

SOUTH AUSTRALIA

FILM CLASSIFICATION ACT, 1971

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 March 1984.

The Commissioner of Statute Revision is authorised by the Acts Republication Act, 1967, to make textual alterations of various kinds to an Act in preparing it for reprint. Some of the textual alterations are specifically footnoted, but others are not. Textual alterations of the following kinds are not footnoted:

- (a) the abbreviation of references to South Australian Acts by omitting reference to any year except the year of enactment and by omitting unnecessary qualifying phrases such as "as amended" and "as amended from time to time";*
- (b) the abbreviation of cross-references to other provisions of the same Act by omitting phrases such as "of this Act", "of this section" and "of this paragraph";*
- (c) the conversion of cross-references in the form "paragraph (a) of subsection (2) of section 7" to the form "section 7(2)(a)";*
- (d) the conversion of references to years or numbers, expressed in words, to arabic numerals;*
- (e) the conversion into decimal currency of references to pecuniary amounts;*
- (f) the correction of misprints and minor grammatical or clerical errors;*
- (g) the correction of the layout of provisions;*
- (h) the conversion of upper case letters to lower case letters or of lower case letters to upper case letters;*
- (i) the alteration of punctuation.*

A report has been prepared containing a comprehensive list of the textual alterations made under the Acts Republication Act, 1967, in the preparation of this reprint. The report will be laid before the House of Assembly and the Legislative Council and copies are available from the office of the Commissioner of Statute Revision, 11th Floor, S.G.I.C. Building, Victoria Square, Adelaide.

SUMMARY OF PROVISIONS

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FILM CLASSIFICATION ACT, 1971

being

Film Classification Act, 1971, No. 82 of 1971 [Assented to 25 November 1971]¹

as amended by

Film Classification Act Amendment Act (No. 1), 1973, No. 69 of 1973 [Assented to 6 December 1973];
Film Classification Act Amendment Act, 1974, No. 27 of 1974 [Assented to 11 April 1974];
Film Classification Act Amendment Act, 1974, No. 100 of 1974 [Assented to 5 December 1974];
Film Classification Act Amendment Act, 1977, No. 43 of 1977 [Assented to 15 December 1977];
Film Classification Act Amendment Act, 1978, No. 93 of 1978 [Assented to 7 December 1978];
Film Classification Act Amendment Act, 1982, No. 64 of 1982 [Assented to 1 July 1982]²;
Film Classification Act Amendment Act, 1983, No. 113 of 1983 [Assented to 22 December 1983]³.

An Act to provide for the classification of films intended for public exhibition; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "Film Classification Act, 1971". Short title.
 2. This Act shall come into operation on a day to be fixed by proclamation¹. Commencement.
 3. In this Act, unless the contrary intention appears— Interpretation.
 - "advertisement", in relation to a film, means any extract from the film, or any poster, photograph, sketch, programme, slide or written or printed matter, used or intended to be used to advertise or publicize the film:
- * * * * *
- "corresponding law" means a law of any other State or Territory of the Commonwealth declared by regulation to be a corresponding law for the purposes of this Act:
- "exhibitor", in relation to a film, means a person who arranges for, or causes, the film to be exhibited, and includes a person who has the superintendence or management of a theatre in which the film is exhibited, and "to exhibit" means to exhibit the images contained in a film by means of a projector: Def. amended by 93, 1978, s. 2 (b).
- "film" means— Def. substituted by 93, 1978, s. 2 (c).

¹ Came into operation 24 February 1972; *Gaz.* 24 February 1972, p. 655.

² Came into operation 1 August 1982; *Gaz.* 15 July 1982, p. 168.

³ Not brought into operation at the date of, and the amendments effected thereby not included in, this reprint.

- (a) a film;
- (b) a video tape;
- or
- (c) any other optical or electronic record,

from which moving pictures may be produced, and includes any part of, or extract from, any such film:

Def. inserted by
93, 1978, s. 2 (c).

“projector” means—

- (a) a cinematograph;
- or
- (b) any other apparatus or device,

for the exhibition of moving pictures:

Def. amended by
64, 1982, s. 3.

“restricted classification” means a classification under section 4 (1) (d):

“theatre” means any place, whether enclosed, partly enclosed or unenclosed, in which a film is exhibited, whether admission thereto is open to members of the public or restricted to persons who are members of a club or who possess any other qualification or characteristic and whether admission is or is not procured by the payment of money or on any other condition.

Film not to be
exhibited unless
classified.
S. 4 substituted
by 27, 1974, s. 2.

