

CINEMATOGRAPH FILMS (AUSTRALIAN QUOTA) ACT.

Act No. 41, 1935.

An Act for securing the exhibition of a certain proportion of Australian cinematograph films; and for purposes connected therewith. [Assented to, 11th April, 1935.]

George V.
No. 41, 1935.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Cinematograph Films (Australian Quota) Act, 1935." Short title.

(2) This Act shall, save as otherwise expressly provided therein, commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette. The date so appointed is in this Act referred to as the commencement of this Act. Commencement.

2.

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Interpre-
tation.

"Acquire."

2. In this Act, unless the context or subject-matter otherwise indicates or requires—

"Acquire," in relation to a distributor, includes the production or obtaining possession of films for the purpose of hiring or selling them.

"Australian
film."

"Australian film" means a film—

- (a) which has been wholly or mainly produced in Australia;
- (b) all the studio scenes depicted in which have been photographed in Australia; and
- (c) (where the film is produced by a company) which has been produced by a company incorporated in Australia.

"British
films."

"British films" means films which are deemed to be British films for the purposes of the Imperial Act, the Cinematograph Films Act, 1927.

"Cinematograph."

"Cinematograph" includes cinematograph and any other similar apparatus for the exhibition of moving pictures.

"Cinematograph
film."

"Cinematograph film" means a film used or proposed to be used for the purpose of exhibiting a cinematograph picture.

"Cinematograph
picture."

"Cinematograph picture" means a picture or other optical effect exhibited or proposed to be exhibited by means of a cinematograph.

"Com-
mittee."

"Committee" means the Films Advisory Committee constituted under this Act.

"Distri-
butor."

"Distributor," in relation to films, means a person for the time being engaged in the business of hiring or selling films.

"Distri-
butor's
quota."

"Distributor's quota," in relation to the films acquired by a distributor for the purposes of his business in any period, means the proportion of Australian films which he is required by this Act to acquire during that period, computed in accordance with this Act.

"Exhibitor."

"Exhibitor," in relation to films, includes every person who exhibits any film in a theatre, and "to exhibit" has a corresponding interpretation.

"Exhibitors"

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- “Exhibitor’s quota,” in relation to films exhibited by any exhibitor in any period, means the proportion of Australian films which he is required by this Act to exhibit during that period, computed in accordance with this Act. No. 41, 1935.
“Exhibitor’s quota.”
- “Film ” means cinematograph film. “Film.”
- “Foreign films ” means all films which are neither British films nor Australian films. “Foreign films.”
- “Hiring,” in relation to films, means hiring or otherwise issuing or distributing films to an exhibitor at a rent or for other consideration or making other arrangements with exhibitors for the exhibition thereof. “Hiring.”
- “Length,” in relation to films, means the total length of film which may lawfully be exhibited. “Length.”
- “Prescribed ” means prescribed by this Act or by regulations made thereunder. “Pre-scribed.”
- “Producer,” in relation to any film, means the person making the arrangements necessary for the production of the film and for the organisation and direction of the scenes to be depicted in the film. “Producer.”
- “Schedule ” means Schedule to this Act. “Schedule.”
- “Theatre ” includes any house, room, building, garden or place wherein any cinematograph picture is exhibited and to which admission is or may be procured by payment of money or by ticket or by any other means, token or consideration as the price, hire or rent of admission. “Theatre.”

3. (1) This Act shall apply to all films except films of the following classes, namely:— Application of this Act.

- (a) films depicting wholly or mainly news and current events;
- (b) films depicting wholly or mainly natural scenery;
- (c) films being wholly or mainly commercial advertisements;
- (d) films used wholly or mainly by educational institutions for educational purposes;

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- (e) films depicting wholly or mainly industrial or manufacturing processes;
- (f) scientific films, including natural history films;
- (g) Australian films in respect of which the Minister upon the recommendation of the Films Advisory Committee constituted under this Act has directed that this Act shall not apply on the ground that their artistic or photographic merit, or their appeal to the interest of the public generally, or their general quality is not sufficient to warrant their being taken into account for the purposes of computing the distributor's quota or the exhibitor's quota in accordance with this Act;
- (h) films not exceeding five thousand feet in length; or
- (i) Australian films the production of which was commenced before the first day of January, one thousand nine hundred and thirty-four.

