

Queensland



CLASSIFICATION OF FILMS ACT 1991

**Reprinted as in force on 9 December 1992
(includes amendments up to Act No. 36 of 1992)**

Reprint No. 1

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the Office of the Queensland Parliamentary Counsel
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Information about this reprint

This Act is reprinted as at 9 December 1992. As required by section 5 of the *Reprints Act 1992*, it—

- shows the law as amended by all amendments that commenced before that day; and
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

As required by section 6 of the *Reprints Act 1992*, the reprint includes, in a suitable place, a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

The opportunity has also been taken, under section 7 of the *Reprints Act 1992*, to do the following—

- omit the enacting words as permitted by section 7(1)(a) of that Act;
- use citations and references permitted by Division 2 of that Act;
- use punctuation and expressions consistent with current legislative drafting practice as permitted by sections 27 and 29 of that Act;
- use conjunctives and disjunctives consistent with current legislative drafting practice as permitted by section 28 of that Act;
- use aspects of format and printing style consistent with current legislative drafting practice as permitted by section 35 of that Act;

Also see Endnotes for—

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**

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CLASSIFICATION OF FILMS ACT 1991

[as amended by all amendments that commenced before 9 December 1992²]

An Act relating to the classification of films, and related purposes

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Classification of Films Act 1991*³⁻⁴.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Definitions

3. In this Act—

“**advertisement**”, in relation to a film, includes—

- (a) every visual form of advertising the film (including any accompanying words or any spoken words or other sounds), whether in or on a book, paper, magazine, poster, photograph, sketch, program, film, slide or any other thing (other than an item of clothing); and
- (b) any form of advertising capable of being heard from any instrument or device designed or used for the production of sound; and
- (c) any written or pictorial matter contained or displayed in or on a container or wrapping used to enclose the film;

“appeal censor” means—

- (a) the officer or authority of the Commonwealth exercising on behalf of the Government of Queensland the functions of appeal censor under an agreement under this Act between the Governor in Council and the Governor-General; or
- (b) the appeal censor appointed by the Governor in Council under this Act;

“approved”, in relation to an advertisement for a film, means approved under section 10;

“approved organisation” means an organisation approved by the films classification officer under section 56;

“censor” means—

- (a) the officer or authority of the Commonwealth exercising on behalf of the Government of Queensland the functions of a censor of films under an agreement under this Act between the Governor in Council and the Governor-General; or
- (b) the censor of films appointed by the Governor in Council under this Act;

“chief censor” means the chief censor under the *Customs (Cinematograph Films) Regulations 1956* of the Commonwealth;

“child abuse film” means a film that is an objectionable film because it depicts a minor (whether engaged in sexual activity or otherwise) who is, or is apparently, under the age of 16 years in a way that is likely to cause offence to a reasonable adult person;

“Commonwealth Gazette” means the Commonwealth of Australia Gazette;

“determined manner and form” means the manner and form determined under the *Film Classification Act 1971* of the Australian Capital Territory;

“determined markings” means markings determined under the Ordinance or the *Film Classification Act 1971* of the Australian Capital Territory;

“exhibition”, in relation to a film, includes the screening of the film;

“exhibitor” means a person who exhibits a film in a theatre;

“film” includes—

- (a) a cinematograph film, slide, video tape and video disc; and
- (b) any other form of recording from which a visual image can be produced;

but does not include a computer program or an advertisement for a film;

“objectionable film” means an unclassified film, or an unapproved advertisement for a film, that—

- (a) describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence, or revolting or abhorrent phenomena, in a way that offends against standards of morality, decency and propriety generally accepted by reasonable adult persons; or
- (b) depicts a minor (whether engaged in sexual activity or otherwise) who is, or is apparently, under the age of 16 years in a way that is likely to cause offence to a reasonable adult person; or
- (c) promotes, incites or instructs in matters of crime or violence; or
- (d) has been refused classification or approval;

“occupier”, in relation to a place, includes a person in charge of the place;

“Ordinance” means the *Classification of Publications Ordinance 1983* of the Australian Capital Territory;

“place” includes—

- (a) vacant land or premises; and
- (b) a vehicle, vessel or aircraft;

“possession”, in relation to a film, includes—

- (a) custody or control of the film; and
- (b) an ability or right to obtain custody or control of the film;

“premises” includes—

- (a) a building or structure, or a part of a building or structure, of any kind; and
- (b) the land on which a building or structure is situated; and

(c) a vehicle, vessel or aircraft;

“public place” means any place that—

(a) the public is entitled to use; or

(b) is open to, or used by, the public (whether or not on payment of money);

“sell” means sell by wholesale, retail, exchange or let on hire, and includes offer for sale or hire, agree to sell or hire and cause or permit to be sold or hired;

“synopsis”, in relation to a film, includes a statement or summary of any incidents, or of the plot or play or story, depicted or intended to be depicted by means of the film;

“theatre” means a building, room, public hall, house, garden or other place—

(a) where a film is about to be, is being or has been exhibited; and

(b) to which admission is, or may be, gained by ticket or by payment of money or any other consideration;

“unapproved”, in relation to an advertisement for a film, means not approved under section 10.

Inspectors and films classification officer

4.(1) For the purposes of this Act, the chief executive of the department may appoint, in writing, officers of the department, or, with the agreement of the Commissioner of Police, police officers, to be inspectors.

(2) The chief executive may issue an identity card to an inspector who is not a police officer.

(3) The identity card must—

(a) contain a recent photograph of the inspector; and

(b) be in a form approved by the chief executive.

(4) A person who ceases to be an inspector must, as soon as practicable, return his or her identity card to the chief executive.

Maximum penalty for contravention of this subsection—5 penalty units.

- (5) There is to be a films classification officer.
- (6) The films classification officer is to be an officer of the department.

PART 2—CLASSIFICATION OF FILMS

Arrangements with the Commonwealth for discharge of duties by Commonwealth officers etc.

