

WESTERN AUSTRALIA.

CENSORSHIP OF FILMS.

11° and 12° Geo. VI., No. LXXIX.

No. 79 of 1947.¹

[As affected by Act: No. 113 of 1965; and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT relating to the censorship of films and to enable an Agreement for that purpose to be entered into with the Commonwealth.

[Assented to 13th January, 1948.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY.

1. This Act may be cited as the *Censorship of Films Act, 1947*, and shall come into operation on a date to be fixed by Proclamation.¹

Short title
and com-
mencement.

¹ Came into operation 1st January, 1949. See *Gazette* 24/12/48, p. 3037.

Construction. 2. This Act shall be read and construed so as not to exceed the legislative power of the State to the intent that where any enactment hereof would but for this section have been construed as being in excess of that power it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

Parts of Act. 3. This Act shall be divided into Parts, as follows:—

PART I.—PRELIMINARY;

PART II.—ADMINISTRATION OF ACT;

PART III.—CENSORSHIP OF FILMS;

PART IV.—AGREEMENT WITH COMMONWEALTH FOR ADMINISTRATION OF ACT.

Interpretation. 4. In this Act, unless the context otherwise indicates or requires, the following terms shall have the meanings respectively assigned to them, that is to say:—

Advertisement. “Advertisement” means any matter or thing describing or announcing, in any way or form, the projected exhibition of a film.

Censor. “Censor” means—

- (a) the officer or authority of the Commonwealth of Australia exercising and discharging on behalf of the Government of Western Australia the powers, duties, functions and authorities of the censor of films under this Act pursuant to any arrangement under Part IV of this Act; or
- (b) if and while there is no such arrangement in operation, the censor of films appointed under this Act,

including any person who may be appointed by the Governor to act as censor of films.

“Children” means children under the age of sixteen years. Children.

“Distributor” means, in relation to films, a person for the time being engaged in the business of hiring or selling films. Distributor.

“Exhibitor” means, in relation to films, every person who exhibits a film in a picture theatre; and the term “exhibit” and derivatives of that term shall have a corresponding interpretation. Exhibitor.

“Film” means a film exhibited or proposed to be exhibited in a picture theatre by the use of a cinematograph and any other similar apparatus and reproducing equipment to produce a moving picture or other optical effect. Film.

“Minister” means the Chief Secretary or other Minister of the Crown for the time being charged with the administration of this Act. Minister.

“Picture theatre” includes any building or any part of a building, or any enclosure, ground, place or premises whatsoever wherein or whereon any film is exhibited and to which admission is or may be procured by payment of money or by ticket or by any other means, token or consideration as the price, hire or rent of admission, or where there is a subscription, collection or donation received. Picture theatre.

“Scenario” includes any statements or summary— Scenario.

(a) of the plot of any play or story; or

(b) of the incidents,

depicted or intended to be depicted by means of a film.

PART II.—ADMINISTRATION OF ACT.

Operation
of Part.

5. This Part shall be subject to any agreement executed under Part IV. of this Act.

Administra-
tion of Act.

6. This Act shall be administered by the Minister and, subject to the Minister, by the censor.

Appointment
of censor
and other
officers.
cf. Vic. No.
3786, s. 15.

7. (1) In the event of no arrangement under Part IV. of this Act being made or of such an arrangement being terminated or otherwise ceasing to be in operation, the Governor for the purposes of this Act may, subject to the provisions of the Public Service Act, 1904-1947¹, appoint such person as he thinks fit to be the censor of films, and appoint one or more persons to be a deputy or deputies of the censor to assist the censor or to act in his stead.

(2) Any deputy of the censor shall have and may exercise the powers, duties, discretions and authorities of the censor under this Act.

Delegation
of his
powers by
the censor.

