

FILM AND VIDEO TAPE CLASSIFICATION ACT, 1984, No. 155

NEW SOUTH WALES.



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SCHEDULE 1.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

FILM AND VIDEO TAPE CLASSIFICATION ACT, 1984, No. 155

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 155, 1984.

An Act to provide for the classification, exhibition and supply of films and video tapes. [Assented to, 10th December, 1984.]

See also Indecent Articles and Classified Publications (Amendment) Act, 1984; Theatres and Public Halls (Film and Video Tape Classification) Amendment Act, 1984.

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BE it enacted by the Queen'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:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Film and Video Tape Classification Act, 1984".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Interpretation.

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"advertisement", in relation to a film, includes—

- (a) every visual form of advertising the film (including any accompanying words or any spoken words or other sounds) whether in a book, paper, magazine, poster, photograph, sketch, programme, film or slide, or by way of television, or in any other way;
- (b) any form of advertising capable of being heard from a radio or any instrument or device for the production of sound; and

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- (c) any written or pictorial matter contained or displayed in or on a container or wrapping used to enclose the film;

“appeal censor” means—

- (a) the officer or authority of the Commonwealth exercising and discharging on behalf of the State the functions of an appeal censor pursuant to an arrangement made under section 4; or
- (b) where no such arrangement is in operation, the appeal censor appointed as referred to in section 5;

“censor” means—

- (a) the officer or authority of the Commonwealth exercising and discharging on behalf of the State the functions of a censor of films pursuant to an arrangement under section 4; or
- (b) where no such arrangement is in operation, the censor appointed as referred to in section 5;

“child” means a person who has not attained the age of 16 years;

“child abuse film” means a film which depicts a person (whether engaged in sexual activity or otherwise) who is, or who is apparently, a child in a manner that is likely to cause offence to a reasonable adult;

“classified” means classified under this Act;

“Commonwealth Gazette” means the Commonwealth of Australia Gazette;

“display”, in relation to a film, does not include exhibit;

“film” includes a cinematograph film, slide and video tape and any other form of recording from which a visual image can be produced;

“minor” means a person who has not attained the age of 18 years, but does not include a married person;

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“premises” includes any structure, building, aircraft, vehicle, vessel and place (whether built upon or not), and any part thereof;

“public place” means any place open to the public, whether on payment or the provision of any other consideration or otherwise, and includes a shop, stall, vehicle or other place to which persons are invited or permitted to resort to obtain, view or inspect goods or to obtain a service;

“regulations” means regulations made under this Act;

“sell” means sell by wholesale or retail, whether by cash, on terms or otherwise, and includes barter, exchange, supply for profit, let on hire, offer for sale or to let on hire, receive for sale or to let on hire, have in possession for sale or to let on hire, expose for sale or to let on hire, send, forward or deliver for sale or to let on hire and cause, suffer or allow to be sold or to be let on hire, offered or exposed for sale or to be let on hire;

“synopsis”, in relation to a film, includes a statement or summary of any incidents, or of the plot of a play or story, depicted or intended to be depicted by means of the film;

“unclassified” means not classified under this Act;

“unclassified film” means a film which has not been classified under this Act and includes—

- (a) a film which has been refused classification; and
- (b) a film to which a classification has been assigned otherwise than in accordance with this Act;

“video tape” includes video disc.

(2) In this Act, a reference to the exhibiting of a film includes a reference to the screening of a film.

(3) In this Act, a reference to a theatre or public hall is a reference to a theatre or public hall within the meaning of the Theatres and Public Halls Act, 1908.

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(4) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
 - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
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PART II.

CLASSIFICATION OF FILMS AND VIDEO TAPES.

DIVISION 1.—*Appointment of censor and appeal censor.*

Arrangements with the Commonwealth with respect to appointment of censor, etc.

4. (1) The Governor may arrange with the Governor-General of the Commonwealth for the exercise and discharge by officers or authorities of the Commonwealth, on behalf of the State, of the functions of a censor of films or of an appeal censor with respect to the classification of films under this Act.

