

Classification of Films and Publications (Amendment) Act 1993

No. 105 of 1993

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Victoria

No. 105 of 1993

Classification of Films and Publications (Amendment) Act 1993

[Assented to 26 November 1993]

The Parliament of Victoria enacts as follows:

1. *Purposes*

The purposes of this Act are—

- (a) to ensure that publications which are unsuitable for children are not sold or displayed to them;
- (b) to implement new requirements of the national classification scheme;
- (c) to improve the current system of censorship of films and publications.

2. *Commencement*

- (1) This Act (except sections 4 and 6) comes into operation on the day on which it receives the Royal Assent.

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- (2) Subject to sub-section (3), sections 4 and 6 come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in sub-section (2) does not come into operation within the period of 2 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.

No. 48/1990
 as amended
 by No.
 27/1992.

3. *Principal Act*

In this Act, the **Classification of Films and Publications Act 1990** is called the **Principal Act**.

4. *Objectionable films and publications*

- (1) In section 3 of the Principal Act—
 - (a) in paragraph (d) of the definition of “**Objectionable film**” after “been” insert “, or would be,”; and
 - (b) in the definition of “**Objectionable publication**” after paragraph (a) insert—
 - “(ab) lacks serious literary, artistic, political, educational or scientific value and describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a manner that a reasonable adult would generally regard as unsuitable for children; or”;
 - (c) in paragraph (d) of the definition of “**Objectionable publication**” after “been” insert “, or would be,”.
- (2) In section 55 (2) of the Principal Act, for “paragraph (a)” substitute “paragraph (a) or (ab)”.

5. *Fees*

After section 6 (2) of the Principal Act insert—

- “(2A) If a film contains more than one title and runs for more than 90 minutes, the fee referred to in sub-section (2) (b) (ii) is payable on each 90 minutes, or part of 90 minutes, of the film.”.

6. Insertion of new section 56A

After section 56 of the Principal Act insert—

“56A. Display of certain parts of publications and advertisements

- (1) A person must not exhibit or display for sale, in a public place to which children have access, any publication or advertisement for a publication if any part of that publication or advertisement depicts or deals with nudity, sex, drug misuse, crime, cruelty, violence or revolting phenomena in a manner that a reasonable adult would consider unsuitable for general public display unless—
- (a) that part of the publication or advertisement is concealed by a cover; or
 - (b) the publication or advertisement is displayed in a rack that conceals that part; or
 - (c) for some other reason that part of the publication or advertisement cannot be seen without being handled.

Penalty: 10 penalty units.

- (2) It is a defence to a charge under sub-section (1) to prove that the defendant or the defendant's servant or agent took reasonable precautions to ensure that the publication or advertisement was not exhibited or

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displayed in contravention of sub-section (1).

- (3) Section 55 (1) does not apply to a charge for an offence under sub-section (1).".

7. New "MA" classification for films

- (1) In section 8 (1) of the Principal Act, after paragraph (c) insert—

“(ca) as an “MA” film, where the censor is of the opinion that the film depicts, expresses or otherwise deals with sex, violence or coarse language in such a manner as to make the film unsuitable for viewing by persons under the age of 15 years; or”.

- (2) In section 8 (5) of the Principal Act—

- (a) in paragraph (a) after “M” insert ‘, “MA”’; and
 (b) in paragraph (b) after “M” insert ‘, “MA”’; and
 (c) in paragraph (c) after “classified as an” insert “MA” or’; and

- (d) after paragraph (c) insert—

‘; or

(d) as an “MA” film if the advertised film is classified as an “R” film.’.

- (3) In section 22 of the Principal Act, after paragraph (a) insert—

“(ab) in the case of an unclassified film that is, after the date of the offence, classified as an “MA” film, 30 penalty units;’.

- (4) In section 32 of the Principal Act—

- (a) in paragraph (a) after “M” film,’ insert ‘an “MA” film,’; and

- (b) in paragraph (b) after “M” film,’ insert ‘an “MA” film,’; and

- (c) in paragraph (c) after “classified as” (where secondly occurring) insert ‘an “MA” film,’; and

(d) after paragraph (c) insert—

‘(ca) if the film is classified as an “MA” film—a film classified as an “R” film or an unclassified film; or’.

(5) In section 35 of the Principal Act, for ‘or “M”’ substitute ‘, “M” or “MA”’.

8. *Insertion of new section 22A*

After section 22 of the Principal Act insert—

‘22A. *Exhibition of certain advertisements with classified films*

A person must not exhibit, or cause to be exhibited, in a public place—

- (a) an advertisement relating to a film classified as an “MA” film or an “R” film, if the advertisement accompanies the exhibition of a film classified as a “G”, “PG” or “M” film; or
- (b) an advertisement relating to a film classified as an “R” film, if the advertisement accompanies the exhibition of a film classified as a “G”, “PG”, “M” or “MA” film.

Penalty: 10 penalty units.’.

9. *Insertion of new section 25A*

After section 25 of the Principal Act insert—

‘25A. *Admission of persons to “MA” films*

- (1) A person must not exhibit an “MA” film in a public place if—
 - (a) a child who has attained the age of 2 years but has not attained the age of 15 years is in a place from

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which the exhibition of the film is capable of being seen; and

- (b) the child is not accompanied by his or her parent or guardian.

Penalty: 5 penalty units.

