

WESTERN AUSTRALIA

CENSORSHIP LAWS AMENDMENT ACT 1994

No. 1 of 1994

AN ACT to amend the —

- *Censorship of Films Act 1947; and*
- *Video Tapes Classification and Control Act 1987.*

[Assented to 11 April 1994.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Censorship Laws Amendment Act 1994*.

PART 2 — CENSORSHIP OF FILMS ACT 1947 AMENDED

Principal Act

2. In this Part the *Censorship of Films Act 1947** is referred to as the principal Act.

[* *Reprinted as approved 14 December 1978.*

For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, p. 27.]

Section 3 repealed

3. Section 3 of the principal Act is repealed.

Section 4 amended

4. Section 4 of the principal Act is amended —

(a) by deleting the definition of “children”; and

(b) by inserting in the appropriate alphabetical order the following definitions —

“

“**G film**” means a film classified as being suitable for general exhibition in accordance with section 12 (1a) (a);

”;

“

“**M film**” means a film classified as being a film which is not recommended for viewing by a person under the age of 15 years in accordance with section 12 (1a) (c);

”;

- “
- “MA film”** means a film classified as being a film which is unsuitable for viewing by a person under the age of 15 years unless that person is accompanied by his or her parent or guardian in accordance with section 12 (1a) (d);
- ”;
- “
- “PG film”** means a film classified as being a film which should be viewed by a person under 15 years only with the guidance of a parent or guardian in accordance with section 12 (1a) (b);
- ”;
- “
- “R film”** means a film classified as being a film which is unsuitable for viewing by a person under the age of 18 years in accordance with section 12 (1a) (e);
- ”.

Section 12 amended

5. Section 12 (1a) of the principal Act is amended by deleting paragraphs (a), (b), (c) and (d) and substituting the following paragraphs —

- “
- (a) a G film (for general exhibition);
 - (b) a PG film (a film which should be viewed by a person under 15 years only with the guidance of a parent or guardian);
 - (c) an M film (a film which is not recommended for viewing by a person under the age of 15 years);
- ”

- (d) an MA film (a film which is unsuitable for viewing by a person under the age of 15 years unless that person is accompanied by his or her parent or guardian); or
- (e) an R film (a film which is unsuitable for viewing by a person under the age of 18 years).

”.

Section 12A amended

6. Section 12A of the principal Act is amended —

- (a) by repealing subsection (1);
- (b) in subsection (2) —
 - (i) by deleting “a restricted exhibition picture” and substituting the following —

“ an R film ”; and
 - (ii) by deleting “exhibiting that picture” and substituting the following —

“ exhibiting that film ”;
- (c) by inserting after subsection (2) the following subsection —

“

 - (2a) Where a person who has attained the age of 2 years and who has not attained the age of 15 years —
 - (a) is present at the exhibition of an MA film in a picture theatre; and

”

- (b) is not accompanied by his or her parent or guardian,

the person exhibiting that film in the picture theatre is guilty of an offence against this Act in respect of each such person who is so present.

”;

- (d) in subsection (4) by deleting “a restricted exhibition picture” and substituting the following —

“ an R film ”;

- (e) after subsection (4) by inserting the following subsection —

“

(4a) Subject to subsection (6), where a person who has attained the age of 18 years causes, permits or allows a person —

- (a) who has attained the age of 2 years;
- (b) who has not attained the age of 15 years; and
- (c) who is not accompanied by his or her parent or guardian,

to be present at the exhibition of an MA film in a picture theatre, the person who has attained the age of 18 years is guilty of an offence.

”;

(f) in subsection (5) —

(i) by inserting after “subsection (2)” the following —

“ or (2a) ”; and

(ii) in paragraph (b) by deleting “had attained the age of eighteen years, or” and substituting the following —

“ had —

(i) in the case of a complaint under subsection (2), attained the age of 18 years; or

(ii) in the case of a complaint under subsection (2a), attained the age of 15 years,

or, in either case,

”;

(g) in subsection (6) —

(i) by inserting after “(4)” the following —

“ or (4a) ”;

(ii) by deleting “exhibiting the picture” and substituting the following —

“ exhibiting the film ”; and

(iii) by deleting “exhibiting that picture” and substituting the following —

“ exhibiting that film ”;

and

(h) in subsection (8) —

(i) by deleting “a restricted exhibition picture” and substituting the following —

“ an R film or an MA film ”; and

(ii) by deleting “attained the age of eighteen years —” and substituting the following —

“
 , in the case of an R film, attained the age of 18 years or, in the case of an MA film, attained the age of 15 years —
”.

Section 12C amended

7. Section 12C (1) of the principal Act is amended by deleting “being for restricted exhibition under section 12 or section 12B” and substituting the following —

“
 an R film under section 12 or 12B, or as an MA film under section 12 or 12B,
”.