(2) An agreement relating to an arrangement under this section may make provision for all or any matters necessary or convenient to be provided for or incidental to carrying out the arrangement and shall contain a provision to the effect that the arrangement may be terminated by the Governor at any time.

(3) An agreement under this section shall have effect according to its tenor.

(4) The Minister shall cause notice of the making or termination of an arrangement under this section, including the date of the making or termination of the arrangement, as the case may be, to be published in the Gazette as soon as practicable after that date.

Other arrangements for appointment of censor, etc.

5. (1) Where there is no arrangement in operation under section 4, a censor and an appeal censor may be employed under the Public Service Act, 1979.

(2) The offices of censor and appeal censor may be held in conjunction with any other position in the Public Service.

DIVISION 2.—*Classification.***Application of Division.**

6. Nothing in this Division applies to or in respect of an application for classification of a film where—

- (a) a previous application for classification of the same film has been made but not determined; or
- (b) a decision in respect of the film is the subject of an application for review by the appeal censor and the appeal censor has not determined the application.

Application for classification.

7. (1) An application for the classification of a film may be made to the censor by any person.

(2) An application for the classification of a film—

- (a) shall be in or to the effect of the form approved by the censor;
and
- (b) shall be lodged with the censor together with—
 - (i) a synopsis of the film;
 - (ii) a copy of any advertisement proposed to be used in relation to the film; and
 - (iii) the prescribed fee.

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Screening of film for purpose of classification.

8. (1) The censor may require a film that is the subject of an application for classification to be screened in accordance with this section.

(2) Where the censor requires a film to be screened, the censor may require the person who applied for classification of the film to lodge a copy of the film with the censor, which the censor may retain for such period as the censor may determine.

(3) Where the censor requires a film to be screened, the film shall be screened as and when required by the censor and the screening shall be carried out at the risk of the person who applied for classification of the film.

(4) At the screening of a film in accordance with this section, the person who applied for classification of the film, not more than 4 representatives of that person and such other persons as are approved by the censor are entitled to be present.

Classification of films.

9. (1) Except as provided by subsection (2), the censor shall classify a film for which an application for classification has been made—

- (a) as a "G" film, where the censor is of the opinion that the film is suitable for general exhibition;
- (b) as a "PG" film, where the censor is of the opinion that the film should be viewed by a person under the age of 15 years only with the guidance of a parent or guardian of the person;
- (c) as an "M" film, where the censor is of the opinion that the film cannot be recommended for viewing by persons under the age of 15 years; or
- (d) as an "R" film, where the censor is of the opinion that the film is unsuitable for viewing by a minor.

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(2) The censor shall refuse to classify a film for which an application for classification has been made where the film—

- (a) describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty or violence, or revolting or abhorrent phenomena, in a manner that is likely to cause offence to a reasonable adult;
- (b) is a child abuse film;
- (c) describes, depicts, expresses or otherwise deals with sexual activity of any kind between a human being and an animal; or
- (d) promotes, incites or encourages terrorism within the meaning of the Australian Security Intelligence Organization Act 1979 of the Commonwealth.

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

Advertisements.

10. (1) The censor may approve, unconditionally or subject to conditions, or disapprove the use of any advertisement relating to a film that is the subject of an application for classification.

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

Notice of decision of censor.

11. (1) Where, under section 9 or 10, the censor makes a decision in respect of a film, the censor shall cause notice of the decision—

- (a) to be given in writing to the person who applied for classification of the film; and
- (b) to be published—
 - (i) where there is an arrangement in operation under section 4, in the Commonwealth Gazette; or

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(ii) where there is no arrangement in operation under section 4, in the Gazette, within 30 days after the day on which the decision was made.

(2) A decision referred to in subsection (1) shall take effect on the day on which notice of the decision is published in the Commonwealth Gazette or the Gazette, as the case may be, in accordance with that subsection.

Application for review of decision.

12. (1) Where, under section 9 or 10, the censor has made a decision in respect of a film—

- (a) the person who applied for classification of the film; or
- (b) the Minister,

may apply to the appeal censor for a review of the decision.

