

FIRST PRINT

**FILM AND VIDEO TAPE CLASSIFICATION (AMENDMENT)  
BILL 1993**

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the Film and Video Tape Classification Act 1984 to introduce a new "MA" classification for films (including video tapes) that are unsuitable for viewing by a child under 15 years of age.

The new classification lies between "M" (not recommended for persons under 15) and "R" films (which it is illegal for persons under 18 to view) in the hierarchy of film classification.

The amendments:

- specify the grounds for the "MA" classification
- prohibit the public exhibition of "MA" films if a child under 15 years of age is present (unless the child is accompanied by his or her parent or guardian)
- prohibit the sale or hiring of an "MA" film to a child under 15 years of age unless the child's parent or guardian consents to the sale
- set out the defences available to persons who show "MA" films or sell or hire them
- include amendments of a consequential and transitional nature.

The Bill also amends the Act to remove the need for the censor to formally refuse classification in New South Wales for a film that has been classified "X" in the Australian Capital Territory. An "X" classification will now automatically operate as a refusal of classification in New South Wales.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 gives effect to the Schedule of amendments to the Film and Video Tape Classification Act 1984 (Schedule 1).

Schedule 1 contains the amendments described above.

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FIRST PRINT

**FILM AND VIDEO TAPE CLASSIFICATION (AMENDMENT)  
BILL 1993**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Film and Video Tape Classification Act 1984 No. 155

**SCHEDULE 1—AMENDMENTS**

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**FILM AND VIDEO TAPE CLASSIFICATION (AMENDMENT)  
BILL 1993**

NEW SOUTH WALES



No.           , 1993

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**A BILL FOR**

An Act to amend the Film and Video Tape Classification Act 1984 to provide for an "MA" classification for films that are not suitable for viewing by persons under the age of 15 years; and for other purposes.

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*Film and Video Tape Classification (Amendment) 1993*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Film and Video Tape Classification (Amendment) Act 1993.

**5 Commencement**

2. (1) This Act commences on a day to be appointed by proclamation, except as provided by subsection (2).

(2) Schedule 1 (15) and section 3 in its application to that item commence on the date of assent.

**10 Amendment of Film and Video Tape Classification Act 1984 No. 155**

3. The Film and Video Tape Classification Act 1984 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

15 (1) Section 9 (**Classification of films**):

(a) From section 9 (1) (b), omit "person" wherever occurring, insert instead "child".

(b) From section 9 (1) (c), omit "persons", insert instead "children".

20 (c) After section 9 (1) (c), insert:

(c1) as an "MA" film, where the censor is of the opinion that the film is unsuitable for viewing by a child under the age of 15 years; or

(2) Section 9A:

25 After section 9, insert:

**"X" classification in ACT operates as classification refused**

30 9A. While a film is classified as an "X" film under the Classification of Publications Ordinance 1983 of the Australian Capital Territory, it is taken to have been refused classification under this Act.



*Film and Video Tape Classification (Amendment) 1993*

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SCHEDULE 1—AMENDMENTS—*continued*

- (3) Section 19 (**Prohibition against exhibition of unclassified films**):

In section 19 (3) (a), after “ ‘M’ ”, insert “or ‘MA’ ”.

- (4) Section 19A (**Restrictions on showing advertisements with films**):

Omit section 19A (2), insert instead:

(2) The hierarchy of film classification is as follows:

- “G” is a lower classification than “PG”, “M”, “MA” or “R”;
- “PG” is a lower classification than “M”, “MA” or “R”;
- “M” is a lower classification than “MA” or “R”;
- “MA” is a lower classification than “R”.

- (5) Section 19B:

After section 19A, insert:

**Attendance of children under 15 at exhibition of “MA” films—offence by exhibitor**

19B. (1) A person must not exhibit, or cause to be exhibited, an “MA” film in a public place, if a child under the age of 15 years is present at the whole or any part of the exhibition of the film and is not accompanied by his or her parent or guardian.

Maximum penalty: 10 penalty units in the case of a corporation and 5 penalty units in any other case.

(2) An adult who is exercising parental control over a child under the age of 15 years is, while exercising that control, taken to be a parent of the child for the purposes of this section (even if not actually a parent of the child).

(3) A person is guilty of an offence under subsection (1) in respect of each child to whom subsection (1) applies who is present at the exhibition of the film.

*Film and Video Tape Classification (Amendment) 1993*

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SCHEDULE 1—AMENDMENTS—*continued*

(4) It is a defence to a prosecution for an offence under subsection (1) if the defendant proves:

- 5 (a) that the defendant took all such steps as were reasonable in the circumstances to avoid being guilty of the alleged offence; or
- 10 (b) that the defendant or the defendant's employee or agent had reasonable grounds for believing, and did in fact believe, that the child in respect of whom the alleged offence was committed had attained the age of 15 years at the date of the alleged offence; or
- 15 (c) that the child was accompanied at the exhibition of the film by a person and that there was no reason to suspect that the person was not a parent or guardian of the child.

(5) For the purposes of this section, a child does not cease to be accompanied by his or her parent or guardian during the exhibition of a film merely because the parent or guardian is temporarily absent during the exhibition.