(2) Notwithstanding anything in subsection one of this section, the Minister may at any time upon the recommendation of the Films Advisory Committee constituted under this Act, direct that this Act shall apply to any specified Australian film of any of the classes mentioned in that subsection: Provided that no such direction shall be made in respect of any film less than three thousand feet in length.

(3) Films to which this Act applies are in this Act referred to as "quota" films.

Minimum requirements as to acquisition by distributors of Australian "quota" films. First Schedule.

4. (1) Of the total number of "quota" films other than British films acquired by a distributor for the purposes of his business in any of the years mentioned in the First Schedule it shall be his duty to acquire and make available for distribution in that year not less than the proportion of Australian "quota" films specified in the said Schedule. Where such proportion is not a whole number any fraction exceeding one-half shall be deemed to be a whole number.

For the purpose of calculating such proportion, no Australian "quota" film shall be counted more than once, nor shall any such film be counted by more than one distributor. (2)

(2) If the Minister is satisfied that in any year compliance with the requirements of this Act by any distributor or by distributors generally is not or was not commercially practicable by reason of the quantity, character or exhibition value of Australian films available or the excessive cost of such films in relation to British films or foreign films he may modify those requirements or exempt such distributor or distributors therefrom to such extent as in the circumstances he considers reasonable.

The power conferred on the Minister by this subsection shall not be exercised except upon the recommendation of the Films Advisory Committee constituted under this Act.

(3) A notification of every modification and exemption made or granted by the Minister pursuant to subsection two of this section shall be published in the Gazette.

(4) For the purpose of enabling the Minister to exercise the powers conferred upon him by the provisions of this section every distributor shall not later than a prescribed day in each year furnish to the Minister a statement in writing in the prescribed form of the number of "quota" films which he proposes to acquire and distribute during the next succeeding year.

(5) If in any of the years specified in the First Schedule a distributor fails to comply with the requirements of this Act or with those requirements as modified in accordance with subsection two of this section he shall be liable to a penalty not exceeding one hundred pounds unless he proves to the satisfaction of the court that the reasons for non-compliance were beyond his control. In addition to any penalty that may be imposed as aforesaid, the court convicting such distributor may in any case if it is of opinion that the offence was committed with the intent to defeat the purposes of this Act make an order for the cancellation or suspension of the registration of such distributor under this Act, and such order shall take effect as from a date to be therein specified in that behalf.

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(6) This section shall commence upon a date being three months after the commencement of this Act, and the first year referred to in the First Schedule shall commence on the date on which this section commences.

Special provisions in the case of distributors carrying on small businesses. First Schedule.

5. Any two or more distributors each of whom satisfies the Minister that, in any of the years specified in the First Schedule, he will not acquire or has not acquired for the purposes of his business more than six "quota" films, may with the consent of the Minister combine for the purpose of satisfying the quota requirements of this Act for that year, and in any such case all the distributors who have so combined shall for the said purpose be regarded as one distributor only and shall accordingly be deemed to have complied with the requirements aforesaid to the same extent as one distributor in such circumstances would have complied with those requirements.

Minimum requirements as to exhibition of Australian films. Second Schedule.

6. (1) Of the total number of "quota" films exhibited by any exhibitor in any of the years mentioned in the Second Schedule it shall be his duty to exhibit in each theatre in which he exhibits films not less than the proportion of Australian "quota" films specified in the said Schedule. Where such proportion is not a whole number, any fraction exceeding one-half shall be deemed to be a whole number.

(2) In computing for the purposes of this section the proportion of Australian "quota" films exhibited by any exhibitor in any theatre in any year every exhibition of a "quota" film (whether Australian or otherwise) shall be deemed to be the exhibition of a separate film.

(3) If the Minister is satisfied that in any year compliance with the provisions of this Act by any exhibitor or by exhibitors generally is not or was not commercially practicable by reason of the quantity, character or exhibition value of Australian films available, or the excessive cost of such films in relation to British or foreign films, he may modify those requirements or exempt such exhibitor or exhibitors therefrom to such extent as in the circumstances he considers reasonable.

The power conferred on the Minister by this subsection shall not be exercised except upon the recommendation of the Films Advisory Committee constituted under this Act.