(2) An application under subsection (1) shall be in writing signed by, or on behalf of, the applicant and shall be lodged with the appeal censor—

- (a) where the applicant is a person referred to in subsection (1) (a)—within 30 days after the day on which the person received written notice of the decision to which the application relates; or
- (b) where the applicant is the Minister—at any time after the day on which the notice of the decision was published in the Commonwealth Gazette or the Gazette, as the case may be.

(3) The prescribed fee is payable by an applicant, other than the Minister, on lodging an application under this section.

Notice of application for review.

13. Where—

- (a) under section 9 or 10, the censor has made a decision in respect of a film; and

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- (b) a person other than the person who applied to the censor for classification of the film applies to the appeal censor for a review of the decision,

the appeal censor shall cause notice in writing of the application for review to be given to the person who applied to the censor for classification of the film.

Review of classification.

14. (1) Where an application for review of a decision of the censor is made to the appeal censor, the appeal censor shall review the decision and may make a decision—

- (a) confirming the decision of the censor; or
- (b) setting aside the decision and classifying, or refusing to classify, the film, or approving, unconditionally or subject to conditions, or disapproving the use of any advertisement relating to the film, as the appeal censor thinks fit.

(2) The appeal censor may determine the procedure for the hearing of an application under this section.

(3) Where the appeal censor makes a decision under this section, the appeal censor shall, within 14 days after the day on which the decision was made—

- (a) notify the applicant in writing of the decision; and
- (b) cause a notice setting out the terms of the decision to be published—
 - (i) where there is an arrangement in operation under section 4, in the Commonwealth Gazette; or
 - (ii) where there is no arrangement in operation under section 4, in the Gazette.

(4) A decision made by the appeal censor under this section shall take effect on the day on which notice of the decision is published in the Commonwealth Gazette or the Gazette, as the case may be, in accordance with subsection (3).

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

Revocation of classification of film.

15. (1) Subject to this section, the appeal censor may—

- (a) on application made in accordance with this section by—
 - (i) the person who applied for the classification of a film in accordance with section 7; or
 - (ii) the Minister; or

(b) on the motion of the appeal censor,
revoke the classification of a film or a decision refusing to classify a film.

(2) An application under this section—

- (a) shall be in writing signed by, or on behalf of, the applicant; and
- (b) shall be lodged with the appeal censor at any time after the expiration of the period of—
 - (i) 12 months from the day on which the classification or decision to which the application relates took effect; or
 - (ii) where the appeal censor has previously disposed of an application under this section in respect of the film, 12 months from the day on which the last application was disposed of.

(3) The appeal censor shall not, on the motion of the appeal censor, revoke a classification or a decision at any time before the expiration of the period of 12 months from the day on which the classification or decision took effect.

(4) The appeal censor shall not revoke a classification or a decision unless the appeal censor is satisfied that it is proper to do so, having regard to the provisions of this Division relating to the classification of films.

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(5) Where the appeal censor revokes the classification of a film or a decision refusing to classify a film, the appeal censor shall, within 14 days after the day on which the classification or decision is revoked, cause notice of revocation under this section of the classification or decision to be published—

- (a) where there is an arrangement in operation under section 4, in the Commonwealth Gazette; or
- (b) where there is no arrangement in operation under section 4, in the Gazette.

(6) The revocation of the classification of a film or a decision refusing to classify a film shall take effect on the day on which notice of the revocation is published in the Commonwealth Gazette or the Gazette, as the case may be, in accordance with subsection (5).

Retention of films by censor, etc.

16. Where a film in respect of which an application for classification has been made is not classified, the film or any part of the film and any advertisement lodged with the film—

- (a) may be retained by the censor or appeal censor, as the case may be; or
- (b) if the censor or appeal censor is satisfied that the film or part and any such advertisement will forthwith be disposed of in such manner as the censor or appeal censor, as the case may be, directs, may be returned to the applicant.

Effect of alteration of classified film.

17. A classified film that has been subjected to an alteration or addition after it has been classified shall, unless the censor or appeal censor has approved of the alteration or addition in writing, be deemed to be an unclassified film.

