

WESTERN AUSTRALIA

VIDEO TAPES CLASSIFICATION AND CONTROL AMENDMENT ACT

No. 19 of 1991

AN ACT to amend the *Video Tapes Classification and Control Act 1987*.

The Parliament of Western Australia enacts as follows:

[Assented to 25 June 1991.]

Short title

1. This Act may be cited as the *Video Tapes Classification and Control Amendment Act 1991*.

Commencement

2. (1) Subject to subsection (2), this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Sections 4 to 12 shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

Principal Act

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

[Act No. 73 of 1987.]

Section 6A inserted

4. After the heading "PART III—CLASSIFICATION" the following section is inserted—

Interpretation

" 6A. In this Part "previous decision" means—

- (a) a decision of the censor under section 9 in respect of a video tape;
- (b) a decision of the censor under section 10 in respect of an advertisement; or
- (c) a decision of the appeal censor under section 15 (1) (b). "

Section 10 amended

5. Section 10 of the principal Act is amended—

- (a) by inserting the subsection designation "(1)" after the section designation "10."; and
- (b) by inserting the following subsection—

" (2) The conditions that may be imposed under subsection (1) may include, but shall not be limited to, conditions requiring the inclusion in the advertisement of such words or symbols as the censor thinks fit. "

Sections 12, 13 and 14 repealed and sections 12 and 13 substituted

6. Sections 12, 13 and 14 of the principal Act are repealed and the following sections are substituted—

Notice of decision of censor

“ 12. (1) Where, under section 9 or 10, the censor makes a decision in respect of a video tape or advertisement, as the case may be, the censor shall cause a written notice of the decision to be given to the person who applied for classification of the video tape or approval of the advertisement.

(2) A notice given under subsection (1) in respect of a decision to classify a video tape shall include a description of the markings determined under section 23A in relation to the classification given to that video tape.

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

Application for review by appeal censor

13. (1) Where under section 9 or 10 the censor has made a decision in respect of a video tape or advertisement, as the case may be—

- (a) the person who applied for classification of the video tape or approval of the advertisement;
- (b) the publisher of the video tape or advertisement; or
- (c) the Minister,

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

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

- (a) except in the case of an application by the Minister—within 37 days after the day on which written notice of the relevant decision pursuant to subsection (1) takes effect, or within such further time as the appeal censor allows; or
- (b) in the case of an application by the Minister—at any time.

(3) An application shall be—

- (a) in writing signed by or on behalf of the applicant;
- (b) except in the case of the Minister—accompanied by the prescribed fee; and
- (c) lodged with the appeal censor.

(4) Where a person other than the original applicant for the classification of a video tape or approval of an advertisement applies for the review of a decision about the video tape or advertisement under this section the appeal censor shall cause a notice in writing of the application for review to be given to the original applicant. ”.

Section 15 amended

7. Section 15 of the principal Act is amended—

- (a) in subsection (1) by inserting after “made to the appeal censor” the following—

“ under section 13 ”;

(b) by inserting after subsection (1) the following subsection—

“ (1a) The conditions that may be imposed under subsection (1) may include, but shall not be limited to, conditions requiring the inclusion in the advertisement of such words or symbols as the appeal censor thinks fit. ”; and

(c) by repealing subsections (2) and (3) and substituting the following subsections—

“ (2) Where the appeal censor makes a decision under this section, the appeal censor shall, within 14 days after the day on which the decision is made, notify the applicant in writing of the decision.

(3) A decision under this section takes effect on the day on which notice of the decision is given. ”.

Sections 15A, 15B, 15C, 15D, 15E and 15F inserted

8. After section 15 of the principal Act the following sections are inserted—

Review by censor

“ **15A.** (1) The censor shall, upon the written request of the Minister, review a previous decision.

(2) The Minister may make a written request under subsection (1)—

(a) in the case of a decision referred to in section 6A (c) resulting from an application by the Minister—at any time;

(b) in any other case—after the expiration of 2 years from the day on which the previous decision took effect.

(3) The censor may, of his or her own motion, review a previous decision (not being a decision referred to in section 6A (c) resulting from an application by the Minister) after the expiration of 2 years from the day on which the previous decision took effect, provided however that upon such a review the censor may not decide to apply a less restrictive classification.

Notice of review

15B. (1) The censor shall, not later than 30 days before a proposed review of a previous decision, cause—

(a) notice of the review to be published—

- (i) where there is an arrangement in operation under section 5, in the Commonwealth Gazette; or
- (ii) where there is no arrangement in operation under section 5, in the *Gazette*;
- (iii) in a daily newspaper circulating throughout the State;

and

(b) notice in writing of the review to be served on—

- (i) the original applicant for classification of the relevant video tape or approval of the relevant advertisement; and
- (ii) the publisher of the video tape or advertisement.

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

(a) that service; or

- (b) notice having been published under subsection (1) (a),

(whichever occurs later), make a written submission to the censor on such of the following matters as are relevant—

- (c) whether the video tape should be classified or refused classification;
- (d) the appropriate classification of the video tape;
- (e) whether the advertisement should be approved or disapproved.

Review of previous decision

15C. (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 refusing to classify the video tape, or approving, unconditionally or subject to conditions, or disapproving the advertisement to which the previous decision relates.

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

- (a) to any submissions made in accordance with section 15B (2); and
- (b) in the case of a video tape—to the criteria referred to in section 9.

Notice of decision—review of previous decision

15D. (1) Where a decision is made under section 15C confirming or setting aside a previous decision, the censor shall cause notice of the decision—

- (a) to be given in writing to the original applicant for classification of the relevant video tape or approval of the relevant advertisement; and
- (b) to be published—
 - (i) where there is an arrangement in operation under section 5, in the Commonwealth Gazette; or
 - (ii) where there is no arrangement in operation under section 5, in the *Gazette*,

within 30 days after the date on which the decision is made.