4. (1) A film shall not be exhibited in a theatre unless one of the following classifications has been assigned to the film in pursuance of a corresponding law or by the Minister:

- (a) for general exhibition;
- (b) not recommended for children;
- (c) for mature audiences;
- (d) for restricted exhibition;
- or
- (e) such other classification as may be prescribed.

Subsec. (2)
amended by 43,
1977, s. 2; 64,
1982, s. 4.

(2) If a film is exhibited in contravention of subsection (1), the exhibitor shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars.

(3) The Minister may, by instrument published in the *Gazette*, declare that a classification assigned to a film in pursuance of a corresponding law shall be ineffective in this State and, if such a declaration is made—

- (a) the film shall bear a classification assigned to it by the Minister in lieu of the classification assigned in pursuance of the corresponding law;

or

- (b) if the Minister refrains from assigning a classification to the film, it shall be deemed not to have been classified in accordance with this section.

(4) This section does not impose any obligation upon the Minister to assign a classification to a film.

(5) In exercising his powers and discretions under this section, the Minister shall have regard to standards of morality, decency and propriety that are generally accepted by reasonable adult persons in this State.

5. (1) Where a classification has been assigned to a film pursuant to a corresponding law, or by the Minister under this Act, the film shall not be exhibited with any alteration or addition made since it was submitted for classification unless the alteration or addition has been approved in writing pursuant to the provisions of the corresponding law or by the Minister.

Alteration of classified film prohibited.

(2) This section does not apply to an alteration or addition made for the purpose of repairing a film or for any other technical purpose connected with the exhibition of the film.

(3) If a film is exhibited in contravention of subsection (1), the exhibitor shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

Subsec. (3) amended by 64, 1982, s. 5.

6. (1) Where a child between the ages of two years and eighteen years is in a theatre at any time when a film to which a restricted classification has been assigned is being, or is about to be, exhibited, the exhibitor shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

Children between ages of two and eighteen years not to be admitted to exhibition of film bearing restricted classification.

Subsec. (1) amended by 64, 1982, s. 6 (a).

(2) It shall be a defence to a prosecution under subsection (1) that—

(a) the defendant took reasonable precautions designed to ensure that any such persons were not admitted to the exhibition of the film;

or

(b) the defendant, or a person to whom the responsibility of admitting persons to the exhibition of the film was entrusted, believed on reasonable grounds that the child to whom the charge relates had not attained the age of two years or had attained the age of eighteen years.

(3) Where a child between the ages of sixteen years and eighteen years is in a theatre at any time when a film to which a restricted classification has been assigned is being, or is about to be, exhibited, he shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

Subsec. (3) amended by 64, 1982, s. 6 (b).

(3a) A person who assists a child between the ages of two years¹ and eighteen years to enter, or gain admission to, a theatre in which a film to which a restricted classification has been assigned is being, or is about to be, exhibited shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

Subsec. (3a) inserted by 69, 1973, s. 2 (a); amended by 64, 1982, s. 6 (c).

(4) This section does not apply in respect of a child who has attained the age of sixteen years and who is employed by an exhibitor in the performance of duties and functions in connection with the operation of the projector used for the exhibition of the film.

Subsec. (4) amended by 93, 1978, s. 3.

(5) Where a film to which a restricted classification has been assigned is being, or is about to be, exhibited in a theatre, the exhibitor, an employee of the exhibitor or a member of the police force may—

Subsec. (5) inserted by 69, 1973, s. 2 (b); substituted by 100, 1974, s. 2 (a).

(a) require any person who seeks admission to the theatre or who is in the theatre to state his correct age;

¹ The word "years" inserted pursuant to the Acts Republication Act, 1967, s. 7 (1).

and

(b) where the exhibitor, employee or member of the police force suspects that the age as stated may be incorrect, require that person to produce satisfactory evidence of his age.

Subsec. (5a)
inserted by 100,
1974, s. 2 (a).

(5a) Where a film to which a restricted classification has been assigned is being, or is about to be, exhibited in a theatre and the exhibitor, an employee of the exhibitor or a member of the police force suspects upon reasonable grounds that a person who is in the theatre is between two and eighteen years of age, he may—

(a) require that person to leave the theatre forthwith;

and

(b) where that person fails to comply with that requirement, use reasonable force to remove that person from the theatre.

Subsec. (6)
inserted by 69,
1973, s. 2 (b).

(6) Any statement or evidence obtained pursuant to a requirement under subsection (5) shall be admissible in any legal proceedings against the person by whom the statement or evidence was made or furnished.

Subsec. (7)
inserted by 69,
1973, s. 2 (b);
amended by 100,
1974, s. 2 (b); 64,
1982, s. 6 (d).