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PART III.**EXHIBITION OF FILMS AND VIDEO TAPES.****Matters constituting exhibition of film.**

18. In any proceedings under this Act or the regulations, without affecting the liability of any person for any offence against this Act or the regulations, a person shall be deemed to exhibit a film in a public place—

- (a) if the person conducts the exhibition of the film in the public place; or
- (b) if the person has the superintendence or management of the public place in which the film is exhibited.

Prohibition against exhibition of unclassified films.

19. (1) A person shall not exhibit an unclassified film in a public place or cause an unclassified film to be so exhibited.

(2) 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" film or a "PG" film.

(3) A person who contravenes subsection (1) is guilty of an offence punishable on conviction—

- (a) in the case of an unclassified film that is, after the date of the offence, classified as an "M" film—by a fine not exceeding \$500 in the case of a corporation or by a fine not exceeding \$100 in any other case;
- (b) in the case of an unclassified film that is, after the date of the offence, classified as an "R" film—by a fine not exceeding \$5,000 in the case of a corporation or by a fine not exceeding \$1,000 or by imprisonment for a term not exceeding 12 months in any other case; or
- (c) in the case of a film—
 - (i)** that has been refused classification; or

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(ii) that was unclassified as at the date of the offence and that is, after that date, refused classification, by a fine not exceeding \$15,000 in the case of a corporation or by a fine not exceeding \$4,000 or by imprisonment for a term not exceeding 2 years in any other case.

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

Attendance of minors at exhibition of certain films—offence by exhibitor.

20. (1) A person shall not exhibit, in a public place, an “R” film or a film which has been refused classification or cause an “R” film or a film which has been refused classification to be so exhibited, if a minor who has attained the age of 2 years is present at the whole or any part of the exhibition of the film.

Penalty: \$5,000 in the case of a corporation and \$1,000 or imprisonment for 12 months in any other case.

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

(3) 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 servant or agent had reasonable grounds for believing, and did in fact believe, that the minor in respect of whom the alleged offence was committed had attained the age of 18 years, or had not attained the age of 2 years, at the date of the alleged offence.

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Attendance of minors at exhibition of certain films—offence by minor.

21. A minor who has attained the age of 15 years shall not attend the whole or any part of the exhibition, in a theatre or public hall, of an “R” film or a film which has been refused classification.

Penalty: \$200.

Attendance of minors at exhibition of certain films—offence by other persons.

22. (1) Subject to subsection (2), a person who has attained the age of 18 years shall not cause, permit or allow a minor who has attained the age of 2 years to be present at the whole or any part of the exhibition, in a public place, of an “R” film or a film which has been refused classification.

Penalty: \$1,000 or imprisonment for 12 months.

(2) A person is not guilty of an offence under subsection (1)—

- (a) if the person is the person exhibiting the film referred to in that subsection; or
- (b) if the person is the servant or agent of the person exhibiting the film referred to in that subsection.

(3) It is a defence to a prosecution for an offence under subsection (1) if the defendant proves that the defendant had reasonable grounds for believing, and did in fact believe, that the minor in respect of whom the alleged offence was committed had attained the age of 18 years, or had not attained the age of 2 years, at the date of the alleged offence.

Withdrawal of film.

23. (1) The censor may at any time order the withdrawal of a film from exhibition if the censor is of the opinion that such a course is necessary in the public interest.

(2) An order under subsection (1) shall have effect according to its tenor.

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PART IV.

ADVERTISING AND SUPPLY OF FILMS AND VIDEO TAPES.

Use of advertisements.

24. (1) A person shall not use any advertisement approved under Part II in relation to a film otherwise than in the form in which the advertisement was so approved, unless the censor or appeal censor has approved, in writing, of that use.

(2) A person shall not use any advertisement approved under Part II in relation to a film except in accordance with the conditions, if any, to which the approval is subject.

(3) A person shall not sell, exhibit or distribute a film (whether the film is classified or unclassified) in association with any advertisement which has been disapproved under Part II.

