
**CLASSIFICATION OF PUBLICATIONS
AMENDMENT ACT 1988**

No. 46 of 1988

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**CLASSIFICATION OF PUBLICATIONS
AMENDMENT ACT 1988**

No. 46 of 1988

**AN ACT to amend the Classification of Publications Act 1984
and the Films Act 1971.**

[Royal Assent 8 December 1988]

BE it enacted by His Excellency the Governor of Tasmania,
by and with the advice and consent of the Legislative
Council and House of Assembly, in Parliament assembled, as
follows:—

PART I

PRELIMINARY

1—This Act may be cited as the *Classification of Publications* Short title.
Amendment Act 1988.

2—(1) This section and section 1 shall commence on the Commenc
day on which this Act receives the Royal assent.

(2) Except as provided in subsection (1), this Act shall
commence on such day as may be fixed by proclamation.

PART II

AMENDMENTS OF THE CLASSIFICATION OF PUBLICATIONS
ACT 1984

Principal Act.

3—In this Part, the *Classification of Publications Act 1984** is referred to as the Principal Act.

Amendment of section 3 of Principal Act (Interpretation).

4—Section 3 (1) of the Principal Act is amended by inserting “or to let on hire” after “sale” in paragraph (b) of the definition of “sell”.

Amendment of section 6 of Principal Act (Publications Classification Board).

5—Section 6 of the Principal Act is amended as follows:—

(a) by omitting subsection (2) and substituting the following subsection:—

(2) The Board shall, for the purpose of the discharge of—

(a) its functions under sections 26A and 26B, be constituted by 7 members; and

(b) any of its other functions under this Act, be constituted by 5 members, appointed by the Governor.

(b) by inserting the following subsection after subsection (3):—

(3A) One of the persons who constitute the Board for the purpose of the discharge of its functions under sections 26A and 26B shall be a person who is under the age of 25 years at the date of his appointment or re-appointment as a member of the Board.

Insertion in Principal Act of new section 18A.

6—After section 18 of the Principal Act, the following section is inserted:—

Interpretation.

18A—In this Division, “previous decision” means—

(a) a decision by the censor in respect of a film made pursuant to section 21; or

(b) a decision by the appeal censor made pursuant to section 25 (1) (b).

Amendment of section 21 of Principal Act (Classification of film by censor).

7—Section 21 of the Principal Act is amended by inserting after subsection (1) the following subsection:—

* No. 107 of 1984. Amended by No. 29 of 1984 and No. 67 of 1985 (expired on 31.12.1986).

(1A) The classification of a film under subsection (1) shall be subject to such conditions (if any) as the censor may determine.

8—After section 21 of the Principal Act, the following sections are inserted:—

Insertion in
Principal Act of
new sections
21A, 21B, and
21C.

21A—(1) The censor shall, at the direction of the Minister, review a previous decision.

Review by
censor.

(2) A direction under subsection (1) may be given—

- (a) in the case of a decision referred to in section 18A (b) resulting from an application by the Minister—at any time; and
- (b) in any other case—after the expiration of 2 years after the date on which the previous decision took effect.

(3) The censor may, of his own motion, review a previous decision (not being a decision referred to in section 18A (b) resulting from an application by the Minister) after the expiration of 2 years after the date on which the previous decision took effect.

21B—(1) The censor shall, not later than 30 days before a proposed review of a previous decision, cause—

Notice of review.

(a) a notice of the review to be published—

- (i) where there is an arrangement in operation under section 4, in the *Commonwealth Gazette*; or
- (ii) where there is no arrangement in operation under section 4, in the *Gazette*; and

(b) notice in writing of the review to be given to the person who applied to the censor for classification of the relevant film.

(2) A person who is entitled to be given a notice under subsection (1) (b) may, within 30 days after—

- (a) receiving that notice; or
- (b) notice having been published in the *Commonwealth Gazette* or the *Gazette*, as the case may be,

whichever occurs later, make a written submission to the censor about whichever of the following matters are relevant:—

- (c) whether the film should be classified or not classified;

(d) the appropriate classification of the film.

Review of
previous decision.

21C—(1) When a previous decision is reviewed by the censor, the censor may make a decision—

- (a) confirming the previous decision; or
- (b) setting aside the previous decision and classifying, or not classifying, the film to which the previous decision relates.

