



AUSTRALIAN CAPITAL TERRITORY

Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act (No. 2) 1996

No. 77 of 1996

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AMENDMENTS OF TAXATION (ADMINISTRATION) ACT 1987



AUSTRALIAN CAPITAL TERRITORY

Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act (No. 2) 1996

No. 77 of 1996

An Act to amend the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* and for related purposes

[Notified in ACT Gazette S328: 20 December 1996]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act (No. 2) 1996*.

Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

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(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

3. In this Act, “Principal Act” means the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*.¹

PART II—AMENDMENTS OF PRINCIPAL ACT

Interpretation

4. Section 3 of the Principal Act is amended by inserting the following definition:

“ ‘X film’ means a film classified X.”.

X films

5. Section 20 of the Principal Act is amended by adding at the end the following subsection:

“(2) A person shall not sell or copy an X film except in accordance with a licence under Part VI.

Penalty: 100 penalty units or imprisonment for 12 months, or both.”.

Possession or copying of film

6. Section 24 of the Principal Act is amended by omitting from subsection (2) all the words after “film” (second occurring).

Insertion

7. After section 54 of the Principal Act the following Part is inserted:

“PART VI—X FILMS

Division 1—Preliminary

Interpretation

“54A. (1) In this Part—

‘influential person’, in relation to a body corporate, means—

- (a) a director or secretary of the body; or
- (b) a person who is—
 - (i) substantially concerned in the management of the body; or
 - (ii) able to control, or to substantially influence, the body’s activities or internal affairs;

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‘licence’ means a licence granted under section 54E;

‘Registrar’ means the Registrar of X Film Licences under section 54B.

“(2) A reference in this Part to an offence against this Act shall be read as including a reference to an offence under Part VIII of the *Crimes Act 1900*.

Division 2—X Film Licences

Registrar of X Film Licences

“54B. (1) There shall be a Registrar of X Film Licences.

“(2) The Chief Executive shall create and maintain an office in the Public Service the duties of which include performing the functions of the Registrar of X Film Licences.

“(3) The Registrar shall be a public servant for the time being performing the duties of the Public Service office referred to in subsection (2).

Application for licence

“54C. An application for a licence to sell or copy, or to sell and copy, X films shall—

- (a) be in a form approved by the Registrar; and
- (b) be accompanied by the determined fee.

Further information on licence application

“54D. The Registrar may, by written notice, require an applicant for a licence to provide, in writing or orally, such further information relating to the application as is specified in the notice.

Grant or refusal of business licence

“54E. (1) The Registrar shall, on application in accordance with section 54C—

- (a) grant a licence to sell or copy, or to sell and copy, X films; or
- (b) refuse to grant a licence to sell or copy, or to sell and copy, X films.

“(2) The Registrar may impose conditions on the grant of a licence.

“(3) The conditions which the Registrar may impose are those which the Registrar believes on reasonable grounds are necessary in the public interest.

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“(4) For the purposes of making a decision under subsection (1) or (2), the Registrar shall have regard to the following:

- (a) if the applicant is a natural person—whether he or she is an undischarged bankrupt;
- (b) if the applicant is a body corporate—whether it is being wound up;
- (c) whether the applicant has contravened this Act, the *Publications Control Act 1989* or the *Business Franchise (“X” Videos) Act 1990*;
- (d) whether the applicant has been convicted of an offence punishable on conviction—
 - (i) in the case of a natural person—by a fine of not less than 100 penalty units or imprisonment for a period of not less than 1 year; or
 - (ii) in the case of a body corporate—by a fine of not less than 500 penalty units;
- (e) whether the applicant has infringed copyright within the meaning of Part IV of the *Copyright Act 1968* of the Commonwealth in relation to a cinematograph film within the meaning of that Act.

“(5) In paragraphs (4) (c) and (d), a reference to an applicant shall be read, where the applicant is a body corporate, as including a reference to any influential person in relation to the body.

“(6) If the Registrar refuses to grant a licence, the Registrar shall refund to the applicant an amount equal to the determined fee accompanying the application for the licence.

Form of licence

“54F. A licence shall specify—

- (a) the full name and address of the licensee;
- (b) whether the licence is granted in respect of the sale or copying, or the sale and copying, of X films;
- (c) the premises in relation to which the licence is granted; and
- (d) the conditions (if any) to which the licence is subject.