Penalty: \$10,000 in the case of a corporation and \$2,000 or imprisonment for 2 years in any other case.

Advertisements for unclassified film prohibited.

25. (1) A person shall not publish an advertisement in relation to an unclassified film.

(2) A person does not contravene subsection (1) in respect of the publication of an advertisement for an unclassified film which, after the date of the publication, is classified as a "G" film or a "PG" film.

(3) A person who contravenes subsection (1) is guilty of an offence punishable on conviction—

- (a) in the case of the publication of an advertisement for an unclassified film that is, after the date of the offence, classified as an "M" film—
by a fine not exceeding \$500 in the case of a corporation or by a fine not exceeding \$100 in any other case;

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- (b) in the case of the publication of an advertisement for an unclassified film that is, after the date of the offence, classified as an "R" film—
by a fine not exceeding \$5,000 in the case of a corporation or by a fine not exceeding \$1,000 or by imprisonment for a term not exceeding 12 months in any other case; or
- (c) in the case of the publication of an advertisement for a film—
 - (i) that has been refused classification; or
 - (ii) that was unclassified as at the date of the offence and that is, after that date, refused classification,
by a fine not exceeding \$15,000 in the case of a corporation or by a fine not exceeding \$4,000 or by imprisonment for a term not exceeding 2 years in any other case.

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

False advertising of classified films prohibited.

26. A person shall not publish an advertisement in relation to a classified film which indicates—

- (a) that the film is unclassified; or
- (b) that the film has a classification other than the classification it has been assigned under Part II.

Penalty: \$5,000 in the case of a corporation and \$1,000 or imprisonment for 12 months in any other case.

Prescribed markings on containers.

27. (1) A person shall 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 the prescribed markings in respect of the classification assigned to the film under Part II.

Penalty: \$5,000 in the case of a corporation and \$1,000 or imprisonment for 12 months in any other case.

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(2) A person shall not display, for the purposes of sale, or sell a film, or cause or permit a film to be so displayed or sold, if the container, wrapping or casing in which the film is so displayed or sold bears the prescribed markings in respect of a classification other than the classification assigned to the film under Part II or a marking or other matter that indicates or suggests that the film has been assigned a classification other than the classification assigned to the film under Part II.

Penalty—subsection (2): \$10,000 in the case of a corporation and \$2,000 or imprisonment for 2 years in any other case.

Display of notice on premises.

28. A person shall not display, for the purposes of sale, or sell a film on or from any premises unless there is displayed on those premises a notice which complies with the regulations.

Penalty: \$2,000 in the case of a corporation and \$1,000 in any other case.

Classified films containing advertisements for other films.

29. A person shall not sell, or cause or permit to be sold, a classified film that contains an advertisement relating to—

- (a) where the film is classified as a “G” film—a film classified as an “M” film or an “R” film or an unclassified film;
- (b) where the film is classified as a “PG” film—a film classified as an “R” film or an unclassified film;
- (c) where the film is classified as an “M” film—a film classified as an “R” film or an unclassified film; or
- (d) where the film is classified as an “R” film—an unclassified film.

Penalty: \$10,000 in the case of a corporation and \$2,000 or imprisonment for 2 years in any other case.

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Sale of "R" films to minors prohibited.

30. (1) A person shall not sell a film classified as an "R" film to a minor (other than a minor of whom the person is the parent or guardian).

Penalty: \$5,000 in the case of a corporation and \$1,000 or imprisonment for 12 months in any other case.

(2) It is a defence to a prosecution for an offence under subsection (1) if the defendant proves that the defendant or the defendant's servant or agent had reasonable grounds for believing, and did in fact believe that the minor in respect of whom the alleged offence was committed had attained the age of 18 years at the date of the alleged offence.

Purchase of certain films by minors prohibited.

31. A minor who has attained the age of 15 years shall not obtain by way of sale to the minor a film classified as an "R" film or a film which has been refused classification.

Penalty: \$200.

Display and sale of unclassified films prohibited.

32. (1) A person shall not display, for the purposes of sale, or sell an unclassified film or cause or permit an unclassified film to be so displayed or sold.