- 20 (6) Section 20 (**Attendance of minors at exhibition of certain films—offence by exhibitor**):

From section 20 (1A), omit "or 'M' ", insert instead " , 'M' or 'MA' ".

- 25 (7) Section 22 (**Attendance of minors at exhibition of certain films—offence by other persons**):

From section 22 (1A), omit "or 'M' ", insert instead " , 'M' or 'MA' ".

- (8) Section 25 (**Advertisements for unclassified film prohibited**):

In section 25 (3) (a), after " 'M' ", insert "or 'MA' ".

- 30 (9) Section 29 (**Classified films containing advertisements for other films**):

Omit section 29 (2), insert instead:

- (2) The hierarchy of film classification is as follows:
- "G" is a lower classification than "PG", "M", "MA" or "R";
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*Film and Video Tape Classification (Amendment) 1993*

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SCHEDULE 1—AMENDMENTS—*continued*

- “PG” is a lower classification than “M”, “MA” or “R”;
- “M” is a lower classification than “MA” or “R”;
- “MA” is a lower classification than “R”.

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(10) Section 29A:

After section 29, insert:

**Sale of “MA” films to children under 15 prohibited without parental consent**

29A. (1) A person must not sell a film classified as an “MA” film to a child under the age of 15 years unless the child’s parent or guardian consents to the particular sale or the person who sells the film is the parent or guardian of the child.

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Maximum penalty: 10 penalty units in the case of a corporation and 5 penalty units in any other case.

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(2) An adult who is exercising parental control over a child under the age of 15 years is, while exercising that control, taken to be a parent of the child for the purposes of this section (even if not actually a parent of the child).

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(3) It is a defence to a prosecution for an offence under subsection (1) if the defendant proves that the defendant or the defendant’s employee or agent had reasonable grounds for believing, and did in fact believe:

(a) that the child in respect of whom the alleged offence was committed had attained the age of 15 years at the date of the alleged offence; or

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(b) that the child’s parent or guardian consented to the particular sale.

(11) Section 30 (**Sale of “R” films to minors prohibited**):

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From section 30 (1), omit “(other than a minor of whom the person is the parent or guardian)”, insert instead “, unless the person who sells the film is the parent or guardian of the minor”.

*Film and Video Tape Classification (Amendment) 1993*

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SCHEDULE 1—AMENDMENTS—*continued*

- (12) Section 32 (**Display and sale of unclassified films prohibited**):  
From section 32 (3) (a), omit “or ‘M’ ”, insert instead  
“, ‘M’ or ‘MA’ ”.
- 5 (13) Section 36 (**Copying of certain unclassified films prohibited**):  
From section 36 (3), omit “or ‘M’ ”, insert instead “, ‘M’  
or ‘MA’ ”.
- (14) Section 43 (**Evidence**):  
After section 43 (1) (d), insert:  
10 (d1) that a film has been classified as an “X” film under  
the Classification of Publications Ordinance 1983 of  
the Australian Capital Territory;
- (15) Schedule 1 (**Savings, Transitional and Other Provisions**):  
After clause 11, insert:  
15 *Film and Video Tape Classification (Amendment)*  
*Act 1993*  
**Films classified “MA” before amendment commences**  
12. (1) In this clause:  
20 “**the amending Act**” means the Film and Video Tape  
Classification (Amendment) Act 1993;  
“**the appointed day**” means the day appointed under  
section 2 (1) of the amending Act.  
25 (2) Anything done by the censor before the appointed day  
(including before the date of assent to the amending Act) for  
or with respect to the classification of a film as an “MA”  
film which could have been validly done under this Act had  
the amendments made by the amending Act been in force  
when it was done is taken to have been validly done under  
this Act.  
30 (3) Between the date of assent to the amending Act and the  
appointed day, while a film is classified as an “MA” film as  
a result of anything done by the censor as referred to in  
subclause (2), the film is regarded as having been classified  
as an “M” film.

*Film and Video Tape Classification (Amendment) 1993*

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SCHEDULE 1—AMENDMENTS—*continued*

**Films classified “X” before amendment commences**

13. Section 9A applies in respect of a film classified as an “X” film as referred to in that section even if that classification of the film commenced before the commencement of that section.