Term of licence

“54G. Subject to this Part, a licence remains in force for such period, not exceeding 12 months, as is specified in the licence.

Renewal of licence

“54H. (1) A licensee may, at any time before the expiration of the period referred to in section 54G or the last period of renewal, as the case may be, apply to the Registrar for a renewal of the licence.

“(2) An application shall—

- (a) be in a form approved by the Registrar; and
- (b) be accompanied by the determined fee.

“(3) The Registrar shall, on receipt of an application in accordance with subsection (1), renew the licence.

“(4) Subject to this Part, a licence renewed under subsection (3) remains in force for a period of 12 months commencing on the expiration of the period referred to in section 54G, or the last period of renewal, as the case requires.

Payment by instalments

“54J. (1) Where, under section 54H, the Registrar renews a licence, the licensee may pay the determined fee by instalments.

“(2) Instalment payments shall be paid on or before the due date.

“(3) Where a person fails to pay an instalment by the due date, the Registrar shall, by notice to the licensee, suspend the licence.

“(4) Where a person fails to pay an instalment within 30 days after the due date for the instalment, the Registrar shall cancel the licence.

“(5) In this section—

‘due date’ means 1 February, 1 May, 1 August or 1 November.

Variation of conditions

“54K. (1) The Registrar may, by notice in writing served on the licensee, vary the conditions specified in a licence.

“(2) A notice under subsection (1) takes effect from the day specified in the notice (being a day not less than 28 days after the date of the notice).

“(3) A licensee shall not, without reasonable excuse, fail to submit the licence to the Registrar within 28 days after service of a notice referred to in subsection (1).

Penalty: 20 penalty units.

“(4) On receipt of a licence, the Registrar shall amend the licence and return it to the licensee within 7 days.

Change of licensed premises

“54L. (1) Subject to subsection (2), a licensee shall before—

- (a) selling X films at premises other than those specified in the licence; or
- (b) ceasing to sell X films at particular premises specified in the licence;

submit the licence to the Registrar together with written notice of the proposed change and the proposed date of the change.

“(2) A licensee shall not give notice under subsection (1) less than 28 days before the proposed date of change.

“(3) The Registrar shall, within 7 days after receipt of a notice under subsection (1), amend the licence and return it to the licensee.

“(4) The amendment of a licence under subsection (3) takes effect on the date specified in the notice under subsection (1).

“(5) A licensee shall not, without reasonable excuse, contravene subsection (1).

Penalty: 20 penalty units.

Change of activity under a licence

“54M. (1) Where—

- (a) a licensee is authorised under a licence to sell and copy X films; and
- (b) the licensee ceases to sell or copy X films;

the licensee shall, not later than 28 days after he or she ceases to sell or copy X films—

- (c) notify the Registrar in writing of that fact; and
- (d) submit his or her licence to the Registrar.

“(2) The Registrar shall, within 7 days after receipt of a notice under subsection (1), amend the licence and return it to the licensee.

“(3) A licensee shall not, without reasonable excuse, contravene subsection (1).

Penalty: 20 penalty units.

Cancellation

“54N. (1) The Registrar may cancel a licence if the Registrar has reasonable grounds for believing that—

- (a) the licence was granted in error or in consequence of a false statement made, or misleading information furnished, by the applicant for the licence;

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- (b) the licensee has contravened a condition of a licence;
- (c) the licensee has contravened this Act, the *Publications Control Act 1989* or the *Business Franchise ("X" Videos) Act 1990*;
- (d) the licensee has been convicted of an offence—
 - (i) against this Act; or
 - (ii) that is punishable on conviction—
 - (A) in the case of a natural person—by a fine of not less than 100 penalty units or by imprisonment for a period of not less than 1 year; or
 - (B) in the case of a body corporate—by a fine of not less than 500 penalty units;
- (e) if the licensee is a natural person—he or she is an undischarged bankrupt;
- (f) if the licensee is a body corporate—it is being wound up; or
- (g) the licensee has infringed copyright within the meaning of Part IV of the *Copyright Act 1968* of the Commonwealth in relation to a cinematograph film within the meaning of that Act.