5.(1) The Governor in Council may, by written agreement, make arrangements with the Governor-General with respect to the performance of the function of censorship of films in the State by officers and authorities of the Commonwealth on behalf of the State.

(2) In performing this function under the agreement, the officers and authorities of the Commonwealth have all of the functions and powers conferred by this Act.

(3) Subject to subsection (4), the Governor in Council may terminate the agreement by written notice given to the Governor-General.

(4) The Governor in Council must give the Governor-General not less than 3 months written notice of intention to terminate the agreement.

Other arrangements for appointment of censor etc.

6.(1) If there is not an agreement in force under section 5, the Governor in Council may, under the *Public Service Management and Employment Act 1988*, appoint a censor, an appeal censor and 1 or more deputies of the censor and appeal censor.

(2) A deputy of the censor or appeal censor may do anything that the censor or appeal censor, as the case may be, is authorised or required to do under this Act.

Application for classification of film

7.(1) A person may apply to the censor for classification of a film.

(2) An application for the classification of a film—

- (a) must be in the form approved by the censor; and
- (b) must be lodged with the censor together with—
 - (i) the prescribed fee; and
 - (ii) a synopsis of the film in the English language.

(3) An applicant for classification of a film may lodge with the censor a copy of an advertisement proposed to be used for the film.

(4) If an agreement under section 5 is in force, the censor must not accept an application for classification of a film unless an application is made to the censor for classification of the film under the law of each State or Territory in relation to the classification of films.

Screening of film for purposes of classification

8.(1) The censor may require a film that is the subject of an application for classification to be screened.

(2) If the censor requires a film to be screened, the censor may require the applicant to lodge a copy of the film with the censor.

(3) The censor may retain the copy of the film.

(4) If the censor requires a film to be screened—

- (a) the film is to be screened as and when required by the censor; and
- (b) the screening is to be carried out at the expense and risk of the applicant; and
- (c) the applicant, not more than 4 representatives of the applicant, and any other person approved by the censor, are entitled to be present at the screening.

Classification of films

9.(1) The censor may classify a film for which an application for classification has been made—

- (a) as a **“G” film**, if the censor is of the opinion that the film is suitable for general exhibition; or
- (b) as a **“PG” film**, if the censor is of the opinion that the film should be viewed by a person under the age of 15 years only with the guidance of a parent or guardian of the person; or
- (c) as an **“M” film**, if the censor is of the opinion that the film cannot be recommended for viewing by a person under the age of 15 years; or
- (d) as an **“R” film**, if the censor is of the opinion that the film is unsuitable for viewing by a minor.

(2) The censor must refuse to classify a film that—

- (a) describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence, or revolting or abhorrent phenomena, in a way that offends against standards of morality, decency and propriety generally accepted by reasonable adult persons; or
- (b) is or would be classified as an **“X”** film under the Ordinance; or
- (c) depicts a minor (whether engaged in sexual activity or otherwise) who is, or is apparently, under the age of 16 years in a way that is likely to cause offence to a reasonable adult person; or
- (d) promotes, incites or instructs in matters of crime or violence.

(3) If a video tape or video disc includes an advertisement for an unclassified film, the censor must refuse to classify the video tape or video disc.

(4) If a video tape or video disc includes an advertisement for a classified film, the censor must not classify the video tape or video disc—

- (a) as a **“G” film**, if the advertised film is classified as a **“PG”**, **“M”** or **“R”** film;
- (b) as a **“PG” film**, if the advertised film is classified as an **“M”** or **“R”** film; or

(c) as an “**M**” film, if the advertised film is classified as an “**R**” film.

(5) The censor must keep a record of all decisions made by the censor under this section.

Advertisements

10.(1) Subject to subsection (2), the censor may approve (either unconditionally or subject to conditions), or refuse to approve, an advertisement for a film that is the subject of an application for classification or that has been classified.

(2) The censor must refuse to approve an advertisement, or part of an advertisement, for a film if the advertisement or part—

- (a) describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence, or revolting or abhorrent phenomena, in a way that offends against standards of morality, decency and propriety generally accepted by reasonable adult persons; or
- (b) depicts a minor (whether or not engaged in sexual activity) who is, or is apparently, under the age of 16 years in a way that is likely to cause offence to a reasonable adult person; or
- (c) promotes, incites or instructs in matters of crime or violence.

(3) The conditions that may be imposed under subsection (1) include, for example, conditions requiring the inclusion in the advertisement of any words or symbols.

(4) The censor may, by written notice given to the exhibitor of a classified film, require the exhibitor to submit to the censor for approval a copy of every advertisement that is used, or intended to be used, in connection with the exhibition of the film and that has not already been the subject of a decision under subsection (1).

(5) Until the requirement is complied with, each advertisement mentioned in subsection (4) is taken to be an unapproved advertisement for the film.

(6) The censor must keep a record of all decisions made by the censor under this section.

Notice of decision of censor

11.(1) If the censor makes a decision—

- (a) classifying or refusing to classify a film; or
- (b) approving or refusing to approve an advertisement for a film;

the censor must give written notice of the decision to the applicant for classification or approval within 30 days of the decision.

(2) If a film is classified, the notice must include a description of the determined markings in relation to the classification given to the film.

(3) A decision referred to in subsection (1) takes effect on the day on which notice of the decision is given under this section.

Application for review by appeal censor

12.(1) If the censor makes a decision classifying or refusing to classify a film, or approving or refusing to approve an advertisement for a film—

- (a) the applicant for classification or approval; or
- (b) the publisher of the film; or
- (c) the Minister;

may apply to the appeal censor for review of the decision.

(2) An application under subsection (1) may be made—

- (a) if made by the Minister, at any time; or
- (b) if made by any other person—
 - (i) within 37 days after the day on which the decision the subject of the application takes effect; or
 - (ii) within any further time allowed by the appeal censor.

(3) An application under subsection (1) must be—

- (a) in writing signed by the applicant for the review; and
- (b) except if made by the Minister—accompanied by the prescribed fee.