(2) When reviewing a previous decision, the censor shall have regard to—

- (a) any submission made in accordance with section 21B (2); and
- (b) the criteria referred to in sections 10 and 21.

Amendment of
section 22 of
Principal Act
(Notice in respect
of decision by
censor).

9—Section 22 of the Principal Act is amended as follows:—

- (a) by inserting in subsection (1) “or a decision confirming or setting aside a previous decision pursuant to section 21C (1)” after “section 21”;
- (b) by omitting subsection (2) and substituting the following subsection:—

(2) A decision—

(a) in respect of a film pursuant to section 21 shall take effect on the day on which;
or

(b) confirming or setting aside a previous decision pursuant to section 21C (1) shall take effect at the expiration of 30 days after the day on which,

the notice of the decision is published in the *Commonwealth Gazette* or, as the case may be, the *Gazette* in accordance with subsection (1).

Amendment of
section 23 of
Principal Act
(Application for
review of
classification).

10—Section 23 (1) of the Principal Act is amended by inserting “or a decision confirming or setting aside a previous decision pursuant to section 21C (1)” after “section 21”.

Amendment of
section 24 of
Principal Act
(Notice of
application).

11—Section 24 (a) of the Principal Act is amended by inserting “or a decision confirming or setting aside a previous decision pursuant to section 21C (1)” after “section 21”.

Insertion in
Principal Act of
new Part IIIA.

12—After section 26 of the Principal Act, the following Part is inserted:—

PART IIIA

PROVISIONS RELATING TO CERTAIN
CLASSIFIED FILMS

26A—(1) Where a person considers that a classified film unduly emphasizes matters of cruelty or violence, that person may apply to the Board for a review of the classification of the film.

Applications to Board to review classified films in relation to matters of cruelty or violence.

(2) An application under subsection (1) shall—

(a) be in writing;

(b) contain particulars of the matters of cruelty or violence that the applicant considers are unduly emphasized in the classified film to which the application relates, except in the case of an application made by the Minister;

(c) be filed with, or forwarded to, the Registrar; and

(d) be accompanied by the prescribed fee, except in the case of an application made by the Minister.

(3) Where the Board receives an application under subsection (1) relating to—

(a) a classified film that is classified as an “R” film, the Board shall review the classification of the film; or

(b) any other classified film, the Board may, but is not obliged to, review the classification of the film.

(4) The Board shall, in reviewing the classification of a classified film pursuant to an application under subsection (1)—

(a) have regard to the standards of morality, decency, and propriety generally accepted by reasonable adults;

(b) have regard to any artistic or educational merit that the film may possess and to the general character of the film; and

(c) have regard to the persons or class of persons to whom or to which the film is sold or delivered or likely to be sold or delivered.

(5) After reviewing the classification of a classified film pursuant to an application under subsection (1), the Board shall make one of the following decisions:—

(a) a decision making a recommendation to the Minister that the sale and delivery of the film be prohibited if the Board considers—

(i) in the case of a film that is classified as an “R” film, that the sale and delivery of the film should be prohibited on the ground that it unduly emphasizes matters of cruelty or violence; or

(ii) in the case of any other film, that the sale and delivery of the film should be prohibited on the ground that the classification given to the film under this Act is inappropriate because of the level or amount of cruelty or violence depicted in the film;

(b) a decision refusing to make such a recommendation if the Board does not consider that the sale and delivery of the film should be prohibited on the appropriate ground mentioned in paragraph (a).

(6) The Board shall, within 14 days after making a decision under subsection (5), cause the Minister to be notified in writing of the decision.

26B—(1) Where the Minister receives a notice of a decision making a recommendation of the kind referred to in section 26A (5) (a), he shall make an order, as provided in section 26C, prohibiting the sale and delivery of the classified film to which the notice relates.

(2) Where the Minister receives a notice of a decision of the kind referred to in section 26A (5) (b), he shall accept the recommendation unless he is dissatisfied with the decision, in which case the Minister may request the Board to review the decision.

(3) A request under subsection (2) shall—

(a) be in writing; and

(b) specify the grounds on which the Minister bases his request.

(4) Where the Board receives a request under subsection (2), the Board shall, having regard to the grounds on which the Minister has based the request and the matters referred to in section 26A (4), review the decision to which the request relates and shall make another decision—

(a) confirming the first-mentioned decision; or

(b) setting aside the first-mentioned decision and making a recommendation of the kind referred to in section 26A (5) (a).