8. (1) The censor may, with the consent of the Minister, and shall at the direction of the Minister, in relation to any matters or class of matters or in relation to any specified area, by writing under his hand, delegate such of his powers, duties, functions and authorities under this Act (other than this power of delegation) as he thinks fit, or as the Minister shall specify, so that the delegated powers, duties, functions and authorities may, subject to this Act, be exercised by the delegate with respect to the matters or class of matters or area specified in the instrument of delegation.

(2) Where under this Act the exercise of any power, duty, function or authority by the censor is dependent upon the opinion, belief or state of mind of the censor in relation to any matter, that power,

¹ Now Public Service Act, 1904-1970.

duty, function or authority may be exercised by the delegate upon the opinion, belief or state of mind of that delegate.

(3) Every delegation, excepting a delegation made by direction of the Minister, shall be revocable by the censor at his will, and any delegation, including a delegation made by direction of the Minister, shall be revoked by him if the Minister so directs, and no delegation shall prevent the exercise of the delegated power, duty, function or authority by the censor.

PART III.—CENSORSHIP OF FILMS.

9. (1) A person shall not exhibit or cause to be exhibited in any picture theatre any film not exempted from the provisions of this subsection unless and until such film has been approved by the censor.

When film not to be exhibited unless approved by censor.

(2) The exhibition in any picture theatre of any film hereinafter in this subsection specified shall be exempted from the provisions of subsection one of this section if such film is so exhibited under, subject to, and in accordance with the provisions hereinafter in this subsection contained in relation to such film or to the exhibition in a picture theatre of such film, or to both (as the case may be), that is to say:—

- (i) Any film registered under the Customs (Cinematograph Films) Regulations or other regulations relating to the censorship of films for the time being or from time to time made under the Customs Act, 1901-1936, of the Commonwealth.
- (ii) Any film portraying solely pictures of a topical event which has happened in Australia while being exhibited in a picture theatre at any time not later than fourteen days after the happening of such event.

- (iii) Any film, other than a trailer film, used solely for advertising purposes, unless the censor has directed that such film be submitted to him for approval (the censor being hereby authorised to give such direction if he has reason to believe that such film, or any part thereof, is not suitable for exhibition before children).

(3) The censor may, by direction in writing under his hand, exempt any film or part of any film from the operation of this Part of this Act to the extent specified in the direction.

Applications
for approval.

10. Application for the approval by the censor of any film shall be made in the prescribed form, and shall contain the prescribed particulars and shall be accompanied by the appropriate fee specified in the Schedule to this Act.

Power to
require
picture to
be exhibited
for
inspection.

11. (1) The censor may require any film to be exhibited before him at such time and place as he directs at the expense and risk of the applicant, and may require the production of the scenario or of any advertisement with respect to such film.

(2) The censor's decision shall be final as to—

- (a) the eligibility of any person to be present at a censorship screening; and
- (b) the number of persons to be present at any such screening.

Powers of
censor.

12. (1) The censor may—

- (a) approve a film as being suitable for general exhibition; or
- (b) approve a film as being not suitable for exhibition before children; or
- (c) approve a film subject to such conditions as he imposes; or

(d) refuse approval.

(2) The censor shall not approve a film which is, in his opinion— No approval in certain cases.

- (a) indecent or obscene, or likely to be injurious to morality; or
- (b) likely to encourage public disorder or crime; or
- (c) undesirable in the public interest.

(3) The censor shall not unconditionally refuse to approve a film which, in his opinion— When approval not to be refused.

- (a) reproduces or adapts, in good faith and with artistic merit, any work of recognised literary merit; or
- (b) represents, in good faith and with artistic merit, any scriptural, historical, traditional, mythical or legendary story.

13. (1) The approval of the censor shall be signified by a certificate in the prescribed form. Certificate of approval.

(2) The refusal of the censor shall be signified by a certificate in the prescribed form. Certificate of refusal.