(4) If a person other than the applicant for classification of a film, or approval of an advertisement for a film, applies under subsection (1) for the

review of a decision, the appeal censor must give written notice of the application for review to the applicant for classification or approval.

Powers and duties on review by appeal censor

13.(1) On an application under section 12 for the review of a decision, the appeal censor must—

- (a) confirm the decision; or
- (b) set aside the decision and—
 - (i) classify, or refuse to classify, the film; or
 - (ii) approve, or refuse to approve, the advertisement.

(2) The appeal censor must notify the applicant for review of the appeal censor's decision within 14 days after making the decision.

(3) A decision under subsection (1) takes effect on the day on which notice of the decision is given under subsection (2).

(4) The appeal censor must keep a record of a decision made under subsection (1).

Review after 2 years by censor on own initiative

14.(1) The censor may, on his or her own initiative, review a previous decision of the censor or appeal censor not earlier than 2 years after the day on which the previous decision took effect.

(2) The censor must, not later than 30 days before a proposed review of a previous decision, cause written notice of the review to be given to—

- (a) the person who applied for classification of the film or approval of the advertisement; and
- (b) the publisher of the film or advertisement.

(3) A person mentioned in subsection (2)(a) or (b) may, within 30 days after receiving notice under that subsection, make a written submission to the censor concerning any of the following matters—

- (a) whether the film should be classified or refused classification;
- (b) the appropriate classification of the film;

- (c) whether the advertisement should be approved or refused approval.

Powers and duties on review on own motion

- 15.(1)** If a previous decision is reviewed by the censor, the censor may—
 - (a) confirm the previous decision; or
 - (b) set aside the previous decision and—
 - (i) classify, or refuse to classify, the film; or
 - (ii) approve, or refuse to approve, the advertisement; to which the previous decision relates.
- (2)** In reviewing a previous decision, the censor must have regard to—
 - (a) any submissions made under section 14(3); and
 - (b) in the case of a film—the matters mentioned in section 9; and
 - (c) in the case of an advertisement—the matters mentioned in section 10.
- (3)** The censor must give written notice of the decision to—
 - (a) the person who applied for classification of the film or approval of the advertisement; and
 - (b) any other person who made a submission under section 14(3).
- (4)** The censor must, within 30 days after the day on which the decision is made, cause notice of the decision to be published in—
 - (a) if there is an arrangement in operation under section 5 — the Commonwealth Gazette; or
 - (b) if there is no such arrangement—the Gazette.
- (5)** A decision under subsection (1) takes effect at the end of 30 days after the day on which notice of the decision is published under subsection (4).

Application for review by appeal censor of decision under section 15

16.(1) If the censor confirms or sets aside a previous decision—

- (a) the applicant for classification or approval; or
- (b) the publisher of the film or advertisement; or
- (c) the Minister;

may apply to the appeal censor for review of the censor's decision under section 15(1).

(2) An application under subsection (1) must be made—

- (a) if made by the applicant for classification or approval—within 30 days after the applicant received notice of the decision; or
- (b) if made by the publisher of the film or advertisement—within 30 days after the day on which notice of the decision is published under section 15(3).

(3) The Minister may make application under subsection (1) at any time.

(4) An application under subsection (1) must be—

- (a) in writing signed by the applicant; and
- (b) made to the appeal censor; and
- (c) except if made by the Minister—accompanied by the prescribed fee.

Powers and duties of appeal censor on review under section 16

17.(1) On an application under section 16(1) for the further review of a previous decision, the appeal censor must—

- (a) confirm the decision made under section 15(1); or
- (b) set aside that decision and—
 - (i) classify, or refuse to classify, the film; or
 - (ii) approve, or refuse to approve, the advertisement.

(2) The appeal censor must, within 14 days after the day of a decision under subsection (1)—

- (a) give written notice of the decision to the applicant for further review; and
- (b) cause a notice of the decision to be published in—
 - (i) if there is an arrangement in operation under section 5—the Commonwealth Gazette; or
 - (ii) if there is no such arrangement—the Gazette.

(3) A decision under subsection (1) takes effect on the day on which notice of the decision is published under subsection (2).

(4) The appeal censor must keep a record of all decisions made under subsection (1).

Retention of films by censor

18. If a film in respect of which an application for classification has been made is not classified, the film, or any part of the film, and any advertisement lodged with the film—

- (a) may be retained by the censor or appeal censor; or
- (b) if the censor or appeal censor is satisfied that the film or part of the film and the advertisement will be disposed of in the way directed by the censor or appeal censor—may be returned to the applicant.

Effect of alteration of classified film or approved advertisement

19.(1) A classified film that has been modified after it has been classified is taken to be an unclassified film unless the censor or appeal censor has approved of the alteration or addition in writing.

(2) An approved advertisement that has been modified after it has been approved is taken to be an advertisement that has been refused approval unless the censor or appeal censor has approved of the alteration or addition in writing.

PART 3—EXHIBITION OF FILMS

Classification of film to be shown before exhibition

20. A person must not exhibit a film in a public place unless, at the start of the exhibition, there is exhibited an image that bears the determined markings displayed in the determined manner and form.

Maximum penalty—10 penalty units.

Prohibition against exhibition of unclassified films

21. A person must not exhibit, or attempt to exhibit, an unclassified film in a public place.

Maximum penalty—

- (a) in the case of a film that, if it were classified, would be classified as a “G”, “PG” or “M” film—5 penalty units; or
- (b) in the case of a film that, if it were classified, would be classified as an “R” film—50 penalty units; or
- (c) in the case of a film that has been or would have been refused classification—300 penalty units or imprisonment for 2 years.

Attendance of minor at exhibition of certain films—offence by exhibitor

22.(1) A person must not exhibit, or attempt to exhibit, in a public place a film classified as an “R” film if a minor who has attained the age of 2 years is, or will be, present at the whole or any part of the exhibition of the film.

Maximum penalty—10 penalty units.

(2) A person is not guilty of an offence against subsection (1) if the person or the person’s servant or agent believes on reasonable grounds that the minor concerned has attained the age of 18 years or has not attained the age of 2 years.

