



ANNO TRICESIMO QUARTO

# ELIZABETHAE II REGINAE

A.D. 1985

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No. 1 of 1985

An Act to amend the Classification of Publications Act, 1974.

[Assented to 28 February 1985]

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

1. (1) This Act may be cited as the "Classification of Publications Act Amendment Act, 1985". Short title.

(2) The Classification of Publications Act, 1974, is in this Act referred to as "the principal Act".

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

3. Section 4 of the principal Act is amended—

(a) by striking out the definition of "film" and substituting the following definition:

"film" means—

(a) a film;

(b) a video tape or video disc;

or

(c) any other form of recording,

from which moving pictures may be produced and includes a container, package or wrapping that is designed or used to hold a film and that includes written or pictorial matter relating to the film;

(b) by inserting in the definition of "publication" after the word "film" the word ", slide";

(c) by striking out the definition of "restricted publication" and substituting the following definition:

Amendment of  
s. 4—  
Interpretation.

“restricted publication” means—

(a) a category 1 or a category 2 restricted publication;

or

(b) an “R” film;;

(d) by inserting after the definition of “restricted publications area” the following definition:

“‘R’ film” means a film classified as an “R” film by the Board in pursuance of this Act;;

and

(e) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsections:

(2) In this Act—

(a) a reference to exhibiting images from a film is a reference to exhibiting images from a film by means of an apparatus or device for the exhibition of moving pictures;

and

(b) a reference to exhibiting a film includes a reference to exhibiting images from the film.

(3) A film that was immediately before the commencement of this subsection classified as a category 1 restricted publication shall, unless a different classification is assigned to the film by the Board under this Act, be deemed to have been classified by the Board as an “R” film.

Amendment of  
s. 12—  
Criteria to be  
applied by the  
Board.

4. Section 12 of the principal Act is amended by inserting in subsection (1) after the word “perusal” the passage “or viewing”.

Amendment of  
s. 13—  
Classification of  
publications.

5. Section 13 of the principal Act is amended—

(a) by striking out subsections (1) and (2) and substituting the following subsections:

(1) Where the Board decides that a publication—

(a) describes, depicts, expresses or otherwise deals with prescribed matters in a manner that is likely to cause offence to reasonable adult persons;

or

(b) is unsuitable for perusal or viewing by minors,

the Board shall, subject to subsection (3), classify the publication—

(c) in the case of a publication other than a film—

(i) as a category 1 restricted publication;

or

(ii) as a category 2 restricted publication;

or

(d) in the case of a film—as an “R” film:

(2) Where the Board decides that a publication is not likely to be offensive to reasonable adult persons and is not unsuitable for perusal or viewing by minors, the Board shall classify the publication—

(a) in the case of a publication other than a film—as suitable for unrestricted distribution;

or

(b) in the case of a film—

(i) as a “G” film where the Board considers that the film is suitable for general viewing;

(ii) as a “PG” film where the Board considers that the film should only be viewed by a person under the age of fifteen years with the guidance of a parent or guardian of the person;

or

(iii) as an “M” film where the Board considers that the film cannot be recommended for viewing by persons under the age of fifteen years.;

(b) by inserting after paragraph (b) of subsection (3) the following paragraph:

or

(c) in the case of a film—that the film is, by reason of its emphasis on or explicit depiction of prescribed matters, unsuitable for classification as an “R” film.;

and

(c) by inserting after subsection (3a) the following subsections:

(3b) For the purposes of subsection (3) (c), a film—

(a) that is not classified under a corresponding law and—

(i) that has been refused classification under the corresponding law;

or

(ii) that has had a classification that has been revoked under the corresponding law;

or

(b) that is classified under a corresponding law otherwise than as a “G” film, a “PG” film, an “M” film or an “R” film,

shall be deemed to be unsuitable for classification as an “R” film.

(3c) In subsection (3b)—

“corresponding law” has the meaning assigned to the expression by section 14 (5).

Repeal of s. 14 and substitution of new ss. 14 and 14a.

6. Section 14 of the principal Act is repealed and the following sections are substituted:

Publications deemed to have been classified or to be unclassified in certain cases.

14. (1) Where a classification is assigned to a publication in pursuance of a corresponding law, the publication shall be deemed to have been assigned a corresponding classification by the Board under this Act.

(2) A publication, being a container, package or wrapping that is designed or used to hold a film and that includes written or pictorial matter relating to the film, shall be deemed to have been assigned the same classification by the Board as the classification (if any) assigned to the film under this Act.

(3) Subsection (1) or (2) does not apply to a publication if a different classification has been or is assigned to it by the Board under this Act.

(4) Where a publication that is classified under this Act is altered otherwise than in a manner authorized by regulations made for the purposes of this subsection, the altered publication shall, unless the same or some other classification is assigned to it, be deemed to be unclassified.

(5) In this section—

“corresponding classification”, in relation to a classification assigned in pursuance of a corresponding law, means the classification under this Act declared by regulation to be the classification that corresponds to the classification under the corresponding law:

“corresponding law” means a law of any other State or Territory of the Commonwealth declared by regulation to be a corresponding law for the purposes of this section.

Conditions applying to restricted publications.

14a. (1) The following conditions are imposed in relation to every category 1 restricted publication:

(a) a condition that the publication shall not be sold or delivered to a minor (otherwise than by a parent or guardian, or a person acting with the written authority of a parent or guardian, of the minor);

(b) a condition that the publication shall not be displayed in a place to which the public has access (not being a restricted publications area) unless the publication is contained in a sealed package.

(2) The following conditions are imposed in relation to every “R” film:

(a) a condition that the film shall not be sold or delivered to a minor (otherwise than by a parent or guardian, or a person acting with the written authority of a parent or guardian, of the minor);

(b) a condition that images from the film shall not be exhibited to a minor (otherwise than by a parent or guardian, or a person acting with the authority of a parent or guardian, of the minor).

