

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
ATTORNEY-GENERAL'S DEPARTMENT

**Output 1.3**

**Question No. 33**

**Senator Joyce asked the following question at the hearing on 20 October 2008:**

What penalties would be applied to publishers of periodicals who change their content so that it is no longer reflective of its classification once that classification has been made?

**The answer to the honourable senator's question is as follows:**

The *Classification (Publications, Films and Computer Games) Act 1995* (the Act) provides that an applicant for classification of a publication that is an issue of a periodical may request that the classification granted for the original issue apply also to all or some future issues. The Classification Board issues Serial Classification Declarations in accordance with the *Classification (Serial Publications) Principles 2005* which were approved in 2005 by State and Territory Government and Australian Government Ministers responsible for Censorship.

The Act provides that if the Board is of the opinion that an issue of the publication covered by the declaration:

- (a) contains material that, if the issue were being classified separately, would cause it to be classified with a higher classification than the original issue, or
- (b) contains an advertisement that has been refused approval,

then the Board must revoke the declaration so far as it affects that issue and any future issue.

On revocation, that issue and any future issues are unclassified unless submitted for individual classification. Offences for the sale of submittable publications, which are by definition unclassified, are set out in State and Territory classification enforcement legislation in the attached table.

<b>Value of Penalty Units for Each Jurisdiction</b>		
<b>Jurisdiction</b>	<b>Relevant Provision</b>	<b>Value of 1 Penalty Unit</b>
Commonwealth	Section 4AA <i>Crimes Act 1914</i> (Cth)	\$110
New South Wales	Section 17.6 <i>Crimes (Sentencing Procedure Act) 1999</i> (NSW)	\$110
Victoria	Section 110 Sentencing Act 1991 (Vic), Victorian Government Gazette, S66, 14 March 2008, page 1	\$113.42
Queensland	Section 5 Penalties and Sentences Act 1992 (Qld)	\$75
Western Australia	The value of a penalty unit is not consistent across all legislation	
South Australia	Penalties are divided into Divisions, where Division 1 penalties are the most severe and Division 12 are the most lenient	
Tasmania	Section 3 Penalty Units and Other Penalties Act 1987 (Tas)	\$120
Australian Capital Territory	Section 133 <i>Legislation Act 2001</i> (ACT)	\$100
Northern Territory	Section 3 <i>Penalty Units Act</i> (NT)	\$110

## Key Customs offences relating to the import of submittable publications

Enforcement Act	Offence	Penalty	Defence
<p><i>Customs (Prohibited Imports) Regulations 1956</i></p> <p>4A Importation of Objectionable Goods</p>	<p>4A(1) defines ‘publication’ to mean any book, paper, magazine, film, computer game or other written or pictorial matter.</p> <p>(1A) This regulation applies to publications and any other goods, that:</p> <p>(a) describe, depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be imported; or</p> <p>(b) describe or depict in a way that is likely to cause offence to a reasonable adult, a person who is, or who appears to be, a child under 18 (whether the person is engaged in sexual activity or not); or</p> <p>(c) in relation to a computer game — are unsuitable for a person under 18 to see or play; or</p> <p>(d) promote, incite or instruct in matters of crime or violence; or</p> <p>(e) promote or incite the misuse of a drug specified in Schedule 4; or</p> <p>(f) advocate the doing of a terrorist act.</p>		

	(2) The importation of goods to which this regulation applies is prohibited unless a permission, in writing, to import the goods has been granted by the Attorney-General or a person authorized by the Attorney-General for the purposes of this subregulation.		
<i>Customs Act 1901</i> Section 233	<p>(1) A person shall not: ... (b) import any prohibited imports</p> <p>(1AA) A person who contravenes subsection (1) is guilty of an offence punishable upon conviction: ... (b) in any other case—as provided by subsection 233AB(2).</p>	<p>233AB Penalties for offences against sections 233 and 233A</p> <p>(2) Where an offence is punishable as provided by this subsection, the penalty applicable to the offence is:</p> <p>(a) where the Court can determine the value of the goods to which the offence relates, a penalty not exceeding:  (i) 3 times the value of those goods; or  (ii) 1,000 penalty units;  whichever is the greater; or</p> <p>(b) where the Court cannot determine the value of those goods—  a penalty not exceeding 1,000 penalty units.</p>	<p>(1AB) Subsection (1AA) is an offence of strict liability, to the extent that it relates to paragraphs (1)(b), (c) and (d).</p> <p>Note: For <i>strict liability</i>, see section 6.1 of the <i>Criminal Code</i>.</p> <p>Section 6.1 of the <i>Criminal Code</i> provides that for an offence of strict liability:</p> <p>(a) there are no fault elements for any of the physical elements of the offence; and</p> <p>(b) the defence of mistake of fact under section 9.2 is available.</p>