Attendance of minor at exhibition of certain films—offence by other persons

23.(1) A person who has attained the age of 18 years must not—

(a) cause or permit, or attempt to cause or permit, a minor who—

(i) has attained the age of 2 years; and

(ii) is in his or her care, custody and control;

to attend; or

(b) accompany and assist, or attempt to accompany and assist, a minor who has attained the age of 2 years to attend;

the exhibition in a public place of a film classified as an “R” film or an objectionable film.

Maximum penalty—

(a) in the case of a film classified as an “R” film—10 penalty units; or

(b) in the case of an objectionable film—100 penalty units.

(2) A person is not guilty of an offence against subsection (1) if the person believes on reasonable grounds that the minor concerned has attained the age of 18 years or has not attained the age of 2 years.

Minors not to be present at exhibition of certain films—offence by minor

24. A minor who has attained 15 years of age must not be present, or attempt to be present, at the exhibition, in a public place, of a film that is classified as an “R” film, or a film that has been refused classification, knowing that he or she should not be present.

Maximum penalty—1 penalty unit.

Power to demand name, age and address etc.

25.(1) If an inspector, exhibitor or an exhibitor’s servant or agent has reasonable cause to suspect that a person seeking admission, or who has been admitted, to a theatre in which a film classified as an “R” film is about to be, is being, or has just been, exhibited—

(a) has in the person's care, custody or control; or

(b) has accompanied and assisted;

a minor aged 2 years or more, he or she may require the person to give—

(c) the person's correct name and address; and

(d) to the best of the person's knowledge, the correct name, age and address of the minor.

(2) If an inspector, exhibitor or an exhibitor's servant or agent has reasonable cause to suspect that a person seeking admission, or who has been admitted, to a theatre in which a film classified as an "R" film is about to be, is being, or has just been, exhibited is a minor, he or she may require the person to give his or her correct name, age and address.

(3) If an inspector, exhibitor or an exhibitor's servant or agent has reasonable grounds to believe that any of the particulars given by a person under subsection (1) or (2) are false, he or she may require the person to produce evidence of the correctness of the particulars given by the person.

(4) A person required to provide particulars under subsection (1) or (2) may also be required to complete and sign a statement in the prescribed form as to those particulars.

(5) A person must not fail—

(a) to give particulars, or to produce satisfactory evidence of the correctness of particulars, required under subsection (1) or (2); or

(b) to complete and sign a statement as required under subsection (4).

Maximum penalty—1 penalty unit.

(6) If a person—

(a) has not at the time of the failure referred to in subsection (5) attended the exhibiting of the "R" film concerned; and

(b) immediately leaves the theatre after the failure;

the person does not commit an offence against subsection (6).

(7) A person must not give a false or misleading particular, or supply false or misleading evidence as to any particulars, under a requirement under this section.

Maximum penalty—5 penalty units.

(8) An exhibitor or an exhibitor's servant or agent may refuse to admit a person to a theatre, or may require a person to leave a theatre, if—

- (a) the person's presence in the theatre could subject the exhibitor to a penalty under this Act; or
- (b) the person contravenes this section.

(9) A person must not contravene a requirement under subsection (8).

Maximum penalty—5 penalty units.

PART 4—ADVERTISING AND SUPPLY OF FILMS

Use of advertisements

26.(1) A person must not use, or attempt to use, an advertisement for a film if the advertisement has been refused approval by the censor.

(2) A person must not use, or attempt to use, an advertisement approved under Part 2 for a film otherwise than in the form in which the advertisement was approved unless the censor or appeal censor has approved, in writing, of the use.

(3) A person must not use, or attempt to use, an advertisement approved under Part 2 in relation to a film otherwise than in accordance with the conditions (if any) subject to which the approval was given.

Maximum penalty—60 penalty units.

Advertisement to bear determined markings

27. A person must not publish, or attempt to publish, an advertisement for a film unless the advertisement bears the determined markings for the film displayed—

- (a) in the determined form and manner; and
- (b) so that they are clearly visible, having regard to the size and nature of the advertisement.

Maximum penalty—10 penalty units.

False advertising of films prohibited

28.(1) A person must not publish, or attempt to publish, an advertisement for a classified film that indicates—

- (a) that the film is unclassified; or
- (b) that the film has a classification other than its classification under Part 2.

Maximum penalty—60 penalty units or imprisonment for 6 months.

(2) A person must not publish, or attempt to publish, an advertisement for an unclassified film if the advertisement has not been approved by the censor.

Maximum penalty—

- (a) in the case of an objectionable film—60 penalty units or imprisonment for 6 months; or
- (b) in any other case—10 penalty units.

Markings on containers

29. A person must not display for sale or sell, or attempt to display for sale or sell, a film unless the container, wrapping or casing in which the film is so displayed or sold bears the determined markings for its classification.

Maximum penalty—10 penalty units.

Display of information about classification

30.(1) A person who sells or distributes, or attempts to sell or distribute, a classified film on premises open to the public must keep displayed, in accordance with subsection (2), a notice about classifications in the form determined by the chief censor under the Ordinance.

Maximum penalty—10 penalty units.

(2) The notice must be displayed in a conspicuous place and in a way that it can be conveniently read by any person on the premises.

Classified films containing advertisements for other films

31. A person must not sell or display for sale, or attempt to sell or display for sale, a classified film that contains an advertisement relating to—

- (a) if the film is classified as a “G” film—a film classified as a “PG”, “M” or “R” film or an unclassified film; or
- (b) if the film is classified as a “PG” film—a film classified as an “M” or “R” film or an unclassified film; or
- (c) if the film is classified as an “M” film—a film classified as an “R” film or an unclassified film; or
- (d) if the film is classified as an “R” film—an unclassified film.

Maximum penalty—10 penalty units.

Display for sale of “R” film

32. A person who displays, or attempts to display, for sale a film classified as an “R” film, or an advertisement for a film classified as an “R” film, must do so in accordance with the conditions (if any) prescribed for the purposes of this section.

