

**FILM AND VIDEO TAPE CLASSIFICATION (AMENDMENT)
ACT 1991 No. 74**

NEW SOUTH WALES



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**FILM AND VIDEO TAPE CLASSIFICATION (AMENDMENT)
ACT 1991 No. 74**

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Act No. 74, 1991

An Act to amend the Film and Video Tape Classification Act 1984 to prevent films from containing or being exhibited with advertisements for films of a more restricted classification and to make further provision with respect to review of classifications, alteration of classified films, possession of unclassified films, and classification guidelines; and for other purposes. [Assented to 17 December 1991]

Film and Video Tape Classification (Amendment) 1991

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

1. This Act may be cited as the Film and Video Tape Classification (Amendment) Act 1991.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 1 (9)–(11) and section 3 in its application to those provisions are taken to have commenced on 1 January 1991.

Amendment of Film and Video Tape Classification Act 1984 No. 155

3. The Film and Video Tape Classification Act 1984 is amended as set out in Schedule 1.

Explanatory notes

4. Matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

Amendments: definition of “exhibit”**(1) Section 3 (Definitions):**

- (a) Insert in alphabetical order in section 3 (1):
“**exhibit**” a film includes screen a film;
- (b) Omit section 3 (2).

Explanatory note

Item (1) relocates an existing interpretative provision in the list of definitions.

Amendment: censor to have regard to Ministerial guidelines**(2) Section 5A:**

Before section 6, insert:

SCHEDULE 1—AMENDMENT—*continued***Censor to have regard to guidelines**

5A. (1) In exercising their functions under this Act, the censor and appeal censor are to have regard to any guidelines issued to them from time to time by the Minister relating to the classification of films.

(2) The Minister is not to issue guidelines except those that are agreed to on behalf of the States and Territories in respect of which an arrangement of the type described in section 4 is in force.

Explanatory note

Item (2) provides that the censor and appeal censor are to have regard to uniform Ministerial guidelines issued to them for the classification of films.

Amendment: application for classification required in all States and Territories**(3) Section 7 (Application for classification):**

After section 7 (2), insert:

(3) If an arrangement under section 4 is in force, the censor must not accept an application for classification of a film unless an application is made (and the appropriate fee paid) to the censor for classification of the film under the corresponding law in each State and Territory in respect of which a corresponding arrangement is in force.

Explanatory note

Item (3) prevents an application for classification of a film being accepted unless the application is also made in all the States and Territories which have arrangements for the performance of classification functions on their behalf by the commonwealth Censor. This will enable effect to be given to administrative arrangements whereby the Commonwealth Censor deals with applications for classification from all States and Territories at the same time and receives a composite fee to cover the appropriate fee in each jurisdiction.

Amendment: separate classification applications for film and video versions of a film**(4) Section 7 (Application for classification):**

At the end of section 7, insert:

SCHEDULE 1—AMENDMENTS—*continued*

(4) Cinematograph and video tape versions of a film must be the subject of separate applications unless the censor otherwise allows.

(5) An additional application fee is payable for each additional 90 minutes or part thereof after the first 90 minutes of a film if, in the opinion of the censor, the film contains 2 or more separate works.

Explanatory note

Item (4) requires separate applications for classification to be made in respect of film and video versions of the same title and requires additional fees to be paid for classification of a film which contains more than 1 title and exceeds 90 minutes in length

Amendments: prescribed markings and warnings to appear on films**(5) Section 9 (Classification of films):**

After section 9 (2). insert:

(2A) When classifying a film, the censor may specify as part of the classification a warning or warnings, relating to the contents of the film, that are to be displayed when the film is sold or displayed for sale.

(6) Section 27 (Prescribed markings and warnings on films and containers):**(a) Omit section 27 (l), insert instead:**

(1) A person must not display, for the purposes of sale, or sell a film, or cause or permit a film to be so displayed or sold unless the container, wrapping or casing in which the film is so displayed or sold bears:

(a) the prescribed markings in respect of the classification assigned under Part 2; and

(b) any warning specified in relation to the film under section 9 (2A).

Maximum penalty: 50 penalty units in the case of a corporation and 10 penalty units or imprisonment for 12 months in any other case,

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SCHEDULE 1—AMENDMENTS—*continued*

(b) After section 27 (2), insert:

(3) A requirement of this section as to what the container, wrapping or casing in which a film is displayed or sold must or must not bear extends in the case of a film that is a video tape to the top surface and spine of the video cassette.

Explanatory note

Item (5) empowers the censor (when classifying a film) to assign certain warnings in relation to the film's contents (e.g. the type of language used) which are required to be placed on the film's container, wrapping or casing. Item (6) requires that markings relating to the video tape's classification (and any warnings as to the film's contents) appear on the top face and spine of the video cassette (as well as on its container, as at present).

