

NORTHERN TERRITORY OF AUSTRALIA

CLASSIFICATION OF PUBLICATIONS AND
FILMS AMENDMENT BILL 1992

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Classification of Publications
and Films Act*

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Classification of Publications and Films Amendment Act 1992*.

2. PRINCIPAL ACT

The *Classification of Publications and Films Act* is in this Act referred to as the Principal Act.

3. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

4. CLASSIFICATION OF FILM TO BE SHOWN BEFORE SCREENING

Section 38B(3) of the Principal Act is amended by omitting "agreement" and substituting "arrangement".

5. NEW PARTS

The Principal Act is amended by inserting, after section 56, the following:

"PART IVA - PRODUCTION OR COPYING
OF FILMS CLASSIFIED 'X', &c.

"Division 1 - Registration

56A. INTERPRETATION

"(1) For the purposes of this Division -

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"near relative', in relation to a person, means a parent or the spouse or another relative of that person, where -

- (a) the reference to the spouse of a person includes a reference to a person who is not legally married to the first-mentioned person but who lives with that person on a bona fide domestic basis; and
- (b) the reference to "another relative" is a reference to a person connected by blood relationship, marriage, adoption or custom, and for this purpose persons are connected -
 - (i) by blood relationship if within the fourth degree of relationship;
 - (ii) by marriage if one is married to the other or to a person who is connected by blood relationship to the other;
 - (iii) by adoption if one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other; and
 - (iv) by custom if the relationship is generally regarded in a community as being akin to one of blood, marriage or adoption;

"produce' means to provide creative, technical or theatrical services including scripting, directing, filming and performing whether or not for a fee, reward or other consideration.

"56B. OFFENCE RELATING TO PRODUCTION OF FILM CLASSIFIED 'X', &c.

"(1) A person shall not participate in the production of a film that is, or is likely to be, classified 'X' or refused classification.

Penalty: \$20,000.

"(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves on the balance of probabilities that the defendant believes and always believed that the film, the result of the production -

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- (a) is classified, or is intended (and always was intended) to be presented for classification and that it is classified, or is expected to be classified, other than an as 'X' film and is not expected to be refused classification; or
- (b) is not intended, and was never intended, to be published or made available for publication.

"(3) A court may, on the conviction of a defendant for an offence against this section or the Regulations, in addition to imposing a penalty cancel or suspend the defendant's registration under section 56E.

"56C. COPYING OF 'X' FILMS, &c.

"(1) A person, other than a natural person registered under this section, shall not copy or cause to be copied in the Territory, for the purposes of publication, a film that is classified "X", has been refused classification or that is not classified.

Penalty: \$20,000.

"(2) The Regulations may prescribe limitations on the copying of a film referred to in subsection (1) either generally or in respect of specific films or specific classes of film, but the limitations shall not be expressed to commence before the expiration of 28 days after they are made.

RBT "(3) A person registered under this Division shall not, in any period of 12 months, make more than 100 copies of any one film.

Penalty: \$20,000.

"(4) A court may, on the conviction of a defendant for an offence against this section or the Regulations, in addition to imposing a penalty, cancel or suspend the defendant's registration under section 56E.

"56D. APPLICATION FOR REGISTRATION

"(1) A person may apply to the Registrar-General for registration for the purposes of section 56C.

"(2) An application shall be in writing in an approved form accompanied by -

- (a) the basic fee;
- (b) an amount equal, in the estimation of the applicant on reasonable grounds, to the advance fee; and

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- (c) details of the information relied on by the applicant in estimating the advance fee.

"56E. GRANT OF REGISTRATION

"(1) The Registrar-General may grant to an applicant registration for the purpose applied for under section 56D on such conditions as he or she thinks fit, if the Registrar-General is satisfied on reasonable grounds in the circumstances that the applicant is a fit and proper person to be registered.