(2) A person does not contravene subsection (1) in respect of the display or sale of an unclassified film which, after the date of display or sale, is classified as a "G" film or a "PG" film.

(3) A person who contravenes subsection (1) is guilty of an offence punishable on conviction—

- (a) in the case of an unclassified film that is, after the date of the offence, classified as an "M" film—by a fine not exceeding \$500 in the case of a corporation or by a fine not exceeding \$100 in any other case;

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- (b) in the case of an unclassified film that is, after the date of the offence, classified as an "R" film—by a fine not exceeding \$5,000 in the case of a corporation or by a fine not exceeding \$1,000 or by imprisonment for a term not exceeding 12 months in any other case; or
- (c) in the case of a film—
 - (i) that has been refused classification; or
 - (ii) that was unclassified as at the date of the offence and that is, after that date, refused classification,
by a fine not exceeding \$15,000 in the case of a corporation or by a fine not exceeding \$4,000 or by imprisonment for a term not exceeding 2 years in any other case.

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

Display and sale of improperly marked unclassified films prohibited.

33. A person shall not display, for the purposes of sale, or sell an unclassified film, or cause or permit an unclassified film to be so displayed or sold, if the container, wrapping or casing in which the film is so displayed or sold bears a marking or other matter that indicates or suggests that the film has been classified.

Penalty: \$15,000 in the case of a corporation and \$4,000 or imprisonment for 2 years in any other case.

Keeping together of certain classified and unclassified films prohibited.

34. A person shall not, on any premises on or from which classified films are displayed, for the purposes of sale, or sold, keep or have possession of any unclassified films.

Penalty: \$15,000 in the case of a corporation and \$4,000 or imprisonment for 2 years in any other case.

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PART V.

MISCELLANEOUS.

Procurement of children for child abuse films prohibited.

35. A person shall not invite or procure or attempt to procure a child to be in any way concerned in the making of a child abuse film.

Penalty: \$15,000 in the case of a corporation and \$4,000 or imprisonment for 2 years in any other case.

Copying of certain unclassified films prohibited.

36. A person shall not make, for the purposes of sale, a copy of the whole or any part of a film which has been refused classification.

Penalty: \$15,000 in the case of a corporation and \$4,000 or imprisonment for 2 years in any other case.

Liability.

37. No proceedings shall lie or be allowed by or in favour of any person against—

- (a) the censor or the appeal censor; or
- (b) any person acting under the direction of the censor or the appeal censor,

in the execution or intended execution of this Act or the regulations in respect of anything done bona fide under and for the purposes of this Act or the regulations.

Exemptions.

38. (1) The Minister may, by notice published in the Gazette, exempt a person or body, or a person or body of a class or description of persons or bodies, specified in the notice from the operation of such of the provisions of this Act or the regulations, and subject to such conditions (if any), as are specified in the notice.

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(2) The censor or the appeal censor may, in any particular case, by direction in writing under the hand of the censor or the appeal censor, as the case may require, exempt, subject to such conditions as may be specified in the direction, any film from the operation of this Act to the extent specified in the direction.

(3) Notwithstanding anything in this Act or the regulations, it is not an offence for a person or body to do any act or thing that falls within the scope of an exemption under subsection (1) or (2) and that is done in accordance with the conditions (if any) to which that exemption is subject.

Search warrants.

39. (1) Where a complaint is made on oath to a stipendiary magistrate to the effect that the complainant has reason to suspect, and believes that a provision of this Act or the regulations has been or is being contravened in any premises, the magistrate may, if satisfied that the belief of the complainant is well founded, authorise by search warrant any member of the police force to enter those premises, to search for and seize any thing found therein or thereon that may reasonably be suspected of being connected with an offence which has been or is to be committed against this Act or the regulations and on those premises or elsewhere to screen, by means of any suitable apparatus or equipment (whether found on the premises or not) any film found in or on the premises.

(2) For the purposes of subsection (1), a thing is connected with an offence if it is—

- (a) a thing with respect to which the offence has been committed;
- (b) a thing that will afford evidence of the commission of the offence;
or
- (c) a thing that was used, or is intended to be used, for the purpose of committing the offence.