(5) The Board shall, within 14 days after making a decision under subsection (4), cause the Minister to be notified in writing of the decision.

(6) Where the Minister receives a notice of a decision under subsection (4)—

(a) confirming a decision of the kind referred to in section 26A (5) (b), he shall accept the recommendation made in that decision; or

(b) making a recommendation of the kind referred to in section 26A (5) (a), he shall make an order, as provided in section 26C, prohibiting the sale and delivery of the classified film to which the notice relates.

26C—(1) An order under section 26B (1) or (6) (b)—

Provisions relating to orders, &c.

(a) is not a statutory rule within the meaning of the *Rules Publication Act 1953*;

(b) shall be published in the *Gazette* and in a newspaper circulating generally throughout the State; and

(c) takes effect on such day as is specified in the order, being a day not earlier than 7 days after the date of the publication of the order in the *Gazette*.

(2) A classified film to which an order referred to in subsection (1) relates shall, on the taking effect of the order, be deemed to be an unclassified film.

(3) Where the Minister makes an order referred to in subsection (1), he shall cause a copy of the order to be forwarded to the Registrar.

(4) Where, pursuant to subsection (3), a copy of an order is forwarded to the Registrar, he shall, by notice in writing, inform the person who applied under section 26A (1) for the review of the classified film to which the order relates of the making of the order.

(5) Where the Minister accepts a recommendation as mentioned in section 26B (2) or (6) (a), he shall cause notice, in writing, of his acceptance to be forwarded to the Registrar.

(6) Where, pursuant to subsection (5), a notice is forwarded to the Registrar, he shall, by notice in writing, inform the person who applied under section 26A (1) for the review of the relevant classified film that the Minister has accepted the recommendation of the Board that the sale and delivery of the film should not be prohibited.

Offences.

26D—A person shall not sell or deliver, or cause or permit to be sold or delivered, a film the sale and delivery of which has been prohibited by an order under section 26B (1) or (6) (b).

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months, or both.

13—Schedule 1 to the Principal Act is amended by omitting subclause (1) of clause 9 and substituting the following subclause:—

(1) Where the Board is constituted as provided by—

(a) section 6 (2) (a), 4 members shall form a duly convened quorum at a meeting of the Board;
or

(b) section 6 (2) (b), 3 members shall form a duly convened quorum at such a meeting.

Amendment of
Schedule 1 to
Principal Act
(PROVISIONS
WITH
RESPECT TO
MEMBERSHIP
AND
MEETINGS OF
PUBLICATIONS
CLASSI-
FICATION
BOARD).

Amendments of
Principal Act for
purpose of
converting
monetary
penalties into
penalty units.

14—The Principal Act is amended as set out in Schedule 1.

15—(1) A person holding office as a member of the Publications Classification Board under section 6 of the Principal Act immediately before the commencement of section 5 of this Act shall, unless he sooner vacates that office, or is removed from that office under clause 5 (2) of Schedule 1 to the Principal Act, continue to hold that office for the remainder of the period specified in the instrument of his appointment, notwithstanding the reconstitution of that Board by reason of section 5 of this Act.

Savings and transitional provisions.

(2) A film classified as a “G”, “PG”, “M”, or an “R” film under the *Classification of Publications Ordinance 1983* between the date fixed by proclamation under section 2 (2) of the Principal Act and the date fixed by proclamation under section 2 (2) of this Act shall be deemed to have been classified as a “G”, “PG”, “M”, or an “R” film respectively under the Principal Act.

(3) The classification of a film that is deemed, by virtue of subsection (2), to have been classified under the Principal Act shall be deemed to have taken effect on the day on which notice of the decision to classify the film was published in the *Commonwealth Gazette* under the *Classification of Publications Ordinance 1983*.

(4) A certificate purporting to be signed by the Chief Censor certifying that a film specified in the certificate was classified under the *Classification of Publications Ordinance 1983* on a day specified in the certificate and that the classification assigned to the film was the classification specified in the certificate, is admissible in any proceedings under the Principal Act and shall, until the contrary is established, be evidence of the matters so specified.

(5) In this section—

“Chief Censor” has the meaning assigned to that expression by the *Classification of Publications Ordinance 1983*;

“*Classification of Publications Ordinance 1983*” means the *Classification of Publications Ordinance 1983* of the Australian Capital Territory as amended from time to time.