- (2) It is a defence to a charge under sub-section (1) to prove that the defendant or the defendant's servant or agent—

(a) took reasonable precautions to ensure that children referred to in sub-section (1) were not admitted to the exhibition unaccompanied by their parents or guardians; or

(b) had reasonable grounds for believing, and did in fact believe, that the child in respect of whom the alleged offence was committed had not attained the age of 2 years or had attained the age of 15 years (as the case may be) at the date of the alleged offence.’

10. Insertion of new section 33A

After section 33 of the Principal Act insert—

‘33A. Sale of “MA” film to child under 15 prohibited

- (1) A person, other than a parent or guardian of the child, must not sell or deliver a film classified as an “MA” film to a child under the age of 15 years.

Penalty: 5 penalty units.

- (2) It is a defence to a charge under sub-section (1) to prove that the defendant or the defendant's servant 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.’.

11. *Repeal of section 21*

Section 21 of the Principal Act is repealed.

12. *Advertising before film classified*

In section 29 (2) of the Principal Act, after “film” (where first occurring) insert “unless a certificate of exemption has been granted under section 29A in respect of that film”.

13. *Insertion of new section 29A*

After section 29 of the Principal Act insert—

‘29A. *Exemption*

- (1) The distributor or exhibitor of an unclassified film may, and must if so required in writing by the censor, apply in writing to the censor for a certificate of exemption in respect of the film.
- (2) The censor may require an applicant for a certificate of exemption to submit for approval a copy of all advertisements relating to the film.
- (3) If an arrangement under section 4 is in force, the censor must not accept an application for a certificate of exemption unless such an application is made to the censor under the corresponding law in each State, the Northern Territory and the Australian Capital Territory.

- (4) The censor may, by notice in writing, grant a certificate of exemption in respect of an unclassified film.
- (5) The censor must refuse to grant a certificate of exemption if, in the opinion of the censor, the film is likely to be classified as an "R" film.
- (6) The censor must not, without the consent of the Minister after consultation with the Attorney-General of the Commonwealth, approve more than 30 applications for certificates of exemption in a calendar year.
- (7) The grant of a certificate of exemption under this section is subject to—
 - (a) any conditions that the censor may think fit to impose; and
 - (b) any conditions, so far as applicable, that are determined from time to time by the Attorney-General of the Commonwealth, for the purposes of section 17F of the Publications Control Act 1989 of the Australian Capital Territory as amended and in force for the time being, and published in the Australian Capital Territory Gazette.
- (8) The censor may revoke a certificate of exemption if at any time the use of advertisements contravenes any condition subject to which the certificate was granted.
- (9) An applicant for a certificate of exemption may apply in writing to the appeal censor for a review of a decision of the censor under sub-section (4).

(10) Subject to sub-section (11), on an application for review, the appeal censor must—

(a) confirm the decision of the censor;
or

(b) substitute its own decision for the decision of the censor.

(11) The appeal censor must not review a decision refusing to grant a certificate of exemption made under sub-section (5) or if the censor has approved 30 applications for certificates of exemption in that calendar year.’

14. *Restricted publications area*

(1) In section 3 of the Principal Act, in the definition of “**Restricted publications area**”, for “the prescribed requirements” substitute “section 47A”.

(2) In section 60 (2) of the Principal Act, for “prescribed form” substitute “form in the Schedule in legible letters not less than 15 millimetres in height and of a colour that contrasts with the background colour of the notice”.

15. *Insertion of new section 47A*

After section 47 of the Principal Act insert—

“47A. *Restricted publications areas—construction, conduct and management*

(1) A restricted publications area must be so constructed that no part of the interior of the area is visible to any person outside the area.

- (2) Each entrance to a restricted publications area—
 - (a) must be fitted with a gate or door capable of excluding persons from the area; and
 - (b) must be closed by means of that gate or door when the area is not open to the public.
- (3) The proprietor of a restricted publications area or a person who has attained the age of 18 years and is in charge of or has the management or control of a restricted publications area must be in attendance in or near the area at all times when the area is open to the public.”.

16. Child pornography

In section 60A (2) of the Principal Act, after paragraph (d) insert—

“; or

- (e) that the defendant made the film or took the photograph or was given the film or photograph by the child and that, at the time of making, taking or being given the film or photograph, the defendant was not more than 2 years older than the child was or appeared to be; or
- (f) that the child or one of the children depicted in the film or photograph is the defendant.”.

17. Insertion of Schedule

After section 73 of the Principal Act insert—

“SCHEDULE

Section 60 (2)

RESTRICTED PUBLICATIONS AREA
PERSONS UNDER 18 YEARS OF AGE MAY
NOT ENTER. THE PUBLIC IS WARNED
THAT SOME MATERIAL DISPLAYED IN
THIS AREA MAY CAUSE OFFENCE.”.

18. Transitional

A film that, between 1 May 1993 and the commencement of section 7, is classified as an “M” film but in any other State, the Northern Territory or the Australian Capital Territory is classified as an “MA” film, must be taken, after the commencement of section 7, to be classified as an “MA” film.

NOTES

1. *Minister’s second reading speech—*

Legislative Assembly: 28 October 1993

Legislative Council: 11 November 1993

2. The long title for the Bill for this Act was “A Bill to amend the **Classification of Films and Publications Act 1990** and for other purposes.”.
3. Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)