the Minister to the Board for its consideration.

**12. (1)** In considering questions as to whether a publication is offensive, or suitable or unsuitable for perusal by minors, the Board shall have regard to standards of morality, decency and propriety that are generally accepted by reasonable adult persons. Criteria to be applied by the Board.

**(2)** In performing its functions under this Act, the Board shall give effect to the principles—

**(a)** that adult persons are entitled to read and view what they wish;

and

**(b)** that members of the community are entitled to protection (extending both to themselves and those in their care) from exposure to unsolicited material that they find offensive,

and in a case where the application of those principles would lead to conflicting conclusions, shall exercise its powers in a manner that will, in the opinion of the Board, achieve a reasonable balance in the application of those principles.

**(3)** In performing its functions under this Act the Board shall—

**(a)** have due regard to decisions, determinations or directions of authorities of the Commonwealth and of the States of the Commonwealth relevant to the performance of those functions;

and

**(b)** have due regard to the nature of the publication under consideration and to all other relevant factors that bear upon the classification or conditions that should be assigned to, or imposed in respect of, the publication.

## PART III

Classification  
of publications.

## 13. (1) Where the Board decides that a publication—

(a) describes, depicts, expresses or otherwise deals with matters of sex, drug addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a manner that is likely to cause offence to reasonable adult persons;

or

(b) is unsuitable for perusal by minors,

the Board shall classify that publication as a restricted publication.

(2) Where the Board decides that a publication is not likely to be offensive to reasonable adult persons and is not unsuitable for perusal by minors, it shall classify that publication as suitable for unrestricted distribution.

(3) The Board may refrain from assigning a classification to a publication where the Board is satisfied that to assign a classification to the publication or to impose conditions in respect of the publication, could not give proper effect to the principles that the Board is bound to apply.

(4) Where a publication under consideration by the Board consists of an issue or instalment of a series of publications that are issued periodically or by instalment, the Board may classify future publications of the same series on the basis of the publication presently under consideration.

Restrictions  
that may be  
imposed by  
the Board.

## 14. The Board may impose all or any of the following conditions in respect of a restricted publication:—

(a) a condition prohibiting the sale, delivery, exhibition or display of the publication to a minor (other than by a parent or guardian or a person acting with the authority of a parent or guardian) or the exhibition or display of the publication in circumstances in which it is likely to be perused by minors;

(b) a condition prohibiting or restricting the exhibition or display of the publication in a place to which the public has access or in such a manner that it is visible from any such place;

(c) a condition prohibiting the sale or delivery of the publication except to adults making a direct request for the publication;

(d) a condition prohibiting the delivery of any such publication otherwise than to a purchaser who personally makes a request for the publication;

and

(e) a condition prohibiting or restricting the publication of advertisements in respect of the publication.

**15. (1)** The Board may, of its own motion, or shall on the application of any person, review any classification or conditions assigned to, or imposed in respect of, a publication and may vary that classification or those conditions in such manner as it considers appropriate.

*Review.*

(2) Where an application is made under subsection (1) of this section, and the Board has within the preceding three months reviewed the classification or conditions assigned to, or imposed in respect of the publication, to which the application relates, the Board shall not be obliged to proceed with the review until the expiration of three months from that previous review.

**16. (1)** In the exercise of its functions under this Part, the Board may—

*Powers of the Board.*

- (a) by summons signed on behalf of the Board by a member of the Board, or the Registrar, require the attendance before the Board of any person whom the Board thinks fit to call before it;
- (b) by summons signed on behalf of the Board by a member of the Board or the Registrar require the production of any publication or other document;
- (c) inspect any publication or document produced before it and retain any such publication or document for such reasonable period as it thinks fit;
- (d) require any person to make an oath or affirmation that he will truly answer all questions put to him by the Board relevant to any matter being inquired into by the Board (which oath or affirmation may be administered by any member of the Board or by the Registrar);

or

- (e) require any person appearing before the Board (whether he has been summoned to appear or not) to answer any relevant question put to him by any member of the Board or by any other person appearing before the Board.