14. (1) The censor may require the applicant for the approval of any film to submit for his approval any advertisement proposed to be used with respect to such film, and may also require the exhibitor of any film approved by the censor to submit for his approval any advertisement used or proposed to be used by such exhibitor with respect to the exhibition of such film. Approval of advertisements.

(2) No person shall announce, print, publish, distribute, exhibit, or otherwise disseminate in any way, or cause to be so announced, printed, published, Offence.

distributed, exhibited, or disseminated, any advertisement of or with respect to any film or portion of a film—

- (a) which film has not been approved by the censor when required to be so approved by this Act; or
- (b) a copy of which advertisement was required by the censor to be submitted to him for approval and has not been so submitted or, if so submitted, has not been approved by the censor; or
- (c) which advertisement has been altered or added to after approval thereof by the censor.

Powers of censor.

(3) The censor may—

- (a) approve any such advertisement or any part thereof unconditionally; or
- (b) approve any such advertisement or any part thereof subject to such conditions as he shall impose; or
- (c) refuse to approve any such advertisement or any part thereof.

Censor shall have regard to s. 12 (2).

(4) In considering any advertisement submitted to him for approval the censor shall have regard to the provisions of subsection two of section twelve of this Act.

Applicant to submit particulars, etc., of advertisement.

(5) Every applicant for approval by the censor of any advertisement shall submit to the censor such particulars, including (if the censor so directs) samples of such advertisement as the censor shall require.

Matters to be contained in advertisement.

15. (1) Every advertisement shall—

- (a) in the case of a film approved as being suitable for general exhibition, contain a statement clearly visible or announced that such film has been so approved;

- (b) in the case of a film approved as being not suitable for exhibition before children, contain a statement clearly visible or announced that such film is not suitable for exhibition before children under the age of sixteen years;
- (c) in the case of a film approved subject to conditions, contain a statement clearly visible or announced substantially setting out such conditions in such form as is approved in writing by the censor.

Provided, however, that in the case of a group of visible advertisements relating to more than one picture theatre and having a total area of not more than one hundred square inches it shall be optional to publish a statement in words of letters of not less than "six-point black" type at the foot of such group by way of explanation of a symbol to be approved by the censor appearing in such advertisements opposite the title of each film to denote the censor's classification of such film:

Provided further that there shall be exhibited on the screen at every exhibition of films in every picture theatre prior to and during every interval in each programme a slide to be approved by the censor in such form as will clearly indicate to the audience the interpretation of symbols directed to be used in connection with the advertising of the censor's approval of films as suitable for general exhibition, not suitable for exhibition before children, and horror films.

(2) A person shall not in respect of any film use or cause to be used any advertisement contrary to any provision of this section. Offence.

16. Subject to this Act, a person shall not print, publish, distribute, exhibit or disseminate in any other manner whatsoever, or cause to be printed, published, distributed, exhibited or disseminated in Reproduction of whole or part of unapproved film prohibited.

any other manner whatsoever, any photograph or other reproduction of any film or part of a film required by this Act to be approved by the censor, at any time when such film is not so approved.

Film to be exhibited as approved by censor.

17. (1) A person shall not exhibit or cause to be exhibited any film approved by the censor otherwise than in the form and under the title so approved.

Reproduction of certificate of approval to be projected.

(2) A person who exhibits or causes to be exhibited any film approved by the censor shall, immediately before the exhibition of such film, cause to be projected on the screen on which the picture is to be exhibited a reproduction of the certificate of approval by the censor of such film. Such reproduction shall be in letters clearly visible throughout the picture theatre and be not less than six feet in length, and if the reproduction is projected by a slide, the period of projection shall be not less than four seconds:

Provided that this subsection shall not apply to any film approved by the censor for general exhibition, which in the opinion of the censor may be classed as gazette, topical, scientific, travel or educational.

Certain films not to be exhibited during daytime on Saturdays, public holidays, and school holidays.

