

**Classification (Publications, Films and  
Computer Games) (Enforcement)  
(Amendment) Bill**

**EXPLANATORY MEMORANDUM**

Clause 1 states that the purpose of the Act is to amend the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** to:

- create offences in respect of commercial quantities of certain prohibited material; and
- to provide further for forfeiture of seized items; and
- to require all Category 1 restricted publications to be sold in sealed, plain, opaque packages; and
- to increase penalties against bodies corporate.

Clause 2 states that the commencement provisions and the amendment to the **Confiscation Act 1997** come into operation on the day on which the Act receives Royal Assent and the remaining provisions come into operation on 1 July 1998.

Clause 3 states that the Principal Act is the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995**.

Clause 4 inserts a new definition into section 3 of the Principal Act so that a "commercial quantity" in relation to publications, films or computer games, means not less than 50 copies, whether of one or more than one publication, film or computer game.

Clause 5 inserts new sub-sections 15(2), (3) and (4) into the Principal Act. Section 15(2) provides that it is an offence to sell a commercial quantity of X films.

Clause 5 also provides an indictable offence of selling a commercial quantity of RC films.

Clause 6 inserts a new section 23A into the Principal Act. Section 23A(1) provides that it is an indictable offence to possess a commercial quantity of RC films with the intention of selling or exhibiting the films.

Section 23A(2) provides that it is an indictable offence to copy a commercial quantity of RC films with the intention of selling or exhibiting the films or the copies.

Section 23A(3) provides that a person guilty of an offence against sub-section (1) or (2) is punishable by a maximum of 10 years imprisonment or to a fine not exceeding 1200 penalty units.

Section 23A(4) provides that it is an offence to possess a commercial quantity of X films with the intention of selling or exhibiting the films.

Section 23A(5) provides that it is an offence to copy a commercial quantity of X films with the intention of selling or exhibiting the films or the copies.

Section 23A(6) provides that a person guilty of an offence against sub-section (4) or (5) is punishable by a fine not exceeding 240 penalty units.

Section 23A(7) provides that evidence that a person made 50 or more copies of an unclassified film is evidence that the person intended to sell or exhibit the films and is proof of that fact in the absence of any evidence to the contrary.

Clause 7 inserts new sub-sections (4) and (5) into section 25 of the Principal Act. It is an indictable offence to sell a commercial quantity of RC publications (maximum penalty: 1200 penalty units or imprisonment for 10 years).

Clause 8 substitutes a new sub-section 26(1) in the Principal Act. It provides that a person must not sell or deliver a publication classified Category 1 restricted unless it is contained in a sealed package made of plain, opaque material and both the publication and the package bear the determined markings. For the purposes of this sub-section the word "plain" does not include the title of a publication. The maximum penalty which applies is 60 penalty units or imprisonment for 6 months.

- Clause 9 inserts new sub-sections 31(3) and 31(4) into the Principal Act. It is an indictable offence to possess or copy a commercial quantity of RC publications with the intention of selling the publications or the copies. (Maximum penalty: 1200 penalty units or imprisonment for 10 years).
- Clause 10 inserts new sub-sections 36(3) and 36(4) into the Principal Act. It is an indictable offence where a person sells a commercial quantity of RC computer games, with a maximum penalty of 1200 penalty units or imprisonment for 10 years.
- Clause 11 inserts a new section 45A into the Principal Act. Section 45A(1) provides that it is an indictable offence to possess a commercial quantity of RC computer games with the intention of selling or demonstrating the computer games (maximum penalty: 1200 penalty units or imprisonment for 10 years).
- Section 45A(2) provides that it is an indictable offence to copy a commercial quantity of RC computer games with the intention of selling or demonstrating the computer games or the copies. (Maximum penalty: 1200 penalty units or imprisonment for 10 years).
- Section 45A(4) provides that evidence that a person made 50 or more copies of an unclassified computer game is evidence that the person intended to sell or demonstrate the computer games and is proof of that fact in the absence of any evidence to the contrary.
- Clause 12 provides new time limits within which certain actions may be instituted under section 75 of the Principal Act.
- Clause 12(1)(a) changes a time limit from six months to twelve months. If at the expiration of twelve months from the date of seizure of items no person has been charged with an offence in relation to the seized items, the film, publication or computer game is forfeited to the Crown.
- Clause 12(1)(b) changes a time limit from 28 days to 60 days. The owner of a film, publication or computer game that has been lawfully seized by a member of the police force may apply within 60 days of the seizure to the Magistrates' Court for the return of the film, publication or computer game.

