

Content Ratings and Warnings

Advice and Information for Members

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1. Background: Content Ratings for live performance

This guide has been developed following a number of recent Member queries concerning the presentation of work that may be considered offensive by some audience members.

As most Members will be aware, this issue arises periodically and is usually prompted by adverse public or media response to particularly challenging or controversial work. Unfortunately, this can sometimes cause uncertainty for practitioners and members of the public alike.

This brief guide clarifies the law concerning classification and censorship of live performances in Australia, and sets out useful steps for producers to take when mounting potentially confronting work.

Live Performance Australia (LPA) strongly supports total freedom of artistic expression. It is a principle that is central to our culture, and helps define the society we live in. As practitioners, there are simple steps that we can all take to ensure that this principle remains strong.

2. Legal status of live performance for content ratings purposes

Despite popular misconceptions, there is no formal classification system for live performances in Australia. No public authority exists to monitor the content of work that is presented in a live context.

The Australian Classification Board (formerly the Office of Film and Literature Classification), is a Commonwealth agency with responsibility for the classification films, computer games and some publications – but it has no purview in live performance. Similarly, television content in Australia is subject to a classification system that is regulated by a Federal government agency (the Australian Communications and Media Authority (ACMA)), but no such body or code exists to cover live performance - be it theatre, opera, ballet, rock concerts, or anything in between.

In terms of statutory law, the New South Wales *Summary Offences Act 1998 (NSW)* does outline offences for offensive conduct, offensive language and obscene exposure in public places. These laws could potentially be applied to a live public performance, but no clear guidance exists (either through case law or official advice) as to when they may be used.

Similarly, the common law offence of “outraging public decency” could potentially apply, but again – there is little useful guidance to go by.

Although the chances of being subjected to an action under the *Summary Offences Act* (if the performance is in New South Wales), or the common law action of “outraging public decency” are very remote, the potential does exist. At the same time, no official classification system or regulatory body is available to provide guidance which may assist a producer to avoid such an action.

The best way to protect a production against the possibility of being closed down, however remote that is, is to provide adequate warning to the audience members who view that production. If adequate content advice has been provided, then the likelihood that any complaint will gain sufficient traction to prompt legal action is significantly reduced.

Beyond the strictly legal perspective, appropriate content warnings are also important from a public relations and audience development perspective. They also serve to protect the industry from more overt regulation - while we have total freedom of artistic expression in the live performance industry, care should be taken to protect this situation by warning audience members when the content of a show may offend.

Of course, this is not always possible. Sensibilities do vary radically, and what is offensive to one viewer may be tame to another. In broad terms though, common community standards and the standards established by film and television classifications do act as a sound guide to how live work may be received by an audience. A major consideration must always be whether a potential 'gap' exists between the audience expectation of what a show may be, or what it may contain, and the reality of what is presented. If an audience can be reasonably expected to know what it is 'getting' then this minimizes the likelihood of complaints.

3. Factors to consider, and steps to take

In the FindLaw article *Where is the Office of Live Theatre Classification?*¹ law firm Abbot Tout provides some guidance as to the factors a producer should consider when mounting a production, and the extent to which a warning may be necessary to avoid the possibility of an adverse action.

Abbott Tout identifies the following factors:

1. The content of the performance.
2. The context of any potentially offensive material.
3. The location at which the performance may be presented.
4. The target audience.
5. The manner in which the performance is promoted.
6. The extent to which prospective audience members are warned of possibly offensive elements.

Each of these factors is considered individually below:

- **The content of the performance:**

Film advisory warnings provide good guidance in this respect. Live performances depicting violence, sex scenes, drug use and extremely coarse language have the potential to offend some viewers and adequate warning should be given. Beyond these major factors, common sense should be applied to the presentation of other potentially distressing content - scenes depicting animal cruelty, for example.

¹ <http://www.findlaw.com.au/articles/2131/where-is-the-office-of-live-theatre-classification.aspx> (23 May 2011)

In addition, advance notice should be provided for content which may impact on the health of some audience members. This can include the use of strobe lighting (which can trigger seizures in epileptics), and smoking on stage.

- **The context of any potentially offensive material:**

This is important, as audience members are naturally conditioned to expect a certain level of content depending on the style or genre of the piece being presented. It would be unreasonable for an audience member to object to depictions of drug use in a stage production of *Trainspotting*, for example, or of sexual content in *Shopping and Fucking*.

If, however, a contemporary production of *Romeo and Juliet* were to be presented depicting graphic sex scenes, this may cause offence.

- **The location at which the performance may be presented:**

Again, the location of a performance will impact on audience expectations of content – which in turn impacts on the extent to which an audience member may be offended by content.

A ticketed production at a professional venue could be expected to present more adult content, for example, than street theatre performed at a family festival.

- **The target audience:**

The events that generate the highest number of complaints tend to be those where the content is not appropriate for the primary audience of the event. In recent times, this has applied more to live pop concerts than any other medium. The core audience for many pop performers remains teenage and pre-teenage girls - yet the sexualised performances, (and sometimes the language content), of the shows can offend the parents who accompany their children - and tend to be considered inappropriate for children. If there is likely to be a 'gap' between the audiences expectations (which can occur if only radio edits of the performers songs have been listened to, and video clips screened in 'G' rated time-slots), then the likely content of the live show should be communicated at the point of sale (see below).

- **The manner in which the performance is promoted:**

Marketing material should be tailored to depict the nature of the performance, and to connect with an appropriate audience base. This is not only sound marketing, but also avoids potential offence.

- **The extent to which prospective audience members are warned of possibly offensive elements:**

This is perhaps the single most important factor in avoiding a potentially adverse action – and can generally nullify the negative impact of the above factors.

In providing content warnings to audiences, it is useful to consider providing warnings in all marketing material, at the point of ticket sale, and at the point at which the patron enters the venue.

This includes statements on posters and flyers that “content may offend”, or “this show is not suitable for children under ‘x’ years of age” (or words to the effect), warnings printed on tickets, and warnings placed prominently in foyers or at the entrance of the venue at the time of the production. In addition, ticketing and venue staff should be informed to provide accurate advice regarding the content of the performance, and to provide standard content warnings when selling tickets over the telephone or at the box office.

If these steps are taken, with regard to all of the above factors, then there is little risk to the promoter of any legally adverse outcome from an audience complaint.

A patron may complain (some patrons always will), but their complaint will have little credence if they were properly warned.