

Classification of Films and Publications Bill

(No. 2)

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 sets out the purposes of the Act.

Clause 2 provides that the Act is to come into operation on a day or days to be proclaimed.

Clause 3 contains definitions. “Sell” includes let on hire.

Clause 4 empowers the Governor-in-Council to arrange with the Commonwealth Governor-General for the discharge of classification functions by Commonwealth officers.

Clause 5 provides for the appointment of censorship officials, when no arrangement under clause 4 is in force.

Clause 6 details the procedure for applying for classification of a film.

Clause 7 empowers the censor to require the screening of a film submitted for classification.

Clause 8 sets out the categories of classification available for a film. It provides that the censor must refuse to classify certain films.

Sub-clause (5) directs the censor to refuse to classify a video film which includes an advertisement for an unclassified film, and sub-clause (6) provides that a video film must not be given a lower classification than the classification of any film advertised on it.

Clause 9 empowers the censor to approve or refuse approval for advertisements relating to a film and empowers the censor to require the exhibitor of a classified film to submit advertisements for approval.

Clause 10 requires the censor to notify the applicant of his or her decision in relation to the classification of a film.

Clause 11 allows for an appeal to the appeal censor against the censor’s decision in relation to a film or advertisement.

Clause 12 sets out the powers and duties of the appeal censor on review.

Clause 13 empowers the censor to review his or her own decisions after the expiration of two years after they are made.

Clause 14 details the powers and duties of the censor when reviewing a previous decision.

Clause 15 allows for an appeal to the appeal censor against a decision of the censor under Clause 14.

Clause 16 sets out the powers and duties of the appeal censor on review of a decision under Clause 14.

Clause 17 empowers the appeal censor to revoke a decision to classify or refuse classification for a film or to approve or refuse approval for an advertisement.

Clause 18 empowers the censor and appeal censor to retain a film submitted for classification.

Clause 19 provides that a classified film or approved advertisement subsequently altered is taken to be an unclassified film or disapproved advertisement unless the censor has approved in writing of the alteration.

PART 3—EXHIBITION OF FILMS

Clause 20 explains the circumstances in which a person is to be taken to “exhibit” a film in a public place.

Clause 21 provides that determined markings must be displayed before the exhibition of a film in a public place.

Clause 22 provides that a person must not exhibit an unclassified film in a public place.

Clause 23 makes it an offence to exhibit an “R” film in a public place, if a child is present at the exhibition.

Clause 24 makes it an offence for a child who has attained the age of 10 years to attend the exhibition of an “R” film or a film which has been refused classification.

Clause 25 provides that it is an offence to accompany or permit a child to attend the exhibition in a public place of an “R” film or an objectionable film.

Clause 26 empowers a member of the police force or an exhibitor to demand the name, age and address of a person suspected to be accompanying a child to an “R” film.

PART 4—ADVERTISING AND SUPPLY OF FILMS

Clause 27 makes it an offence to use an advertisement that has not been approved by the censor or to use an approved advertisement in a manner that is contrary to conditions of approval.

Clause 28 provides that it is an offence to publish an advertisement relating to a film unless the advertisement bears determined markings.

Clause 29 prohibits false advertising of films and the advertisement of unclassified films.

Clause 30 makes it an offence to display a film for sale unless it bears determined markings.

Clause 31 requires the display of a notice about classification on any premises open to the public for the purposes of sale or distribution of films.

Clause 32 makes it an offence to sell a classified film containing an advertisement for a film of a higher classification.

Clause 33 makes it an offence to display for sale an “R” film or an advertisement in relation to an “R” film, except in accordance with prescribed conditions (if any).

Clause 34 makes it an offence to sell or deliver an “R” film to a child.

Clause 35 prohibits the display for sale or sale of an unclassified film.

Clause 36 makes it an offence to display for sale or sell an unclassified film, if the film’s container bears markings indicating that the film has been classified.

Clause 37 makes it an offence to display for sale or sell a classified film, if the film's container bears markings indicating that the film is not classified or is differently classified.

PART 5—OBJECTIONABLE FILMS

Clause 38 defines “sell” for the purposes of Part 5 as including sell by wholesale and sell by retail.

