

Introduced by Mr A A Tink, MP

First print



New South Wales

# **Crimes Amendment (Possession of Refused Classification Publications, Films and Computer Games) Bill 1996**

## **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

### **Overview of Bill**

The object of this Bill is to amend the *Crimes Act 1900* to prohibit possession of publications, films and computer games that:

- (a) have been classified RC (Refused Classification) in accordance with the *National Classification Code* under the *Commonwealth Classification (Publications, Films and Computer Games) Act 1995*, or
  - (b) are unclassified but that would, if classified, be classified RC.
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Explanatory note

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## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendment to the *Crimes Act 1900* set out in Schedule 1.

**Schedule 1** amends the *Crimes Act 1900* to replace the offence of possessing child pornography contained in section 578B with a new offence of possessing a publication, film or computer game classified RC, or an unclassified publication, film or computer game that would, if classified, be classified RC. The current offence relating to child pornography prohibits the possession of RC material classified (in accordance with the *National Classification Code* set out in the Schedule to the Commonwealth *Classification (Publications, Films and Computer Games) Act 1995*) RC on the basis that it describes or depicts, in a way that is likely to cause offence to a reasonable adult, a person (whether or not engaged in sexual activity) who is a child under 16 or who looks like a child under 16. The new offence will continue to prohibit the classification of such child pornography but will expand the prohibition to cover material classified RC on other grounds under the *National Classification Code*. For example, it will cover films classified RC on the basis that they:

- 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 classified, or
- promote, incite or instruct in matters of crime or violence.

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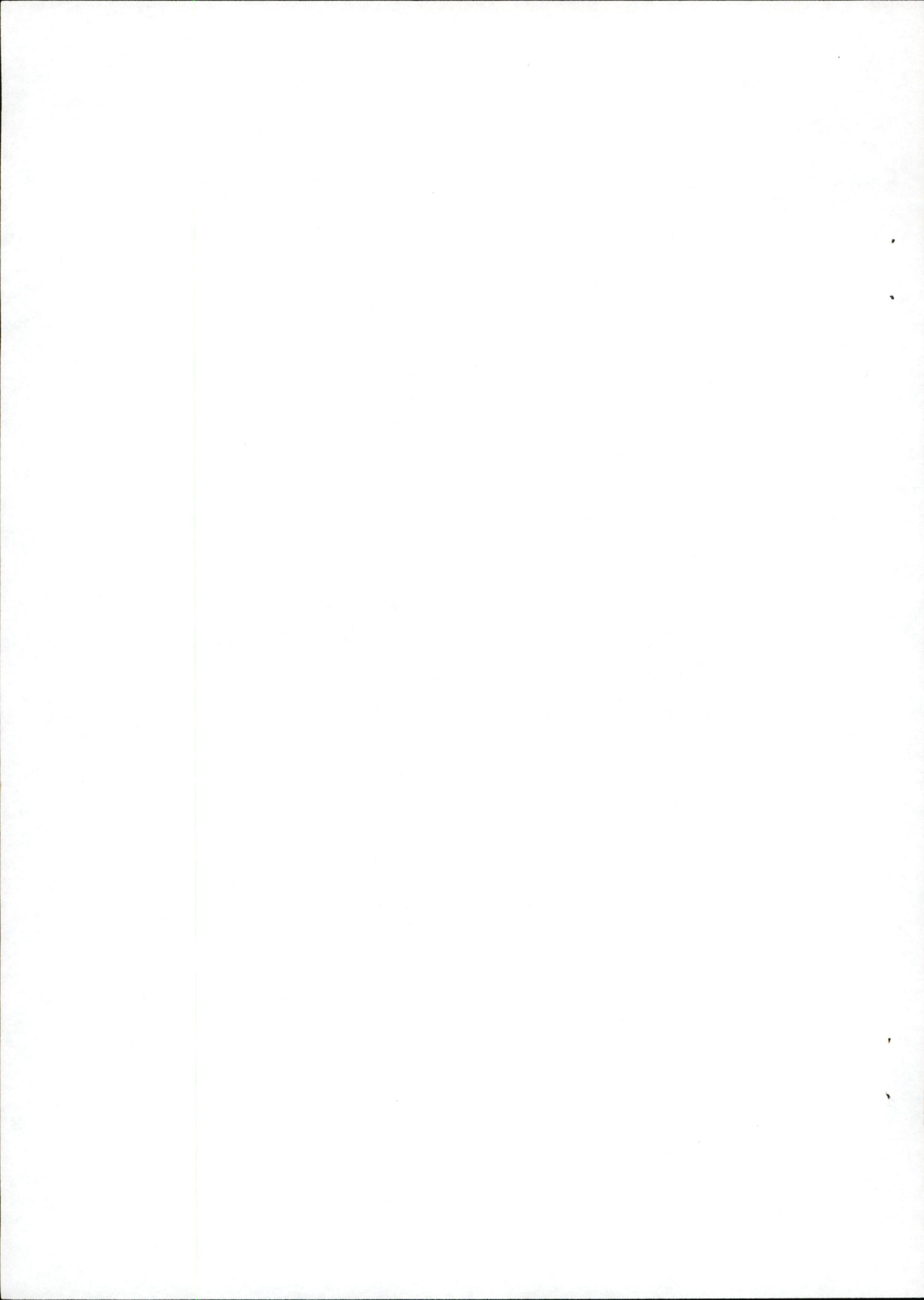
# Crimes Amendment (Possession of Refused Classification Publications, Films and Computer Games) Bill 1996