Amendments: advertisements

(7) Section 10:

Omit the section, insert instead:

Advertisements

10. (1) The censor may approve, unconditionally or subject to conditions, or disapprove the use of any advertisement relating to a film (whether or not the film is the subject of an application for classification or has been classified).

(2) Such an approval may approve an advertisement for use before the film is classified, but the censor is not to grant such an approval unless satisfied:

- (a) that special circumstances exist justifying the grant of the approval; and
- (b) that the film is unlikely to be classified as an "R" film; and
- (c) that the advertisement is suitable for general exhibition.

(3) The censor may by notice in writing require a person to submit for approval any advertisement in association with which the person sells, exhibits or distributes a film, other than an advertisement a copy of which accompanied an application for classification of the film concerned.

(4) If a person fails to comply with such a requirement within the time required by the notice, the advertisement concerned is taken to have been disapproved by the censor under this section.

SCHEDULE 1—AMENDMENTS—*continued*

(5) The censor must keep a record of all decisions made by the censor under this section.

(8) **Section 25 (Advertisements for unclassified film prohibited):**
At the end of section 25 (1), insert “, unless the advertisement is approved under section 10 for use before the film is classified”.

Explanatory note

Items (7) and (8) allow the censor in special cases to approve advertising material associated with the distribution of a film for use before the film is classified. Currently an advertisement cannot be used until the film is classified. An advertisement is not to be the subject of such an approval unless the film concerned is unlikely to be classified “R” and the censor is satisfied that the advertisement is suitable for general exhibition. The amendments also allow the censor to require film distributors, sellers and exhibitors to submit advertising material to the censor for approval. If the use of an advertisement is disapproved by the censor it cannot be used by the film distributor, seller or exhibitor.

Amendments: classification to take effect when written notice of decision is given

(9) **Section 11:**

Omit the section, insert instead:

Notice of decision of censor

11. (1) The censor must give notice in writing of a decision under section 9 or 10 in respect of a film to the person who applied for classification of the film and to the Minister, within 30 days after the decision is made.

(2) The decision made takes effect when that notice is given to the person who applied for classification.

(10) **Section 12 (Application for review of decision):**

Omit section 12 (2) (b), insert instead:

(b) where the applicant is the Minister—at any time.

(11) **Section 14 (Review of classification):**

Omit section 14 (3) and (4), insert instead:

(3) The appeal censor must give notice in writing of a decision under this section to the applicant and to the Minister, within 14 days after the decision is made.

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SCHEDULE 1—AMENDMENTS—*continued*

(4) A decision made under this section takes effect when that notice is given to the applicant.

Explanatory note

Items (9)–(11) provide that a classification decision of the censor or the appeal censor takes effect when written notice of the decision is given to the persons affected by the decision. Currently the operative date is the date notice of the decision is gazetted.

Amendments: review of previous classification decisions after 2 years

(12) Section 11A:

After section 11, insert:

Review after 2 years by censor on own initiative

11A. (1) The censor may, on his or her own initiative, review a previous decision of the censor or appeal censor at any time after 2 years have elapsed since the previous decision took effect.

(2) The censor must, at least 30 days before the review:

- (a) cause notice of the review to be published in the Commonwealth Gazette if there is an arrangement in force under section 4, or in the Gazette if there is no such arrangement in force; and
- (b) if it is reasonably practicable to do so, give notice in writing of the review to the person who applied for classification of the film or approval of the advertisement concerned.

(3) A person entitled to be given notice may make a written submission to the censor concerning any of the following matters:

- (a) whether the film should be classified or refused classification;
- (b) the appropriate classification of the film;
- (c) whether the advertisement should be approved or refused approval.

(4) A submission may be made only within 30 days after notice is given to the person or notice is published under subsection (2) (a), whichever happens later.

SCHEDULE 1—AMENDMENTS—*continued*

(5) On a review under this section, the censor is to take into account any submissions duly made and may:

- (a) confirm the previous decision; or
- (b) set aside the previous decision, and classify or refuse to classify the film or approve or refuse to approve the advertisement to which the previous decision relates.

(6) The censor must:

- (a) cause notice of his or her decision on the review to be published in the Commonwealth Gazette if there is an arrangement in force under section 4, or in the *Gazette* if there is no such arrangement in force; and
- (b) if it is reasonably practicable to do so, give notice in writing of his or her decision on the review to the person who applied for classification of the film or approval of the advertisement that was the subject of the review.

(7) A decision under this section takes effect when notice of it is given under subsection (6) (b) or, if no such notice is given, on the date notice is published under subsection (6) (a) or a later date specified in that notice.

(8) The censor must keep a record of all decisions made by the censor under this section.

(13) Section 12 (Application for review of decision):

From section 12 (1), omit “9 or 10”, insert instead “9, 10 or 11A”.

