

South Australia

Classification of Theatrical Performances Act 1978

An Act to provide for the classification of theatrical performances; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Classification of Theatrical Performances Act 1978*.

4—Interpretation

In this Act, unless the contrary intention appears—

actor, in relation to a theatrical performance, means any person who acts or performs, or is seen or heard, in the course of the performance;

adult means a person of or above the age of eighteen years;

advertisement in relation to a theatrical performance means any poster, film, photograph, sketch, programme or written or printed matter used or intended to be used to advertise or publicise the theatrical performance;

child means a person under the age of eighteen years;

Council means the South Australian Classification Council established under the *Classification (Publications, Films and Computer Games) Act 1995*;

promoter of a theatrical performance means—

- (a) any person who is, or would be, entitled to any profits derived from the sale of tickets to the performance or of rights of any other kind to view or attend the performance; or
- (b) the producer of the theatrical performance; or
- (c) the proprietor of the theatre in which the theatrical performance takes place or is to take place;

proprietor of a theatre means the owner of the theatre and includes any person who is entitled to rents or profits derived from the use of the theatre;

Registrar means the Registrar of the Council;

restricted theatrical performance—see section 12(2);

script in relation to a theatrical performance means a document that sets out the words to be spoken by actors in the course of the performance and describes visual and audible aspects of the performance with reasonable particularity;

theatre means any place whether enclosed, partly enclosed or unenclosed in which a theatrical performance takes place;

theatrical performance means any play, mime, ballet, dance, display or other entertainment—

- (a) in which one or more live actors or performers take part; and
- (b) which is performed, or is intended for performance, before an audience.

Part 3—Classification of theatrical performances

10—Application for classification

- (1) The Council may, of its own motion, or at the request of any person, meet for the purpose of considering the classification to be assigned to a theatrical performance.
- (2) The Council shall, at the request of the Minister, meet to consider the classification to be assigned to a theatrical performance specified in the request.

11—Criteria to be applied by Council

- (1) In considering questions as to whether a theatrical performance is offensive, or suitable or unsuitable for children, the Council shall have regard to standards of morality, decency and propriety that are generally accepted by reasonable adult persons.
- (2) In performing its functions under this Act the Council shall have due regard to the nature of the theatrical performance under consideration and to all other relevant factors that bear upon the classification or conditions that should be assigned to, or imposed in respect of, the theatrical performance.

12—Classification of theatrical performances

- (1) Where the Council is satisfied that the nature of a theatrical performance is such that children might properly attend the performance, it may classify the performance as an unrestricted theatrical performance.
- (2) Where the Council is satisfied that a theatrical performance is—
 - (a) likely to cause offence to reasonable adult persons; or
 - (b) unsuitable for the attendance of children,it shall, subject to subsection (3) of this section, classify the performance as a restricted theatrical performance.
- (3) Where the Council is satisfied that a theatrical performance is likely to cause serious offence to reasonable adult persons, it may refrain from assigning a classification to the performance.

13—Conditions in respect of theatrical performances

- (1) Where the Council assigns a classification to a theatrical performance, it may impose such conditions in respect of the performance as it thinks fit to ensure that changes are not made in the nature of the performance of a kind that would affect—
 - (a) the classification of the performance; or
 - (b) a decision by the Council as to whether or not a classification should be assigned to the performance.
- (2) Where the Council assigns a restricted classification to a theatrical performance, it may impose conditions restricting the publication of advertisements in respect of the performance.

14—Powers of Council

- (1) In the exercise of its functions under this Part, the Council may—
 - (a) by summons signed on behalf of the Council by a member of the Council, or the Registrar, require the attendance before the Council of any person whom the Council thinks fit to call before it; or
 - (b) by summons signed on behalf of the Council by a member of the Council or the Registrar require the production of a script or other document relating to a theatrical performance; or
 - (c) inspect any script or other document produced before it and retain copies thereof; or

- (d) require any person to make an oath or affirmation that he will truly answer all questions put to him by the Council relevant to any matter being inquired into by the Council (which oath or affirmation may be administered by any member of the Council or by the Registrar); or
 - (e) require any person appearing before the Council (whether he has been summoned to appear or not) to answer any relevant question put to him by any member of the Council or by any other person appearing before the Council.
- (2) Subject to subsection (3) of this section, if any person—
- (a) who has been served with a summons to attend before the Council neglects or fails to attend in obedience to the summons; or
 - (b) who has been served with a summons to produce any publication or other document neglects or fails to comply with the summons; or
 - (c) misbehaves himself before the Council, wilfully insults the Council or any member thereof or interrupts the proceedings of the Council; or
 - (d) refuses to be sworn or to affirm, or to answer any relevant question when required to do so by the Council,
- he shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.
- (3) A person shall not be obliged to answer a question put to him by the Council if the answer to that question would tend to incriminate him, or to produce any publication or other document if their contents would tend to incriminate him.