<b>Key offences in State and Territory classification enforcement law relating to submittable publications</b>			
<b>Enforcement Act</b>	<b>Offence</b>	<b>Penalty</b>	<b>Defence</b>
<b>Australian Capital Territory – <i>Classification (Publications, Films and Computer Games) (Enforcement) Act 1995</i></b>			
Section 28 Sale of unclassified RC publications	(1) A person commits an offence if— (a) the person sells or delivers a submittable publication; and (b) the person knows that the publication is a submittable publication.	Maximum penalty: 50 penalty units, imprisonment for 6 months or both.	(3) This section does not apply if— (a) the person sells or delivers the publication for classification or law enforcement; or (b) the publication was a submittable publication and, since the offence was alleged to have been committed, the publication has been classified unrestricted.
	(2) A person commits an offence if— (a) the person sells or delivers a publication classified RC; and (b) the person knows that the publication is a publication classified RC.	Maximum penalty: 100 penalty units, imprisonment for 1 year or both.	
Section 34 Misleading or deceptive markings	(1) A person commits an offence if— (a) the person publishes an unclassified publication with a marking, or in packaging with a marking; and (b) the marking indicates or suggests that the publication has been classified.	Maximum penalty: 30 penalty units.	(4) Subsection (5) applies if— (a) a publication is reclassified under the Commonwealth Act, section 39 (Reclassification etc after 2 years) or section 97A (Reclassification); or (b) the board revokes a classification for a publication under the Commonwealth Act, section 22B (3) (Classification of a publication, film or computer game that may be the same as or similar to a classified item).  (5) A person does not commit an offence against this section in relation to the publication during the 30-day period after the decision to reclassify or revoke takes effect,
	(2) A person commits an offence if— (a) the person publishes a classified publication with a marking, or in packaging with a marking; and (b) the marking indicates or suggests that the publication is unclassified or has a different classification.	Maximum penalty: 30 penalty units.	

	(3) An offence against this section is a strict liability offence.		if the publication displays the determined markings and consumer advice (if any) applying to the publication before the reclassification or revocation.
<b>New South Wales – Classification (Publications, Films and Computer Games) Enforcement Act 1995</b>			
Section 19 Sale of RC or submittable publications prohibited	(1) A person must not sell or deliver: (a) a submittable publication, or (b) a publication classified RC.	Maximum penalty: • in the case of a submittable publication that is subsequently classified Category 1 restricted-20 penalty units for an individual, 50 penalty units for a corporation • in the case of a submittable publication that is subsequently classified Category 2 restricted-50 penalty units for an individual, 100 penalty units for a corporation • in the case of a publication classified RC (or a submittable publication that is subsequently classified RC)-100 penalty units or imprisonment for 12 months for an individual, 250 penalty units for a corporation.	(2) It is a defence to a prosecution for an offence under subsection (1) (a) to prove that since the offence was alleged to have been committed the publication has been classified Unrestricted.
Section 23 Misleading or deceptive markings	(1) A person must not publish an unclassified publication with a marking, or in packaging with a marking, that indicates or suggests that the publication has been classified.  (2) A person must not publish a classified publication with a marking, or in packaging with a marking, that indicates or suggests that the publication is unclassified or has a different classification.	Maximum penalty: 50 penalty units for an individual, 100 penalty units for a corporation.	(3) If: (a) a publication is reclassified under section 39 or 97A of the Commonwealth Act, or (b) the Board revokes a classification for a publication under section 22B (3) of that Act, it is sufficient compliance with this section for a period of 30 days after the decision to reclassify or revoke takes effect if the publication bears the determined markings applicable to the publication before that reclassification or revocation
<b>Northern Territory - Classification of Publications, Films and Computer Games Act</b>			
Section 50D Sale of unclassified or RC	(1) A person shall not sell or deliver (other than for the purpose of classification or law	Penalty: If the offender is a natural person - 200 penalty units or imprisonment for 2	(2) It is a defence to a prosecution for an offence against subsection (1) in relation to a