18. A person shall not exhibit or cause to be exhibited in any picture theatre any film approved by the censor as being not suitable for exhibition before children, or any advertisement relating to a film approved by the censor as being not suitable for exhibition before children at any time before half past five o'clock in the afternoon on any Saturday, public holiday or week day during school term holidays:

Provided that the Minister may, subject to such conditions as he may impose, and whether or not any agreement is executed under Part IV. of this

Act, exempt any picture theatre from the provisions of this section if he is satisfied that such exemption is warranted in the public interest.

19. The censor may require the applicant to furnish security for the fulfilment of any conditions imposed by the censor or by this Act in respect of any films submitted for approval, and upon failure to comply with such conditions or any of them may enforce the security so furnished against the applicant or person by whom it was furnished.

Power to require security for fulfilment of conditions.

20. (1) Where the censor has approved any film subject to conditions imposed by him, he may at any time revoke such approval if he is satisfied that such conditions or any of them have not been complied with. Such revocation shall be signified by a notice in the prescribed form. Any film in respect of which such notice of revocation has been issued shall be deemed to be an unapproved film.

Revocation of certificate of approval.

(2) The censor may at any time order the withdrawal of a film from exhibition for the purpose of further censorship if he is satisfied that such withdrawal is necessary in the public interest.

Censor may order withdrawal of film from exhibition.

(3) A person shall not exhibit or cause to be exhibited an unapproved film or a film so ordered to be withdrawn unless and until the censor again approves of such film.

Offence.

21. Any film or part of a film or any advertisement with respect to any film to which the censor has refused approval may be retained by the censor, who may cause such film or part of a film or advertisement to be destroyed after the expiry of one month from the date of notification to the applicant of intention to destroy such film or part of a film or advertisement. The censor may, however, return such film or part of a film or advertisement to

Censor may retain film and advertisements when approval refused.

the applicant, if satisfied that such applicant will dispose of the film or part of a film or advertisement in the manner directed by the censor.

Appeals from
decision of
censor.

22. (1) Any person who feels aggrieved by any decision of the censor, including the imposition of any condition under the powers conferred on the censor by or under this Part, may within such time and upon such conditions as are hereinafter in this section prescribed appeal therefrom to the Minister or to any person authorised in writing by the Minister in that behalf.

Procedure.

(2) Such appeal shall be in writing and shall be lodged with the censor not later than twenty-eight days after the date of notification of the decision from which the appeal is made and shall set out in full the grounds of the appeal.

Fees.

(3) The appropriate fee specified in the schedule to this Act shall be paid to the censor at the time of the lodging of such appeal.

If require-
ments
regarding
appeal
complied
with censor
to advise
Minister,
etc.

(4) The censor shall examine every such appeal and, if the requirements in regard thereto have been complied with, shall advise the Minister or person authorised in writing by the Minister to hear such appeal of the receipt of the appeal.

Hearing of
appeal.

(5) The Minister or person so authorised by the Minister shall arrange the time, date, and place for the hearing of the appeal and not less than twenty-four hours' notice shall be given the appellant of the time, date, and place fixed for the hearing of his appeal.

Any film or
copy of any
advertise-
ment may be
required to
be screened
or submitted.

(6) The Minister or person authorised by the Minister to hear any such appeal may require any film or copy of any advertisement in respect of which such appeal has been made to be screened or submitted for his inspection, as the case may be, at the risk and at the expense of the appellant.

(7) The appellant shall have the right to be present at the hearing of his appeal. Appellant may be present.

(8) The Minister or person authorised by the Minister to hear any such appeal may— Powers on appeal.

(a) allow the appeal; or

(b) as a condition precedent to his allowance of the appeal—

(i) require excisions to be made from any film the subject of such appeal; or

(ii) require alterations to be made in any such film or advertisement in respect of which such appeal has been made;

but such excisions or alterations shall be made, and the custody of such excisions or of a sample copy of such altered advertisement arranged for, only as the censor may direct; or

(c) disallow the appeal; or

(d) direct the censor to refuse to register the film the subject of the appeal.