Maximum penalty—10 penalty units.

Sale of “R” film prohibited

33.(1) A person must not sell or deliver, or attempt to sell or deliver, a film classified as an “R” film to a minor.

Maximum penalty—20 penalty units.

(2) A person is not guilty of an offence against subsection (1) if—

- (a) the person or the person’s servant or agent has reasonable grounds for believing, and does in fact believe, that the minor concerned has attained the age of 18 years; or
- (b) the minor concerned is employed by a person engaged in a business of selling films and the delivery takes place in the course of the employment.

Display and sale of unclassified films prohibited

34. A person must not display for sale or sell, or attempt to display for sale or sell, an unclassified film.

Maximum penalty—

- (a) in the case of a film that, if it were classified, would be classified as a “G”, “PG” or “M” film—5 penalty units; or
- (b) in the case of a film that, if it were classified, would be classified as an “R” film—10 penalty units; or
- (c) in the case of a film that, if it were classified under the Ordinance, would be classified as an “X” film—50 penalty units; or
- (d) in the case of a film (other than a film mentioned in paragraph (c)) that would have been refused classification—200 penalty units.

Display and sale of improperly marked unclassified films prohibited

35. A person must not display for sale or sell, or attempt to display for sale or sell, an unclassified film if the container, wrapping or casing in which the film is displayed or sold bears a marking or other matter that indicates or suggests that the film has been classified.

Maximum penalty—60 penalty units or imprisonment for 6 months.

Display and sale of improperly marked classified films

36. A person must not display for sale or sell, or attempt to display for sale or sell, to a person a classified film if the container, wrapping or casing in which the film is contained bears a mark or other matter indicating that the film is not classified or that the film has a classification other than its classification under Part 2.

Maximum penalty—60 penalty units or imprisonment for 6 months.

PART 5—OBJECTIONABLE FILMS

Public exhibition of objectionable film

37. A person must not exhibit, or attempt to exhibit, an objectionable film in such a way that it can be seen by persons in a public place.

Maximum penalty—20 penalty units.

Exhibition of an “R” or objectionable film before a minor

38.(1) A person must not exhibit, or attempt to exhibit, a film classified as an “R” film in a place that is not a public place in the presence of a minor without the consent of a parent or guardian of the minor.

Maximum penalty—10 penalty units.

(2) A person must not exhibit, or attempt to exhibit, an objectionable film in a place that is not a public place in the presence of a minor.

Maximum penalty—100 penalty units.

Display and sale of objectionable film prohibited

39. A person must not display for sale or sell, or attempt to display for sale or sell, an objectionable film.

Maximum penalty—

- (a) in the case of a film that is or would, if classified, be classified as an “X” film under the Ordinance—60 penalty units or imprisonment for 6 months; or
- (b) in any other case—250 penalty units or imprisonment for 2 years.

Keeping together of classified and objectionable films prohibited

40. A person must not, on any premises on or from which classified films are sold or displayed for the purposes of sale, keep or have possession of an objectionable film.

Maximum penalty—

- (a) in the case of a film that is or would, if classified, be classified as an “X” film under the Ordinance—60 penalty units or imprisonment for 6 months; or

- (b) in any other case—250 penalty units or imprisonment for 2 years.

Possession of objectionable film

41.(1) A person must not have possession of an objectionable film for the purpose of sale or distribution.

Maximum penalty—

- (a) in the case of a film that is or would, if classified, be classified as an “X” film under the Ordinance—60 penalty units or imprisonment for 6 months; or
- (b) in any other case—250 penalty units or imprisonment for 2 years.

(2) A person must not have possession of an objectionable film for the purpose of exhibition in a public place.

Maximum penalty—250 penalty units or imprisonment for 2 years.

(3) A person must not have possession of a film knowing it to be a child abuse film.

Maximum penalty—imprisonment for 1 year.

Making objectionable film

42.(1) A person must not, for the purpose of gain, make or produce, or attempt to make or produce, an objectionable film.

Maximum penalty—250 penalty units or imprisonment for 2 years.

(2) A person must not, for the purpose of gain, copy, or attempt to copy, an objectionable film.

Maximum penalty—250 penalty units or imprisonment for 2 years.

(3) A person must not make, or attempt to make, a child abuse film.

Maximum penalty—1000 penalty units or imprisonment for 5 years.

(4) A person must not copy, or attempt to copy, a child abuse film.

Maximum penalty—800 penalty units or imprisonment for 3 years.

Procurement of minor for objectionable film

43. A person must not procure, or attempt to procure, a minor to be in any way concerned in the making or production of an objectionable film.

Maximum penalty—800 penalty units or imprisonment for 3 years.

No liability in certain circumstances

44.(1) A person is not guilty of an offence against this Part in relation to an unclassified film if the film is subsequently classified under Part 2.

(2) A person is not guilty of an offence against section 41 or 42(1) in relation to an objectionable film of the kind mentioned in paragraph (a) of the definition of “objectionable film” if—

- (a) the person took all reasonable steps to obtain classification of the film, having regard to the stage of making or production of the film or the time that has elapsed since making or production of the film; and
- (b) the person believes on reasonable grounds that the film will be classified.

PART 6—INVESTIGATION AND ENFORCEMENT**Inspector to produce identity card**

45. An inspector who is not a police officer is not entitled to exercise powers under this Part in relation to another person unless the inspector first produces the inspector’s identity card for inspection by the person.

Entry and search—monitoring compliance

46.(1) Subject to subsection (2), an inspector may, for the purpose of finding out whether the requirements of this Act are being complied with—

- (a) enter or board any place; and
- (b) exercise the powers set out in section 48.

(2) An inspector must not enter or board a place, or exercise a power under subsection (1), unless—

- (a) the occupier of the place (if any) consents to the entry or boarding or exercise of the power; or
- (b) a warrant under section 49 authorises the entry or exercise of the power; or
- (c) the place is premises, or that part of premises, to which the public are admitted (whether or not for consideration) and the entry is made when members of the public attend or the premises are open for admission by the public.

