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THE LEGISLATIVE ASSEMBLY
OF THE
AUSTRALIAN CAPITAL TERRITORY

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES)
(ENFORCEMENT) (AMENDMENT) BILL 1997

EXPLANATORY MEMORANDUM

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CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (ENFORCEMENT) (AMENDMENT) BILL 1997

Outline

This is an amending Bill. It amends the Classification (Publications, Films and Computer Games) (Enforcement) Act 1995, referred to in the Bill as the Principal Act. The Principal Act provides for the enforcement of a scheme of classification of publications, films and computer games and has specific provisions for a scheme of regulation for the sale and copying of films classified as X rated. The amendments in the Bill are principally directed towards the regulation of the X Film industry.

The Bill amends the Principal Act by introducing provisions for the return, forfeit and disposal of films seized under the Act. The Bill also amends a provision in the Act that may frustrate the very purpose of the scheme.

Formal Clauses

Clauses 1, 2 and 3 are formal clauses. They refer to the short title of the Bill, commencement and definition of the Principal Act. Clause 2 states that the Act will commence on the day on which it is notified in the Gazette.

Clause 4: Repeal

This clause amends the Principal Act by repealing subsection 24(3) which provides a defence to a prosecution for the offence of possessing a film classified RC or an unclassified film with the intention of selling or exhibiting the film or copying the film, if the film has been classified X, R, MA, M, PG or G after the alleged offence.

The subsection is repealed because it is an impediment to the successful operation of the classification scheme because persons selling and copying unclassified films are effectively not required to have a film classified unless, or until, they are prosecuted for its exhibition, an intention to sell the film, the sale of the film or copying of the film.

Clause 5: Substitution

This clause amends the Principal Act by omitting subsection (1) of section 54R and substituting a new subsection (1).

The proposed subsection 54R (1) extends the application of the provisions related to the notification of decisions to include decisions taken by the Registrar pursuant to the provisions contained in the proposed section 54Y (3) which deal with applications for an extension of time to satisfy the Registrar that a film is classified X, R, MA, M, PG or G. The notification requirement also applies to circumstances where the Registrar decides to destroy a film pursuant to proposed subsection 54ZB (1).

The proposed subsection 54R (1A) specifies which persons are required to be notified in relation to a decision referred to in the proposed subsection (1)

Proposed subclause (b) omits the reference in subsection 54R (2) to subsection (1) and substitutes reference to the notification provision contained in proposed subsection 54R (1A)

Clause 6: Substitution

This clause amends the Principal Act by repealing section 54Y and substituting Division 5 - Seized films Division 5 - Seized films, contains new sections 54Y, 54Z, 54ZA and 54ZB

Interpretation

New section 54Y provides interpretation for relevant terms contained in Division 5 and contains the Registrar's powers to extend the period in which information about the classification of a seized film can be provided.

Subsection 54Y(1) specifies that the 'defined period' in relation to the provision of information to the Registrar that the seized film is classified X, R, MA, M, PG or G is 120 days after the seizure of the film or such further period as approved by the Registrar.

'defined offence' - in relation to a seized film means an offence in relation to that film against this Act, section 92Nb of the Crimes Act 1900, the Publications Control Act 1989 or the Business Franchise ('X' Videos) Act 1990. Section 92Nb of the Crimes Act relates to "child pornography", and the Publications Control Act 1989 and the Business Franchise ('X' Videos) Act 1990 were the Acts that preceded the Principal Act in the regulation of classified material.

'seized film' - means a film seized under section 54W. Section 54W permits inspectors under the Act to seize a film which the inspector believes to be associated with an offence against the Act.

Subsection 54Y(2) provides interpretation of when proceedings in relation to a defined offence are determined for the purposes of the Division. This ensures that, if proceedings are taken for alleged offences in relation to seized films, all appeal periods must have expired before the Registrar can take action to destroy a seized film.

Subsection 54Y(3) provides that the Registrar may approve an extension to the defined period of 120 days for the provision of information that a film is classified X, R, MA, M, PG or G.

Subsection 54Y(4) provides that the Registrar may approve the extension of the "defined period" - on the written application of the person from whom the film was seized before the period of 120 days expires, or any extended period; or on the Registrar's own motion. It also permits the Registrar to approve an extension of the time, either before or after the initial period of 120 days expires.

