

(Reprint No. 1)

SOUTH AUSTRALIA

CLASSIFICATION OF FILMS FOR PUBLIC EXHIBITION ACT, 1971

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 July 1991.

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since its last reprinting on 1 March 1984.

SUMMARY OF PROVISIONS

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CLASSIFICATION OF FILMS FOR PUBLIC EXHIBITION 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

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

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:

Short title

1. This Act may be cited as the *Classification of Films for Public Exhibition Act, 1971*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

Interpretation

3. In this Act, unless the contrary intention appears—

“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 publicise 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:

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

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

³Came into operation 1 January 1985: *Gaz.* 13 December 1984, p. 1811.

“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:

“film” means—

- (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:

“projector” means—

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

for the exhibition of moving pictures:

“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

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) parental guidance recommended;
- (c) for mature audiences;
- (d) for restricted exhibition;
- or
- (e) such other classification as may be prescribed.

(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.

Alteration of classified film prohibited

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.

(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.

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

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.

(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.

(3a) A person who assists a child between the ages of two years 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.

(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.

(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—

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

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.

(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.

(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.

(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.

(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.

(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).

(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.

(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.

(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.

(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.

Illegal publication of advertisement, etc.

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.

(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.

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

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.

Penalty: Two thousand dollars.

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

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),

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.

Prohibition on exhibition of restricted films in certain circumstances

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.

(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.

Summary proceedings

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

Time for commencement of prosecutions

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.

Offences by bodies corporate

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.

APPENDIX

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 4 of The Public General Acts of South Australia 1837-1975 at page 98.

Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments as in force at 1 March 1984. A schedule of these alterations was laid before Parliament on 3 April 1984.

Section 1:	amended by 113, 1983, s. 3
Section 3:	definition of "cinematograph" repealed by 93, 1978, s. 2(a) definition of "exhibitor" amended by 93, 1978, s. 2(b) definition of "film" substituted by 93, 1978, s. 2(c) definition of "projector" inserted by 93, 1978, s. 2(c) definition of "restricted classification" amended by 64, 1982, s. 3
Section 4(1):	amended by 113, 1983, s. 4
Section 4(2):	amended by 43, 1977, s. 2; 64, 1982, s. 4
Section 5(3):	amended by 64, 1982, s. 5
Section 6(1):	amended by 64, 1982, s. 6(a)
Section 6(3):	amended by 64, 1982, s. 6(b)
Section 6(3a):	amended by 64, 1982, s. 6(c)
Section 6(7):	amended by 64, 1982, s. 6(d)
Section 6(4):	amended by 93, 1978, s. 3
Section 8(2):	amended by 64, 1982, s. 7(a)
Section 8(2a) and (2b):	inserted by 64, 1982, s. 7(b)
Section 8(3):	amended by 64, 1982, s. 7(c)
Section 8(3a):	inserted by 64, 1982, s. 7(d)
Section 8(4):	amended by 64, 1982, s. 7(e)
Section 8(5) and (6):	inserted by 64, 1982, s. 7(f)
Section 9(1):	substituted by 64, 1982, s. 8(a)
Section 9(3):	amended by 64, 1982, s. 8(b)
Section 9a:	inserted by 64, 1982, s. 9
Section 11(2):	amended by 64, 1982, s. 10
Section 11b:	substituted by 43, 1977, s. 3
Section 11b(3):	amended by 64, 1982, s. 11
Section 13:	substituted by 64, 1982, s. 12
Section 13a:	inserted by 64, 1982, s. 12
Section 14:	amended by 43, 1977, s. 4