



AUSTRALIAN CAPITAL TERRITORY

# **Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 1997**

**No. 108 of 1997**

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

*[Notified in ACT Gazette S420: 24 December 1997]*

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

### **Short title**

1. This Act may be cited as the *Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 1997*.

### **Commencement**

2. This Act commences on the day on which it is notified in the *Gazette*.

### **Principal Act**

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

**Possession or copying of film**

4. Section 24 of the Principal Act is amended by omitting subsection (3).

**Notice of decisions**

5. Section 54R of the Principal Act is amended—

(a) by omitting subsection (1) and substituting the following subsections:

“(1) This section applies to the following decisions of the Registrar:

- (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;
- (d) under subsection 54N (1) to cancel a licence;
- (e) under subsection 54Y (3) to refuse to approve the extension of the defined period in relation to a seized film;
- (f) under subsection 54Y (3) to approve the extension of the defined period in relation to a seized film for a period less than that applied for by the person from whom the film was seized;
- (g) under subsection 54ZB (1) to destroy a seized film.

“(1A) Where the Registrar makes a decision to which this section applies, he or she shall cause notice in writing of the decision to be given to—

- (a) in the case of a decision referred to in paragraph (1) (a) to (f) (inclusive)—the applicant or licensee, as the case requires; or
  - (b) in the case of a decision referred to in paragraph (1) (g)—the person from whom the film was seized.”; and
- (b) by omitting from subsection (2) “(1)” (first occurring) and substituting “(1A)”.

## **Substitution**

6. Section 54Y of the Principal Act is repealed and the following Division substituted:

### ***“Division 5—Seized films***

## **Interpretation**

“54Y. (1) In this Division—

‘defined offence’, in relation to a seized film, means an offence in relation to that film against—

- (a) this Act;
- (b) section 92NB of the *Crimes Act 1900*;
- (c) the *Publications Control Act 1989*; or
- (d) the *Business Franchise (‘X’ Videos) Act 1990*;

‘defined period’, in relation to a seized film, means—

- (a) 120 days after the seizure of the film; or
- (b) such extended, or further extended, period as is approved under subsection (3);

‘seized film’ means a film seized under section 54W.

“(2) For the purposes of this Division, proceedings in relation to a defined offence shall not be taken to be determined until—

- (a) the expiration of any period for lodging an appeal in relation to the proceedings; or
- (b) if any appeal has been lodged in relation to the proceedings—the appeal has been determined, and any period for lodging a further appeal has expired.

“(3) For the purposes of this Division, the Registrar may by instrument approve the extension, or further extension, of the defined period in relation to a seized film for such period as he or she considers on reasonable grounds to be necessary or desirable for the purposes of—

- (a) allowing the person from whom the film was seized to satisfy the Registrar on reasonable grounds that the film is classified X, R, MA, M, PG or G; or
- (b) the administration of this Act.

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“(4) The Registrar may by instrument approve the extension of a defined period under subsection (3)—

- (a) on the written application of the person from whom the relevant film was seized, being an application made before that period would otherwise have expired; or
- (b) at any time—on the Registrar’s own motion.

“(5) The Registrar shall give a copy of an instrument of extension under paragraph (4) (b) in relation to a seized film to the person from whom the film was seized.

**Notice**

“54Z. (1) This section applies to a seized film if the Registrar is not satisfied on reasonable grounds that the film is classified X, R, MA, M, PG or G.

“(2) Where this section applies to a seized film, the Registrar shall give a written notice to the person from whom the film was seized inviting the person to satisfy the Registrar on reasonable grounds within the defined period that the film is classified X, R, MA, M, PG or G.

“(3) A notice under subsection (2) shall include a statement to the effect that—

- (a) the seized film may be destroyed unless the person satisfies the Registrar on reasonable grounds that the film is classified X, R, MA, M, PG or G; and
- (b) the person from whom the film was seized may apply to the Registrar under subsection 54Y (4) for the extension, or further extension, of the defined period.

**Return of seized films**

“54ZA. The Registrar shall take reasonable steps to return a seized film to the person from whom it was seized where—

- (a) the Registrar is satisfied on reasonable grounds that the film is classified X, R, MA, M, PG or G;
- (b) either—
  - (i) proceedings in relation to a defined offence have not been instituted at the expiration of the defined period after the date of seizure; or

- (ii) if such proceedings have been instituted within that period—the proceedings have been determined (whether before or after the expiration of that period) and no offence has been found proved in relation to the film; and
- (c) if the person is a licensee—
  - (i) an invitation under subsection 54N (3) on the ground referred to in paragraph 54N (1) (c) in relation to the film has not been issued to the person at the expiration of the defined period after the date of seizure; or
  - (ii) if such an invitation has been issued within that period—the Registrar has made a decision (whether before or after the expiration of that period) not to cancel the licence on that ground.

#### **Destruction of seized films**

“54ZB. (1) The Registrar shall destroy a seized film where, following the issue of a notice under subsection 54Z (2)—

- (a) the person from whom the film was seized does not satisfy the Registrar on reasonable grounds, pursuant to the invitation in the notice, that the film is classified X, R, MA, M, PG or G; and
- (b) either—
  - (i) proceedings in relation to a defined offence have not been instituted at the expiration of the defined period after the date of seizure; or
  - (ii) if such proceedings have been instituted within that period—the proceedings have been determined (whether before or after the expiration of that period) and no offence has been found proved in relation to the film.

“(2) The Registrar shall destroy a seized film where—

- (a) the person from whom the film was seized is a licensee; and
- (b) the licence is cancelled on the ground referred to in paragraph 54N (1) (c) in relation to the film.

“(3) The Registrar shall destroy a seized film where a defined offence in relation to the film is proved.

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“(4) Despite subsections (1), (2) and (3), the Registrar may retain a seized film for the purposes of the administration of this Act for such period as he or she considers on reasonable grounds to be necessary or desirable for those purposes.”.

**Forfeiture of certain publications, films and computer games**

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

“(2) This section does not apply to a film seized under section 54W.”.

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**NOTE**

**Principal Act**

1. Act No. 47, 1995. See also Acts Nos. 46 and 77, 1996.

*[Presentation speech made in Assembly on 4 December 1997]*

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