(2) Subject to subsection (3) of this section, if any person—

- (a) who has been served with a summons to attend before the Board neglects or fails to attend in obedience to the summons;
- (b) who has been served with a summons to produce any publication or other document neglects or fails to comply with the summons;
- (c) misbehaves himself before the Board, wilfully insults the Board or any member thereof or interrupts the proceedings of the Board;

or

PART III

(d) refuses to be sworn or to affirm, or to answer any relevant question when required to do so by the Board,

he shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(3) A person shall not be obliged to answer a question put to him by the Board if the answer to that question would tend to incriminate him, or to produce any publication or other document if their contents would tend to incriminate him.

## Notice.

17. (1) Notice of:—

(a) any classification or conditions assigned or imposed by the Board to or in respect of a publication;

or

(b) any decision by the Board to refrain from assigning a classification to a publication;

shall be published in a newspaper circulating generally throughout the State and in the *Gazette*.

(2) Any such classification or conditions shall take effect from (and including) the day on which a notice is first published in pursuance of subsection (1) of this section.

PART IV

## PART IV

## MISCELLANEOUS

## Offences.

18. (1) A person who sells, distributes, delivers, exhibits or otherwise deals with a restricted publication in contravention of any condition imposed under this Act shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars or imprisonment for three months.

(2) A person who publishes, or is concerned in the publication of, an advertisement contrary to conditions imposed under this Act shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars or imprisonment for three months.

(3) No person shall sell or distribute any copies of a restricted publication that are not marked, in accordance with the regulations, in a manner that indicates the conditions to which sale and distribution of the publication are subject.

Penalty: Five hundred dollars.



(4) No person shall sell or distribute any copies of a restricted publication that are not wrapped in accordance with the regulations.

Penalty: Five hundred dollars.

19. (1) Where a member of the police force has reason to believe that an offence has been committed in relation to the exhibition, sale or distribution of a restricted publication, he may enter upon any premises of the person by whom he believes the contravention to have been committed and seize any copies of restricted publications upon those premises.

Power to  
seize restricted  
publications.

(2) A court before which a person is convicted of an offence against this Act may order that any restricted publications involved in the commission of the offence be forfeited to the Crown.

20. (1) Notwithstanding any law relating to obscenity or indecency, it shall not be an offence—

Certain actions  
not to  
constitute  
offences.

(a) to print or produce a publication so that it may be submitted to the Board for classification;

(b) to sell, distribute, deliver, exhibit or display a publication that has been classified as suitable for unrestricted distribution;

or

(c) to sell, distribute, deliver, exhibit or display a publication in compliance with conditions imposed by the Board.

(2) In any proceedings in respect of an offence relating to obscenity or indecency constituted by the sale, distribution, delivery, exhibition or display of a publication, it shall be a defence for the person charged with the offence to prove—

(a) that the publication has been classified under this Act;

(b) that the circumstances alleged to constitute the offence took place before the date on which the classification came into force;

and

(c) that the defendant exercised restraints, or observed conditions, upon or in relation to the sale, distribution, delivery, exhibition or display of the publication that were not less stringent than the conditions (if any) imposed by the Board.

21. Proceedings for offences against this Act shall be disposed of summarily.

Procedure.

**PART IV****Regulations.**

22. (1) The Governor may make such regulations as are contemplated by this Act, or as he considers necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1) of this section, those regulations may—

- (a) provide for the manner in which restricted publications are to be marked;
- (b) provide for an exemption from all or any of the provisions of this Act (which may be unconditional or subject to such conditions as are stipulated in the regulations) in respect of the distribution, delivery, exhibition or other dealing with restricted publications by the authority or body administering any particular libraries, or libraries of a particular class;

and

- (c) prescribe penalties (recoverable summarily) and not exceeding two hundred dollars for breach of, or non-compliance with, any regulation.

**Amendment of  
Police Offences  
Act.**

23. The Police Offences Act, 1953-1973, is amended by inserting after subsection (4) of section 33 the following subsection:—

(4a) In deciding whether to consent to a prosecution under this section, the Minister shall take into consideration any relevant decision of the Classification of Publications Board.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

M. L. OLIPHANT, Governor