

CINEMATOGRAPH FILMS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill makes several amendments to the Cinematograph Films Act 1961 relating to holders of exhibitors' licences and renters' licences. It also provides for the Administrative Division of the Supreme Court to take over the functions of the Cinematograph Films Licensing and Registration Appeal Authority; for appeals to the Court of Appeal on questions of law from decisions of the Administrative Division under the new provisions; and for appeals to the Administrative Division on questions of law from decisions of the Cinematograph Films Censorship Board of Appeal.

Clause 1 relates to the Short Title.

Clause 2, subclause (1): Section 38 (1) of the principal Act empowers the Cinematograph Films Licensing Authority to prescribe in an exhibitor's licence the maximum and minimum number of days in each week on which the holder of the licence shall exhibit films. The amendment made by this subclause will enable the Authority to prescribe such a maximum or minimum in each week or in each month, instead of only in each week. The purpose of the amendment is to deal with cases where weekly screenings are uneconomic.

Subclause (2) inserts a new subsection in section 38 empowering the Licensing Authority to prescribe in such a licence the period or periods of the year during which films may be exhibited. The purpose of this amendment is to deal with cases where regular screenings throughout the year are uneconomic, but where there is a demand for screenings at particular periods, such as school holidays.

Subclause (3) makes consequential amendments to section 40 (matters to be considered by Licensing Authority on applications for licences) and section 42 (2) (applications for additional licences).

Clause 3: Under section 49 (1) (a) of the principal Act, no one may carry on the business of renting films to persons required to hold exhibitors' licences unless he is himself the holder of a renter's licence, but this does not apply to the renting of films to persons required to hold exhibitors' permits. Under section 64, on the other hand, the holder of a renter's licence has an

obligation to ensure that any exhibitor to whom he rents a film, and who is required by the Act to hold either an exhibitor's licence or an exhibitor's permit for the exhibition of the film, does in fact hold such a licence or permit. The amendment made to section 49 (1) (a) by this clause fills the gap in that section by providing that a renter's licence is necessary for persons who carry on the business of renting films to persons required to hold exhibitors' permits.

Clause 4 repeals sections 81 to 90 of the principal Act (which provide for the appointment of a Cinematograph Films Licensing and Registration Appeal Authority to hear appeals on matters relating to licensing and registration) and substitutes new sections 81 to 86. The new sections so substituted follow the recommendations of the Public and Administrative Law Reform Committee in its Second Report on Appeals from Administrative Tribunals (January 1969).

The new section 81 provides for such appeals to go to the Administrative Division of the Supreme Court instead of to the special Licensing Appeal Authority. The appeals are, as at present, against decisions of the Licensing Authority, the Registrar (in relation to the registration of films), and the Cinematograph Film Projectionists Licensing Board (cf. section 86 (1) of the principal Act).

The new section 82 re-enacts, without alteration, section 86 (1) (a) to (e) of the principal Act, setting out the matters on which such appeals lie.

The new section 83 re-enacts section 86 (2) of the principal Act, specifying the persons entitled to appeal. The only alteration consists of a rearrangement of the order of some of the paragraphs, for consistency with the order of the new section 82.

The new section 84 re-enacts, without alteration, sections 88 and 83 (1), the proviso to section 85 (1), and section 85 (3) of the principal Act, dealing with the procedure and powers of the Court in the hearing and determination of an appeal.

The new section 85 re-enacts, with alterations, section 89 of the principal Act, and empowers the Court to refer back to the authority of first instance, for reconsideration, the whole or any part of the subject-matter of an appeal. As doubts have arisen as to the effect of the present section 89 (2), that subsection is rewritten. The present subsection purports to nullify the original decision and seems to require (in cases where there has been a hearing in the first instance) a complete rehearing of the whole proceedings even where only part of the matter is referred back. The proposed new subsection (2) (b) requires the Court, when referring back the whole or any part of the subject-matter of the appeal, to give directions to the authority of first instance as to the rehearing or reconsideration or otherwise of the whole or any part of the matter referred back.

Under the new section 86 the procedure on appeals is to be in accordance with rules of Court.

Clause 5 inserts two new sections in the principal Act, giving further rights of appeal on questions of law only. These sections also give effect to the recommendations of the Public and Administrative Law Reform Committee.

The new section 100A provides for a right of appeal to the Court of Appeal, by way of case stated on a question of law only, from decisions of the Administrative Division of the Supreme Court under the new sections substituted by *clause 4*.

The new section 100B provides for a right of appeal to the Administrative Division of the Supreme Court, by way of case stated on a question of law only, from decisions of the Cinematograph Films Censorship Board of Appeal.