(9) The decision of the Minister or person authorised to hear any appeal shall be final and shall be communicated forthwith to the appellant by the censor, who shall give effect to all such decisions. Decision final.

23. (1) Where the censor has refused approval of a film, or where on appeal against such refusal the Minister or person authorised by the Minister to hear such appeal disallows the appeal, the applicant may, within fourteen days of either decision or within such further time as the censor in special circumstances allows, apply to the censor for permission to reconstruct the film and to submit it to the censor for review. Reconstruction of a film.

(2) Application for permission to reconstruct a film shall be accompanied by a plan setting out in detail the grounds upon which it is claimed Application to be accompanied by a plan.

reconstruction should be permitted and enumerating any proposed alterations, deletions or additions, and shall be accompanied by the fee prescribed in the Schedule to this Act.

Schedule.

Powers of censor.

(3) The censor may approve or refuse approval of any plan of reconstruction submitted to him or so alter or amend it as he deems fit, and such decision shall be subject to appeal as provided by this Act.

Certificate of reconstruction of film.

(4) The censor's approval or refusal of approval that a film shall be reconstructed shall be signified by a certificate in the prescribed form.

Registration of distributors and exhibitors.

24. Every distributor and exhibitor shall register his name and address with the censor and shall from time to time furnish such returns and such information as the censor may require.

Powers of entry.

25. The censor, or any person authorised in writing by the Minister or the censor in that behalf, shall be admitted without charge to any picture theatre for the purposes of this Act during the screening of any film, and any person hindering the censor or such person shall be guilty of an offence under this Act.

Police to assist.

26. Every member of the Police Force shall assist in the enforcement of this Act, and shall make such inquiries as the Minister or the censor may require, and where any offence against the provisions of this Act or the regulations thereunder comes to the notice of any member of the Police Force he shall forthwith report the matter in writing to the censor, who shall take such action consistent with this Act as he thinks fit.

27. (1) Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence and liable to a penalty as follows:—

Penalties.
Amended by
No. 113 of
1965, s. 8.

- (i) In the case of an offence against any provision of subsection (2) of section fourteen or section sixteen of this Act, a penalty of not less than ten dollars nor more than forty dollars;
- (ii) In the case of an offence against any provision of subsection (2) of section seventeen or section eighteen of this Act, a penalty of not less than ten dollars nor more than forty dollars for the first offence and, for the second or any succeeding offence against the same or any other of such provisions, a penalty of not less than twenty dollars nor more than one hundred dollars;
- (iii) In the case of any other offence, a penalty of not more than one hundred dollars.

(2) Where any person is convicted of the offence of exhibiting or causing to be exhibited any film required by this Act to be approved by the censor at any time when such film is not so approved, the court may, in addition to or in lieu of imposing a penalty, order that such film be forfeited to the Crown.

When film
may be
ordered to
be forfeited.

Any film so forfeited shall be dealt with in such manner as the censor directs.

(3) Any offence against this Act may be prosecuted summarily.

Summary
prosecution.

(4) Notwithstanding any provision of any other Act, the penalty imposed for any offence against this Act shall not, if a minimum amount of penalty for such offence is prescribed, be reduced below such minimum.

Evidence.

28. (1) A certificate by the censor that any film has been—

- (a) approved by him as being suitable for general exhibition; or
- (b) approved by him as being not suitable for exhibition before children; or
- (c) approved by him subject to any conditions stated in such certificate; or
- (d) refused approval by him; or

that any advertisement or any part of any advertisement has been—

- (e) approved by him unconditionally; or
- (f) approved by him subject to the conditions specified in such certificate; or
- (g) refused approval by him; or

that any film or any advertisement or part of any advertisement has not been approved by him, or that any distributor or exhibitor is or is not registered under this Act, shall be evidence of the facts stated in such certificate, and in the absence of evidence in rebuttal thereof shall be conclusive evidence of the facts so stated.