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(4) A notification of every modification and exemption made or granted by the Minister pursuant to subsection three of this section shall be published in the Gazette.

(5) If in any of the years specified in the Second Schedule an exhibitor fails to comply with the requirements of this Act or with those requirements as modified in accordance with subsection three of this section he shall be liable to a penalty not exceeding one hundred pounds unless he proves to the satisfaction of the court that the reasons for non-compliance were beyond his control. In addition to any penalty as aforesaid the court convicting such exhibitor may in any case if it is of opinion that the offence was committed with intent to defeat the purposes of this Act make an order for the cancellation or suspension of the registration of such exhibitor under this Act, and such order shall take effect from a date to be therein specified in that behalf.

(6) This section shall commence upon a date being nine months after the commencement of this Act, and the first year referred to in the Second Schedule shall commence on the date on which this section commences.

7. (1) In order to comply with the requirements of section six of this Act, any exhibitor may (notwithstanding anything in any agreement whether entered into before or after the commencement of this Act) without incurring any liability for breach of contract, reject any number of films (other than Australian films and British films), which he has contracted to accept for purposes of exhibition.

Right of exhibitor to reject films in order to comply with requirements of Act.

(2) Notice of his intention to reject any number of films pursuant to subsection one of this section shall be given in writing by the exhibitor to the distributor concerned not less than twenty-eight days before the day on which the exhibitor proposes first to exhibit the Australian "quota" film in respect of which such right of rejection is exercised.

(3) This section shall not be construed to entitle an exhibitor to reject during any year a greater number of films than the number which represents the proportion

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of Australian "quota" films required by section six of this Act to be exhibited by such exhibitor during that year.

Certain agreements declared void.

8. (1) (a) Any agreement which requires or purports to require or can be construed as requiring any exhibitor who purchases or takes on hire any Australian "quota" film to purchase or take on hire any film or films other than that Australian "quota" film, as a condition of the purchase or taking on hire of that Australian "quota" film, shall be absolutely void.

(b) This subsection shall commence upon a date being nine months after the commencement of this Act.

(2) Subsection one of this section shall extend to any agreement whether the same was made before the commencement of this Act, or either before or after the date of commencement of that subsection.

Australian "quota" films in other States to be Australian "quota" films for purposes of this Act.

9. Subject to the provisions of section ten of this Act, any Australian film which the Minister is satisfied has been approved as a "quota" film in any other State shall unless the Minister otherwise directs be deemed to be an Australian "quota" film for the purposes of this Act.

Producers of certain Australian films to furnish returns before distributing, etc., films in New South Wales.

10. (1) Every producer of any Australian film which is more than five thousand feet in length or of an Australian film to which the Minister has pursuant to this Act directed that this Act shall apply, shall before distributing or exhibiting such film in New South Wales or selling or supplying the same for distribution or exhibition in New South Wales, furnish to the Minister a return in the prescribed form together with such fee (not exceeding five pounds) as is prescribed.

Penalty.

(2) Any producer of such an Australian film who fails to comply with the requirements of subsection one of this section shall be liable to a penalty not exceeding fifty pounds.

Films Advisory Committee.

11. (1) There shall be a Films Advisory Committee, which shall consider such matters arising in connection with the administration of this Act as may be referred to it by the Minister.

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The Films Advisory Committee may make such recommendation or report to the Minister on any matter so referred to it as it thinks fit.

(2) The Films Advisory Committee shall be appointed by the Governor and shall consist of three persons having no pecuniary interest in any branch of the film industry. One of such persons shall in and by his appointment be the chairman of the committee, and another of such persons shall in and by his appointment be the deputy-chairman of the committee.

The provisions of the Public Service Act, 1902, or any Act amending that Act, shall not apply to the appointment of members of the committee; and such members shall not be subject to the provisions of any such Act during their term of office.

(3) The Governor may remove any member so appointed.

(4) The members of the committee shall, subject to this Act, hold office for a term of three years from the date of their appointment and be eligible for re-appointment from time to time for a like term.