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FILM AND VIDEO TAPE CLASSIFICATION AMENDMENT BILL 1993

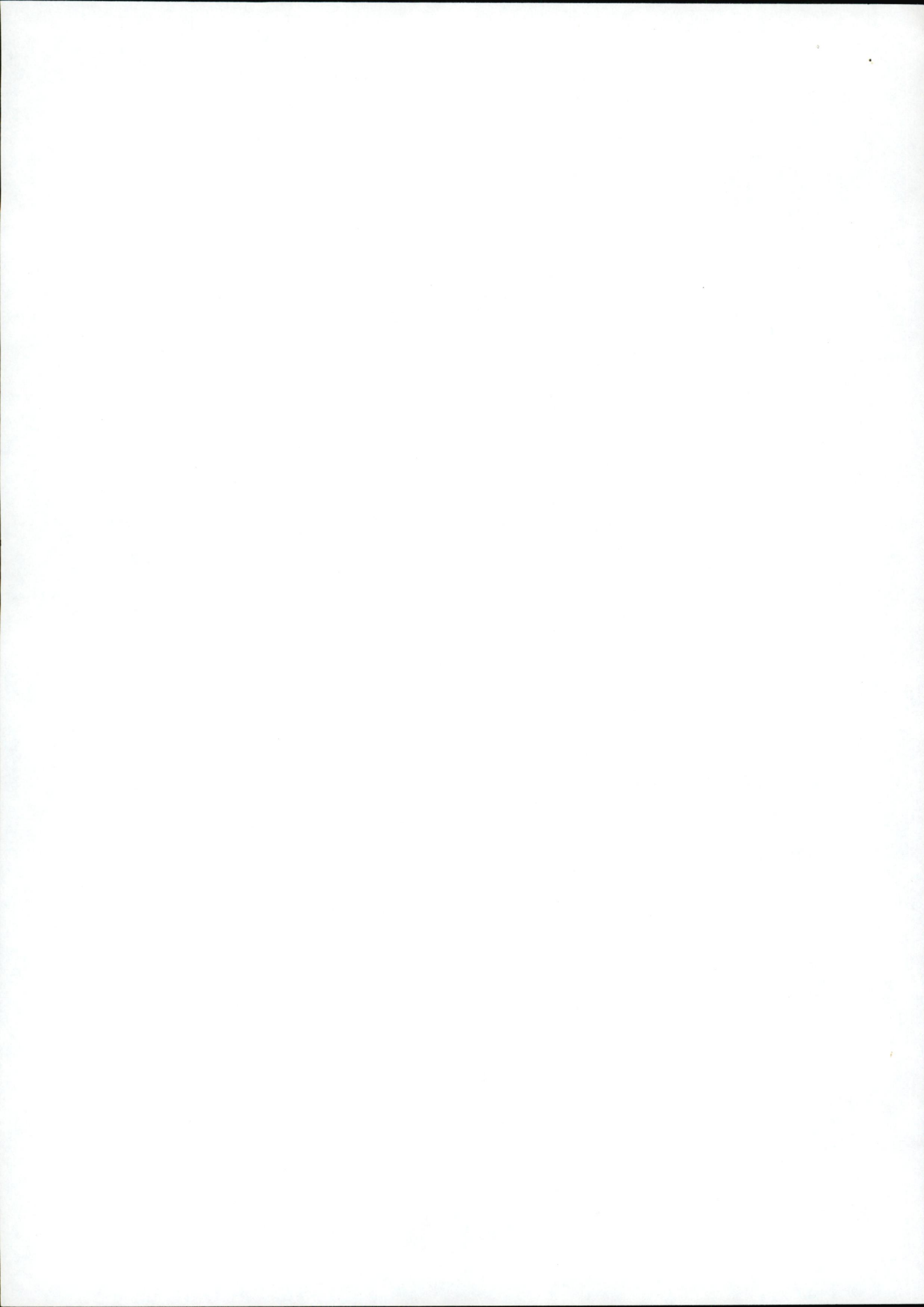
SPEECH

MR PRESIDENT,

THE FILM AND VIDEO TAPE CLASSIFICATION AMENDMENT BILL 1993 WILL PROVIDE FOR A NEW CLASSIFICATION FOR FILMS AND VIDEOS.

NEW SOUTH WALES ALONG WITH OTHER STATES AND TERRITORIES AGREED TO THE INTRODUCTION OF THE NEW "MA" RATING FOR FILMS AND VIDEOS FOLLOWING A PROPOSAL PUT FORWARD BY THE COMMONWEALTH AT THE COUNCIL OF AUSTRALIAN GOVERNMENTS MEETING IN DECEMBER LAST YEAR.