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New South Wales

# **Crimes Amendment (Possession of Refused Classification Publications, Films and Computer Games) Bill 1996**

No. , 1996

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## **A Bill for**

An Act to amend the *Crimes Act 1900* with respect to possession of Refused Classification publications, films and computer games, and for other purposes.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Crimes Amendment (Possession of Refused Classification Publications, Films and Computer Games) Act 1996*.

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**2 Commencement**

This Act commences on a day to be appointed by proclamation.

**3 Amendment of Crimes Act 1900 No 40**

The *Crimes Act 1900* is amended as set out in Schedule 1.

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## Schedule 1 Amendment

(Section 3)

### Section 578B

Omit section 578B. Insert instead:

**578B Possession of Refused Classification publications, films and computer games** 5

(1) In this section:

*RC material* means a publication, film or computer game classified RC, or an unclassified publication, film or computer game that would, if classified, be classified RC. 10

*Classification Board* means the Classification Board established under the Commonwealth Act.

*classified* means classified under the Commonwealth Act. 15

*Commonwealth Act* means the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth.

*computer game, film and publication* each have the same meanings, respectively, as in the Commonwealth Act. 20

*law enforcement agency* has the same meaning as in section 13 of the *Criminal Records Act 1991*, and includes a person or body prescribed by the regulations for the purpose of this definition. 25

(2) A person who has in his or her possession any RC material is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 12 months (or both).

Schedule 1      Amendment

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- (3) Nothing in this section makes it an offence:
- (a) for any member or officer of a law enforcement agency to have any RC material in his or her possession in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under any Act or law, or 5
  - (b) for any person to have any RC material in his or her possession in the exercise or performance of a power, function or duty relating to the classification of such material conferred or imposed on the person by or under any Act or law, or 10
  - (c) for a person to have in his or her possession any publication, film or computer game that is classified other than as RC. 15
- (4) Proceedings for an offence under this section:
- (a) are not to be commenced later than 6 months after the date of the alleged offence, and
  - (b) in the case of a publication, film or computer game that is unclassified at the time of the alleged offence, are not to be commenced until the publication, film or computer game concerned has been classified, and 20
  - (c) are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone. 25
- (5) It is a defence to a prosecution under this section to prove:
- (a) that the defendant did not know, or could not reasonably be expected to have known, that the publication, film or computer game concerned is classified RC or would be classified RC, or 30
  - (b) in the case of RC material classified on the basis that it describes or depicts, in a way that is likely to cause offence to a reasonable adult, a person (whether or not engaged in sexual activity) who is 35



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a child under 16 or who looks like a child under 16—that the person described or depicted in the material was of or above the age of 16 at the time when the publication, film or computer game was published, made, taken or produced.

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(6) In any proceedings under this section, a certificate issued under section 87 of the Commonwealth Act signed (or purporting to be signed) by the Director of the Classification Board (or by the Deputy Director of the Classification Board) and stating that the publication, film or computer game concerned is classified RC and the basis of its classification is prima facie evidence of the matter stated in the certificate.

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(7) A court that convicts a person of an offence under this section may order that any RC material in respect of which the offence was committed is to be destroyed or otherwise disposed of as the court thinks fit.

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(8) The Governor may make regulations, not inconsistent with this Act, prescribing any matter required or permitted to be prescribed under this section.

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