"(2) The circumstances referred to in subsection (1) include -

- (a) whether the applicant is an undischarged bankrupt;
- (b) whether the applicant has contravened a provision of this Act or the *Business Franchise ("X" Videos) Act 1990* of the Australian Capital Territory; and
- (c) whether the applicant has been convicted of an offence punishable on conviction by a fine of not less than \$10,000 or by imprisonment for a period of not less than 12 months.

"(3) The Registrar-General shall not register a person who is a near relative of an already registered person, and if a near relative obtains registration, whether inadvertently or otherwise, the Registrar-General shall cancel the registration.

"(4) Where 2 or more persons, who are near relatives, apply for registration at the same time, the Registrar-General shall register only one of them and that one, in the absence of agreement among the applicants, shall be determined by the drawing of lots.

"(5) If the Registrar-General refuses to register an applicant, he or she shall refund to the applicant an amount equal to the amount accompanying the application.

"56F. REGISTER

"(1) The Registrar-General shall, on the grant of registration under section 56E to a person, maintain a register of persons who may copy or cause to be copied, a film referred to in section 56C.

"(2) Particulars in the register shall include the name and address of the applicant and the conditions, if any, to which the registration is subject.

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"(3) The Registrar-General may keep the register in the form or such combination of forms, and in such medium or combination of medium, including electronic means, as the Registrar-General thinks fit.

"56G. REGISTRATION

"(1) Registration remains in force until the expiration of the last day of the month in which it was granted and it may be renewed in accordance with section 56H.

"(2) The Registrar-General may vary the conditions to which registration is subject with effect from a date specified in a notice of variation being not less than 28 days after the date of the notice.

"56H. APPLICATION FOR RENEWAL

"(1) A person may, not later than 7 days before the expiration of the term of the registration, apply for renewal of registration.

"(2) An application under subsection (1) shall be accompanied by -

- (a) the basic fee; and
- (b) the relevant fee being -
 - (i) for the first application for renewal of registration - an amount equal, in the estimation of the applicant on reasonable grounds, to the advance fee; or
 - (ii) for a subsequent application for renewal of registration - the franchise fee; and
- (c) the information relied on by the applicant in -
 - (i) estimating the advance fee; or
 - (ii) calculating the franchise fee.

"(3) Notwithstanding that an application for renewal was not made in accordance with subsection (1) or (2), the Registrar-General may renew a registration.

"(4) If the Registrar-General refuses to grant registration, he or she shall refund to the applicant an amount equal to the amount accompanying the application.

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"56J. CANCELLATION

"(1) The Registrar-General may cancel a person's registration if satisfied on reasonable grounds that -

- (a) the registration was granted in error or in consequence of a false statement made, or misleading information furnished, by the applicant; or
- (b) the registered person -
 - (i) has contravened or failed to comply with a condition to which the registration is subject;
 - (ii) has contravened or failed to comply with this Act or the *Business Franchise ("X" Videos) Act 1990* of the Australian Capital Territory;
 - (iii) has been convicted of an offence -
 - (A) against this Act; or
 - (B) punishable on conviction by a fine of not less than \$10,000 or by imprisonment for a period of not less than 12 months;
 - (iv) is an undischarged bankrupt; or
 - (v) is not a fit and proper person to be registered.

"(2) The Registrar-General shall, before cancelling a registration, by notice in writing to the registered person, invite the person to show cause why the registration should not be cancelled.

"(3) A notice shall contain -

- (a) particulars of the facts and circumstances relied on by the Registrar-General to establish that a ground for cancellation exists; and
- (b) a statement to the effect that the registered person may, within the period specified in the notice, being not earlier than 14 days after the day the notice is given, give to the Registrar-General written particulars of the facts and circumstances relied on to show that the registration should not be cancelled.

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"(4) If a registered person does not, within the time specified in the notice, in the opinion of the Registrar-General based on reasonable grounds, show cause why the registration should not be cancelled, the Registrar-General shall cancel the registration.

"(5) Cancellation of registration takes effect on the expiration of the day on which notice of the cancellation is given to the registered person under subsection (2).

"56K. NOTICE OF CEASING TO OPERATE, &c.

