



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 69 of 1982

An Act to amend the Classification of Publications Act, 1973-1978.

[Assented to 1 July 1982]

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, 1982". Short titles.

(2) The Classification of Publications Act, 1973-1978, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Classification of Publications Act, 1973-1982".

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 inserting after the definition of "adult" the following definitions: Amendment of s. 4— Interpretation.

"category 1 restricted publication" means a publication classified as a category 1 restricted publication by the Board in pursuance of this Act:

"category 2 restricted publication" means a publication classified as a category 2 restricted publication by the Board in pursuance of this Act;;

(b) by inserting in the definition of "restricted publication" after the passage "classified as a" the passage "category 1 or category 2"; and

(c) by inserting after the definition of "restricted publication" the following definition:

"restricted publications area" means any premises, or part of any premises, established, constructed and managed in accordance with the regulations for the sale of restricted publications:.

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

4. Section 12 of the principal Act is amended by inserting before paragraph (a) of subsection (3) the following paragraph:

(aa) have due regard to the views of the Minister;

Amendment of
s. 13—
Classification
of publications.

5. Section 13 of the principal Act is amended—

(a) by striking out from paragraph (a) of subsection (1) the passage “drug addiction” and substituting the passage “drug misuse or addiction”;

(b) by inserting in subsection (1) before the passage “restricted publication” the passage “category 1 or category 2”;

and

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

(3) The Board may refrain from assigning a classification to a publication where the Board is satisfied—

(a) that to assign a classification to the publication could not give proper effect to the principles that the Board is bound to apply;

or

(b) that the publication would, by reason of the manner in which it describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena, so offend against the standards of morality, decency and propriety generally accepted by reasonable adult persons that it should not be assigned a classification.

Repeal of
s. 14 and
substitution of
new section.

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

Conditions
applying to
restricted
publications.

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

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

and

(b) a condition that the publication shall not be exhibited or 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 category 2 restricted publication:

- (a) a condition that the publication shall not be sold, delivered, exhibited or displayed to a minor (otherwise by a parent or guardian, or a person acting with the authority of a parent or guardian, of the minor);
 - (b) a condition that the publication shall not be sold by retail, or exhibited, displayed or delivered for or on sale by retail, except 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 in plain opaque material;
- and
- (e) a condition that the publication shall not be advertised except in a restricted publications area or by way of printed or written material delivered to a person at the written request of that person.

7. Section 15 of the principal Act is amended—

Amendment of
s. 15—
Review.

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

(1) The Board may, of its own motion, and shall, on the application of any person, review any classification assigned to a publication and, on the review, may revoke or vary the classification as it considers appropriate.;

and

(b) by striking out from subsection (2) the passage “or conditions assigned to, or imposed in respect of” and substituting the passage “assigned to”.

8. Section 17 of the principal Act is amended—

Amendment of
s. 17—
Notice.

(a) by striking out paragraph (a) of subsection (1) and substituting the following paragraph:

(a) any classification assigned to a publication;;

(b) by striking out from paragraph (ab) of subsection (1) the passage “or condition”;

and

(c) by striking out from subsection (2) the passage “or conditions”.

9. Section 18 of the principal Act is amended—

Amendment of
s. 18—
Offences.

(a) by striking out from subsection (1) the passage “one thousand dollars” and substituting the passage “five thousand dollars”;

- (b) by striking out from subsection (2) the passage "one thousand dollars" and substituting the passage "five thousand dollars";
- (c) by striking out subsections (3) and (4) and substituting the following subsection:

(3) No person shall sell, or exhibit, display or deliver for sale, any restricted publication unless the publication is marked in the prescribed manner with the prescribed information.

Penalty: Two thousand dollars.;

- (d) by striking out from subsection (5) the passage "to which a restricted classification has been assigned" and substituting the passage "that is a restricted publication";
 - (e) by striking out from subsection (5) the passage "One thousand dollars" and substituting the passage "Five thousand dollars";
- and
- (f) by inserting after subsection (5) the following subsection:

(6) In proceedings for an offence against this section, an allegation in the complaint that a specified publication had been assigned a specified classification under this Act on a date specified in the complaint, shall, in the absence of proof to the contrary, be accepted as proof of the matters so alleged.

Insertion of
new s. 19a.

10. The following section is inserted after section 19 of the principal Act:

Rights under
contracts
relating to
unclassified or
restricted
publications.

19a. (1) A person who is a party to a contract for the sale, delivery, exhibition or display of, or any other dealing with, a publication may, if the Board has—

(a) refrained from assigning a classification to the publication under this Act;

or

(b) classified the publication as a restricted publication,

notify the other contracting party that he declines to be bound by the contract insofar as it relates to the publication in question and, if he has already received it, return the publication to the other party.

(2) Subsection (1) applies in relation to a contract whether or not the decision of the Board referred to in that subsection was made before or after the making of the contract.

(3) Where a person exercises a right conferred by subsection (1) in relation to a contract—

(a) he shall not incur any liability under or in respect of that or any other contract in consequence of that action;

and

(b) he may, if he has not received the publication or has returned the publication to the other contracting party in the condition in which it was supplied, recover from the other party, by action in any court of competent jurisdiction, any amount paid by him to the other party in connection with the supply of the publication.

11. Section 20 of the principal Act is amended—

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

(a) by striking out from paragraph (c) of subsection (1) the passage “by the Board” and substituting the passage “under this Act”;

(b) by striking out from paragraph (c) of subsection (2) the passage “by the Board” and substituting the passage “under this Act”;

and

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

(3) The provisions of this section do not derogate from the obligation to comply with the provisions of the Film Classification Act, 1971, as amended.

12. Section 22 of the principal Act is amended—

Amendment of
s. 22—
Regulations.

(a) by inserting in paragraph (a) of subsection (2) after the passage “in which” the passage “and the information with which category 1 or category 2”;

(b) by inserting after paragraph (a) of subsection (2) the following paragraphs:

(ab) provide for the manner and form in which applications may be made for the classification of a publication or for the review of the classification of a publication and prescribe the fees payable upon such applications;

(ac) regulate the establishment, construction and management of restricted publications areas and prevent the access of minors to such areas;

(ad) provide for the registration of restricted publications areas and the imposition of conditions upon, and the suspension and cancellation of, such registration;

(ae) provide for the manner and form in which applications may be made for the registration, or renewal of the registration, of restricted publications areas, and prescribe the fees payable upon such applications;;

and

(c) by striking out from paragraph (c) of subsection (2) the passage “two hundred dollars” and substituting the passage “one thousand dollars”.

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

D. B. DUNSTAN, Governor