Clause 6 amends sections 2 and 78 of the principal Act. These amendments are consequential on the amendments made by *clause 4*.

Clause 7 makes the necessary transitional provisions as to appeals already made to the Licensing and Registration Appeal Authority and not determined by him before the passing of the Bill.

Clause 8 repeals section 95 of the principal Act. That section provides that proceedings before the Cinematograph Films Censorship Board of Appeal are not to be held bad for want of form, may not be appealed against, and (except on the ground of lack of jurisdiction) are not to be challenged, reviewed, or called in question in any Court. The effect of the repeal is to restore, in relation to the Board, the full supervisory jurisdiction of the Supreme Court by way of the prerogative writs of certiorari, prohibition, and mandamus.

Hon. Mr Seath

CINEMATOGRAPH FILMS AMENDMENT

ANALYSIS

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" <i>Appeals to Administrative Division of Supreme Court on Licensing and Registration Matters</i>	"100B. Appeal against decision of Censorship Board of Appeal on question of law
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A BILL INTITULED

An Act to amend the Cinematograph Films Act 1961

BE IT ENACTED by the General Assembly of New Zealand
in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title—This Act may be cited as the Cinematograph Films Amendment Act 1969, and shall be read together with and deemed part of the Cinematograph Films Act 1961* (hereinafter referred to as the principal Act).

*1961, No. 59

Amendments: 1962, No. 60; 1967, No. 133

2. Obligations of holder of exhibitor's licence—(1) Section 38 of the principal Act is hereby amended by inserting in subsection (1), after the words "in each week", the words "or in each month".

(2) The said section 38 is hereby further amended by inserting, after subsection (1), the following subsection: 5

"(1A) Without prejudice to subsection (1) of this section, in granting any exhibitor's licence the Licensing Authority may prescribe in the licence the period or periods of the year during which the holder of the licence shall exhibit films, and the holder of the licence shall exhibit films as so prescribed." 10

(3) The principal Act is hereby consequentially amended—

(a) By omitting from section 40 the words "the number of days in each week on which", and substituting the words "the number of days in each week or in each month on which and the period or periods of the year during which": 15

(b) By omitting from subsection (2) of section 42 the words "the number of days in each week on which", and substituting the words "the number of days in each week or in each month on which and the period or periods of the year during which". 20

3. Renters' licences—Section 49 of the principal Act is hereby amended by inserting in paragraph (a) of subsection (1), after the words "exhibitor's licence", the words "or an exhibitor's permit". 25

4. New sections substituted as to certain appeals—Part VIII of the principal Act is hereby amended by repealing the heading "*Cinematograph Films Licensing and Registration Appeal Authority*", above section 81, and also by repealing sections 81 to 90, and substituting the following heading and sections: 30

"Appeals to Administrative Division of Supreme Court on Licensing and Registration Matters

"81. Appeals on licensing and registration matters— 35

(1) Subject to section 83 of this Act, there shall be a right of appeal, within 28 days after the date of the decision appealed against, to the Supreme Court against a decision of—

"(a) The Licensing Authority; or

“(b) The Registrar, in relation to the registration of any film; or

“(c) The Cinematograph Film Projectionists Licensing Board—

5 in respect of any of the matters specified in section 82 of this Act.

“(2) Every such appeal shall be heard and determined by the Administrative Division of the Supreme Court (in this Part, unless the context otherwise requires, referred to as the
10 Court).

“82. Matters on which appeals lie—The right of appeal under section 81 of this Act shall be from—

“(a) The whole or any part of any decision of the Licensing Authority in respect of any exhibitor’s licence or exhibitor’s permit, including any terms or conditions which may have been attached thereto by the Licensing Authority, or in respect of any application to the Licensing Authority for an exhibitor’s licence or exhibitor’s permit, or for variation of the terms of any existing exhibitor’s licence or exhibitor’s permit, or for its consent to an assignment of an exhibitor’s licence:
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“(b) The whole or any part of any decision of the Licensing Authority in respect of any renter’s licence, including any terms or conditions which may have been attached thereto by the Licensing Authority, or in respect of any application to the Licensing Authority for a renter’s licence, or for variation of any of the terms of an existing renter’s licence:
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“(c) The whole or any part of any decision of the Licensing Authority in respect of the classification of a film under section 26 of this Act:

“(d) The whole or any part of any decision of the Cinematograph Film Projectionists Licensing Board in respect of any projectionist’s licence or in respect of any application to the Board for a projectionist’s licence:
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“(e) The whole or any part of any decision of the Registrar made in respect of the registration of any film.
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“83. Persons entitled to appeal—The following persons and no others may exercise such right of appeal as aforesaid:

“(a) The holder of or applicant for the exhibitor’s licence in respect of which the decision of the Licensing Authority was given; and the holder of any current or expired exhibitor’s licence in respect of a cinematograph theatre in the locality affected by the application in respect of which the decision was given: 5

Provided that the holder of an expired exhibitor’s licence may not appeal under this paragraph unless he has applied within the prescribed time for the renewal thereof and either he has not received advice of any final decision in respect of the renewal of the licence or has been advised of a decision not to renew his licence within 28 days of the date of the decision against which he appeals under this paragraph: 10 15

Provided also that no appeal shall lie under this paragraph against any decision to renew an existing exhibitor’s licence: 20

“(b) The holder of or applicant for the exhibitor’s permit in respect of which the decision of the Licensing Authority was given, and the holder of any exhibitor’s licence in respect of a theatre in a locality affected by a decision of the Licensing Authority in respect of that permit: 25

“(c) The holder of or applicant for the renter’s licence in respect of which the decision of the Licensing Authority was given: 30

“(d) The person in respect of whose application for the classification of any film under section 26 of this Act the decision of the Licensing Authority was given:

“(e) The holder of any projectionist’s licence in respect of which the decision of the Cinematograph Film Projectionists Licensing Board was given, and the person in respect of whose application for a projectionist’s licence any decision of that Board was given: 35 40

“(f) The person in respect of whose application for the registration of any film the decision of the Registrar was given:

5 “(g) Either party to an assignment of an exhibitor’s licence aggrieved by any decision of the Licensing Authority in respect of an application for its consent to the assignment:

10 “(h) The person in respect of whose application for consent to an arrangement referred to in section 47 of this Act the decision of the Licensing Authority was given.

“84. **Hearing and determination of appeal**—(1) At the hearing of any appeal under the foregoing provisions of this Part of this Act, the Court shall hear all the evidence
15 tendered and all representations made by or on behalf of the appellant and other persons that the Court deems relevant to the subject-matter of the appeal.

“(2) The Court may receive as evidence any statement, document, information, or matter that may in its opinion
20 assist it to deal effectually with the matters before it, whether or not the same would be otherwise admissible in a Court of law.

“(3) The Court may in any case, if it considers it is in the interests of the parties or of any of them and is not contrary
25 to the interests of other persons concerned, order that the hearing or any part of it shall be held in private.

“(4) The Court may make an order prohibiting the publication of any report or description of the proceedings or of any part of the proceedings in any appeal before it; but no
30 such order shall be made prohibiting the publication of the names and descriptions of the parties to the appeal, or particulars of any licence or permit or certificate affected by it, or of any decision of the Court.

“(5) In its determination of any appeal the Court may
35 confirm, modify, or reverse the decision or any part of the decision appealed against.

“85. **Court may refer appeals back for reconsideration**—
(1) Notwithstanding anything in section 84 of this Act, the
40 Court may in any case, instead of determining any appeal under that section, direct the authority whose decision is appealed against to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.

“(2) In giving any direction under this section the Court shall—

“(a) Advise the authority whose decision is appealed against of its reasons for so doing; and

“(b) Give to that authority such directions as it thinks just as to the rehearing or reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration. 5

“(3) In reconsidering the matter so referred back the authority shall have regard to the Court’s reasons for giving a direction under subsection (1) of this section and to the Court’s directions under subsection (2) of this section. 10

“86. **Procedure**—Subject to the foregoing provisions of this Part, the procedure in respect of any appeal shall be in accordance with rules of Court.” 15

5. New sections inserted—The principal Act is hereby further amended by inserting in Part VIII, after section 100, the following heading and sections:

“Appeals on Questions of Law

“100A. **Appeal against decision of Administrative Division on question of law**—(1) If any party to any proceedings before the Administrative Division of the Supreme Court under the foregoing provisions of this Part of this Act is dissatisfied with any determination or decision of the Court in the proceedings as being erroneous in point of law, he may appeal to the Court of Appeal by way of case stated for the opinion of that Court on a question of law only. 20 25

“(2) Within 14 days after the date of the determination or decision the appellant shall file a notice of appeal with the Registrar of the Supreme Court at Wellington. The appellant shall forthwith deliver or post a copy of the notice to every other party to the proceedings. 30

“(3) Within 14 days after the filing of the notice of appeal, or within such further time as the Judge before whom the proceedings were heard may in his discretion allow, the appellant shall state in writing and file with the Registrar a case setting out the facts and the grounds of the determination or decision and specifying the question of law on which the appeal is made. The appellant shall forthwith deliver or post a copy of the case to every other party to the proceedings. 35 40

“(4) As soon as practicable after the filing of the case, the Registrar shall cause it to be submitted to the Judge before whom the proceedings were heard.