Section 15 amended

8. Section 15 of the principal Act is amended —

(a) in subsection (1) (a) by deleting “being suitable for general exhibition,” and substituting the following —

“ a G film, ”;

- (b) in subsection (1) (b) by deleting “for general exhibition in accordance with subsection (1a) of section twelve of this Act” and substituting the following —

“ as a G film ”; and

- (c) in the second proviso to subsection (1) by deleting “suitable for general exhibition, films which should be viewed by children only with the guidance of a parent or guardian, for mature audiences or for restricted exhibition.” and substituting the following —

“
a G film, a PG film, an M film, an MA film
or an R film.
”.

Section 17 amended

9. Section 17 of the principal Act is amended in the proviso to subsection (2) by deleting “under subsection (1a) of section twelve of this Act as being for general exhibition” and substituting the following —

“ as a G film ”.

Section 18 amended

10. Section 18 of the principal Act is amended by deleting “being a film which should be viewed by children only with the guidance of a parent or guardian or for mature audiences or for restricted exhibition” in the 2 places where it occurs and substituting in each place the following —

“ a PG film, an M film, an MA film or an R film ”.

Section 28 amended

11. Section 28 (1) of the principal Act is amended by deleting paragraphs (a), (b), (ba) and (bb) and substituting the following paragraphs —

“

- (a) approved and classified by him as a G film;
- (b) approved and classified by him as being a PG film;
- (ba) approved and classified by him as an M film;
- (bb) approved and classified by him as being an MA film;
- (bc) approved and classified by him as an R film;

”.

Section 28A amended

12. Section 28A of the principal Act is amended —

- (a) by repealing subsection (1);
- (b) in subsection (2) by deleting “restricted exhibition film” and substituting the following —

“ R film ”;

- (c) in subsection (3) —

- (i) by deleting “a restricted exhibition film” and substituting the following —

“ an R film ”;

- (ii) in paragraph (a) by deleting “being for restricted exhibition” and substituting the following —
“ an R film ”; and
- (iii) in paragraph (b) by deleting “being for restricted exhibition.” and substituting the following —
“ an R film. ”;
- (d) in subsection (4) by deleting “a restricted exhibition film” and substituting the following —
“ an R film ”; and
- (e) in subsection (5) by deleting “a restricted exhibition film.” and substituting the following —
“ an R film. ”.

Transitional

13. (1) A film that, between 1 May 1993 and the commencement of this Act, is classified —

- (a) as an M film under section 12 (1a) of the principal Act; and
- (b) as an MA film under the *Classification of Publications and Films Act 1985* of the Northern Territory,

is, on and after the commencement of this Act, taken to be classified as an MA film under the principal Act.

(2) A film that, between 1 May 1993 and the commencement of this Act —

- (a) is not classified under section 12 (1a) of the principal Act; and

- (b) is classified as an MA film under the *Classification of Publications and Films Act 1985* of the Northern Territory,

shall be taken —

- (c) to have been classified as an M film under the principal Act on and from the date that the film was classified as an MA film under the *Classification of Publications and Films Act 1985* of the Northern Territory until the commencement of this Act; and
- (d) to be classified as an MA film under the principal Act on and after the commencement of this Act.

**PART 3 — VIDEO TAPES CLASSIFICATION AND
CONTROL ACT 1987 AMENDED**

Principal Act

14. In this Part the *Video Tapes Classification and Control Act 1987** is referred to as the principal Act.

[* *Act No. 73 of 1987.*

*For subsequent amendments see 1992 Index to
Legislation of Western Australia, Table 1, p. 223.]*

Section 9 amended

15. Section 9 (1) of the principal Act is amended —

- (a) by deleting “or” after paragraph (c); and
- (b) by inserting after paragraph (c) the following paragraph —

“

(ca) as an “MA” video tape, where the censor is of the opinion that the video tape is unsuitable for viewing by a person under the age of 15 years unless that person is accompanied by his or her parent or guardian; or

”.

Section 21 amended

16. Section 21 (2) of the principal Act is amended by inserting after paragraph (c) the following paragraph —

“

- (ca) in the case of the publication of an advertisement for an unclassified video tape that

is, after the date of the offence, classified as an “MA” video tape — by a fine not exceeding \$3 000 in the case of a corporation or by a fine not exceeding \$500 in any other case;

”.

Section 25 amended

17. Section 25 of the principal Act is amended —

- (a) in paragraph (a) by inserting after “an “M” video tape” the following —

“ , an “MA” video tape ”;

- (b) in paragraph (b) by inserting after “an “M” video tape” the following —

“ , an “MA” video tape ”;

- (c) in paragraph (c) by inserting after “a video tape classified as” the following —

“ an “MA” video tape, ”;

- (d) by deleting “or” after paragraph (c); and

- (e) by inserting after paragraph (c) the following paragraph —

“

- (ca) where the video tape is classified as an “MA” video tape — a video tape classified as an “R” video tape or an unclassified video tape; or

”.