As the classification of a film is undertaken by the Office of Film and Literature Classification and its classification is dependent upon factors outside the control of either the person from whom it was seized, or the Registrar, it would be inappropriate to require the destruction of a seized film if through no fault of the person from whom the film was seized, or the Registrar, the film could not be classified within the defined period of 120 days.

Subsection 54Y(5) provides that the Registrar shall inform a person from whom a film was seized of any extension of the defined period.

Notice

Proposed section 54Z requires the Registrar to give a notice to a person from whom a film is seized.

Subsection 54Z(1) specifies that the giving of a notice applies to a film which the Registrar is not satisfied is classified X, R, MA, M, PG or G.

Subsection 54Z(2) requires the Registrar, where he or she is not satisfied that the seized film is classified X, R, MA, M, PG or G, to give written notice to a person from whom a film is seized inviting the person to provide proof within the defined period of 120 days, or the extended period, if one has been approved, that the film is classified X, R, MA, M, PG or G.

Subsection 54Z(3) requires that a notice under subsection 54Z(2) shall include a statement that a seized film may be destroyed unless proof is provided that the film is classified X, R, MA, M, PG or G and the person from whom the film was seized may apply for an extension of the defined period of 120 days before the period expires.

Return of seized films

Proposed section 54ZA provides for the return of seized films by the Registrar.

The Registrar shall take reasonable steps to return a seized film to the person from whom it was seized where the Registrar is satisfied on reasonable grounds that the film is classified X, R, MA, M, PG or G and no offence has been proven in relation to the film and, if the person is a licensee, the licence is not cancelled for an offence related to the film.

After receiving notice as required by proposed section 54Z, the onus will be on the person from whom a film is seized to satisfy the Registrar that the film is classified X, R, MA, M, PG or G. The Registrar will also need to be satisfied that no offence or disciplinary action has been proven in relation to the seized film before reasonable steps must be taken to return the film. This will ensure that only classified films are returned to persons from whom they are seized.

Destruction of seized films

Proposed section 54ZB provides for the destruction of seized films by the Registrar.

Subsection 54ZB(1) provides that the Registrar shall destroy a seized film where the person from whom the film was seized has received a notice inviting them to satisfy the Registrar that the film is classified X, R, MA, M, PG or G and they either fail to respond to the invitation or the Registrar is still not satisfied that the film is classified X, R, MA, M, PG or G and no offence is proven in relation to the film

The proposed subsection permits the Registrar to destroy a seized film if not satisfied that it is classified X, R, MA, M, PG or G even though no offence is proven in relation to the seized film. This, however, ensures that only classified films are returned to persons from whom they are seized. The basis of the scheme contained in the Act is that a person must be able to demonstrate that a film that he or she copies or sells is classified X, R, MA, M, PG or G. The return of a film which the Registrar is not satisfied is classified X, R, MA, M, PG or G would seriously undermine this essential element of the scheme. There are also circumstances where a prosecution may fail for reasons other than whether the film is classified.

Subsection 54ZB(2) provides that the Registrar shall destroy a seized film where the person from whom it was seized holds an X Film licence and the licence is cancelled on grounds related to the film.

Subsection 54ZB(3) provides that the Registrar shall destroy a seized film where a defined offence in relation to the film is proven. This will require the destruction of any film seized which is proven to be associated with a defined offence irrespective of whether it is classified or unclassified.

Subsection 54ZB(4) provides that despite proposed subsections (1), (2) and (3) relating to the destruction of seized films, the Registrar may retain a seized film for the purpose of the administration of the Act. This will allow the Registrar to retain a seized film which he or she is not satisfied is classified X, R, MA, M, PG or G or that has been associated with a proven offence against the Act or the cancellation of an X Film licence, if the Registrar believes the retention of the film will assist in the administration of the Act because its retention might prove beneficial in future investigations or it might otherwise assist in educating licensees about their obligations under the Act.

Clause 7

Forfeiture of certain publications, films and computer games

This clause amends section 64A of the Act by adding proposed subsection (2) which specifies that subsection 64A (1) does not apply to a film seized under section 54W. This means that a film seized under section 54W and dealt with by the proposed provisions in clauses 5 and 6 of this Bill will not be the subject of a court order in relation to the forfeiture of the film to the Territory.