"(1) Within 7 days after ceasing to operate in accordance with the purpose for which the registration was granted, the registered person shall give written notice of that fact to the Registrar-General.

Penalty: \$2,000.

"(2) On receiving the notice referred to in subsection (1), the Registrar-General shall amend the register accordingly.

"56L. RECORDS

"A registered person shall keep such records as are prescribed.

Penalty: \$500.

"56M. INVOICES

"A registered person shall write or cause to be written on the invoice issued in relation to a video supplied in pursuance of the registration the words -

'SUPPLIED BY A REGISTERED PERSON',

so that they are clearly legible.

Penalty: \$500.

"56N. ENTRY FOR INSPECTION

"(1) For the purposes of this Part, a person authorised by the Registrar-General -

- (a) may, at all reasonable times, enter on land or on or into premises;
- (b) shall have full and free access at all reasonable times to all books, documents and other papers; and
- (c) may, for those purposes, take extracts from and make copies of books, documents or papers.

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"(2) A person referred to in subsection (1) who enters on land or on or into premises in pursuance of this section is not authorised to remain on the land or premises if, on request by the occupier of the land or premises, the person does not produce a certificate in writing signed by the Registrar-General certifying that the person is authorised to exercise the powers under this section.

"(3) A person shall not, without reasonable excuse, obstruct or hinder a person authorised under this section in the exercise of his or her powers under this Act.

Penalty: \$500.

"Division 2 - Registration Fees

"56P. INTERPRETATION

"In this Division, 'X' video' includes a video film which at the time of sale or supply was not classified, or which had been refused classification, under this Act, but which is later classified as an "X" video.

"56Q. BASIC FEE

"The basic fee for the grant or renewal of a registration is \$100.

"56R. ADVANCE FEE

"(1) The advance fee, in relation to the grant or the first renewal of a registration, is an amount equal to 50% of the total prescribed wholesale value of the "X" videos copied by the registered person in the month for which the registration is granted or renewed.

"(2) An advance fee is due and payable by the relevant registered person (or, where the relevant registration is no longer in force, by the former registered person) to the Territory at the expiration of the month in relation to which it is calculated.

"(3) For the purposes of this Act, an amount paid to the Territory under section 56D(2)(a) or section 56H(1)(c) is to be taken to be a payment on account of the relevant advance fee.

"56S. FRANCHISE FEE

"The franchise fee for the renewal of a registration is an amount equal to 50% of the total prescribed wholesale value of the "X" videos copied by the registered person in the month that is 2 months before the month for which the renewal is sought being videos offered for sale or supply by the person in the month that is 2 months before the month for which the renewal is sought.

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"PART IVB - CHILD PORNOGRAPHY

"56T. POSSESSION OF CHILD PORNOGRAPHY

"(1) A person shall not knowingly possess a film or photograph of a child who is, or apparently is, under the age of 16 years and who is engaged in sexual activity or is depicted in an indecent sexual manner.

Penalty: \$10,000 or imprisonment for 12 months.

"(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves, or on the basis of probability -

- (a) in the case of a film or of a photograph contained in a publication, that at the time of the alleged offence the film or publication was classified;
- (b) that the film or photograph possesses artistic merit or is for a genuine medical, legal, scientific or educational purpose;
- (c) that the possession was for the exercise of a power under this Act;
- (d) that the defendant believed on reasonable grounds that the child had attained the age of 16 years or that he or she was married to the child; or
- (e) that at the time of the alleged offence the defendant was not more than 2 years older than the child was or appeared to be.

"(3) Notwithstanding subsection (2)(b), the defence of artistic merit cannot be relied on in a case where the prosecution proves that the child was actually under the age of 16 years.

"(4) In this section -

- (a) 'photograph' includes a photocopy or other reproduction of a photograph; and
- (b) 'classified', in relation to a film, means classified under this Act."

6. INTERPRETATION

Section 60A(2) of the Principal Act is amended by omitting "agreement" and substituting "arrangement".