(7) Any person who fails to comply with a requirement under subsection (5) or (5a) or who, in response to such a requirement, makes a false statement or furnishes false evidence shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

Exemption.

7. (1) The Governor may, by proclamation—

(a) exempt from the operation of this Act, to such extent as may be provided in the proclamation, films of any specified class;

and

(b) provide that any provisions of this Act shall apply, with such modifications (if any) as the Governor thinks fit and specifies in the proclamation, in respect of films of any class so exempted,

and the operation of this Act shall be modified accordingly.

(2) The Minister may in any particular case, by direction in writing under his hand, exempt any film from the operation of this Act to the extent specified in the direction, and the operation of this Act in relation to that film shall be modified accordingly.

Advertisements.

8. (1) Every advertisement published in connection with the exhibition of a film must state the classification of the film under this Act, either in full or by the use of a prescribed symbol, and that statement or symbol must be such as to be clearly visible having regard to the size and nature of the advertisement.

Subsec. (2)
amended by 64,
1982, s. 7 (a).

(2) A person who publishes, or causes to be published, an advertisement that does not comply with subsection (1) shall be guilty of an offence and liable for a first offence to a penalty not exceeding five hundred dollars and for a second or subsequent offence to a penalty not exceeding two thousand dollars.

Subsec. (2a)
inserted by 64,
1982, s. 7 (b).

(2a) Subject to subsection (2b), where persons are admitted to a theatre for a programme of two or more films, the exhibitor of those films shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars unless every newspaper advertisement published in connection with the exhibition of that programme included a statement of the classification

of the film that has the most limited of the classifications of those films and that statement was made, either in full or by the use of a prescribed symbol, and was such as to be clearly visible having regard to the size and nature of the advertisement.

(2b) Subsection (2a) does not apply in relation to a programme of films if the film that has the most limited of the classifications of those films is classified under section 4 (1) (b). Subsec. (2b) inserted by 64, 1982, s. 7 (b).

(3) Subject to subsection (3a), the classification assigned to a film in accordance with this Act, or a prescribed symbol denoting that classification, must be exhibited so as to be clearly visible by those seeking admission to the theatre in which the film is to be exhibited prior to their admission to the theatre. Subsec. (3) amended by 64, 1982, s. 7 (c).

(3a) Where persons are to be admitted to a theatre for a programme of two or more films, subsection (3) does not apply in relation to a trailer included in that programme unless the classification of the trailer is more limited than the classification of the film that has the most limited of the classifications of the films (not being trailers) included in the programme. Subsec. (3a) inserted by 64, 1982, s. 7 (d).

(4) If the classification assigned to a film is not exhibited as required by subsection (3), the exhibitor shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars. Subsec. (4) amended by 64, 1982, s. 7 (e).

(5) For the purposes of this section—

(a) the classification referred to in a paragraph of section 4 (1) is more limited than the classification referred to in a preceding paragraph of that section;

and

(b) a classification prescribed under section 4 (1) (e) has such relation to the other classifications as may be prescribed.

(6) In this section—

“trailer” means a film that comprises or includes excerpts from another film and is designed to advertise that other film. Subsec. (5) inserted by 64, 1982, s. 7 (f).

9. (1) A person who publishes, or causes to be published, an advertisement in connection with the exhibition of a film to which a classification has not been assigned in accordance with this Act shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars. Illegal publication of advertisement, etc. Subsec. (1) substituted by 64, 1982, s. 8 (a).

(2) The Minister may, by instrument in writing served personally or by post upon any person responsible for, or engaged in, the sale, leasing, distribution or exhibition of any film, require that all advertisements to be used in connection with the exhibition of the film be submitted to him for approval.

(3) Where the Minister, or a person or authority acting in pursuance of a corresponding law, has required that advertisements to be used in connection with the exhibition of a film be submitted for approval, no person shall cause an advertisement to be published in connection with the exhibition of the film otherwise than in a form approved by the Minister or approved in accordance with a corresponding law. Subsec. (3) amended by 64, 1982, s. 8 (b).

Penalty: Two thousand dollars.

(4) It shall be a defence to a prosecution under subsection (3) that the defendant did not know and could not reasonably be expected to have known of the requirement.

Offence to make unclassified or restricted classification films available for viewing in certain circumstances.
S. 9a inserted by 64, 1982, s. 9.

9a. (1) Subject to subsection (2), the owner or occupier of any premises shall not make an unclassified film or restricted classification film available for viewing in those premises by any other person, where the right of that other person to occupy, or be present in, the premises, or to view the film, is procured by the payment of money or on any other condition.

Penalty: Where the offence relates to an unclassified film—five thousand dollars.

