

**FILM AND VIDEO TAPE CLASSIFICATION (AMENDMENT)
ACT 1993 No. 44**

NEW SOUTH WALES



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SCHEDULE 1—AMENDMENTS

**FILM AND VIDEO TAPE CLASSIFICATION (AMENDMENT)
ACT 1993 No. 44**

NEW SOUTH WALES



Act No. 44, 1993

An Act to amend the Film and Video Tape Classification Act 1984 to provide for an “MA” classification for films that are not suitable for viewing by persons under the age of 15 years; and for other purposes.
[Assented to 15 June 1993]

Film and Video Tape Classification (Amendment) Act 1993 No. 44

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Film and Video Tape Classification (Amendment) Act 1993.

Commencement

2. (1) This Act commences on a day to be appointed by proclamation, except as provided by subsection (2).

(2) Schedule 1 (15) and section 3 in its application to that item commence on the date of assent.

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.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 9 (Classification of films):

- (a) From section 9 (1) (b), omit “person” wherever occurring, insert instead “child”
- (b) From section 9 (1) (c), omit “persons”, insert instead “children”*.
- (c) After section 9 (1) (c), insert:
 - (cl) as an “MA” film, where the censor is of the opinion that the film is unsuitable for viewing by a child under the age of 15 years; or

(2) Section 9A:

After section 9, insert:

“X” classification in ACT operates as classification refused

9A. While a film is classified as an “X” film under the Classification of Publications Ordinance 1983 of the Australian Capital Territory, it is taken to have been refused classification under this Act.

SCHEDULE 1—AMENDMENTS—*continued***(3) Section 19 (Prohibition against exhibition of unclassified films):**

In section 19 (3) (a), after “‘M’”, insert “or ‘MA’”.

(4) Section 19A (Restrictions on showing advertisements with films):

Omit section 19A (2), insert instead:

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

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

(5) Section 19B:

After section 19A, insert:

Attendance of children under 15 at exhibition of “MA” films—offence by exhibitor

19B. (1) A person must not exhibit, or cause to be exhibited, an “MA” film in a public place, if a child under the age of 15 years is present at the whole or any part of the exhibition of the film and is not accompanied by his or her parent or guardian.

Maximum penalty: 10 penalty units in the case of a corporation and 5 penalty units in any other case.

(2) An adult who is exercising parental control over a child under the age of 15 years is, while exercising that control, taken to be a parent of the child for the purposes of this section (even if not actually a parent of the child).

(3) A person is guilty of an offence under subsection (1) in respect of each child to whom subsection (1) applies who is present at the exhibition of the film.

SCHEDULE1—AMENDMENTS—*continued*

(4) It is a defence to a prosecution for an offence under subsection (1) if the defendant proves:

- (a) that the defendant took all such steps as were reasonable in the circumstances to avoid being guilty of the alleged offence; or
- (b) that the defendant or the defendant's employee or agent had reasonable grounds for believing, and did in fact believe, that the child in respect of whom the alleged offence was committed had attained the age of 15 years at the date of the alleged offence; or
- (c) that the child was accompanied at the exhibition of the film by a person and that there was no reason to suspect that the person was not a parent or guardian of the child.

(5) For the purposes of this section, a child does not cease to be accompanied by his or her parent or guardian during the exhibition of a film merely because the parent or guardian is temporarily absent during the exhibition.

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

From section 20 (1A), omit “or ‘M’ ”, insert instead “, ‘M’ or ‘MA’ ”.

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

From section 22 (1A), omit “or ‘M’ ”, insert instead “, ‘M’ or ‘MA’ ”.

(8) **Section 25 (Advertisements for unclassified film prohibited):**

In section 25 (3) (a), after “ ‘M’ ”, insert “or ‘MA’ ”.

(9) **Section 29 (Classified film containing advertisements for other films):**

Omit section 29 (2), insert instead:

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

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

SCHEDULE 1—AMENDMENTS—*continued*

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

(10) Section 29A:

After section 29, insert:

Sale of “MA” films to children under 15 prohibited without parental consent

29A. (1) A person must not sell a film classified as an “MA” film to a child under the age of 15 years unless the child’s parent or guardian consents to the particular sale or the person who sells the film is the parent or guardian of the child.

Maximum penalty: 10 penalty units in the case of a corporation and 5 penalty units in any other case.

(2) An adult who is exercising parental control over a child under the age of 15 years is, while exercising that control, taken to be a parent of the child for the purposes of this section (even if not actually a parent of the child).

(3) It is a defence to a prosecution for an offence under subsection (1) if the defendant proves that the defendant or the defendant’s employee or agent had reasonable grounds for believing, and did in fact believe:

- (a) that the child in respect of whom the alleged offence was committed had attained the age of 15 years at the date of the alleged offence; or
- (b) that the child’s parent or guardian consented to the particular sale.

(11) Section 30 (Sale of “R” films to minors prohibited):

From section 30 (1), omit “(other than a minor of whom the person is the parent or guardian)”, insert instead “, unless the person who sells the film is the parent or guardian of the minor”.

SCHEDULE 1—AMENDMENTS—*continued***(12) Section 32 (Display and sale of unclassified films prohibited):**

From section 32 ,^{(3) (a)}, omit “or ‘M’ ”, insert instead
“, ‘M’ or ‘MA’ ”.

(13) Section 36 (Copying of certain unclassified films prohibited):

From section 36 (3), omit “or ‘M’ ”, insert instead “, ‘M’ or ‘MA’ ”.

(14) Section 43 (Evidence):

After section 43 (1) (d), insert:

(d1) that a film has been classified as an “X” film under the Classification of Publications Ordinance 1983 of the Australian Capital Territory;

(15) Schedule 1 (Savings, Transitional and Other Provisions):

After clause 11, insert:

*Film and Video Tape Classification (Amendment)
Act 1993*

Films classified “MA” before amendment commences

12. (1) In this clause:

“**the amending Act**” means the Film and Video Tape Classification (Amendment) Act 1993;

“**the appointed day**” means the day appointed under section 2 (1) of the amending Act.

(2) Anything done by the censor before the appointed day (including before the date of assent to the amending Act) for or with respect to the classification of a film as an “MA” film which could have been validly done under this Act had the amendments made by the amending Act been in force when it was done is taken to have been validly done under this Act.

(3) Between the date of assent to the amending Act and the appointed day, while a film is classified as an “MA” film as a result of anything done by the censor as referred to in subclause (2), the film is regarded as having been classified as an “M” film.

SCHEDULE 1—AMENDMENTS—*continued***Films classified “X” before amendment commences**

13. Section 9A applies in respect of a film classified as an “X” film as referred to in that section even if that classification of the film commenced before the commencement of that section.

*[Minister's second reading speech made in—
Legislative Assembly on 19 May 1993
Legislative Council on 21 May 1993]*