PART III

AMENDMENTS OF THE FILMS ACT 1971

Principal Act.

16—In this Part, the *Films Act 1971** is referred to as the Principal Act.

Amendment of section 9 of Principal Act (Registration and classification of films).

17—Section 9 of the Principal Act is amended by adding the following subsection after subsection (8):—

(9) Where a registered film that is a classified film within the meaning of the *Classification of Publications Act 1984* is, by virtue of section 26C (2) of that Act, deemed to be an unclassified film within the meaning of that Act, that film shall be deemed not to be a registered film for the purposes of this Act.

Insertion in Principal Act of new section 9A.

18—After section 9 of the Principal Act, the following section is inserted:—

Provisions relating to decisions under section 21c of *Classification of Publications Act 1984*.

9A—(1) Where as a result of a decision made by—

(a) the censor under section 21c of the *Classification of Publications Act 1984*; or

(b) the appeal censor under section 25 of that Act in respect of a decision of the censor under section 21c of that Act,

the classification under that Act of a registered film is altered, the Minister may make an order altering the classification of that film under this Act to accord with the altered classification under that Act and on the making of such an order that film shall be deemed to have been assigned a classification under this Act corresponding to that altered classification.

(2) Where as a result of a decision made by—

(a) the censor under section 21c of the *Classification of Publications Act 1984*; or

(b) the appeal censor under section 25 of that Act in respect of a decision of the censor under section 21c of that Act,

a film that is not a registered film is classified under that Act, the Minister may make an order—

(c) registering that film under this Act; and

* No. 90 of 1971. For this Act, as amended up to and including 1st January 1980, see the continuing Reprint of Statutes. Subsequently amended by Nos. 29 and 108 of 1984 and No. 51 of 1985.

- (d) assigning a classification to that film under this Act to accord with the classification under that Act,

and on the making of such an order that film shall be deemed to be a registered film having the same classification under this Act as that assigned to it in the order.

- (3) Where as a result of a decision made by—
- (a) the censor under section 21C of the *Classification of Publications Act 1984*; or
- (b) the appeal censor under section 25 of that Act in respect of a decision of the censor under section 21C of that Act,

a registered film that is classified under that Act ceases to be a film that is so classified, the Minister may make an order revoking the registration of the film under this Act and on the making of such an order that film shall be deemed not to be a registered film.

- (4) An order under subsection (1), (2), or (3)—
- (a) is not a statutory rule within the meaning of the *Rules Publication Act 1953*;
- (b) shall be published in the *Gazette*; and
- (c) takes effect on such day as is specified in the order, being a day not earlier than 7 days after the date of the publication in the *Gazette*.

(5) In this section, “Minister” means the Minister for the time being administering the *Classification of Publications Act 1984*.

19—Section 15 of the Principal Act is amended by inserting “(not being a film in respect of which the Minister has made an order under section 9A)” after “film”.

Amendment of section 15 of Principal Act (Certificate of registration of film).

20—Section 24 of the Principal Act is amended as follows:—

- (a) by omitting “In” and substituting “(1) In”;
- (b) by adding the following subsection as subsection (2) of that section:—

Amendment of section 24 of Principal Act (Evidentiary provisions).

(2) Subsection (1) does not apply to a film in respect of which the Minister has made an order under section 9A.

Amendments of
Principal Act for
purpose of
converting
monetary
penalties into
penalty units and
increasing those
penalties.

21—The Principal Act is amended as set out in Schedule 2.

SCHEDULE 1

Section 14

AMENDMENTS OF CLASSIFICATION OF PUBLICATIONS ACT 1984 FOR
PURPOSE OF CONVERTING MONETARY PENALTIES INTO PENALTY UNITS

1. Section 27—

Omit “\$1 000 or imprisonment for 3 months, or both” and substitute “Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both”.

2. Section 28 (1)—

Omit “\$500” and substitute “Fine not exceeding 5 penalty units”.

3. Section 28 (2)—

Omit “\$500” and substitute “Fine not exceeding 5 penalty units”.

4. Section 29 (1)—

Omit “\$1 000 or imprisonment for 3 months, or both” and substitute “Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both”.

5. Section 29 (2)—

Omit “\$1 000 or imprisonment for 3 months, or both” and substitute “Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both”.