“(2) In paragraphs (1) (c), (d) and (g), a reference to a licensee shall, where the licensee is a body corporate, be read as including a reference to any defined influential person in relation to the body.

“(3) The Registrar shall, before cancelling a licence, by notice in writing served on the licensee, invite the licensee to show cause why the licence should not be cancelled.

“(4) A notice shall contain—

- (a) particulars of the facts and circumstances relied on by the Registrar to establish that a ground for cancellation exists; and
- (b) a statement to the effect that the licensee may, within such period as is specified in the notice (being a period of not less than 14 days after the date the notice is given), give to the Registrar written particulars of the facts and circumstances relied on by the licensee to show that the licence should not be cancelled.

“(5) After the expiration of the period specified in a notice under subsection (3), the Registrar may cancel the licence for the reasons referred to in the notice.

“(6) In making a decision under subsection (5), the Registrar shall have regard to any explanation provided in accordance with subsection (3) as to why the licence should not be cancelled.

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“(7) Cancellation of a licence takes effect on the expiration of the day on which notice of the cancellation is given to the licensee under section 54R.

“(8) The Registrar shall cancel a licensee’s licence on the written request of the licensee.

Surrender

“54P. (1) A licensee shall not, without reasonable excuse, within 7 days after ceasing to sell or copy X films, fail to surrender his or her licence.

Penalty: 20 penalty units.

“(2) A licence is surrendered by giving written notice of its surrender, and the licence, to the Registrar.

“(3) The surrender of a licence takes effect on the date the notice of surrender is given in accordance with subsection (2).

Expiration

“54Q. On the expiration of a licence by cancellation or lapse of time, the former licensee shall not, without reasonable excuse, fail to return the licence to the Registrar within 7 days of its expiration.

Penalty: 20 penalty units.

Division 3—Review of decisions

Notice of decisions

“54R. (1) Where the Registrar makes a decision—

- (a) under paragraph 54E (1) (b) to refuse to grant a licence;
- (b) under subsection 54E (2) to grant a licence subject to conditions;
- (c) under subsection 54K (1) to vary a condition to which the licence is subject; or
- (d) under subsection 54N (1) to cancel a licence;

he or she shall cause notice in writing of the decision to be given to the applicant or licensee, as the case requires.

“(2) A notice under subsection (1) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

Review by Administrative Appeals Tribunal

“54S. Application may be made to the Administrative Appeals Tribunal for a review of a decision referred to in subsection 54R (1).

Division 4—Enforcement

Interpretation

“54T. In this Division—

‘X film’ includes an unclassified film and a film classified RC.

Inspectors

“54U. (1) There shall be 1 or more inspectors for the purposes of this Part.

“(2) The Chief Executive shall create and maintain 1 or more offices in the Public Service the duties of which include performing the functions of an inspector.

“(3) An inspector shall be a public servant for the time being performing the duties of a Public Service office referred to in subsection (2).

Identity cards

“54V. (1) The Chief Executive shall issue to an inspector an identity card specifying the inspector’s name and office, and on which appears a recent photograph of the inspector.

“(2) On ceasing to occupy, or to act in, the office of the inspector a person shall not, without reasonable excuse, fail to return his or her identity card to the Chief Executive.

Penalty: 1 penalty unit.

Powers of entry, search etc.

“54W. (1) For the purposes of this Part an inspector may, without a warrant—

- (a) enter premises to which a licence relates at any reasonable time when those premises are open for business; or
- (b) subject to section 54X, enter any premises at any time with the consent of the occupier of those premises.

“(2) An inspector who enters premises under subsection (1), is not authorised to remain on the premises if, on request by or on behalf of the licensee or occupier of the premises, the inspector does not produce his or her identity card.

“(3) An inspector who enters premises pursuant to subsection (1) may—

- (a) inspect, make copies of, or take extracts from, any film, or any document or record that the inspector has reasonable grounds for believing to be connected with the sale of X films;

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- (b) seize any thing that the inspector has reasonable grounds for believing to be connected with an offence against this Act;
- (c) require any person on the premises to make available any films, or any document or record kept on the premises, to furnish information that the inspector has reasonable grounds for believing is connected with the sale of X films, and to answer questions; and
- (d) require the licensee or occupier to give the inspector such assistance as is reasonable to enable the inspector to exercise his or her powers under this section.