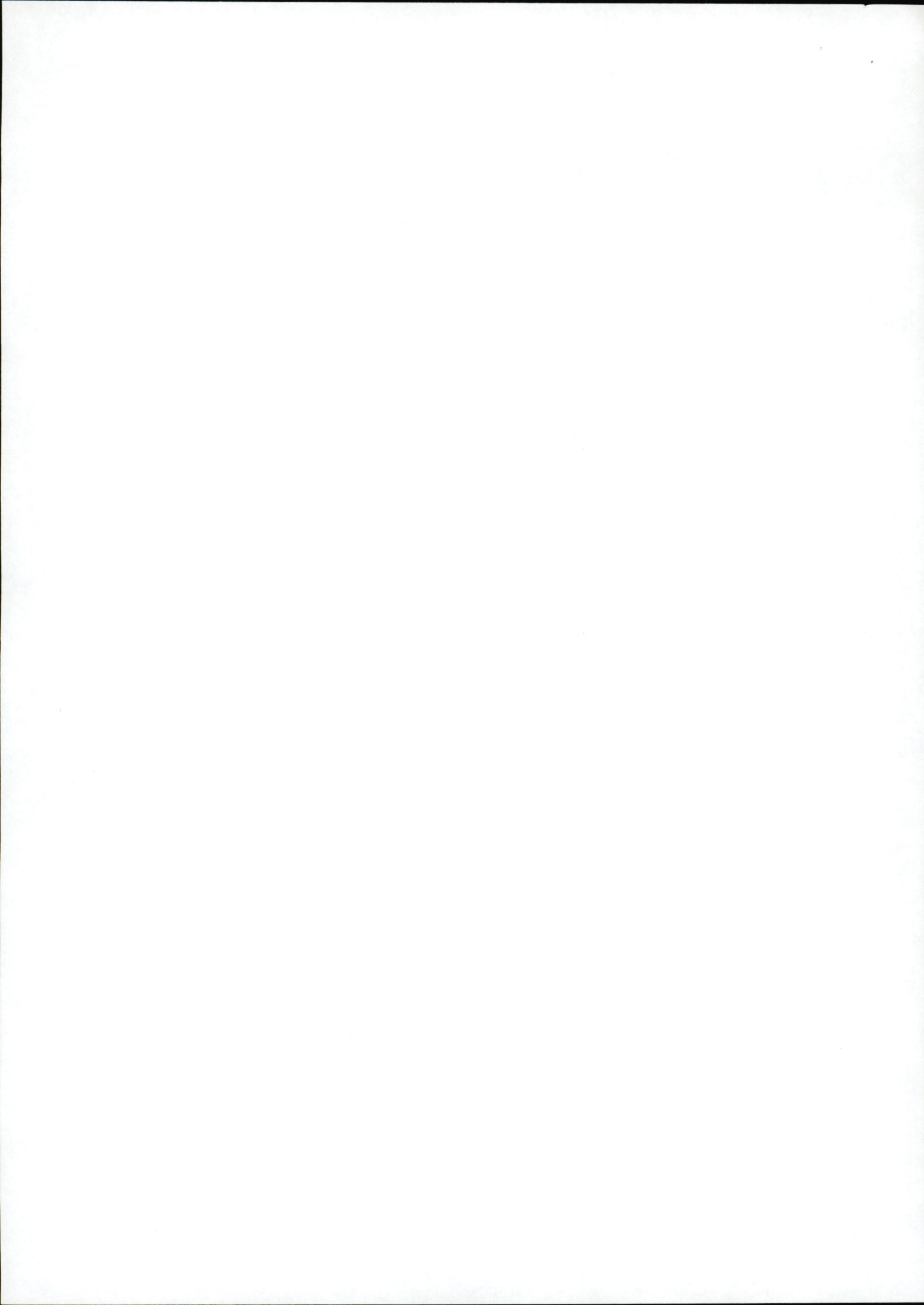


FILMS CONSIDERED TO BE UNSUITABLE FOR VIEWING BY PERSONS UNDER 15 YEARS WOULD FALL INTO THE NEW "MA" CLASSIFICATION AND COULD NOT BE:

- (I) SOLD, HIRED OR DELIVERED TO PERSONS UNDER 15 YEARS, OTHER THAN BY A PARENT OR GUARDIAN;  
OR
- (II) EXHIBITED TO PERSONS UNDER 15 YEARS UNLESS THEY ARE ACCOMPANIED BY THEIR PARENT OR GUARDIAN.

THE PROPOSED AMENDMENTS INCLUDE PENALTIES FOR THE SALE, EXHIBITION OR ADVERTISING OF "MA" FILMS AND VIDEOS OTHER THAN IN ACCORDANCE WITH EXISTING REQUIREMENTS UNDER THE ACT AND THE CONDITIONS APPLYING TO THE NEW CLASSIFICATION.

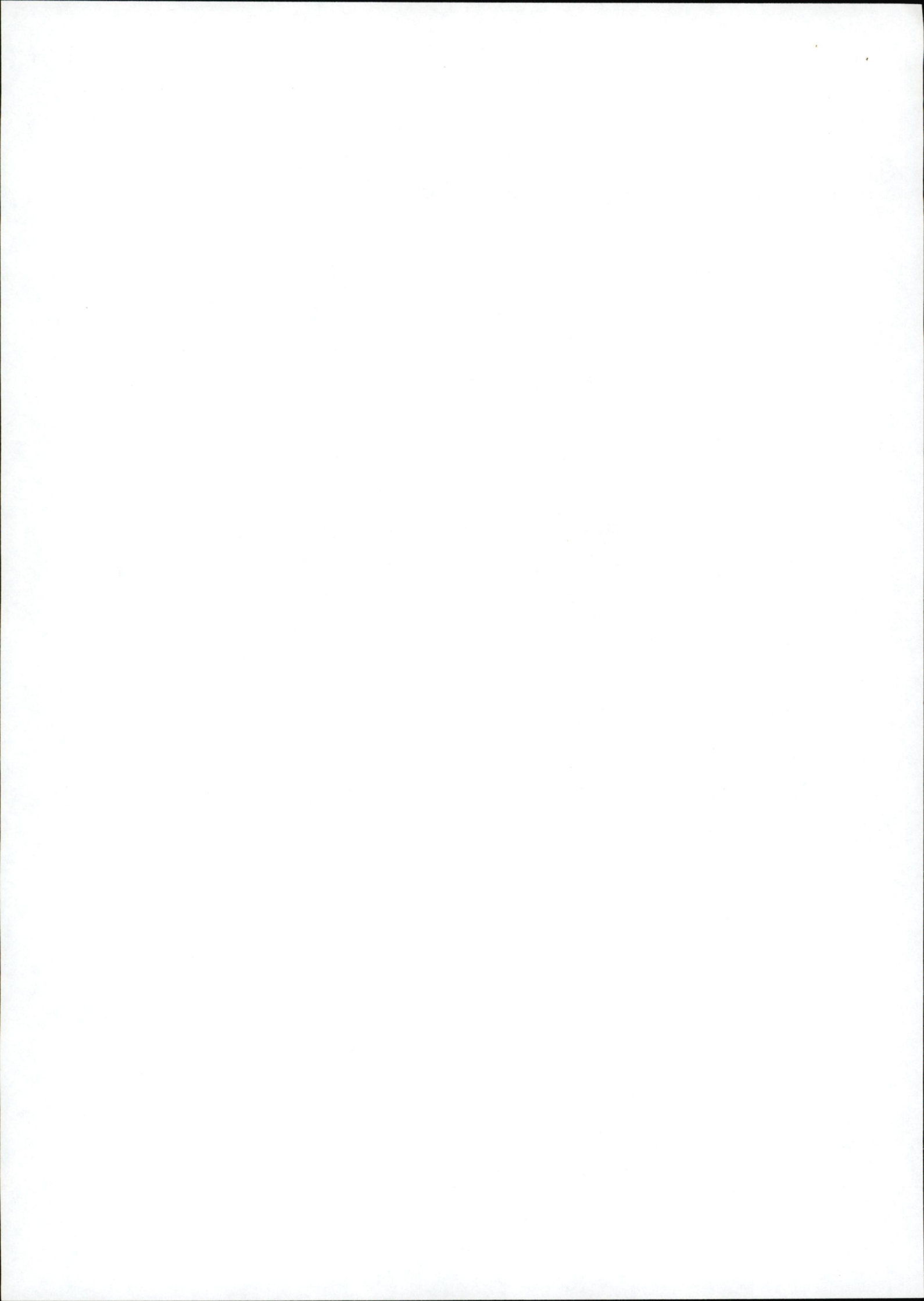
DEFENCES ARE AVAILABLE WHERE "MA" FILMS ARE SOLD OR EXHIBITED TO PERSONS UNDER 15 YEARS, BASED ON WHETHER REASONABLE STEPS HAVE BEEN TAKEN TO PREVENT THE SALE TO OR ADMISSION OF UNAUTHORISED PERSONS.