publications	enforcement) - (a) a submittable publication; or (b) a publication classified RC, knowing that it is such a publication.	years. If the offender is a body corporate - 1 000 penalty units.	submittable publication to prove that since the offence was alleged to have been committed the publication has been classified Unrestricted.
Section 50G Misleading or deceptive markings	(1) A person shall not publish an unclassified publication with a marking, or in packaging with a marking, that indicates or suggests that the publication has been classified.	Penalty: If the offender is a natural person - 100 penalty units or imprisonment for 12 months.  If the offender is a body corporate - 500 penalty units.	(3) If - (a) a publication is reclassified under section 39 or 97A of the Commonwealth Act; (b) a publication is reclassified by a decision of the Review Board under Part 5 of the Commonwealth Act; or © the classification for a publication is revoked under section 22B(3) of the Commonwealth Act, it is sufficient compliance with this section for a period of 30 days after the decision to reclassify or revoke takes effect if the publication bears the determined markings applicable to the publication before that reclassification or revocation.
	(2) A person shall not publish a classified publication with a marking, or in packaging with a marking, that indicates or suggests that the publication is unclassified or has a different classification.	Penalty: If the offender is a natural person - 100 penalty units or imprisonment for 12 months. If the offender is a body corporate - 500 penalty units.	
<b>Queensland – Classification of Publications Act 1991</b>			
Section 9A Power to require publisher to submit application for classification of a publication	(1) If— (a) the director or the publications classification officer reasonably believes a publication is a submittable publication; and (b) it is being published in the State, or the director or the publications classification officer reasonably believes it will be published in the State; the director or the publications classification officer may, by written notice given to its publisher, require the publisher to submit an application for classification of the publication, or its subsequent issues, by the board.  (2) For the requirement under subsection (1)	Maximum penalty--20 penalty units	Section 9C Defence to prosecution under section 9A or 9B In relation to a publication the director or the publications classification officer reasonably believes is a submittable publication that will be published in Queensland, it is a defence to a prosecution for an offence under section 9A or 9B for the defendant to prove that the defendant did not intend to publish, or authorise or cause someone else to publish, the publication in Queensland.

	<p>to have effect—</p> <p>(a) if the director makes the requirement— the director must cause notice of the requirement to be published in the Commonwealth gazette; or</p> <p>(b) if the publications classification officer makes the requirement—the officer must cause notice of the requirement to be gazetted.</p> <p>(3) A person to whom a notice under this section is given must comply with the notice within 3 business days after receiving it.</p>		
<p>Section 12 Sale etc. of prohibited publication or child abuse photograph</p>	<p>A person must not advertise, sell or distribute, or attempt to advertise, sell or distribute, a prohibited publication or child abuse photograph.</p> <p>[Section 3 definitions: <b>prohibited publication</b> means a publication that—</p> <p>(a) is a restricted publication; or</p> <p>(b) is an RC publication; or</p> <p>(c) is an interim prohibited publication.</p> <p><b>restricted publication</b> means a publication that is, or, if classified, would be classified as category 1 restricted or category 2 restricted.]</p>	<p>Maximum penalty—</p> <p>(a) in the case of a restricted publication--50 penalty units or imprisonment for 3 months; or</p> <p>(b) in the case of an RC publication (other than a child abuse publication)--300 penalty units or imprisonment for 1 year; or</p> <p>(c) in the case of a child abuse publication or child abuse photograph--600 penalty units or imprisonment for 2 years.</p>	<p>Section 19 Distributors, retail sellers and advertisers not liable in certain circumstances</p> <p>(1) A retail seller is not guilty of an offence against section 12, 13 or 15 in relation to a prohibited publication that was supplied by an approved wholesaler, or by a person whom the retail seller believed on reasonable grounds was an approved wholesaler, if—</p> <p>(a) at the time of the alleged offence, the publication is not classified; or</p> <p>(b) at the time of the alleged offence—</p> <p>(i) the publication is classified; and</p> <p>(ii) the retail seller does not know that the publication is a prohibited publication.</p> <p>(2) An approved wholesaler is not guilty of an offence against section 12 or 13 in relation to a prohibited publication if—</p> <p>(a) at the time of the alleged offence, the publication is not classified; or</p> <p>(b) at the time of the alleged offence—</p> <p>(i) the publication is classified; and</p> <p>(ii) the distributor does not know that the</p>