5 “(5) The Judge shall, as soon as practicable, and after hearing the parties if he considers it necessary to do so, settle the case, sign it, and cause it to be sent to the Registrar. The settling and signing of the case shall be deemed to be the statement of the case by the Court.

10 “(6) Where since the date of the determination or decision the Judge before whom the proceedings were heard has ceased to hold office as such or died or left New Zealand, or is incapable by reason of sickness or otherwise from acting as such, the case may be submitted to any Judge of the Supreme Court and may be settled and signed by him.

15 “(7) The Registrar shall send the signed case to the Registrar of the Court of Appeal, and shall make a copy available to each party.

20 “(8) If within 14 days after the filing of the notice of appeal, or within such further time as may be allowed, the appellant does not file a case pursuant to subsection (3) of this section, the Judge may certify that the appeal has not been prosecuted.

25 “(9) The Supreme Court or a Judge thereof may in its or his discretion, on the application of the appellant or intending appellant, extend any time prescribed or allowed under this section for the filing of a notice of appeal or the stating of any case.

“(10) The decision of the Court of Appeal on any appeal under this section shall be final.

30 “(11) Subject to the provisions of this section, the case shall be dealt with in accordance with rules of Court.

“100B. Appeal against decision of Censorship Board of Appeal on question of law—(1) If any party to any proceedings before the Censorship Board of Appeal is dissatisfied with any determination or decision of that Board in the proceedings as being erroneous in point of law, he may appeal to the Supreme Court by way of case stated for the opinion of the Court on a question of law only.

40 “(2) Every such appeal shall be heard and determined by the Administrative Division of the Supreme Court.

“(3) Within 14 days after the date of the determination or decision the appellant shall lodge a notice of appeal with the Secretary for Internal Affairs. The appellant shall forthwith deliver or post a copy of the notice to every other party to the proceedings. 5

“(4) Within 14 days after the lodging of the notice of appeal, or within such further time as the Chairman of the Censorship Board of Appeal may in his discretion allow, the appellant shall state in writing and lodge with the Secretary for Internal Affairs a case setting out the facts and the grounds of the determination or decision and specifying the question of law on which the appeal is made. The appellant shall forthwith deliver or post a copy of the case to every other party to the proceedings. 10

“(5) As soon as practicable after the lodging of the case, the Secretary for Internal Affairs shall cause it to be submitted to the Chairman of the Censorship Board of Appeal. 15

“(6) The Chairman shall, as soon as practicable, and after hearing the parties if he considers it necessary to do so, settle the case, sign it, and cause it to be sent to the Secretary for Internal Affairs. The settling and signing of the case shall be deemed to be the statement of the case by the Censorship Board of Appeal. 20

“(7) The Secretary for Internal Affairs shall send the signed case to the Registrar of the Supreme Court at Wellington, and shall make a copy available to each party. 25

“(8) If within 14 days after the filing of the notice of appeal, or within such further time as may be allowed, the appellant does not lodge a case pursuant to subsection (4) of this section, the Chairman of the Censorship Board of Appeal may certify that the appeal has not been prosecuted. 30

“(9) The Court or a Judge thereof may in its or his discretion, on the application of the appellant or the intending appellant, extend any time prescribed or allowed under this section for the filing of a notice of appeal or the stating of any case. 35

“(10) Subject to the provisions of this section, the case shall be dealt with in accordance with rules of Court.”

6. Consequential amendments—The principal Act is hereby consequentially amended—

- (a) By repealing the definition of the expression “Licensing Appeal Authority” in section 2:
- 5 (b) By omitting from subsection (5) of section 78 the words “the Licensing Appeal Authority under section 86”, and substituting the words “the Supreme Court under section 81”:
- 10 (c) By omitting from subsection (6) of section 78 the words “the Licensing Appeal Authority”, and substituting the words “the Supreme Court”.

7. Transitional provisions as to appeals—Every appeal to the Cinematograph Films Licensing and Registration Appeal Authority which before the passing of this Act has been
15 forwarded to the Secretary for Internal Affairs or referred by him to that Authority under the principal Act, and has not been determined by that Authority, shall be deemed to have been made to the Supreme Court and shall be heard and determined by the Administrative Division of that Court
20 pursuant to section 81 of the principal Act (as substituted by section 4 of this Act):

Provided that any such appeal which before the passing of this Act has been wholly or partly heard but has not been determined shall be determined as if this Act had not been
25 passed.

8. Repeal—Section 95 of the principal Act is hereby repealed.