15—Notice

- (1) Notice of—
- (a) any classification or conditions assigned to or imposed in respect of a theatrical performance; or
 - (b) any decision by the Council to refrain from assigning a classification to a theatrical performance,
- shall be published in the Gazette and shall be given personally or by post to a promoter of the theatrical performance.
- (2) The classification and conditions assigned to or imposed in respect of a theatrical performance shall come into effect upon publication of the notice in the Gazette or service of the notice on the promoter, whichever first occurs.

Part 4—Miscellaneous

16—Penalty for breach of condition

Where any condition imposed by the Council in respect of a theatrical performance is not observed, the promoter shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

17—Places where restricted theatrical performances may take place

- (1) A restricted theatrical performance may only take place in a theatre approved by the Council.
- (2) Where a restricted theatrical performance takes place otherwise than as allowed by subsection (1) of this section, the promoter shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

18—Children between age of two and eighteen years not to be admitted to restricted theatrical performance

- (1) Where a child between the age of two years and eighteen years is in a theatre at any time when a restricted theatrical performance is taking place, or is about to take place, the promoter shall be guilty of an offence and liable to a penalty not exceeding fifty dollars.
- (2) It shall be a defence to a prosecution under subsection (1) of this section that—
 - (a) the defendant took reasonable precautions designed to ensure that any such persons were not admitted to the theatre; or
 - (b) the defendant, or a person to whom the responsibility of admitting persons to the theatre 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 age of sixteen years and eighteen years is in a theatre at any time when a restricted theatrical performance is taking place, or is about to take place, he shall be guilty of an offence and liable to a penalty not exceeding fifty dollars.
- (4) A person who assists a child between the age of two and eighteen years to enter, or gain admission to a theatre in which a restricted theatrical performance is taking place, or is about to take place, he shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.
- (5) Where a restricted theatrical performance is taking place, or is about to take place in a theatre, the promoter, an employee of the promoter, 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 promoter, 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.
- (6) Where a restricted theatrical performance is taking place, or is about to take place in a theatre, and the promoter, an employee of the promoter, 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.

- (7) Any statement or evidence obtained pursuant to a requirement under subsection (5) of this section shall be admissible in any legal proceedings against the person by whom the statement or evidence was made or furnished.
- (8) Any person who fails to comply with a requirement under subsection (5) or subsection (6) of this section, 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 two hundred dollars.

19—Certain actions not to constitute offences

- (1) Notwithstanding any law relating to blasphemy, obscenity or indecency it shall not be an offence—
 - (a) to produce or take part in a theatrical performance in the presence of the Council, or a member or officer of the Council, with a view to the performance being classified by the Council;
 - (b) to produce or take part in a theatrical performance that has been classified as an unrestricted theatrical performance by the Council and in respect of which any conditions imposed by the Council are observed;
 - (c) to produce or take part in a theatrical performance that has been classified as a restricted theatrical performance by the Council and in respect of which any conditions imposed by the Council are observed.
- (2) The burden of proving that subsection (1) of this section is applicable in any proceedings for an offence relating to blasphemy, obscenity or indecency lies on the defendant.

20—Evidentiary provision

An apparently genuine document purporting to be under the hand of the Registrar and to certify—

- (a) that a specified classification was assigned by the Council in respect of a specified theatrical performance; or
- (b) that specified conditions were imposed by the Council in respect of a specified theatrical performance,

shall be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the matters so certified.

21—Power to enter and view performance

- (1) An authorised person may, after giving reasonable notice to the promoter of a theatrical performance, enter and remain in a theatre for the purpose of observing the performance or a rehearsal preliminary to the performance.
- (2) In this section—

authorised person means—

- (a) a member of the Council; or
- (b) the Registrar; or
- (c) a person authorised in writing by the Council to exercise the powers conferred by this section.

22—Summary disposal of offences

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

23—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1) of this section those regulations may—
 - (a) prescribe the manner and form in which an application for classification of a theatrical performance is to be made; and
 - (b) prescribe and provide for the payment of fees in respect of a request for the classification of a theatrical performance; and
 - (c) requiring that advertisements published in respect of theatrical performances classified under this Act bear symbols described in the regulations denoting those classifications; and
 - (d) prescribe penalties (recoverable summarily) not exceeding two hundred dollars for breach of, or non-compliance with, any regulation.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Repeal of Act

The *Classification of Theatrical Performances Act 1978* was repealed by s 22 of the *Statutes Amendment and Repeal (Classification of Publications, Films and Computer Games) Act 2019* on 3.2.2020.