6. Section 31 (1)—

Omit “\$5 000 or imprisonment for 12 months, or both” and substitute “Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months, or both”.

7. Section 31 (3)—

Omit “\$1 000” and substitute “Fine not exceeding 10 penalty units”.

8. Section 31 (4)—

Omit “\$1 000” and substitute “Fine not exceeding 10 penalty units”.

9. Section 33 (1)—

Omit “\$5 000 or imprisonment for 12 months, or both” and substitute “Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months, or both”.

10. Section 33 (2)—

Omit “\$1 000 or imprisonment for 3 months, or both” and substitute “Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both”.

11. Section 34 (1)—

Omit “\$1 000 or imprisonment for 3 months, or both” and substitute “Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both”.

12. Section 34 (2)—

Omit “\$1 000” and substitute “Fine not exceeding 10 penalty units”.

13. Section 35—
Omit “\$500” and substitute “Fine not exceeding 5 penalty units”.
 14. Section 36 (2)—
Omit “penalty not exceeding \$500” and substitute “fine not exceeding 5 penalty units”.
 15. Section 37—
Omit “\$1 000” and substitute “Fine not exceeding 10 penalty units”.
 16. Section 38 (1)—
Omit “\$1 000” and substitute “Fine not exceeding 10 penalty units”.
 17. Section 39—
Omit “\$1 000” and substitute “Fine not exceeding 10 penalty units”.
 18. Section 41 (1)—
Omit “\$5 000 or imprisonment for 12 months, or both” and substitute “Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months, or both”.
 19. Section 41 (3)—
Omit “\$1 000” and substitute “Fine not exceeding 10 penalty units”.
 20. Section 41 (4)—
Omit “\$1 000” and substitute “Fine not exceeding 10 penalty units”.
 21. Section 41 (5)—
Omit “\$1 000 or imprisonment for 3 months, or both” and substitute “Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both”.
 22. Section 43—
Omit “\$10 000 or imprisonment for 2 years, or both” and substitute “Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both”.
 23. Section 44—
Omit “\$10 000 or imprisonment for 2 years, or both” and substitute “Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both”.
 24. Section 52 (3)—
Omit “penalty not exceeding \$500” and substitute “fine not exceeding 5 penalty units”.
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SCHEDULE 2

Section 21

AMENDMENTS OF FILMS ACT 1971 FOR PURPOSE OF CONVERTING
MONETARY PENALTIES INTO PENALTY UNITS AND INCREASING THOSE
PENALTIES

1. Section 9 (3)—

(1) Omit “an offence.” and substitute “an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.”.

(2) Omit “Penalty: \$50.”.

2. Section 9 (4A)—

(1) Omit “an offence.” and substitute “an offence and is liable on summary conviction to a fine not exceeding 5 penalty units.”.

(2) Omit “Penalty: \$50.”.

3. Section 9 (5)—

(1) Omit “an offence.” and substitute “an offence and is liable on summary conviction to a fine not exceeding 2 penalty units.”.

(2) Omit “Penalty: \$20.”.

4. Section 9 (7)—

(1) Omit “an offence.” and substitute “an offence and is liable on summary conviction to a fine not exceeding 2 penalty units.”.

(2) Omit “Penalty: \$20.”.

5. Section 12 (3)—

(1) Omit “an offence.” and substitute “an offence and is liable on summary conviction to a fine not exceeding 5 penalty units”.

(2) Omit “Penalty: For a first offence, \$50; for a subsequent offence, \$200.”.

6. Section 13 (3)—

Omit “\$100” and substitute “Fine not exceeding 5 penalty units”.

7. Section 14—

Omit “penalty not exceeding \$100” and substitute “fine not exceeding 5 penalty units”.

8. Section 18—

(1) Omit “Immediately” and substitute “(1) Immediately”.

(2) Omit “Penalty: \$100.”.

(3) Add the following subsection as subsection (2):—

(2) An exhibitor who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 5 penalty units.

9. Section 23 (1)—

(1) Omit “an offence.” and substitute “an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.”.

(2) Omit “Penalty: \$100.”.

10. Section 25 (2) (c)—

- (1) Omit “penalties, not exceeding \$100” and substitute “fines, not exceeding 5 penalty units”.
- (2) Omit “penalty” and substitute “fine”.
- (3) Omit “\$10” and substitute “one penalty unit”.