Clause 12(1)(c)(i) inserts a reference to a new provision created by this Act, and 12(1)(c)(ii) changes a time limit from six months to twelve months. The Magistrates' Court, upon application by the owner, must order the return of a film, publication or computer game to the applicant if, at the expiration of twelve months from the date of seizure the applicant has not been charged with an offence in relation to the film, publication or computer game.

Clause 12(2) inserts a new sub-section 75(3A) into the Principal Act. It provides that where a film, publication or computer game, other than one referred to in sub-section 75(3)(a), (b), or (c), has been lawfully seized by a member of the police force and the member believes on reasonable grounds that a person, other than a person charged with an offence in relation to the seized item, is the owner of the seized item, the member must give notice in writing to the owner of the date and place of seizure and the nature of the seized item.

Clause 12(2) also inserts a new sub-section 75(3B) into the Principal Act. It provides that a person to whom notice is given under sub-section 75(3A) may apply within 60 days after the notice to the Magistrates' Court for the return of the film, publication or computer game.

Clause 12(3) inserts a new sub-section 75A(4A) into the Principal Act. It provides that an applicant under sub-section 75(4) must give notice in writing of the application to the Chief Commissioner of Police containing specified information.

Clause 12(4) will enable a court, in certain circumstances, to order the destruction of a film, publication or computer game.

Clause 12(5) provides that where a court orders forfeiture, it must not direct the destruction of a film, publication or computer game before the expiration of the time allowed for instituting an appeal against the order or, if an appeal is lodged within that time, before the determination of the appeal.

Clause 13 inserts a new section 75A into the Principal Act. Section 75A(1) provides that where a person is found guilty of an offence in relation to a commercial quantity of films, publications or computer games, any other film, publication or computer game that was seized at the same time from the same

premises as the commercial quantity, is forfeited to the Crown at the expiry of 30 days after the finding of guilt unless the Magistrates' Court makes an order under sub-section 75A(4).

Section 75A(2) provides that where an application is made within the period of 30 days referred to in sub-section 75A(1), the operation of sub-section 75A(1) is suspended until the application is determined.

Section 75A(3) provides that an applicant for an order under sub-section 75A(4) must give notice of the application to the Chief Commissioner of Police.

Section 75A(4) provides that the Magistrates' Court may make an order that the item be returned to the applicant and that the applicant's costs be paid by the Chief Commissioner if the court is satisfied that the applicant is the owner of the particular items and the seized item is classified with a classification other than RC, or in the case of a film, RC or X.

Section 75A(5) provides that subject to sub-section 75A(6), a film, publication or computer game which is forfeited under this section may be destroyed or otherwise dealt with as directed by the Minister or the Magistrates' Court.

Section 75A(6) provides that the Minister or court must not direct the destruction of a film, publication or computer game before the expiry of the time allowed for instituting an appeal against a refusal to make an order under sub-section 75A(4) or, if an appeal is lodged within that time, before the determination of the appeal.

- Clause 14 changes the words "2 times" to "5 times" in sub-section 80(3) of the Principal Act and deletes the words "to a maximum of 240 penalty units". Where a body corporate is found guilty of an offence against the Principal Act, a court may now impose a fine not exceeding 5 times the maximum amount which the court could otherwise impose in respect of the offence.
- Clause 15 contains transitional provisions. The amendment of section 75 (see clause 12) applies to any publication, film or computer game seized before or after the commencement of that provision. All other amendments are to apply to a publication, film or computer game seized after the commencement of the relevant provision.

- Clause 16 inserts references to four summary offence provisions of the Principal Act into Schedule 1, item 5, of the **Confiscation Act 1997**, thereby allowing the procedures available under the **Confiscation Act** to be utilised in relation to those listed offences.
- Clause 17 inserts a reference to eight provisions of the Principal Act, which pertain to a commercial quantity of RC publications, films or computer games, into Schedule 4 of the **Magistrates' Court Act 1989**. These indictable offences may therefore be heard and determined summarily.