Where the offence relates to a restricted classification film—five hundred dollars.

(2) Subsection (1) does not apply in relation to a restricted classification film if—

(a) the person procuring the right to occupy, or be present in, the premises, or to view the film, was advised before he procured the right that the film is a restricted classification film;

or

(b) the premises are a theatre and the classification of the film is exhibited in accordance with section 8 (3).

(3) In this section—

“make available” includes cause, suffer or permit to be made available:

“premises” includes a part of premises:

“restricted classification film” means a film to which a restricted classification has been assigned in accordance with this Act:

“unclassified film” means a film to which no classification has been assigned in accordance with this Act.

Evidentiary provision.

10. In any proceedings for an offence under this Act, an apparently genuine document purporting to be signed by the Minister—

(a) stating that a classification has or has not been assigned to a film in accordance with this Act;

(b) stating the classification assigned to a film in accordance with this Act;

or

(c) stating that an advertisement referred to in the notice was required by this Act to be approved by the Minister or in accordance with a corresponding law and the advertisement was or was not so approved,

shall be *prima facie* evidence of the matter so stated.

Power of entry.

11. (1) A person authorized in writing by the Minister or a member of the police force may, without charge, enter any theatre in which he believes a film is being, or is about to be, exhibited in order to ascertain whether the provisions of this Act are being complied with.

(2) A person shall not hinder a person authorized in writing by the Minister or a member of the police force in the exercise of his powers under this section.

Subsec. (2) amended by 64, 1982, s. 10.

Penalty: Two thousand dollars.

11a. (1) Subject to subsection (2), where—

(a) a classification has been assigned to a film by the Minister;

or

(b) a classification has been assigned to a film in pursuance of a corresponding law and a certificate has been issued under subsection (3),

Film to which classification has been assigned may be lawfully exhibited notwithstanding law of obscenity, etc.

S. 11a inserted by 27, 1974, s. 3.

then, notwithstanding any law relating to obscenity or indecency, it shall not be an offence to distribute or exhibit the film in this State.

(2) This section does not relieve any person from an obligation to comply with any provision of this Act.

(3) The Minister may issue a certificate stating that he or his nominee has personally viewed the exhibition of a film to which a classification has been assigned in pursuance of a corresponding law and that the classification so assigned is, in his opinion, the appropriate classification for that film to bear.

11b. (1) The Minister may prohibit the exhibition of any film to which a restricted classification has been assigned, or of such films generally, in—

(a) drive-in theatres or any specified drive-in theatre;

or

(b) any other specified theatre where, in the opinion of the Minister, it is possible for a person to observe from outside the theatre the exhibition of a film inside the theatre.

Prohibition on exhibition of restricted films in certain circumstances.

S. 11b inserted by 69, 1973, s. 3; substituted by 43, 1977, s. 3.

(2) A prohibition under this section may be imposed, varied or revoked—

(a) by notice published in the *Gazette*;

or

(b) by notice in writing served personally or by post upon the proprietor or proprietors of the theatre or theatres to which it applies.

(3) Where a film is exhibited in a theatre in contravention of a prohibition in force under this section, the exhibitor of the film and the proprietor of the theatre shall each be guilty of an offence and liable to a penalty not exceeding five thousand dollars.

Subsec. (3) amended by 64, 1982, s. 11.

12. Proceedings in respect of offences under this Act shall be disposed of summarily.

Summary proceedings.

13. Proceedings in respect of an offence against this Act may be commenced within two years of the date on which the offence is alleged to have been committed.

Time for commencement of prosecutions. S. 13 substituted by 64, 1982, s. 12.

Offences by
bodies corporate.
S. 13a inserted by
64, 1982, s. 12.

13a. Where a body corporate is guilty of an offence against this Act, every member of the governing body of the body corporate shall be guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless he proves that he exercised all reasonable diligence to prevent the commission of the offence.

Regulations.

14. The Governor may make such regulations as are contemplated by this Act, or as he deems necessary or expedient for the purposes of this Act, and, without limiting the generality of the foregoing, those regulations may—

- (a) require that the classification assigned to a film be published in accordance with the regulations prior to the exhibition of the film;
 - (ab) prescribe, and provide for the payment of, fees in respect of any application for classification of a film in pursuance of this Act or in respect of any ancillary or related matter;
 - (b) prescribe any form for the purposes of this Act;
 - (c) make provision for the issue of certificates of classification;
- and
- (d) impose penalties (recoverable summarily) not exceeding one hundred dollars for contravention of, or non-compliance with, any regulation.

Para. (ab)
inserted by 43,
1977, s. 4.