

CLASSIFICATION OF FILMS AMENDMENT BILL 1993

EXPLANATORY NOTES

OBJECTIVE

The *Classification of Films Amendment Bill 1993* has the following objectives:

1. To address recent community concerns expressed about the breadth of the “M” classification for films and videos by providing for a new “MA” classification which will replace part of the existing “M” classification. Films (including videos) at the “lower” end of the existing “M” classification will continue to be classified “M” and be recommended for viewing by persons aged 15 years and older. Those films (and videos) that are unsuitable for viewing by persons under 15 years of age, will constitute the proposed “MA” classification and will not be able to be exhibited, sold, hired or delivered to a person aged under 15 years unless accompanied by an adult.

The proposed Bill will require a film to be classified as “MA” if it depicts, expresses or otherwise deals with sex, violence or coarse language in a manner as to make the film unsuitable for viewing by persons under 15 years.

The move to split the existing “M” classification and introduce a new “MA” classification has emanated from a resolution of the Council of Australian Governments at its meeting in Perth on 7th December 1992.

2. The second objective is to introduce a new definition of the term “sell” which is intended to clarify the application of the *Classification of Films Act 1991* to persons who operate “swap clubs” in which “X” videos are exchanged or distributed.

3. The third objective of the Bill is to effect statute law revision by modernising and rationalising a number of statutory provisions.

NOTES ON CLAUSES

Clause 1 sets out the short title of the Act.

Clause 2 provides that the Act will commence on a day fixed by proclamation.

Clause 3 identifies the Act to be amended.

Clause 4 inserts new definitions into section 3 of the Act and omits from section 3 the present definition of “sell” and provides for a new definition as set out in clause 5.

Clause 5 inserts a new section 3A in the Act which provides an extended definition of the term “sell”. The new definition of the term “sell” differs from the existing definition in section 3 by the insertion of paragraph 3A(c) and the provision of an example of how section 3A(c)(ii) will operate.

Clause 6 inserts a new section 4A into the Act which allows the Films Classification Officer to delegate the Officer’s powers to another officer of the department approved in writing by the chief executive.

Clause 7 amends section 9, which section provides for the classification of films, by making provision for an “MA” classification for films.

Clause 7(1) renumbers paragraph 9(1)(d) as (e).

Clause 7(2) inserts a new paragraph (d) in section 9(1) allowing the censor to classify a film as a “MA” film if the censor is of the opinion that the film describes, depicts, expresses or otherwise deals with sex, violence or coarse language in a way that makes the film unsuitable for viewing by persons under 15 years.

Clause 7(3) inserts a new section 9(4) into the Act. Subsection 9(4) provides that the censor will not classify a video tape or video disk if it includes an advertisement for a film of a higher classification than itself. The amendment ensures that in carrying out the censor’s duties under this subsection, the censor has regard to the new “MA” classification.

Clause 8 amends section 21 by providing a penalty for a person who exhibits, or attempts to exhibit an unclassified film that, if it were classified, would be classified as a “MA” film. The penalty prescribed pursuant to clause 8 is 20 penalty units, which comports with the hierarchy of penalties prescribed in section 21.

Clause 9 inserts a new section 22, which deals with the attendance of certain minors at the exhibition of “MA” and “R” films. The section provides that the attendance of certain minors at the exhibition of “MA” and “R” films in certain circumstances can result in an offence being committed by an exhibitor.

The proposed section 22 provides that an exhibitor commits an offence if the exhibitor, or the exhibitor’s employee or agent allows a child who has reached two years but not 15 years and who is not accompanied by an adult, to view the exhibition of an “MA” film.

The exhibitor or the exhibitor’s employee or agent will not have committed an offence if such persons believe on reasonable grounds that the minor concerned—

- has reached 15 years or has not reached two years; or
- is, or will be, accompanied by an adult during the exhibition of the film.

The present provisions with respect to “R” films set out in existing section 22 are duplicated in the proposed section 22.

Clause 10 omits section 25 and inserts new sections 25-25C. Proposed section 25 sets out the power of an inspector, exhibitor or an exhibitor’s employee or agent (“the inquirer”) to demand a person’s correct name, address and age or, in certain circumstances, to the person’s best knowledge, the correct name, address and age of a minor who that person has in their care and control or who they have accompanied or assisted during the exhibition of a “MA” or “R” film.

Proposed section 25A provides that if an inspector, exhibitor or an exhibitor’s employee or agent (the ‘inquirer’) has reasonable grounds to believe that any of the particulars given by a person under section 25 are false, the inquirer may require the person to produce evidence of the correctness of the particulars including the completion and signing of a statement of the particulars in the approved form.

Proposed section 25B sets out offences relating to particulars.

Proposed section 25C(1) empowers the exhibitor or an exhibitor’s employee or agent to refuse admission of a person to a theatre, or to require a person to leave a theatre, if it is believed on reasonable grounds that the exhibitor would commit an offence if the exhibitor allowed the person to be,

or to continue to be, present at the theatre, or if the person has committed an offence against section 25B.

Subsection 25C(2) provides that an offence will be committed by a person who attempts to enter a theatre after being refused entry pursuant to subsection (1) or fails to leave a theatre after being required to leave pursuant to subsection (1).

Clause 11 omits from section 30 references to distribution. This is consequential upon the expansion of the definition of the term “sell”.

Clause 12 inserts new sections 31 to 33 which provide, respectively for the commission of offences with respect to—

- selling or displaying for sale (or attempting to do so) a classified film which contains advertisements for films of a higher classification (section 31);
- displaying, or attempting to display for sale an “MA” or “R” film or an advertisement for a film classified as “MA” or “R” unless the person has complied with the conditions that are prescribed by regulation for the purposes of the section (section 32);
- the sale or delivery, or the attempted sale or delivery, of an “MA” or “R” film to certain minors (section 33).

Clause 13 amends section 34 (which deals with the display and sale of unclassified films) by inserting a new paragraph (b) which deals with the display and sale of unclassified “MA” films.

Clause 14 amends section 41 (which deals with possession of an objectionable film) by:

- omitting from subsection 41(1) the term “or distribution”. This is consequential upon the expansion of the definition of the term “sell”; and
- inserting a monetary penalty in subsection 41(3). Presently, only a custodial penalty is provided for. Pursuant to section 45(2) of the *Penalties and Sentences Act 1992*, a court can award in circumstances such as this either custodial sentence or a monetary penalty or both. Accordingly, the words “or both” are not required to be inserted in this amendment.

Clause 15 inserts a new subsection 60(3), which is consequential upon

the power of delegation being given to the Films Classification Officer in proposed section 4A.

Clause 16 omits from section 65 (regulation making power) references to “distribution”. This is consequential upon the expansion of the definition of the term “sell”.

Clause 17 inserts a new section 66 which allows the chief executive to approve a form for use under the *Classification of Films Act 1991*.

Clause 18 replaces Part 9 (Repeals, Savings and Transitional Provisions) with a new Part which:

- provides that a regulation in force immediately before the commencement of clause 18 continues to have effect after its commencement as if it had been made immediately after the commencement (section 67); and
- makes transitional provisions for “MA” films.

SCHEDULE

The Schedule outlines a number of amendments to the Act designed to effect statute law revision.