Any certificate purporting to be a certificate by the censor as aforesaid shall be admissible in evidence in any proceedings for an offence under this Act, and the signature of the censor thereto shall be judicially noticed.

(2) In any proceedings under this Act, without affecting the liability of any person for any offence under this Act, a person shall be deemed to exhibit a film if he conducts the exhibition of the same or on the occasion in question has the superintendence or management of the picture theatre wherein such film is exhibited.

Regulations.

29. (1) The Governor may make regulations for or with respect to any matter or thing authorised or required by this Act to be prescribed or necessary or convenient to be prescribed for carrying this Act into effect.

30. There shall be paid in respect of the matters mentioned in the Schedule to this Act the several fees set forth in the said Schedule in respect of the said matters respectively: Provided that no fees shall be payable for registration as an exhibitor or for the approval of films by the censor in respect of entertainments conducted solely for charitable purposes or for benevolent or special (including educational) purposes approved in writing by the Minister.

Fees.

Schedule.

PART IV.—AGREEMENT WITH COMMONWEALTH FOR ADMINISTRATION OF ACT.

31. (1) The Governor may arrange with the Governor-General of the Commonwealth for the exercise and discharge of the function of censorship of films in the State of Western Australia, and for the hearing of any appeals, by officers and authorities of the Commonwealth on behalf of the Government of Western Australia, and for the exercise and discharge of such function such officers and authorities of the Commonwealth shall have and may exercise all the powers and authorities conferred by this Act, except the power mentioned in the proviso to section eighteen of this Act, and shall have and exercise all the duties and responsibilities imposed by this Act.

Power to arrange with Commonwealth.

(2) The arrangement shall be expressed in a written agreement to be executed between the Governor and the Governor General of the Commonwealth, and provision may be made in such agreement for all or any matters which may be deemed to be necessary or expedient for the more effectual exercise and discharge of the function of censorship of films in the State of Western Australia, and the more effectual exercise and discharge by officers and authorities of the Commonwealth of the duties, authorities, responsibilities and powers conferred or imposed by this Act. Any such agreement shall be valid and effectual for all purposes.

(3) The expression "officers and authorities of the Commonwealth" shall for the purposes of any arrangement made by the Governor with the Governor General of the Commonwealth, under this Part,

mean the Censorship Board, Chief Censor, Appeal Censor, or other censors or officers constituted or appointed under the Customs (Cinematograph Films) Regulations or other regulations relating to the censorship of cinematograph films made from time to time by the Governor General of the Commonwealth under the Customs Act, 1901-1936; and the Censorship Board and Chief Censor shall be deemed to be the censor under and for the purposes of this Act, and to be authorised and empowered to exercise and discharge the functions, duties, authorities and responsibilities and powers conferred or imposed upon the censor by this Act, and the Appeal Censor shall be the appeal authority under and for the purposes of this Act, and to be authorised and empowered to exercise and discharge the functions, duties, authorities, responsibilities and powers conferred or imposed upon the Minister or person authorised by him under this Act.

(4) Any arrangement made under this section may be terminated by the Governor subject to giving to the Governor General of the Commonwealth not less than three months prior notice in writing of his intention to terminate such arrangement.

THE SCHEDULE.

FEEs IN RESPECT OF FILMS.

1. On submission of any film for the approval of the censor, or application for permission to reconstruct a film, or on submission of any film already approved, to the censor for his approval of any alteration thereof, deletion therefrom, or additions thereto:—

	\$
For every reel of such film	0.50

2. On appeal of any person aggrieved by any decision of the censor:—

	\$
(a) In respect of a film submitted for approval—for every reel of such film or part thereof (with a minimum fee of three dollars for any one film)	1.00
(b) In respect of any advertisement—for every sample copy (with a minimum fee of three dollars in respect of any sample copy or copies in respect of any one film)	1.00