(3) An inspector who is permitted by this section to enter or board a vehicle, vessel or aircraft may, for the purpose of effecting the entry or boarding and for the purpose of exercising any powers that the inspector is permitted to exercise, stop and detain the vehicle, vessel or aircraft.

Entry and search—evidence of offences

47.(1) Subject to subsection (3), if an inspector has reasonable grounds for suspecting that there is in or on a place a particular thing (“**the evidence**”) that may afford evidence of the commission of an offence against this Act, the inspector may—

- (a) enter or board the place; and
- (b) exercise the powers set out in section 48.

(2) If an inspector enters or boards the place and finds the evidence, the following provisions have effect—

- (a) the inspector may seize the evidence;
- (b) the inspector may keep the evidence for 60 days or, if a prosecution for an offence against this Act in the commission of which the evidence may have been used or otherwise involved is instituted within that period, until the completion of the proceedings for the offence and of any appeal from the decision in relation to the proceedings;
- (c) if the evidence is a document—while the inspector has possession of the document, the inspector may take extracts from and make copies of the document but must allow the document to be

inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the inspector's possession.

(3) An inspector must not enter or board the place or exercise a power under subsection (1) unless—

- (a) the occupier (if any) of the place consents to the entry or boarding or exercise of the power; or
- (b) a warrant under section 50 that was issued in relation to the evidence authorises the entry or boarding or exercise of the power.

(4) If in the course of searching the place under subsection (1) under a warrant under section 50, an inspector—

- (a) finds a thing that the inspector believes, on reasonable grounds to be—
 - (i) a thing (other than the evidence) that will afford evidence of the commission of the offence mentioned in subsection (1); or
 - (ii) a thing that will afford evidence of the commission of another offence against this Act; and
- (b) the inspector believes, on reasonable grounds, that it is necessary to seize the thing to prevent—
 - (i) its concealment, loss or destruction; or
 - (ii) its use in committing, continuing or repeating the offence mentioned in subsection (1), or the other offence, as the case may be;

subsection (2) applies to the thing as if it were the evidence.

General powers of inspector in relation to places

48.(1) The powers an inspector may exercise under section 46(1)(b) or 47(1)(b) in relation to a place are as follows—

- (a) to search any part of the place;
- (b) to inspect or examine anything in or on the place;
- (c) to take extracts from, and make copies of, any documents in or

on the place;

- (d) to take into or onto the place such equipment and materials as the inspector requires for the purpose of exercising any powers in relation to the place;
- (e) to require the occupier or any person in or on the place to give to the inspector reasonable assistance in relation to the exercise of the inspector's powers mentioned in paragraphs (a) to (d).

(2) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1)(e).

Maximum penalty—10 penalty units.

(3) It is a reasonable excuse for a person to fail to answer a question or produce a document if answering the question, or producing the document, might tend to incriminate the person.

Monitoring warrants

49.(1) An inspector may apply to a Magistrate for a warrant under this section in relation to a particular place (other than a dwelling or that part of premises used as a dwelling).

(2) Subject to subsection (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that it is reasonably necessary that the inspector should have access to the place for the purpose of finding out whether the requirements of this Act are being complied with.

(3) If the Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Magistrate must not issue the warrant unless the inspector or some other person has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.

(4) The warrant must—

- (a) authorise the inspector, with such assistance and by such force as is necessary and reasonable—
 - (i) to enter the place; and
 - (ii) to exercise the powers set out in section 48; and
- (b) state whether the entry is authorised to be made at any time of the

- day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
 - (d) state the purpose for which the warrant is issued.

Offence related warrants

50.(1) An inspector may apply to a Magistrate for a warrant under this section in relation to a particular place.

(2) Subject to subsection (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, in or on the place a particular thing (“**the evidence**”) that may afford evidence of the commission of an offence against this Act.

(3) If the Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Magistrate must not issue the warrant unless the inspector or some other person has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.

(4) The warrant must—

- (a) authorise the inspector, with such assistance and by such force as is necessary and reasonable—
 - (i) to enter the place; and
 - (ii) to exercise the powers set out in section 48; and
 - (iii) to seize the evidence; and
- (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 7 days after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purposes for which the warrant is issued.

Offence related warrant may be granted by telephone

51.(1) If, because of circumstances of urgency, an inspector considers it necessary to do so, the inspector may, under this section, apply by telephone for a warrant under section 50.

(2) Before applying for the warrant, the inspector must prepare an information of the kind mentioned in section 50(2) that sets out the grounds on which the issue of the warrant is sought.

(3) If it is necessary to do so, an inspector may apply for the warrant before the information has been sworn.

(4) If the Magistrate is satisfied—

- (a) after having considered the terms of the information; and
- (b) after having received such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the Magistrate may, under section 50, complete and sign such warrant as the Magistrate would issue under that section if the application had been made under that section.

(5) If the Magistrate completes and signs the warrant—

- (a) the Magistrate must—
 - (i) tell the inspector what the terms of the warrant are; and
 - (ii) tell the inspector the day on which and the time at which the warrant was signed; and
 - (iii) record on the warrant the reasons for granting the warrant; and
- (b) the inspector must—
 - (i) complete a form of warrant in the same terms as the warrant completed and signed by the Magistrate; and
 - (ii) write on the form of warrant the name of the Magistrate and the day on which and the time at which the Magistrate signed the warrant.

(6) The inspector must also, not later than the day after the day of expiry

or execution of the warrant (whichever is the earlier), send to the Magistrate—

- (a) the form of warrant completed by the inspector; and
- (b) the information mentioned in subsection (2), which must have been duly sworn.

(7) When the Magistrate receives the documents mentioned in subsection (6), the Magistrate must—

- (a) attach them to the warrant that the Magistrate completed and signed; and
- (b) deal with them in the way in which the Magistrate would have dealt with the information if the application for the warrant had been made under section 50.

(8) A form of warrant duly completed by the inspector under subsection (5) is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the Magistrate authorises.