(14) Section 13 (Notice of application for review):

From section 13 (a), omit “9 or 10”, insert instead “9, 10 or 11A”.

Explanatory note

Items (12)–(14) allow the censor to undertake a review of a previous decision by the censor or appeal censor concerning a film or advertisement after 2 years from the date the decision took effect. The Act currently provides for the review of the censor’s decisions by an appeal censor at the request of the person who submitted the film for classification (within 30 days after the initial classification) or the Minister (at any time). The proposed amendment does not require an application for any review.

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SCHEDULE 1—AMENDMENTS—*continued*

Amendment: approval of alteration of classified film

(15) Section 17 (**Effect of alteration of classified film**):

At the end of section 17, insert:

(2) The censor may give an approval under this section in respect of a particular alteration or addition or a particular class of alterations or additions to a film.

Explanatory note

Item (15) makes it clear that after a film has been classified the censor may approve not only specific alterations or additions to the film but also alterations or additions of a particular class.

Amendment: increased penalties for exhibiting unclassified films

(16) Section 19 (**Prohibition against exhibition of unclassified films**):

From section 19 (3) (c). Omit “\$15,000” and “\$4,000”, insert instead “500 penalty units” and “100 penalty units”, respectively.

Explanatory note

Item (16) increases the maximum monetary penalties for exhibiting an unclassified film (which includes a film which has been refused classification) from \$15,000 to 500 penalty units (\$50,000) in the case of a corporation and from \$4,000 to 100 penalty units (\$10,000) in any other case.

Amendments: advertisements in films

(17) Section 19A:

After section 19, insert:

Restrictions on showing advertisements with films

19A. (1) A person must not exhibit an advertisement in relation to a film as part of the exhibition in a public place of another film (“**the feature film**”) unless the film advertised is of the same classification as or is of a lower classification than the feature film.

Maximum penalty: 100 penalty units in the case of a corporation and 20 penalty units or imprisonment for 2 years in any other case.

SCHEDULE 1—AMENDMENTS—*continued*

(2) The hierarchy of film classification is as follows:

- “G” is a lower classification than “PG”, “M” or “R”;
- “PG” is a lower classification than “M” or “R”;
- “M” is a lower classification than “R”..

(3) An advertisement is to be considered to be exhibited “as part of” the exhibition of a film if its exhibition is preliminary to or occurs during or immediately after the exhibition of the film.

(18) Section 29:

Omit the section, insert instead:

Classified films containing advertisements for other films

29. (1) A person must not sell, or cause or permit to be sold, a film that contains a classified film (“the feature film”) and an advertisement in relation to another film unless the film advertised is of the same classification as or is of a lower classification than the feature film.

Maximum penalty: 100 penalty units in the case of a corporation and 20 penalty units or imprisonment for 2 years in any other case.

(2) The hierarchy of film classification is as follows:

- “G” is a lower classification than “PG”, “M” or “R”;
- “PG” is a lower classification than “M” or “R”;
- “M” is a lower classification than “R”.

Explanatory note

Item (17) prevents the screening of an advertisement for a film as part of the screening of a film if the advertised film is of a more restricted classification than the film being shown. Currently the Act does not prevent the screening of advertisements for more restricted classification films.

Item (18) applies the same restrictions to the sale of films containing advertisements for other films. This alters the current provision which allows films to be sold that contain advertisements for films of one classification higher.

SCHEDULE 1—AMENDMENTS—*continued*

Amendments: prohibition on exhibition of certain films to minors

(19) Section 20 (Attendance of minors at exhibition of certain films—offence by exhibitor):

(a) Omit section 20 (l), insert instead:

(1) A person must not exhibit or cause to be exhibited, in a public place, an “R” film or an unclassified film, if a minor is present at the whole or any part of the exhibition of the film.

Maximum penalty: 50 penalty units in the case of a corporation and 10 penalty units or imprisonment for 12 months in any other case.

(1A) A person does not contravene subsection (1) in respect of the exhibition of an unclassified film which, after the date of the exhibition, is classified as a “G”, “PG” or “M” film.

(1B) Proceedings for an offence under subsection (1) in respect of an unclassified film (other than a film which has been refused classification) must not be instituted until the film has been classified or refused classification.

(b) From section 20 (3) (b), omit “, or had not attained the age of 2 years.”.

(20) Section 22 (Attendance of minors at exhibition of certain films—offence by other persons):

(a) Omit section 22 (l), insert instead:

(1) A person who has attained the age of 18 years must not cause, permit or allow a minor to be present at the whole or any part of the exhibition in a public place of an “R” film or an unclassified film.

Maximum penalty: 10 penalty units or imprisonment for 12 months.

(1A) A person does not contravene subsection (1) in respect of the exhibition of an unclassified film which, after the date of the exhibition, is classified as a “G”, “PG” or “M” film.