RESEARCH UNDERTAKEN ON BEHALF OF THE COMMONWEALTH OFFICE OF FILM AND LITERATURE CLASSIFICATION AND PUBLISHED IN SEPTEMBER 1992 REVEALED CONSIDERABLE PUBLIC CONCERN REGARDING THE WAY SOME MATERIAL IS CURRENTLY CLASSIFIED.

THE REPORT ENTITLED "EXPLORING ATTITUDES TOWARDS FILM, TV AND VIDEO CLASSIFICATIONS" INDICATED WIDESPREAD ENDORSEMENT FOR THE CLASSIFICATION SYSTEM. THE MAJORITY OF AUSTRALIANS USE THE CLASSIFICATIONS NOT ONLY TO SELECT SUITABLE VIEWING FOR CHILDREN, BUT ALSO FOR THEMSELVES.

DESPITE THE GENERAL SUPPORT FOR THE CLASSIFICATION SYSTEM, THE REPORT ALSO SHOWED THERE IS SOME CONFUSION REGARDING BOTH THE DIFFERENCE BETWEEN "M" AND "R" FILM AND VIDEO RATINGS, AND THE REASON FOR APPARENTLY SIMILAR FILMS RECEIVING ONE RATING AS OPPOSED TO THE OTHER (59% OF PERSONS INTERVIEWS AGREED IT IS OFTEN HARD TO TELL THE DIFFERENCE BETWEEN "M" AND "R" FILMS).