(5) If any of such members—

- (a) dies; or
- (b) resigns his office by writing under his hand addressed to the Governor; or
- (c) is absent from three consecutive meetings of the committee except with leave granted by the committee; or
- (d) is removed by the Governor,

his office shall thereupon become vacant and the Governor may, subject to this Act, appoint a person to take the place of the member whose office has become vacant.

(6) Any person so appointed to take the place of a member whose office has become vacant shall hold office for the remainder of the term for which his predecessor was appointed.

(7) In case of the illness, suspension, or absence of the chairman of the committee the powers and authorities of such chairman shall be exercised during such illness, suspension or absence by the deputy chairman.

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(8) No act or proceeding of the committee shall be invalidated or prejudiced by reason only of the fact that at the time when such act or proceeding was done, taken, or commenced there was a vacancy in the office of any one member.

(9) The procedure for the calling of meetings of the committee, and the conduct of business at such meetings, and the times at which such meetings shall be held, shall, subject to any regulations which may be made by the Governor in relation thereto, be as determined by the committee.

(10) Any two members of the committee shall form a quorum for the purpose of transacting any business of the committee.

(11) Any duly convened meeting of the committee at which a quorum is present shall be competent to transact any business of the committee. At any such meeting the chairman, or in his absence the deputy-chairman, shall, in the event of an equal division of votes on any question, have a second or casting vote.

(12) The members of the committee other than those employed by or on behalf of the Crown in right of the State of New South Wales shall be entitled to receive in their capacity as members of the committee such fees as may be fixed by the Governor.

Regis-
tration.

12. (1) No person shall—

(a) carry on the business of exhibiting cinematograph pictures in any theatre; or

(b) carry on the business of selling, leasing, distributing or otherwise disposing of cinematograph films or the right to use such films for the exhibition of cinematograph pictures therefrom in any theatre; or

(c) act as a producer of any cinematograph film, unless he has registered his name and address and such particulars as are prescribed in such manner and with such person and at such times as is or are prescribed.

(2) The Governor may by regulations under this Act exempt from the provisions of subsection one of this section any person or class of persons specified in the regulations.

(3)

(3) The prescribed fee shall be paid in respect of each registration under this section. No. 41, 1935.

(4) Any person who contravenes the provisions of this section shall be liable to a penalty not exceeding one hundred pounds with an additional penalty in the case of a continuing offence not exceeding ten pounds for each day upon which the contravention continues.

(5) This section shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

13. (1) Any penalty imposed by this Act or by any regulation made thereunder may be recovered in a summary manner. Recovery of penalty.

(2) Proceedings for or in respect of the recovery of any such penalty may be instituted at any time within two years after the date upon which the offence in respect of which such penalty is imposed was committed.

14. (1) The Governor may make regulations for or with respect to— Regulations.

(a) prescribing annual fees to be paid—

(i) by persons registered under this Act who carry on the business of exhibiting cinematograph pictures in any theatre—not exceeding in any case in respect of any theatre the sum of one pound; and

(ii) by persons registered under this Act who carry on the business of selling, leasing, distributing or otherwise disposing of cinematograph films or the right to use such films for the exhibition of cinematograph pictures therefrom in any theatre—not exceeding in any case the sum of five pounds;

(iii) by persons registered under this Act who act as producers of cinematograph films—not exceeding in any case the sum of one pound;

(b) books and records to be kept and returns to be furnished to the Minister by producers, distributors and exhibitors of films;

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- (c) imposing penalties not exceeding ten pounds for any breach of any regulation, with an additional penalty in the case of a continuing offence not exceeding one pound for each day on which the breach continues; and
- (d) generally, any matter or thing authorised or required to be prescribed or necessary or expedient to be prescribed for carrying this Act into effect.

(2) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of such publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

(3) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

Secs. 4, 5.

SCHEDULES.**FIRST SCHEDULE.****DISTRIBUTOR'S QUOTA.**

In the first year after the commencement of section 4	5	per centum
In the second year	7½	”
In the third year	10	”
In the fourth year	12½	”
In the fifth year	15	”

SECOND

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Sec. 6.

EXHIBITOR'S QUOTA.

In the first year after the commencement of section 6..	4	per centum
In the second year	..	..	..	5	”
In the third year	..	..	..	7½	”
In the fourth year	..	..	..	10	”
In the fifth year	..	..	..	12½	”