(1B) Proceedings for an offence under subsection (1) in respect of an unclassified film (other than a film which has been refused classification) must not be instituted until the film has been classified or refused classification.

SCHEDULE 1—AMENDMENTS—*continued*

(b) From section 22 (3), omit “, or had not attained the age of 2 years.”.

Explanatory note

Currently the Act prohibits the exhibition of “R” rated films or films refused classification in the presence of minors except those under the age of 2 years. (A “minor” is a person under the age of 18 years.) There are 2 offences, one committed by the film’s exhibitor and one by any adult who allows the minor to be present. Items (19) and (20) remove the exception for minors under 2 years of age and extend the offences to unclassified films. Because of the extension of the offences to unclassified films, additional provisions are inserted for the protection of persons from liability in the case of films that are subsequently classified “G”, “PG” or “M”.

Amendments: prohibition on display and sale of unclassified films

(21) Section 32 (**Display and sale of unclassified films prohibited**):

(a) Omit section 32 (2), insert instead:

(2) In proceedings for an offence under subsection (1), evidence that a person had possession of 10 or more copies of an unclassified film is evidence, in the absence of evidence to the contrary, that the person had possession of the film for sale.

(b) In section 32 (3) (a), omit “an “M” film”, insert instead “a “G”, “PG” or “M” film.

(c) From section 32 (3) (c), omit “\$15,000” and “\$4,000”, insert instead “500 penalty units” and “100 penalty units” respectively.

Explanatory note

Currently the Act provides that a person who displays for sale or sells an unclassified film is guilty of an offence except where the film is subsequently classified “G” or “PG”. Item (21) removes this exception and thus makes it an offence to display for sale or sell an unclassified film irrespective of the C classification it may subsequently be given. The penalties for the offence where the film concerned has been refused classification or is subsequently refused classification are increased from \$15,000 to 500 penalty units (\$50,000) in the case of a corporation and from \$4,000 to 100 penalty units (\$10,000) in any other case. An evidentiary provision is inserted to deem a person who has possession of 10 or more copies of a film to have them for sale, unless there is evidence to the contrary.

SCHEDULE 1—AMENDMENTS—*continued*

Amendment: prohibition on copying certain unclassified films

(22) Section 36:

Omit the section, insert instead:

Copying of certain unclassified films prohibited

36. (1) A person must not make a copy of the whole or any part of an unclassified film for the purposes of sale.

Maximum penalty: 150 penalty units in the case of a corporation and 40 penalty units or imprisonment for 2 years in any other case.

(2) In proceedings for an offence under subsection (1), evidence that a person made 10 or more copies of an unclassified film is evidence, in the absence of evidence to the contrary, that the person made them for the purposes of sale.

(3) A person does not contravene subsection (1) in respect of the copying of an unclassified film which is subsequently classified as a “G”, “PG” or “M” film.

(4) Proceedings for an offence under subsection (1) in respect of an unclassified film (other than a film which has been refused classification) must not be instituted until the film has been classified or refused classification.

Explanatory note

Item (22) prohibits the copying of an unclassified film (or part of such a film) for the purposes of sale. The current provision applies only to films that have been refused classification. Because the new offence will extend to films not yet submitted for classification, additional provisions are inserted for the protection of persons from liability in the case of films that are subsequently classified “G”, “PG” or “M”. An evidentiary provision is inserted to deem a person who has made 10 or more copies of a film to have made them for the purposes of sale, unless there is evidence to the contrary.

Amendment: retention period for property seized under a search warrant

(23) Section 41 (Forfeiture of films etc. following seizure):

From section 41 (1), omit “1 month”, insert “90 days”.

SCHEDULE 1—AMENDMENTS—*continued***Explanatory note**

Item (23) provides that any property which has been seized under a search warrant (having been suspected of being used in the commission of an offence under the Act) cannot be retained by police for more than 90 days unless a prosecution is commenced within that period or a police officer reports the seizure to a justice. Currently the retention period allowed is 1 month. The amendment will apply to seizures that occurred up to 1 month before the commencement of the amendment.

Amendment: savings and transitional provisions**(24) Schedule 1 (Savings, transitional and other provisions):**

After clause 8, insert:

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Property seized under a search warrant

9. Section 41 (as amended by the Film and Video Tape Classification (Amendment) Act 1991) extends to apply in respect of the seizure of a thing before (but not more than 1 month before) the commencement of that amendment.

Transitional provision—offences

10. The amendments made by Schedule 1 do not apply in respect of offences committed before the commencement of those amendments.

Review of classification decisions

11. Section 11A (Review after 2 years by censor on own initiative) applies to a decision of the censor or appeal censor whether made before or after the commencement of that section.

Explanatory note

Item (24) enacts consequential savings and transitional provisions.

*[Minister's second reading speech made in—
Legislative Assembly on 11 December 1991
Legislative Council on 11 December 1991]*