			<p>publication is a prohibited publication.</p> <p>(3) A person who advertises a publication is not guilty of an offence against section 12 if the person does not know, and has no reason to suspect, that the publication is a prohibited publication.</p>
Section 20A Offence to publish a publication classified unrestricted without its determined markings	A person must not publish, or attempt to publish, a publication classified unrestricted unless it bears its determined markings.	Maximum penalty--25 penalty units.	
Section 20B Offence to publish a publication with a misleading or deceptive marking	A person must not publish an unclassified publication with a marking indicating the publication is classified.	Maximum penalty--20 penalty units.	
<b>South Australia – Classification (Publications, Films and Computer Games) Act 1995</b>			
Section 46 Sale of unclassified or RC publications	(1) A person must not sell or deliver (other than for the purpose of classification or law enforcement) a publication classified RC.	Maximum penalty: \$10 000.	(2a) It is a defence to a prosecution for an offence against subsection (1) or (2) to prove that the defendant believed on reasonable grounds that the publication was not classified RC or was not a submittable publication, as the case may be.
	(2) A person must not sell or deliver (other than for the purpose of classification or law enforcement) a submittable publication.	Maximum penalty: \$5 000.	(3) It is a defence to a prosecution for an offence against subsection (2) to prove that since the offence was alleged to have been committed the publication has been classified Unrestricted.
Section 50 Misleading or deceptive markings	(1) A person must not publish an unclassified publication with a marking, or in packaging with a marking, that indicates or suggests that the publication has been classified.	Maximum penalty: \$2 500. Expiation fee: \$210.	(3) If— (a) a publication is reclassified under this Act or the Commonwealth Act; or (b) a classification for a publication is revoked under this Act or the Commonwealth Act, it is sufficient compliance with this section

			for a period of 30 days after the decision to reclassify or revoke takes effect if the publication bears the determined markings applicable to the publication before that reclassification or revocation.
	(2) A person must not publish a classified publication with a marking, or in packaging with a marking, that indicates or suggests that the publication is unclassified or has a different classification.	Maximum penalty: \$2 500. Expiation fee: \$210.	

**Tasmania – Classification (Publications, Films and Computer Games) Enforcement Act 1995**

Section 17 Offences in relation to unclassified objectionable publications	<p>(1) Subject to subsection (2), a person must not –</p> <p>(a) sell or deliver an unclassified objectionable publication or cause or permit such a publication to be sold or delivered; or</p> <p>(b) exhibit, or cause or permit to be exhibited, an unclassified objectionable publication in a public place or in such a manner that it is visible from a public place.</p> <p>[Section 3 definitions: <b>objectionable publication</b> means a publication that –</p> <p>(a) describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a manner that is likely to cause offence to a reasonable adult; or</p> <p>(b) . . . . .</p> <p>(c) describes, depicts, expresses or otherwise deals with an act of bestiality; or</p> <p>(d) promotes, incites or encourages terrorism; or</p> <p>(e) is classified RC or would, if classified, be</p>	<p>Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months, or both.</p>	<p>(3) A person is not to be convicted of an offence under subsection (1) if it is proved that –</p> <p>(a) since the offence was alleged to have been committed the publication has been classified; and</p> <p>(b) the act alleged to constitute the offence did not infringe any conditions, other than the conditions relating to prescribed markings, that would have been applicable to the publication had it been so classified at the time when the act was done.</p>
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	classified RC]		
	(4) A person must not exhibit an unclassified objectionable publication to a minor if that person is not the minor's parent.	Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months, or both.	
	(5) A person must not publish an advertisement relating to an unclassified objectionable publication or cause or permit such an advertisement to be published.	Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months, or both.	
Section 18 Offences in relation to prohibited publications	(1) A person must not – (a) sell or deliver a publication classified RC or cause or permit such a publication to be sold or delivered; or (b) exhibit, or cause or permit to be exhibited, a publication classified RC in a public place or in such a manner that it is visible from a public place.	Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.	
	(2) A person must not exhibit a publication classified RC to a minor.	Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.	
Section 19 Offences in relation to misleading or deceptive markings	(1) A person must not publish an unclassified publication with a marking, or in packaging with a marking, that indicates or suggests that the publication has been classified.	Penalty: Fine not exceeding 10 penalty units.	(3) If – (a) a publication is reclassified under section 39 or 97A of the Commonwealth Act; or (b) the Board revokes a classification for a publication under section 22B(3) of that Act – it is sufficient compliance with this section for a period of 30 days after the decision to reclassify or revoke takes effect if the publication bears the determined markings applicable to the publication before that reclassification or revocation.
	(2) A person must not publish a classified publication with a marking, or in packaging with a marking, that indicates that the publication is unclassified or has a different classification.	Penalty: Fine not exceeding 10 penalty units.	