(9) If—

- (a) it is material, in a proceeding, for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised by this section; and
- (b) the warrant completed and signed by the Magistrate authorising the exercise of power is not produced in evidence;

the court must assume, unless the contrary is proved, that the exercise of power was not authorised by such a warrant.

Additional power of inspector to seize films

52.(1) If—

- (a) a complaint is made to the films classification officer about a film; and
- (b) the films classification officer reasonably believes that the film is an objectionable film;

the films classification officer may direct an inspector to seize the film from any place that the inspector may lawfully enter or board.

(2) The inspector may seize the film from any such place.

(3) An inspector who seizes a film under subsection (2) must, as soon as practicable, submit the film to the censor for classification.

(4) If a film seized under subsection (2) is classified and it is not an objectionable film, the inspector must immediately return the film.

Inspector may require name and address

53.(1) An inspector who—

- (a) finds a person committing, or finds a person that the inspector reasonably suspects of having committed, an offence against this Act; or
- (b) is making inquiries or investigations with a view to establishing whether or not an offence against this Act has been committed by a person; or
- (c) reasonably believes that the name and address of a person is required for the purpose of—
 - (i) giving effect to a provision of this Act; or
 - (ii) enabling the inspector to carry out the inspector's functions under this Act;

may require the person to state the person's name and address and, if the inspector has reasonable grounds to believe that the name or address given is false, may require evidence of its correctness.

(2) A person who is required under subsection (1) to state the person's name or address must not—

- (a) fail to comply with the requirement; or
- (b) state a false name or address.

Maximum penalty—50 penalty units.

(3) A person who is required under subsection (1) to give evidence of the correctness of a name or address must not fail to give the evidence or give false evidence.

Maximum penalty—50 penalty units.

Obstruction etc. of inspectors

54. A person must not, without reasonable excuse, obstruct, hinder or resist an inspector in the exercise of a power under this Act.

Maximum penalty—50 penalty units.

False or misleading statements

55. A person must not—

- (a) make a statement to an inspector that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to an inspector any matter or thing without which the statement is, to the knowledge of the person, misleading in a material particular; or
- (c) give to an inspector a document containing information that the person knows is false, misleading or incomplete in a material particular without—
 - (i) indicating to the inspector that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
 - (ii) providing correct information to the inspector if the person has, or can reasonably obtain, the correct information.

Maximum penalty—50 penalty units.

PART 7—EXHIBITION OF FILMS BY APPROVED ORGANISATIONS

Approval of organisation

56.(1) On receipt of a written application, the films classification officer may, in writing, approve an organisation as an approved organisation.

(2) In determining whether to approve the organisation, the films classification officer must have regard to—

- (a) the purpose for which the organisation was formed; and
- (b) the extent to which the organisation carries on activities of a medical, scientific, educational, cultural or artistic nature; and
- (c) the reputation of the organisation in relation to the screening of films; and
- (d) the conditions imposed by the organisation in relation to the admission of persons to the screening of films by the organisation.

(3) The approval—

- (a) must be published in the Gazette; and
- (b) takes effect on the date of publication; and
- (c) continues in force until it is revoked.

(4) The film classification officer may revoke the approval if the film classification officer determines that, because of a change in the matters mentioned in subsection (2), it is no longer appropriate that the organisation be an approved organisation.

Application for exemption

57. An application for an exemption from this Act, or a provision of this Act, in relation to a film that an approved organisation intends to exhibit at a specified event must—

- (a) be made by the approved organisation; and
- (b) specify the film and the event at which the approved organisation intends to exhibit the film; and
- (c) be accompanied by a synopsis of the story or events depicted in the film; and
- (d) be lodged with the films classification officer in writing.

Exemption

58.(1) On receipt of an application under section 57, the films classification officer may, in writing, exempt an approved organisation from this Act, or specified provisions of this Act, in relation to a specified film to

be exhibited at a specified event.

(2) If the conditions (if any) to which the exemption is subject are complied with—

- (a) this Act, or the provisions of this Act specified in the exemption, do not apply; and
- (b) the film is not an indecent or obscene publication for the purposes of the Criminal Code and the *Vagrants, Gaming and Other Offences Act 1931*;

in relation to the exhibiting by the approved organisation of the film at the event.

Appeal to appeal body

59.(1) If the films classification officer makes a decision—

- (a) refusing to approve an organisation under section 56; or
- (b) revoking such an approval; or
- (c) refusing to give an exemption under section 58;

the films classification officer must notify the organisation in writing of the decision and the reasons for the decision.

(2) The organisation may, within 28 days after being notified of the decision, appeal to the appeal body against the decision.

(3) The appeal must be instituted by giving written notice of appeal to the appeal body.

(4) The notice of an appeal must specify fully the grounds of appeal and the facts relied on.

(5) The appeal body must—

- (a) affirm the decision appealed against; or
- (b) vary the decision appealed against; or
- (c) set the decision appealed against aside and make a decision in substitution for the decision set aside.

(6) For the purposes of the appeal, the appeal body may exercise all the powers and discretions conferred on the films classification officer.

PART 8—MISCELLANEOUS

Evidentiary provisions

60.(1) In a proceeding for an offence against this Act, a certificate signed or purporting to be signed by the censor stating that—

- (a) a specified film has been classified (and specifying the classification) or refused classification; or
- (b) a film has not been classified; or
- (c) a film would, if classified, be classified (and specifying the classification) or would be refused classification and the grounds for refusal; or
- (d) an advertisement in relation to a film has been approved or has been refused approval;

is on its production in the proceeding evidence of the matters stated in the certificate.

(2) In a proceeding for an offence against this Act—

- (a) it is not necessary to prove the authority of the complainant to institute the proceeding; and
- (b) it is not necessary to prove the existence or making of any agreement under section 5.

Indictable offences and summary offences

61.(1) An offence—

- (a) against section 43 (Procurement of minor for objectionable film); or
- (b) against another provision of this Act involving a child abuse film;

is punishable on indictment.

(2) Any other offence against this Act is punishable summarily.