(3) The following conditions are imposed in relation to every category 2 restricted publication:

(a) a condition that the publication shall not be sold, displayed, delivered or exhibited to a minor (otherwise than by a parent or guardian of the minor);

(b) a condition that the publication shall not be—

(i) sold, displayed or delivered on sale;

or

(ii) exhibited in a place to which the public has access, unless the sale, display, delivery or exhibition takes place in a restricted publications area;

(c) a condition that the publication shall not be delivered to a person who has not made a direct request for the publication;

(d) a condition that the publication shall not be delivered to a person unless wrapped or contained in plain opaque material;

(e) a condition that the publication shall not be advertised except—

(i) in a restricted publications area;

(ii) in another category 2 restricted publication;

or

(iii) by way of printed or written material delivered to a person at the written request of the person.

7. Section 15 of the principal Act is amended by inserting in subsection (1) after the passage “to a publication” the passage “(including a classification assigned to a publication by virtue of the operation of section 14 (1) or (2))”.

Amendment of  
s. 15—  
Review.

8. Section 17 of the principal Act is amended—

(a) by inserting in paragraph (a) of subsection (1) after the word “publication” the passage “(otherwise than by virtue of the operation of section 14 (1) or (2))”;

Amendment of  
s. 17—  
Notice.

(b) by striking out from paragraph (ab) of subsection (1) the word “such”;

and

(c) by striking out from subsection (2) the passage “such classification” and substituting the passage “classification assigned to a publication (otherwise than by virtue of the operation of section 14 (1) or (2)) or revocation of a classification”.

Amendment of  
s. 18—  
Offences.

9. Section 18 of the principal Act is amended—

(a) by striking out subsection (3) and substituting the following subsections:

(3) A person who sells, displays or delivers on sale a film that has not been classified under this Act shall be guilty of an offence and liable—

(a) where the Board has subsequently classified the film under this Act and the defendant proves that he exercised restraints, or observed conditions, upon or in relation to the sale, display or delivery of the film that were not less stringent than the conditions (if any) imposed under this Act—to a penalty not exceeding two thousand dollars;

(b) where the Board has subsequently classified the film under this Act but the defendant fails to prove the matters referred to in paragraph (a)—to a penalty not exceeding five thousand dollars or imprisonment for three months;

or

(c) where the Board has subsequently decided to refrain from classifying the film under this Act—to a penalty not exceeding ten thousand dollars or imprisonment for six months.

(3a) A court convicting a person of an offence against subsection (3) that relates to a prescribed film may, in addition to imposing any other penalty in respect of the offence, order that the person shall not engage in the sale of films for a period not exceeding twelve months specified in the order and a person who fails to comply with such an order shall be guilty of an offence and liable to a penalty not exceeding ten thousand dollars or imprisonment for six months.

(4) A person who sells, displays or delivers on sale a publication that has been classified under this Act shall, if the publication, or any package, container, wrapping or casing in which the publication is sold, displayed or delivered on sale, does not comply with the regulations relating to the marking of such publication, package, container, wrapping or casing, be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

(4a) In subsection (4)—

“sell” or “sale” has the meaning assigned to the term by section 4 and includes sell or sale otherwise than by retail.

(4aa) A person who sells films shall ensure that signs of a prescribed kind containing the prescribed information relating to the classification of films under this Act are displayed in accordance with the regulations in any premises in which he sells or displays the films.

Penalty: Two thousand dollars.;

(b) by striking out from subsection (6) the passage “on a date specified in the complaint” and substituting the passage “, or had not been assigned a classification under this Act, on a date specified in the complaint, or that the Board had on a specified date decided to refrain from classifying a publication specified in the complaint,”;

and

(c) by inserting after subsection (6) the following subsections:

(7) A person who—

(a) exhibits images from a prescribed film to any other person;

or

(b) by means of any process copies the whole or any part of a prescribed film;

shall be guilty of an offence and liable to a penalty not exceeding ten thousand dollars or imprisonment for six months.

(8) In this section—

“corresponding law” has the meaning assigned to the expression by section 14 (5):

“prescribed film” means a film that is not classified under this Act or under a corresponding law and—

(a) that has been refused classification under the corresponding law;

or

(b) that has had a classification that has been revoked under the corresponding law.

(9) In proceedings for an offence against this section, an allegation in the complaint that a specified film was on a date specified in the complaint a prescribed film as defined by subsection (8) shall, in the absence of proof to the contrary, be accepted as proof of the matters so alleged.

**10. Section 20 of the principal Act is amended—**

(a) by inserting in paragraph (b) of subsection (1) after the passage “unrestricted distribution” the passage “or, being a film, as a ‘G’ film, a ‘PG’ film or an ‘M’ film”;

Amendment of  
s. 20—  
Certain actions  
not to constitute  
offences.

and

(b) by inserting after subsection (3) the following subsection:

(4) In this section—

“sell” or “sale” has the meaning assigned to the term by section 4 and includes sell or sale otherwise than by retail.

**11. Section 22 of the principal Act is amended—**

(a) by striking out paragraph (a) of subsection (2) and substituting the following paragraph:

Amendment of  
s. 22—  
Regulations.

(a) provide for or regulate the marking of publications of a particular class or the packages, containers, wrappings or casings for publications of a particular class;

and

(b) by striking out from paragraph (b) of subsection (2) the passage "restricted publications by the authority or body administering any particular libraries, or libraries of a particular class" and substituting the passage "publications by specified persons or bodies, or persons or bodies of a specified class".

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

D. B. DUNSTAN, Governor