“(4) A person shall not, without reasonable excuse, fail to comply with a requirement made of the person under paragraph (3) (c) or (d).

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

Consent to entry and inspection

“54X. (1) Before seeking the consent of the licensee or occupier of premises for the purposes of paragraph 54W (1) (b), an inspector shall inform the occupier that he or she may refuse to give that consent.

“(2) If an inspector obtains the consent of the licensee or occupier of premises for the purposes of paragraph 54W (1) (b), the inspector shall ask the licensee or occupier to sign a written acknowledgment—

- (a) that the licensee or occupier has given the inspector consent, for the purposes of that paragraph, to enter the premises and to exercise the powers of an inspector under subsection 54W (3);
- (b) that the licensee or occupier has been informed that he or she may refuse to give that consent; and
- (c) specifying the day on which, and the time at which, that consent was given.

“(3) Where it is material, in any proceedings, for a court to be satisfied of the consent of an occupier for the purposes of paragraph 54W (1) (b) and an acknowledgment in accordance with subsection (2) is not produced in evidence, it shall be presumed that the occupier did not consent unless the contrary is established.

Return or retention of X films

“54Y. (1) In this section, a reference to seizure shall be taken to be a reference to seizure under section 54W.

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“(2) Where—

- (a) an X film is seized; and
- (b) a prosecution for an offence against this Act relating to the X film is not instituted within 60 days of the seizure;

the Registrar shall, on the expiration of that period, take reasonable steps to return the X film to the person from whom it was seized.

“(3) Where—

- (a) an X film is seized; and
- (b) the X film would, but for this subsection, be returned to the licensee pursuant to subsection (2);

then, if the owner is charged with an offence against a law in force in the Territory which would, if proved, entitle the Registrar to cancel the person’s licence the Registrar shall retain possession of the X film pending the hearing of the charge.”.

Commencement of prosecution for an offence

8. Section 64 of the Principal Act is amended by adding at the end the following subsection:

“(2) Paragraph (1) (a) does not apply to a prosecution—

- (a) under subsection 6 (1), section 15 or subsection 19 (1) in relation to an unclassified film; or
- (b) under subsection 33 (1) or 40 (1) in relation to an unclassified computer game.”.

Insertion

9. After section 64 of the Principal Act the following section is inserted:

Forfeiture of certain publications etc.

“64A. Where a person is convicted of an offence in relation to a publication, film or computer game that is classified RC, the court may order that the publication, film or computer game is forfeited to the Territory.”.

PART III—AMENDMENT OR REPEAL OF OTHER ACTS

Amendments of *Taxation (Administration) Act 1987*

10. The *Taxation (Administration) Act 1987* is amended as set out in the Schedule.

Repeal

11. The *Business Franchise (“X” Videos) Act 1990* is repealed.

PART IV—SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation

12. In this Part—

“commencement date” means the date on which section 10 of this Act commences;

“Commissioner” means the Commissioner for Australian Capital Territory Revenue;

“former Act” means the *Business Franchise (“X” Videos) Act 1990*.

Licences

13. (1) A licence granted under section 5 of the former Act and in force immediately before the commencement day continues in force after that day for the remainder of the period for which the licence would, but for this Act, have remained in force.

(2) A continued licence shall be taken to have been granted under section 54E of the Principal Act as amended by this Act.

(3) Subsection 20 (2) of the Principal Act as amended by this Act does not apply in relation to the licensee under a continued licence in so far as it creates an offence relating to copying an X film.

(4) For the purposes of section 54H of the Principal Act as amended by this Act, if the application for renewal of a continued licence is accompanied by the determined fee appropriate for the renewal of a licence granted under section 54E of the Principal Act as so amended to sell and copy X films (a “combined licence”), the continued licence shall be taken to be a combined licence.

(5) In this section—

“continued licence” means a licence continued in force under subsection (1).

Pending applications under former Act

14. (1) An application made under section 5 of the former Act that was not finally determined before the commencement date shall be taken to have been made by the applicant under section 54C of the Principal Act as amended by this Act.

(2) The Registrar shall not grant a licence in respect of an application referred to in subsection (1) unless the applicant pays to the Registrar the difference (if any) between the fee determined for the purposes of section 54C of the Principal Act as amended by this Act and the initial fee (within the meaning of the former Act).