Principal Act and amendments

Year	No	Title	Assent	Commencement
1978	20	<i>Classification of Theatrical Performances Act 1978</i>	23.3.1978	11.5.1978 (<i>Gazette 11.5.1978 p1652</i>)
1993	87	<i>Statutes Repeal and Amendment (Places of Public Entertainment) Act 1993</i>	27.10.1993	3.4.1995 (<i>Gazette 23.2.1995 p422</i>)
1995	88	<i>Classification (Publications, Films and Computer Games) Act 1995</i>	7.12.1995	1.1.1996 (<i>Gazette 21.12.1996 p1751</i>)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 31 (s 58)—1.2.2010 (<i>Gazette 28.1.2010 p320</i>)
2015	8	<i>Statutes Amendment (Boards and Committees—Abolition and Reform) Act 2015</i>	18.6.2015	Pt 7 (ss 39—52)—1.7.2015 (<i>Gazette 25.6.2015 p3076</i>)

Provisions amended

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
<i>ss 2 and 3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 4		
<i>the Board</i>	<i>deleted by 8/2015 s 39(1)</i>	<i>1.7.2015</i>
Council	inserted by 8/2015 s 39(2)	1.7.2015
Registrar	inserted by 8/2015 s 39(3)	1.7.2015

restricted theatrical performance	substituted by 8/2015 s 39(3)	1.7.2015
<i>Pt 2 before deletion by 8/2015</i>		
<i>s 5</i>		
<i>s 5(2) and (3)</i>	<i>substituted by 88/1995 Sch 2 cl 3(a)</i>	<i>1.1.1996</i>
<i>s 6</i>		
<i>s 6(3) and (4)</i>	<i>substituted by 88/1995 Sch 2 cl 3(b)</i>	<i>1.1.1996</i>
<i>s 6(4a)</i>	<i>inserted by 88/1995 Sch 2 cl 3(b)</i>	<i>1.1.1996</i>
<i>s 7</i>	<i>deleted by 84/2009 s 58</i>	<i>1.2.2010</i>
<i>Pt 2</i>	<i>deleted by 8/2015 s 40</i>	<i>1.7.2015</i>
<i>Pt 3</i>		
<i>s 10</i>		
<i>s 10(1)</i>	amended by 8/2015 s 41(1)	1.7.2015
<i>s 10(2)</i>	amended by 8/2015 s 41(2)	1.7.2015
<i>s 11</i>		
<i>s 11(1)</i>	amended by 8/2015 s 42(1)	1.7.2015
<i>s 11(2)</i>	amended by 8/2015 s 42(2)	1.7.2015
<i>s 12</i>		
<i>s 12(1)</i>	amended by 8/2015 s 43(1)	1.7.2015
<i>s 12(2)</i>	amended by 8/2015 s 43(2)	1.7.2015
<i>s 12(3)</i>	amended by 8/2015 s 43(3)	1.7.2015
<i>s 13</i>		
<i>s 13(1)</i>	amended by 8/2015 s 44(1)	1.7.2015
<i>s 13(2)</i>	amended by 8/2015 s 44(2)	1.7.2015
<i>s 14</i>		
<i>s 14(1)</i>	amended by 8/2015 s 45(1)	1.7.2015
<i>s 14(2)</i>	amended by 8/2015 s 45(2)	1.7.2015
<i>s 14(3)</i>	amended by 8/2015 s 45(3)	1.7.2015
<i>s 15</i>		
<i>s 15(1)</i>	amended by 8/2015 s 46	1.7.2015
<i>Pt 4</i>		
<i>s 16</i>	amended by 8/2015 s 47	1.7.2015
<i>s 17</i>		
<i>s 17(1)</i>	amended by 8/2015 s 48	1.7.2015
<i>s 19</i>		
<i>s 19(1)</i>	amended by 8/2015 s 49	1.7.2015
<i>s 20</i>	amended by 8/2015 s 50	1.7.2015
<i>s 21</i>		
<i>s 21(2)</i>		
authorised person	amended by 8/2015 s 51	1.7.2015
<i>Pt 4</i>		
<i>s 17</i>		

s 17(1)

substituted by 87/1993 s 8

3.4.1995

Transitional etc provisions associated with Act or amendments

Statutes Amendment (Boards and Committees—Abolition and Reform) Act 2015

52—Transitional provisions

- (1) In this section—

Board has the same meaning as in the principal Act as in force immediately before the relevant day;

principal Act means *Classification of Theatrical Performances Act 1978*;

relevant day means the day on which section 40 of this Act comes into operation.

- (2) A request for classification in relation to a theatrical performance made by a person under section 10 of the principal Act but not yet determined by the Board immediately before the relevant day will, on the relevant day, be taken to be a request for classification by the Council under that section.
- (3) A classification by the Board in relation to a theatrical performance under section 12 of the principal Act and in force immediately before the relevant day will, on the relevant day, be taken to be a classification by the Council under that section in relation to that performance.
- (4) A decision by the Board to refrain from assigning a classification to a theatrical performance made under section 12 of the principal Act and in force immediately before the relevant day will, on the relevant day, be taken to be a decision by the Council under that section in relation to that performance.
- (5) A condition imposed by the Board under section 13 of the principal Act in respect of a theatrical performance and in force immediately before the relevant day will, on the relevant day, be taken to be a condition imposed by the Council under that section in respect of that performance.
- (6) An approval by the Board of a theatre under section 17(1) of the principal Act and in force immediately before the relevant day will, on the relevant day, be taken to be an approval by the Council of the theatre under that section.
- (7) A member of the Board ceases to hold office on the commencement of this subsection.

Historical versions

Reprint No 1—3.4.1995

Reprint No 2—1.1.1996

1.2.2010