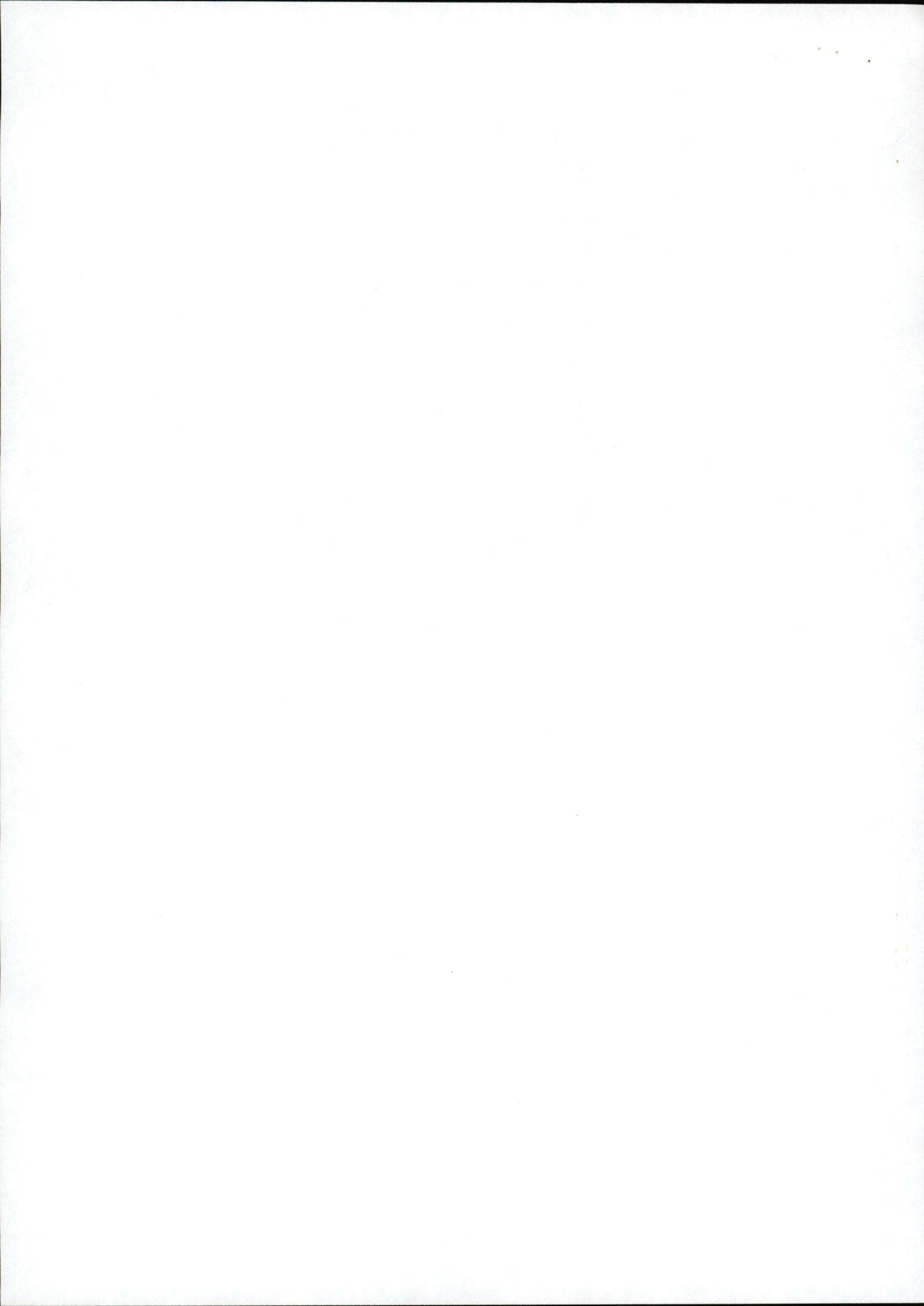




THE BROAD RANGE OF MATERIAL CURRENTLY QUALIFYING FOR AN "M" CLASSIFICATION ALSO CREATES A LACK OF DISCRIMINATION. I NOTE THAT THE "M" CLASSIFICATION HAS PREVIOUSLY INCLUDED SUCH FILMS AS "CAPE FEAR", "TOTAL RECALL" AND "TERMINATOR 2", WHICH CONTAIN HIGH LEVELS OF VIOLENCE. UNDER THE AMENDMENTS PROPOSED THESE FILMS WOULD BE GIVEN AN "MA" RATING.

THE NEW "MA" CLASSIFICATION HAS BEEN INTRODUCED IN RESPONSE TO COMMUNITY AND, MORE PARTICULARLY, PARENTAL CONCERNS REGARDING THE LEVEL OF VIOLENCE AND MATERIAL OF A SEXUALLY EXPLICIT NATURE THAT IS CURRENTLY INCLUDED IN "M" CLASSIFIED MATERIAL. THE NEW CLASSIFICATION WILL ENHANCE THE EXISTING CLASSIFICATION SYSTEM BY FURTHER DELINEATING MATERIAL WHICH MAY BE VIEWED BY YOUNG PERSONS, AS WELL AS PLACING RESTRICTIONS ON THE AVAILABILITY OF MATERIAL WHICH IS OF A MORE VIOLENT AND SEXUALLY EXPLICIT NATURE.

I COMMEND THE BILL.