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(3) An application made under section 9 of the former Act that was not finally determined before the commencement date shall be taken to have been made by the applicant under section 54H of the Principal Act as amended by this Act.

(4) The Registrar shall not renew a licence in respect of an application referred to in subsection (3) unless the applicant pays to the Registrar the difference (if any) between the fee determined for the purposes of section 54H of the Principal Act as amended by this Act and the basic fee (within the meaning of the former Act).

Variation of conditions

15. A notice under section 7 of the former Act and in force immediately before the commencement date shall, on that commencement, be taken to have been given by the Registrar under section 54K of the Principal Act.

Change of licensed premises

16. Where, before the commencement date, a licensee submitted a licence to the Commissioner under section 8 of the former Act and, immediately before that date, the Commissioner—

- (a) had not amended the licence; or
- (b) had amended the licence but had not returned the licence to the licensee;

the Registrar shall, within 7 days after that date, amend and return the licence or return the licence (as the case requires) to the licensee.

Notices to show cause

17. Where the time specified in a notice under subsection 10 (3) of the former Act expires after the commencement date, the notice shall, on that commencement, be taken to have been revoked.

Surrender and expiration

18. A licensee shall be taken to have contravened section 11 or 12 of the former Act if, within the period specified in that section, the licensee fails to surrender or return the licence (as the case requires) to the Registrar.

Matters appellable to Administrative Appeals Tribunal pending on commencement date

19. (1) Where, under the former Act, a person was entitled to appeal to the Administrative Appeals Tribunal against a decision of the Commissioner and, immediately before the commencement date, had not done so, an appeal against that decision may be made to the Tribunal as if the decision were a decision of the Registrar.

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(2) Where, before the commencement date, a person had appealed to the Administrative Appeals Tribunal against a decision of the Commissioner under the former Act and, immediately before that commencement, the appeal had not been finally determined, the appeal against that decision shall be determined as if the decision were a decision of the Registrar.

(3) Where a person—

- (a) was, immediately before the commencement date, entitled to appeal to the Administrative Appeals Tribunal against a decision of the Commissioner under the former Act refusing to renew a licence and, immediately before that commencement, had not done so; or
- (b) had appealed to the Administrative Appeals Tribunal under the former Act in relation to that refusal and, immediately before that commencement, the appeal had not been finally determined;

the person may, within 7 days after that date, apply to the Registrar under section 54H of this Act for renewal of the licence.

(4) A licence referred to in subsection (3) shall be taken to continue in force, subject to this Act, for a period of 7 days commencing on the commencement date.

(5) Where a person—

- (a) was, immediately before the commencement date, entitled under section 91 of the *Taxation (Administration) Act 1987* to appeal to the Administrative Appeals Tribunal against a decision of the Commissioner relating to “X” videos and, immediately before that commencement, had not done so; or
- (b) had appealed to the Administrative Appeals Tribunal under that section in relation to that matter and, immediately before that commencement, the appeal had not been finally determined;

the appeal shall be made or determined under the *Taxation (Administration) Act 1987* as if this Act had not been enacted.

SCHEDULE

Section 10

AMENDMENTS OF TAXATION (ADMINISTRATION) ACT 1987

Section 3—

Omit paragraph (f).

Section 4—

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- (a) Add at the end of paragraph (a) of the definition of “licence fee” in subsection (1) “or”.
- (b) Omit paragraph (b) of the definition of “licence fee” in subsection (1).

Section 12—

- (a) Add at the end of paragraph (1) (aa) “and”.
- (b) Omit from paragraph (1) (b) “and”.
- (c) Omit paragraph (1) (c).
- (d) Omit paragraphs (2) (ea) and (eb).
- (e) Omit from paragraph (2) (f) “or the *Business Franchise (“X” Videos) Act 1990*”.
- (f) by omitting subsection (4).

Section 12A—

- (a) Omit from subsection (1) “, tobacco or a video” and substituting “or tobacco”.
- (b) Omit from the definition of “seized item” in subsection (4) “, tobacco or a video” and substituting “or tobacco”.

NOTES

Principal Act

1. Act No 47, 1995. See also No. 46, 1996.

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 26 September 1996]

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