(2) A decision under this section takes effect at the expiration of 30 days after the day on which notice of the decision is published in the Commonwealth Gazette or the *Gazette*, as the case may be, in accordance with subsection (1).

Application for further review—previous decisions

15E. (1) Where a decision is made under section 15C confirming or setting aside a previous decision—

- (a) the original applicant for classification of the relevant video tape or approval of the relevant advertisement;
- (b) the publisher of the relevant video tape or advertisement; or
- (c) the Minister,

may apply to the appeal censor for a review of the first-mentioned decision.

(2) An application shall be made—

- (a) if made by the original applicant—within 30 days after the applicant receives notice of the decision made under section 15C;
- (b) if made by the publisher—within 30 days after the date on which notice of the decision is published in the Commonwealth Gazette or *Gazette*, as the case may be;

or

- (c) if made by the Minister—at any time.

(3) An application shall be—

- (a) in writing signed for or on behalf of the applicant;
- (b) lodged with the appeal censor; and
- (c) except in the case of an application by the Minister—accompanied by the prescribed fee.

Further review—previous decisions

15F. (1) Where an application is made under section 15E for the further review of a previous decision, the appeal censor shall review that decision and may make a decision—

- (a) confirming the decision made under section 15C; or
- (b) setting aside that decision and classifying or refusing to classify the video tape, or approving, unconditionally or subject to conditions, or disapproving the advertisement, as the appeal censor thinks fit.

(2) Where the appeal censor makes a decision under this section, the appeal censor shall, within 14 days after the day of the decision—

- (a) notify the applicant for further review accordingly; and
- (b) cause a notice setting out the terms of the decision to be published—
 - (i) where there is an arrangement in operation under section 5, in the Commonwealth Gazette;
 - or
 - (ii) where there is no arrangement in operation under section 5, in the *Gazette*.

(3) A decision under this section takes effect on the day on which notice of the decision is published in the Commonwealth Gazette or the *Gazette*, as the case may be, in accordance with subsection (2).

(4) The appeal censor shall keep a record of all decisions made under this section. ”.

Section 20 amended

9. (1) Section 20 of the principal Act is amended by repealing subsection (4) and substituting the following subsection—

“ (4) A person shall not use any advertisement unless the advertisement bears the appropriate markings determined in relation to advertisements under section 23A. ”.

(2) The amendment made to the principal Act by subsection (1) does not apply to or in relation to an advertisement approved before the day on which this section comes into operation and section 20 (4) of the principal Act, and the regulations prescribed for the purposes of that section, as in force prior to the coming into operation of this section shall continue to apply to and in relation to any such advertisement as if this section had not been enacted.

Section 23 repealed and a section substituted

10. (1) Section 23 of the principal Act is repealed and the following section is substituted—

Markings on containers

“ **23.** (1) A person shall not display, for the purposes of sale, or sell a video tape, or cause or permit a video tape to be so displayed or sold, unless the container, wrapping and casing in which the video tape is so displayed or sold bears the markings determined under section 23A in relation to the classification assigned to that video tape under Part III.

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

(2) A person shall not display, for the purposes of sale, or sell a video tape, or cause or permit a video tape to be so displayed or sold, if the container, wrapping or casing in which the video tape is so displayed or sold bears markings determined under section 23A in respect of a classification other than the classification assigned to the video tape under Part III or a marking or other matter that indicates or suggests that the video tape has been assigned a classification other than the classification assigned to the video tape under Part III.

Penalty: \$10 000 in the case of a corporation, and \$2 000 or imprisonment for 6 months in any other case. ”.

(2) The amendments made to the principal Act by subsection (1) do not apply to or in relation to a video tape classified before the day on which this section comes into operation and section 23 of the principal Act, and the regulations prescribed for the purposes of that section, as in force prior to the coming into operation of this section shall continue to apply to and in relation to any such video tape as if this section had not been enacted.

Section 23A inserted

11. After section 23 of the principal Act the following section is inserted—

Determined markings

“ 23A. The censor shall determine, by notice published—

- (a) where there is an arrangement in operation under section 5, in the Commonwealth Gazette; or
- (b) where there is no arrangement in operation under section 5, in the *Gazette*,

markings and the minimum size and position for markings for the purposes of sections 20 (4) and 23 (1) in relation to advertisements relating to video tapes and the different classifications assigned to video tapes. ”.

Section 24 repealed and a section substituted

12. Section 24 of the principal Act is repealed and the following section is substituted—

Display of information on premises

“ 24. (1) A person who sells a classified video tape on or from any premises referred to in subsection (2) shall keep displayed, in accordance with subsection (2), a notice about classifications in the form determined by the censor by notice published—

- (a) where there is an arrangement in operation under section 5, in the Commonwealth Gazette; or
- (b) where there is no arrangement in operation under section 5, in the *Gazette*.

Penalty: \$2 000 in the case of a corporation, and \$1 000 in any other case.

(2) A notice referred to in subsection (1) shall be displayed on premises open to the public for the purpose of selling the classified video tape, in a conspicuous place where, and in such form that, the notice may be conveniently read by any person on the premises. ”.

Section 46A inserted

13. After section 46 of the principal Act the following section is inserted—

No limitation for certain prosecutions

“ 46A. A prosecution for an offence under section 28 (1) (where the video tape in question depicts or otherwise deals with child abuse), 33 (1), 36 or 37 (1) (b) (i) may be brought at any time. ”.