**FILM AND VIDEO TAPE CLASSIFICATION (AMENDMENT)  
ACT 1993 No. 44**

NEW SOUTH WALES

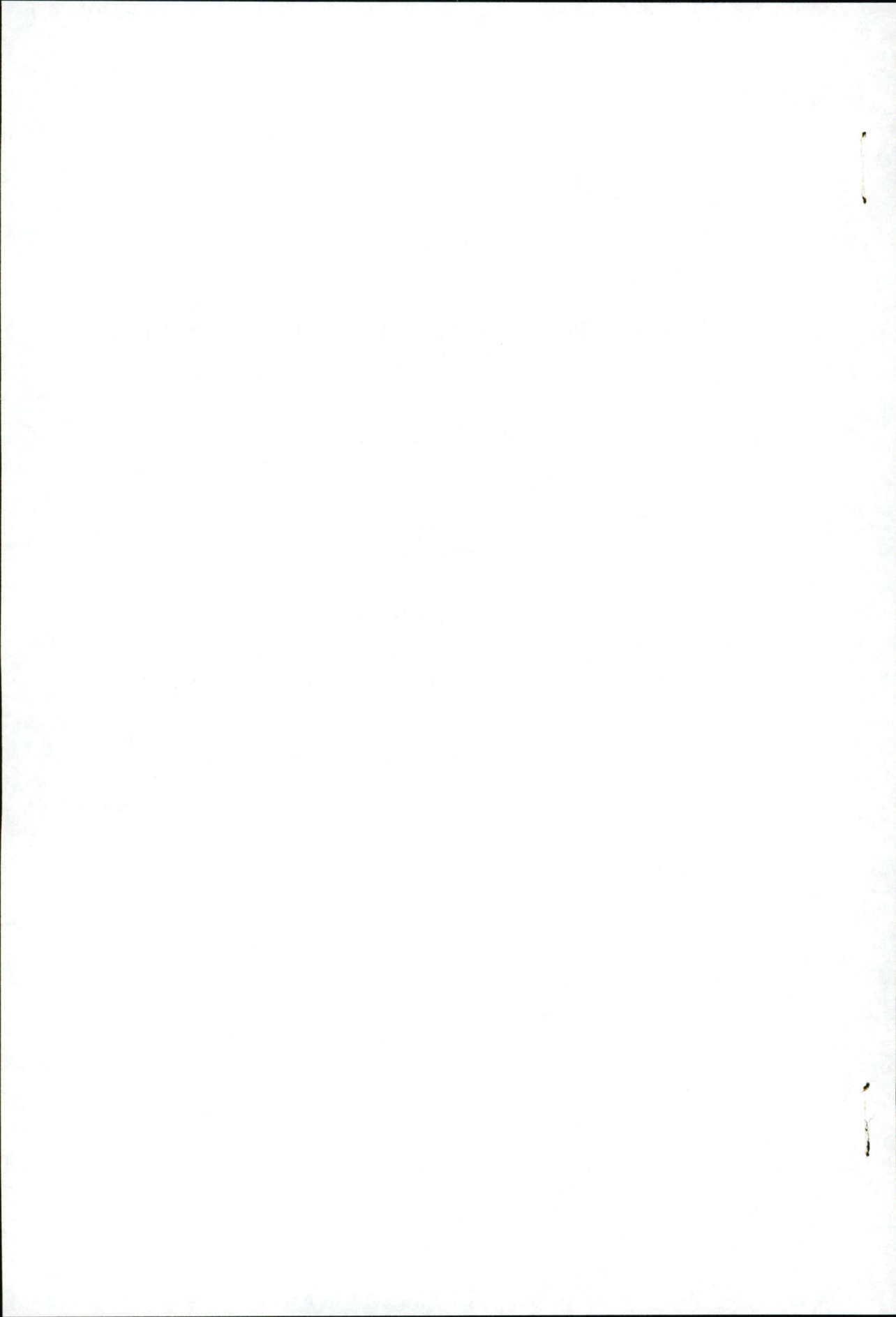


**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Film and Video Tape Classification Act 1984 No. 155

SCHEDULE 1—AMENDMENTS

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**FILM AND VIDEO TAPE CLASSIFICATION (AMENDMENT)  
ACT 1993 No. 44**

NEW SOUTH WALES



**Act No. 44, 1993**

An Act to amend the Film and Video Tape Classification Act 1984 to provide for an "MA" classification for films that are not suitable for viewing by persons under the age of 15 years; and for other purposes.  
[Assented to 15 June 1993]



*Film and Video Tape Classification (Amendment) Act 1993 No. 44*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Film and Video Tape Classification (Amendment) Act 1993.

**Commencement**

2. (1) This Act commences on a day to be appointed by proclamation, except as provided by subsection (2).

(2) Schedule 1 (15) and section 3 in its application to that item commence on the date of assent.

**Amendment of Film and Video Tape Classification Act 1984 No. 155**

3. The Film and Video Tape Classification Act 1984 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 9 (**Classification of films**):

(a) From section 9 (1) (b), omit "person" wherever occurring, insert instead "child".

(b) From section 9 (1) (c), omit "persons", insert instead "children".

(c) After section 9 (1) (c), insert:

(c1) as an "MA" film, where the censor is of the opinion that the film is unsuitable for viewing by a child under the age of 15 years; or

(2) Section 9A:

After section 9, insert:

**"X" classification in ACT operates as classification refused**

9A. While a film is classified as an "X" film under the Classification of Publications Ordinance 1983 of the Australian Capital Territory, it is taken to have been refused classification under this Act.

SCHEDULE 1—AMENDMENTS—*continued*

- (3) Section 19 (**Prohibition against exhibition of unclassified films**):

In section 19 (3) (a), after “ ‘M’ ”, insert “or ‘MA’ ”.

- (4) Section 19A (**Restrictions on showing advertisements with films**):

Omit section 19A (2), insert instead:

(2) The hierarchy of film classification is as follows:

- “G” is a lower classification than “PG”, “M”, “MA” or “R”;
- “PG” is a lower classification than “M”, “MA” or “R”;
- “M” is a lower classification than “MA” or “R”;
- “MA” is a lower classification than “R”.

- (5) Section 19B:

After section 19A, insert:

**Attendance of children under 15 at exhibition of “MA” films—offence by exhibitor**

19B. (1) A person must not exhibit, or cause to be exhibited, an “MA” film in a public place, if a child under the age of 15 years is present at the whole or any part of the exhibition of the film and is not accompanied by his or her parent or guardian.

Maximum penalty: 10 penalty units in the case of a corporation and 5 penalty units in any other case.

(2) An adult who is exercising parental control over a child under the age of 15 years is, while exercising that control, taken to be a parent of the child for the purposes of this section (even if not actually a parent of the child).