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Execution of search warrants.

40. In the execution of a search warrant issued under section 39, a member of the police force may take such assistants as the member thinks necessary and may, by breaking down doors or otherwise, use, or authorise the assistants to use, force in gaining the entry authorised by the search warrant.

Forfeiture of films, etc., following seizure.

41. (1) A thing which has been seized pursuant to a search warrant issued under section 39 shall be returned to the premises in or on which it was seized unless, not later than 1 month after the seizure—

- (a) an information is laid against a person for a contravention of this Act or the regulations with respect to the thing; or
- (b) a member of the police force reports the seizure to a justice.

(2) On the reporting of the seizure of a thing under subsection (1) to a justice, the justice shall issue a summons calling on the person who, at the time of the seizure of the thing, was occupying or using the premises entered by virtue of the search warrant issued under section 39 to appear before a court of petty sessions to show cause why the thing and any other thing so seized should not be forfeited to the Crown.

(3) A court before which a summons issued under subsection (2) is returned may order that there be forfeited to the Crown—

- (a) such of the things to which the summons relates as are not claimed by the person summoned, or by some other person; or
- (b) where the person summoned, or some other person, claims any of the things, such of the things to which the summons relates as, in the opinion of the court, have been or are intended to be used for the purpose of committing an offence against this Act or the regulations and which it is desirable should be so forfeited.

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Return of seized films, etc.

42. A court of petty sessions shall order the return of a thing seized pursuant to a search warrant issued under section 39—

- (a) if the court dismisses an information laid for a contravention of this Act or the regulations with respect to the thing; or
- (b) if, on the return before it of a summons issued under section 41 (2) with respect to the thing, it does not form the opinion referred to in section 41 (3) (b).

Evidence.

43. (1) In any proceedings for an offence against this Act or the regulations, a certificate signed or purporting to be signed by the censor stating—

- (a) that a film has been classified;
- (b) the classification of a film;
- (c) that a film has been refused classification;
- (d) that a film has not been classified;
- (e) that an advertisement in relation to a film has been approved;
- (f) that an advertisement in relation to a film has been refused approval; or
- (g) that an advertisement in relation to a film has not been approved,

is prima facie evidence of the matter stated in the certificate.

(2) In any proceedings for an offence against this Act or the regulations, a copy of the Gazette containing a notice caused to be published under section 4 (4) in respect of the making of an arrangement under section 4, or an extract from that Gazette of that notice (being an extract printed or purporting to have been printed by the Government Printer) is prima facie evidence that the arrangement was duly made and that the arrangement was in operation at the time of the alleged offence.

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(3) In any proceedings for an offence against this Act or the regulations, a certificate signed or purporting to be signed by the Minister stating—

- (a) that an arrangement was duly made under section 4 and that the arrangement was in operation on any day or during any period specified in the certificate; or
- (b) that a person specified in the certificate was the censor or the appeal censor on any day or during any period specified in the certificate;

is prima facie evidence of the matter stated in the certificate.

Offences by corporations.

44. (1) Where a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person, being a director of the corporation or a person concerned in the management of the corporation, shall be deemed to have contravened the same provision unless the person satisfies the court that—

- (a) the corporation contravened the provision without the person's knowledge;
- (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
- (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.

(2) A person may be proceeded against and convicted pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted.

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(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence is actually committed.

Summary procedure for offences.

45. (1) Proceedings for an offence against this Act or the regulations shall be disposed of summarily—

- (a) before a court of petty sessions constituted by a stipendiary magistrate; or
- (b) before the Supreme Court in its summary jurisdiction.

(2) If proceedings for an offence against this Act or the regulations are brought before a court of petty sessions constituted by a stipendiary magistrate, the maximum penalty that the court of petty sessions may impose in respect of the offence is, notwithstanding any other provision of this Act, \$5,000 or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

(3) If proceedings for an offence against this Act or the regulations are brought before the Supreme Court in its summary jurisdiction, that Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations in respect of the offence.