(3) An indictable offence against this Act may, at the election of the defendant, be heard and determined summarily.

(4) A complaint under the *Justices Act 1886* for a summary offence against this Act may be made only by—

- (a) the films classification officer; or
- (b) a person authorised in writing by the Minister.

Forfeiture

62.(1) If a person is convicted of an offence against this Act that relates to an objectionable film, the court by or before which the person is convicted may, in addition to imposing any penalty, order that the film or anything used in connection with the commission of the offence be forfeited.

(2) A film or thing that is forfeited under subsection (1) may be destroyed or otherwise dealt with as directed by the Minister.

Return of seized films

63.(1) An inspector who seizes a film must, unless otherwise ordered by a court, return the film to the person who is entitled to possession of it if—

- (a) it is not required as evidence in a proceeding for an offence against this or any other Act; and
- (b) all proceedings (if any) instituted for an offence in relation to the film are finally determined (whether or not an appeal) and no person has been convicted of an offence against this or any other Act in relation to the film.

(2) Subsection (1) does not apply to a child abuse film.

Classified films not indecent or obscene

64. A classified film is not an indecent or obscene publication for the purposes of the Criminal Code and the *Vagrants, Gaming and Other Offences Act 1931*.

Regulations

65.(1) The Governor in Council may make regulations, not inconsistent with this Act, with respect to any matter that—

- (a) is required or permitted to be prescribed by this Act; or
 - (b) is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may make provision with respect to—
- (a) the appointment of a registrar for the purposes of this Act; and
 - (b) the registration and the cancellation of the registration of exhibitors and persons who sell or distribute films; and
 - (c) the fees to be paid for the purposes of this Act.
- (3) A regulation may prescribe penalties of fines of not more than 20 penalty units for offences against a regulation.
- (4) A regulation may prohibit the exhibition, sale or distribution of films by persons who are not registered under the regulations.
- (5) A regulation may make provision with respect to the constitution, practice and procedure of the appeal body (which may be the holder of an office), including provision in relation to the making of arrangements between the State and the Commonwealth with respect to the constitution of the appeal body.

PART 9—REPEALS, SAVINGS AND TRANSITIONAL

Savings and transitional

67. The savings and transitional provisions specified in Schedule 2 have effect.

SCHEDULE 2

SAVINGS AND TRANSITIONAL

section 67

Interpretation

1. In this Schedule—

“**repealed Act**” means the *Censorship of Films Act 1947*.

Approvals and classifications under repealed Act

2. A film that was, immediately before the commencement of section 67, classified as a “G”, “PG”, “M” or “R” film under the repealed Act is taken to have been classified respectively as a “G”, “PG”, “M” or “R” film under this Act.

Films refused approval under repealed Act

3. A film that was refused approval under the repealed Act is taken to have been refused approval under this Act.

Application made but not determined under repealed Act

4. If an application for approval of a film made under the repealed Act has not been determined before the commencement of section 67, the application is taken to be an application for classification of the film under this Act.

Existing arrangement between Governor in Council and Governor-General

5. An arrangement entered into between the Governor in Council and the Governor-General, or an agreement relating to such an arrangement, made under section 37 of the repealed Act and in force immediately before the

SCHEDULE 2 (continued)

commencement of section 67 of this Act has effect as if made under section 5 of this Act.

Approval of advertisements to continue

6. If an approval of an advertisement (including an approval subject to conditions) for a film is in force under section 18 of the repealed Act immediately before the commencement of section 67, the approval is taken to be an approval of the advertisement, subject to the same conditions (if any), under this Act.

Refused approval of advertisement to continue

7. If an advertisement for a film has been refused approval under section 18 of the repealed Act, the advertisement is taken to have been refused approval under this Act.

Films retained under repealed Act

8. A film or an advertisement for a film retained under section 22 of the repealed Act that is still retained at the commencement of section 67 of this Act may continue to be retained by the censor under this Act.

Application for review not determined under repealed Act

9. If an application made under section 23 of the repealed Act for the review of a decision of the censor has not been determined before the commencement of section 67 of this Act, the application is taken to be an application for the review of a decision of the censor under this Act.

Films retained by Films Board of Review

10. If a film retained by the Films Board of Review under section 10A of the *Films Review Act 1974* has not been destroyed or otherwise disposed of by the Board before the commencement of section 67 of this Act, the film is to be retained, destroyed or otherwise disposed of as the Minister directs.

SCHEDULE 2 (continued)

Films classified “X” under Ordinance

11. A film that is classified as an “X” film under the Ordinance immediately before the commencement of section 5 of this Act is taken to have been refused classification under this Act.

ENDNOTES**1 Index to Endnotes**

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2 Date to which amendments incorporated

This is the day mentioned in section 5(c) of the *Reprints Act 1992*. Accordingly, this reprint includes all amendments that commenced operation before 9 December 1992. Future amendments of the *Classification of Films Act 1991* may be made in accordance with this reprint because of section 49 of the *Reprints Act 1992*.

3 List of legislation**Classification of Films Act 1991 No. 77**

date of assent 9 December 1991

ss 1–2 commenced on date of assent

remaining provisions commenced 27 November 1992 (1992 SL No. 373)

as amended by—

Statute Law (Miscellaneous Provisions) Act 1992 No. 36 s 2 Sch 2

date of assent 2 July 1992

commenced on date of assent

4 List of annotations

Key to abbreviations in list of annotations

RA	=	<i>Reprints Act 1992</i>
amd	=	amended
ins	=	inserted
om	=	omitted
renum	=	renumbered
sub	=	substituted
Chap	=	Chapter
Pt hdg	=	Part heading
Div hdg	=	Division heading
Sdiv hdg	=	Subdivision heading
hdg prec	=	heading preceding
prov hdg	=	provision heading
cl	=	clause
prev	=	previous
pres	=	present

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

Repeal of Acts

s 66 om 1992 No. 36 s 2 Sch 2

Schedule 1

om 1992 No. 36 s 2 Sch 2