(3) A person is guilty of an offence under subsection (1) in respect of each child to whom subsection (1) applies who is present at the exhibition of the film.

*Film and Video Tape Classification (Amendment) Act 1993 No. 44*

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SCHEDULE 1—AMENDMENTS—*continued*

(4) It is a defence to a prosecution for an offence under subsection (1) if the defendant proves:

- (a) that the defendant took all such steps as were reasonable in the circumstances to avoid being guilty of the alleged offence; or
- (b) that the defendant or the defendant's employee or agent had reasonable grounds for believing, and did in fact believe, that the child in respect of whom the alleged offence was committed had attained the age of 15 years at the date of the alleged offence; or
- (c) that the child was accompanied at the exhibition of the film by a person and that there was no reason to suspect that the person was not a parent or guardian of the child.

(5) For the purposes of this section, a child does not cease to be accompanied by his or her parent or guardian during the exhibition of a film merely because the parent or guardian is temporarily absent during the exhibition.

(6) Section 20 (**Attendance of minors at exhibition of certain films—offence by exhibitor**):

From section 20 (1A), omit “or ‘M’ ”, insert instead “, ‘M’ or ‘MA’ ”.

(7) Section 22 (**Attendance of minors at exhibition of certain films—offence by other persons**):

From section 22 (1A), omit “or ‘M’ ”, insert instead “, ‘M’ or ‘MA’ ”.

(8) Section 25 (**Advertisements for unclassified film prohibited**):

In section 25 (3) (a), after “ ‘M’ ”, insert “or ‘MA’ ”.

(9) Section 29 (**Classified films containing advertisements for other films**):

Omit section 29 (2), insert instead:

- (2) The hierarchy of film classification is as follows:
  - “G” is a lower classification than “PG”, “M”, “MA” or “R”;



*Film and Video Tape Classification (Amendment) Act 1993 No. 44*

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SCHEDULE 1—AMENDMENTS—*continued*

- “PG” is a lower classification than “M”, “MA” or “R”;
- “M” is a lower classification than “MA” or “R”;
- “MA” is a lower classification than “R”.

(10) Section 29A:

After section 29, insert:

**Sale of “MA” films to children under 15 prohibited without parental consent**

29A. (1) A person must not sell a film classified as an “MA” film to a child under the age of 15 years unless the child’s parent or guardian consents to the particular sale or the person who sells the film is the parent or guardian of the child.

Maximum penalty: 10 penalty units in the case of a corporation and 5 penalty units in any other case.

(2) An adult who is exercising parental control over a child under the age of 15 years is, while exercising that control, taken to be a parent of the child for the purposes of this section (even if not actually a parent of the child).

(3) It is a defence to a prosecution for an offence under subsection (1) if the defendant proves that the defendant or the defendant’s employee or agent had reasonable grounds for believing, and did in fact believe:

- (a) that the child in respect of whom the alleged offence was committed had attained the age of 15 years at the date of the alleged offence; or
- (b) that the child’s parent or guardian consented to the particular sale.

(11) Section 30 (**Sale of “R” films to minors prohibited**):

From section 30 (1), omit “(other than a minor of whom the person is the parent or guardian)”, insert instead “, unless the person who sells the film is the parent or guardian of the minor”.

*Film and Video Tape Classification (Amendment) Act 1993 No. 44*

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SCHEDULE 1—AMENDMENTS—*continued*

- (12) Section 32 (**Display and sale of unclassified films prohibited**):  
From section 32 (3) (a), omit “or ‘M’ ”, insert instead  
“, ‘M’ or ‘MA’ ”.
- (13) Section 36 (**Copying of certain unclassified films prohibited**):  
From section 36 (3), omit “or ‘M’ ”, insert instead “, ‘M’  
or ‘MA’ ”.
- (14) Section 43 (**Evidence**):  
After section 43 (1) (d), insert:  
(d1) that a film has been classified as an “X” film under  
the Classification of Publications Ordinance 1983 of  
the Australian Capital Territory;
- (15) Schedule 1 (**Savings, Transitional and Other Provisions**):  
After clause 11, insert:

*Film and Video Tape Classification (Amendment)  
Act 1993*

**Films classified “MA” before amendment commences**

12. (1) In this clause:

“**the amending Act**” means the Film and Video Tape  
Classification (Amendment) Act 1993;

“**the appointed day**” means the day appointed under  
section 2 (1) of the amending Act.

(2) Anything done by the censor before the appointed day  
(including before the date of assent to the amending Act) for  
or with respect to the classification of a film as an “MA”  
film which could have been validly done under this Act had  
the amendments made by the amending Act been in force  
when it was done is taken to have been validly done under  
this Act.

(3) Between the date of assent to the amending Act and the  
appointed day, while a film is classified as an “MA” film as  
a result of anything done by the censor as referred to in  
subclause (2), the film is regarded as having been classified  
as an “M” film.



*Film and Video Tape Classification (Amendment) Act 1993 No. 44*

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SCHEDULE 1—AMENDMENTS—*continued*

**Films classified “X” before amendment commences**

13. Section 9A applies in respect of a film classified as an “X” film as referred to in that section even if that classification of the film commenced before the commencement of that section.

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[*Minister's second reading speech made in—  
Legislative Assembly on 19 May 1993  
Legislative Council on 21 May 1993*]