Forfeiture of films, etc., on conviction.

46. Where a person is convicted of an offence against this Act constituted by a contravention of section 19, 27, 29, 32, 33 or 36, the court by which the conviction is recorded may order that there shall be forfeited to the Crown—

- (a) such films specified in the order;
- (b) in the case of a contravention of section 19, such apparatus or equipment used in the exhibition of films; and

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- (c) in the case of a contravention of section 36, such copies of films and such devices, apparatus, equipment and material used in the making of those copies,

as were, at the time of commission of the offence, in the possession or apparently under the control of the person.

Savings, transitional and other provisions.

47. Schedule 1 has effect.

Regulations.

48. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) A regulation may impose a penalty not exceeding \$2,000.

- (3) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;
or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

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SCHEDULE 1.

(Sec. 47.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Interpretation.

1. In this Schedule—

“appointed day” means the day appointed and notified under section 2 (2);

“the 1908 Act” means the Theatres and Public Halls Act, 1908.

Arrangement appointing censor.

2. (1) An arrangement and an agreement relating to an arrangement which were in force immediately before the appointed day under section 26c of the 1908 Act shall be deemed to be an arrangement and an agreement, respectively, under section 4.

(2) Nothing in subclause (1) or section 4 requires the Minister to cause notice to be published, on or after the appointed day, of the making of the arrangement referred to in that subclause.

Classification of films.

3. (1) A film the registration of which under section 26H of the 1908 Act was in force immediately before the appointed day shall be deemed to be a classified film.

(2) A film referred to in subclause (1) shall be deemed—

- (a) in the case of a film classified as being for general exhibition—to be classified as a “G” film;
- (b) in the case of a film classified as being not recommended for children—to be classified as a “PG” film;
- (c) in the case of a film classified as being for mature audiences—to be classified as an “M” film; and
- (d) in the case of a film classified as being for restricted exhibition—to be classified as an “R” film.

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SCHEDULE 1—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

Construction of references to classifications of films.

4. On and from the appointed day, a reference in any other Act, or in any regulation, by-law or other statutory instrument or in any other document, whether of the same or of a different kind, to—

- (a) a film classified under the 1908 Act as being for general exhibition shall be read and construed as a reference to a film classified as a “G” film;
- (b) a film classified under the 1908 Act as being not recommended for children shall be read and construed as a reference to a film classified as a “PG” film;
- (c) a film classified under the 1908 Act as being for mature audiences shall be read and construed as a reference to a film classified as an “M” film; and
- (d) a film classified under the 1908 Act as being for restricted exhibition shall be read and construed as a reference to a film classified as an “R” film.

Approval of advertisements.

5. An approval in force immediately before the appointed day, being an approval referred to in section 26N of the 1908 Act, shall be deemed to be an approval under section 10 (1) and shall be subject to the same conditions, if any, as those to which the approval so referred to was subject.

Application for classification.

6. An application referred to in section 26E of the 1908 Act which had not been determined before the appointed day shall be deemed to be an application under section 7 and shall be determined accordingly.

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SCHEDULE 1—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.***Appeals.**

7. An appeal under section 261 (1) of the 1908 Act which had not been determined before the appointed day shall be deemed to be an application under section 12 (1) and shall be determined accordingly.

Classification of certain video tapes.

8. Where, after the date on which the Classification of Publications Ordinance 1983 of the Australian Capital Territory came into operation and before the appointed day, a video tape has been classified under that Ordinance and the classification has not been revoked under that Ordinance before the appointed day, the video tape shall be deemed—

- (a) in the case of a video tape classified under that Ordinance as a "G" film—
to be classified as a "G" film;
 - (b) in the case of a video tape classified under that Ordinance as a "PG" film—
to be classified as a "PG" film;
 - (c) in the case of a video tape classified under that Ordinance as an "M" film—
to be classified as an "M" film;
 - (d) in the case of a video tape classified under that Ordinance as an "R" film—
to be classified as an "R" film; and
 - (e) in the case of a video tape classified under that Ordinance as an "X" film—
to be a film which has been refused classification.
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