Section 26A inserted

18. After section 26 of the principal Act the following section is inserted —

“

Provision of “MA” video tapes to persons under the age of 15 years prohibited

26A. (1) A person shall not sell or give a video tape classified as an “MA” video tape to a person under the age of 15 years, unless he or she is the parent or guardian of the person under the age of 15 years.

Penalty: \$5 000 in the case of a corporation and \$1 000 in any other case.

(2) It is a defence to a prosecution for an offence under subsection (1) if the defendant proves that the defendant or the defendant’s servant or agent had reasonable grounds for believing, and did in fact believe, that the person in respect of whom the alleged offence was committed had attained the age of 15 years at the date of the alleged offence.

”.

Section 28 amended

19. Section 28 (2) of the principal Act is amended by inserting after paragraph (c) the following paragraph —

“

(ca) in the case of an unclassified video tape that is, after the date of the offence, classified as an “MA” video tape — by a fine not exceeding \$3 000 in the case of a corporation or by a fine not exceeding \$500 in any other case;

”.

Section 32 amended

20. Section 32 (2) of the principal Act is amended by inserting after paragraph (c) the following paragraph —

“

- (ca) in the case of an unclassified video tape that is, after the date of the offence, classified as an “MA” video tape — by a fine not exceeding \$3 000 in the case of a corporation or by a fine not exceeding \$500 in any other case;

”.

Section 33 amended

21. Section 33 of the principal Act is amended by inserting after subsection (3) the following subsections —

“

(4) A person shall not exhibit, in a public place or a school, an “MA” video tape if a person over the age of 2 years but under the age of 15 years —

- (a) is present at the whole or any part of the exhibition of that video tape; and
- (b) is not accompanied by his or her parent or guardian,

unless the exhibitor is the parent or guardian of the person over the age of 2 years but under the age of 15 years.

Penalty: \$5 000 in the case of a corporation and \$1 000 in any other case.

(5) A person is guilty of an offence under subsection (4) in respect of each person over the age of 2 years but under the age of 15 years who is present

at the exhibition of that video tape and who is not accompanied by his or her parent or guardian.

(6) It is a defence to a prosecution under subsection (4) if the defendant proves —

- (a) that the defendant took all such steps as were reasonable in the circumstances to avoid being guilty of the alleged offence;
- (b) that the defendant or the defendant's servant or agent had reasonable grounds for believing, and did in fact believe, that the person in respect of whom the alleged offence was committed had attained the age of 15 years, or had not attained the age of 2 years, at the date of the alleged offence; or
- (c) that the defendant or the defendant's servant or agent had reasonable grounds for believing, and did in fact believe, that a parent or guardian was accompanying the person in respect of whom the alleged offence was committed.

”.

Section 35 amended

22. Section 35 of the principal Act is amended by inserting after subsection (3) the following subsections —

“

(4) Subject to subsection (5), a person who has attained the age of 18 years shall not cause, permit or allow a person who has attained the age of 2 years but has not attained the age of 15 years and who is not accompanied by a parent or guardian, to be present at

the whole or a part of the exhibition, in a public place, of an "MA" video tape.

Penalty: \$2 000.

(5) A person is not guilty of an offence under subsection (4) if —

- (a) the person is the person exhibiting the video tape referred to in that subsection; or
- (b) the person is the servant or agent of the person exhibiting the video tape referred to in that subsection.

(6) It is a defence to a prosecution under subsection (4) if the defendant proves —

- (a) that the defendant had reasonable grounds for believing, and did in fact believe, that the person in respect of whom the alleged offence was committed had attained the age of 15 years, or had not attained the age of 2 years, at the date of the alleged offence; or
- (b) that the defendant had reasonable grounds for believing, and did in fact believe, that a parent or guardian was accompanying the person in respect of whom the alleged offence was committed.

”.

Section 46A amended

23. Section 46A of the principal Act is amended by inserting after “33 (1)” the following —

“ or (4), ”.

Transitional

24. (1) A video tape that, between 1 May 1993 and the commencement of this Act, is classified —

- (a) as an “M” video tape under section 9 (1) of the principal Act; and
- (b) as an “MA” video tape under the *Classification of Publications and Films Act 1985* of the Northern Territory,

is, on and after the commencement of this Act, taken to be classified as an “MA” video tape under the principal Act.

(2) A video tape that, between 1 May 1993 and the commencement of this Act —

- (a) is not classified under section 9 (1) of the principal Act; and
- (b) is classified as an “MA” video tape under the *Classification of Publications and Films Act 1985* of the Northern Territory,

shall be taken —

- (c) to have been classified as an “M” video tape under the principal Act on and from the date that the video tape was classified as an “MA” video tape under the *Classification of Publications and Films Act 1985* of the Northern Territory until the commencement of this Act; and
- (d) to be classified as an “MA” video tape under the principal Act on and after the commencement of this Act.