Clause 39 makes it an offence to screen an objectionable film in such a manner as to be visible to persons in a public place.

Clause 40 provides that it is an offence to screen in a place other than a public place an “R” or objectionable film in the presence of a child without the consent of a parent or guardian of a child.

Clause 41 provides that a person must not display for sale or sell an objectionable film.

Clause 42 provides that a person must not keep or have possession of an objectionable film on any premises from which classified films are sold or displayed for the purposes of sale.

Clause 43 prohibits the possession of an objectionable film for sale or public screening.

Clause 44 makes it an offence to make or produce (i.e., to create) an objectionable film, or to copy an objectionable film, for the purposes of gain.

Clause 45 provides that a person who invites or procures a child to be in any way concerned in the making of an objectionable film is guilty of an indictable offence.

Clause 46 contains two defences to a charge under Part 5.

PART 6—CLASSIFICATION OF PUBLICATIONS

Clause 47 details the conditions applying to the display for sale and sale of classified publications.

Clause 48 makes it an offence to advertise, sell or distribute an objectionable publication.

Clause 49 makes it an offence to possess an objectionable publication for the purposes of publishing it.

Clause 50 provides that the occupier of any premises must not keep or permit to be kept at those premises an objectionable publication for the purposes of publishing it.

Clause 51 prohibits the exhibition or display of an objectionable publication in a public place.

Clause 52 provides that a person must not deposit an objectionable publication in or on a public place.

Clause 53 prohibits the making or production (i.e. the creation) of an objectionable publication for the purposes of publishing it and the copying of an objectionable publication for such purposes.

Clause 54 creates an indictable offence of inviting or procuring a child to be in any way concerned in the making of an objectionable publication.

Clause 55 contains two defences to a charge under Part 6.

Clause 56 makes it an offence to advertise or sell a restricted publication otherwise than in accordance with the conditions of classification.

Clause 57 prohibits the deposit of a restricted publication in or on a public place.

Clause 58 prohibits the deposit of a restricted publication in or on private premises without the occupier's permission.

Clause 59 prohibits the sale or distribution of an unclassified publication if the publication bears markings indicating that it is classified.

Clause 60 provides that a person in charge of a restricted publications area must not permit a child to enter that area. Further, that person must cause a notice in the prescribed form to be displayed in a prominent place on or near each entrance to the restricted publications area.

PART 7—INVESTIGATION AND ENFORCEMENT

Clause 61 contains definitions.

Clause 62 details police powers of entry, search and seizure.

Clause 63 empowers magistrates to issue a warrant authorising entry, search and seizure in relation to a suspected offence against the Act.

PART 8—MISCELLANEOUS

Clause 64 provides that a certificate by the censor stating, for example, whether or not a film has been classified or would be refused classification is evidence in any proceeding for an offence against the Act of the facts stated in the certificate.

Clause 65 provides that, if a body corporate is charged with an offence against the Act, any director, secretary or executive officer of the body corporate may be charged with a like offence, and must be found guilty of the offence if the body corporate is found guilty.

Clause 66 provides that, if a person is charged with committing an offence against the Act on premises used for a business of selling films or publications, the occupier of the premises and the manager of the business may also be charged. If the person is found guilty, the manager and occupier must also be found guilty.

Clause 67 contains a defence to the prosecution of a person under clause 65 or 66.

Clause 68 allows a Court to order a person who has committed an offence to pay the costs of the classification of the film or of the certificate under section 64.

Clause 69 empowers the Court to order that an objectionable film or publication be forfeited to the Crown.

Sub-clause (3) provides that, if a film or publication has been lawfully seized as an objectionable film or publication, and, at the expiration of six months after the seizure, no person has been charged with an offence, the film or publication must be returned to the person from whom it was seized or to the occupier of the place from which it was seized.

Clause 70 empowers the Minister to exempt a person or body of persons from the operation of the Act. It also empowers the censor to exempt in any particular case a film from the operation of the Act.

Clause 71 empowers the Governor-in-Council to make regulations under the Act.

Clause 72 repeals the *Police Offences Act 1958*, the *Films Act 1971* and the *Films (Classification) Act 1984*.

Clauses 73 contains transitional provisions.