**Victoria – Classification (Publications, Films and Computer Games) (Enforcement) Act 1995**

<p>Section 25 Sale of unclassified or RC publications</p>	<p>(1) A person must not sell or deliver (other than for the purpose of classification or law enforcement)- (a) a submittable publication; or (b) a publication classified RC.</p>	<p>Penalty: (1)(c) if the publication is subsequently classified Category 1 restricted or Category 2 restricted - 60 penalty units; (1)(d) if the publication is classified, or is subsequently classified, RC – 240 penalty units or imprisonment for 2 years.</p>	<p>(2) It is a defence to a prosecution for an offence against subsection (1)(a) to prove that since the offence was alleged to have been committed the publication has been classified Unrestricted.  (3) It is a defence to a prosecution for an offence against subsection (1) to prove that the defendant believed on reasonable grounds that the publication was not a submittable publication or a publication classified RC, as the case may be.</p>
	<p>(4) A person must not sell a commercial quantity of- (a) publications classified RC; or (b) unclassified publications which would, if classified, be classified RC; or (c) publications that are a mixture of publications referred to in paragraphs (a) and (b).  (5) An offence against subsection (4) is an indictable offence.</p>	<p>Penalty: 1200 penalty units or imprisonment for 10 years.</p>	
<p>Section 28 Misleading or deceptive markings</p>	<p>(1) A person must not publish an unclassified publication with a marking, or in packaging with a marking, that indicates or suggests that the publication has been classified.</p>	<p>Penalty: 60 penalty units or imprisonment for 6 months.</p>	<p>(3) If- (a) a publication is reclassified under section 39 or 97A of the Commonwealth Act; or (b) the Board revokes a classification for a publication under section 22B(3) of that Act- it is sufficient compliance with this section for a period of 14 days after the decision to reclassify or revoke takes effect if the publication bears the determined markings applicable to the publication before that reclassification or revocation.</p>
	<p>(2) A person must not publish a classified publication with a marking, or in packaging with a marking, that indicates or suggests that the publication is unclassified or has a different classification.</p>	<p>Penalty: 60 penalty units or imprisonment for 6 months.</p>	

**Western Australia – Classification (Publications, Films and Computer Games) Enforcement Act 1996**

<p>Section 61 Sale or supply of submittable or RC publications</p>	<p>(1) A person must not sell or supply — (a) a submittable publication; or (b) a publication classified RC.</p>	<p>Penalty: \$15 000 or imprisonment for 18 months.</p>	<p>(2) It is a defence to a prosecution for an offence against subsection (1)(a) to prove that since the offence was alleged to have been committed the publication has been classified Unrestricted.</p> <p>(3) It is a defence to a prosecution for an offence against subsection (1) to prove that the accused believed on reasonable grounds that the publication was not a submittable publication or a publication classified RC, as the case may be.</p>
<p>Section 65C Misleading or deceptive markings</p>	<p>(1) A person must not publish an unclassified publication with a marking, or in packaging with a marking, that indicates or suggests that the publication has been classified.</p>	<p>Penalty: \$5 000.</p>	<p>(3) If — (a) a publication is reclassified under section 39 or 97A of the Commonwealth Act; or (b) the Board revokes a classification for a publication under section 22B(3) of that Act, it is sufficient compliance with this section for a period of 30 days after the decision to reclassify or revoke takes effect if the publication bears the determined markings applicable to the publication before that reclassification or revocation.</p>
<p>(2) A person must not publish a classified publication with a marking, or in packaging with a marking, that indicates or suggests that the publication is unclassified or has a different classification.</p>	<p>Penalty: \$5 000.</p>		