

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 264**

#### **Classification (Publications, Films and Computer Games) Regulations 2005**

##### **Issued by the authority of the Attorney-General**

The *Classification (Publications, Films and Computer Games) Act 1995* (the 'Act') facilitates the operation of the intergovernmental co-operative legislative scheme for censorship in Australia (the National Classification Scheme). The Act provides a system for the classifications of films, computer games and certain publications.

##### **Authority for making the regulations**

Section 93 of the Act provides that the Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

The Act provides authority for charging fees for a number of services, specifically:

- subparagraph 13(1)(d)(i) for publications;
- subparagraph 14(1)(d)(i) for films;
- paragraph 17(1)(d) for computer games;
- subsection 22A(2) for enforcement applications;
- subsection 27(2) for information (copies of classification certificates);
- subparagraph 28A(2)(c)(i) for obtaining certain certificates;
- paragraph 29(2)(d) for approval of advertisements;
- paragraph 32(2)(d) for exemptions for film for advertising purposes;
- paragraph 43(1)(d) for an application for review of a decision; and
- section 87 for obtaining evidentiary certificates.

The Classification (Publications, Films and Computer Games) Regulations (the 'Principal Regulations') prescribe fees for the various services, provided under the Act by the Classification Board, the Classification Review Board and the Office of Film and Literature Classification (the OFLC) in support of those Boards. The OFLC is a statutory agency providing administrative support to the Classification Board and the Classification Review Board.

## **Reason for proposed Regulations**

In 2004, the Australian Government asked the OFLC to implement a full cost recovery regime. Following this request, the OFLC commenced a review of its fees and charges, which have not increased since 1997, to determine whether the fee structure prescribed in the Regulations reflected the cost of operating those components of the National Classification Scheme that were considered cost recoverable.

As part of the review, the OFLC examined current Board and the OFLC work practices and identified opportunities for improvement of those work practices. This ensured that any new fees were based on efficient cost structures and processes. In addition, the review compared overseas classification models, trends in historic volumes of product submitted for classification and analysis of current product structures. This approach ensured that the fee structure reflected services delivered or likely to be delivered as a result of new and emerging technologies.

## **The effect of the proposed Regulations**

The Classification (Publications, Films and Computer Games) Regulations 2005 (the proposed Regulations) prescribe significant changes to both the categories of application for which fees can be charged, and the fees themselves. The Regulations, giving effect to the new fees and fee structure, will commence on 1 December 2005.

The proposed Regulations will introduce a fairer fee structure. Product categories, in relation to which fees are charged, have been revised to more accurately reflect the services provided by the OFLC. The new product categories are based on product type (i.e. film, game and publication) not on format, client or channel, as was previously the case.

The proposed Regulations will introduce fees for a number of services for the first time. Existing services that did not previously attract a fee, but which will now do so are: classification of a product which has undergone a title change; withdrawal of applications to the Board and Review Board; and classification of a revised publication. New services that will attract a fee are classification of serial publications; and providing a certification of exemption for films and computer games.

The proposed Regulations will introduce fees that reflect the actual cost to government of providing a number of services under the Act. The effect of this is an increase in the fees for most services provided under the Act for which a fee may be charged.

While the quantum of the increase is significant for most sectors of the industry, the impact on computer games, public exhibition films and other films should not be significant. Without the introduction of the serial publication fee, there will have been a major impact on the publications industry, with a likely consequence of the increase in fees being a reduction in the amount of product submitted for classification. The introduction of the serial publication fee will significantly minimise the direct cost to

the publications industry of paying fees and also reduce the regulatory burden on industry by reducing the need to submit product for classification.

### **Matters for which cost recovery is not being implemented**

In accordance with the Government's cost recovery guidelines, the Government will continue to fund those aspects of the work of the Classification Board, Classification Review Board and the OFLC that are not directly related to the classification of particular products. The Government will also continue to fund a number of services which the Government considers should be provided at no cost in the interest of the public. Such services are as follows.

- Providing policy advice and other services, including maintaining the legislative scheme, which are unrelated to classification of products or the other services for which a fee may be prescribed
- Providing services for support of the classification scheme such as:
  - o Providing classification advice to the Australian Customs Service on material submitted to the Classification Board without cost, as part of the ongoing administrative arrangement between the two agencies
  - o Providing permissions to import/export objectionable goods
  - o Funding 50% of the cost of the Community Liaison Scheme, which assists in advising industry and enforcement agencies about the operation of the classification scheme (the remaining 50% is funded by States and Territories)
- Processing applications for waiver of classification fees.

In addition a number of services provided by the Classification Board will not be charged at the full cost recovery rate. Such services are as follows.

- In accordance with the Intergovernmental Agreement on Censorship, provision of the first 100 evidentiary certificates or applications for classification of publications, films or computer games is provided without cost to State and Territory enforcement agencies. Subsequent applications for classification of publications, films or computer games will be charged at half the prescribed fee.
- Applications for review of classification decisions will be less than the full cost recovered rate. The actual cost of this service is approximately \$20,600 per annum per application, rather than the \$8,000 fee provided in the proposed Regulations. Due to the fact that Review Board members are part-time members who reside in various States and Territories (recognizing the need for such membership to be broadly representative of the Australian community) members travel to Sydney for each review. The relative costs of the Review Board are high compared to the number of review applications considered each year
- Full or partial waivers of classification fees will continue to be possible. Applications for waiver are considered in accordance with the Act and with the *Classification (Waiver of Fees) Principles 2000* determined by the Minister, and

- Film festival/event exemptions will continue to be provided without cost to the applicant. Such events are of great cultural value and it is in the public interest to support those who organise them. They are a forum for the work of new and emerging film makers, including younger people such as students, which promote the local film industry. They also provide opportunities to screen foreign and small art house / special interest films that would otherwise not be given a cinema release. Film festivals and events are often run in a non-commercial manner, operating at a loss due to huge overhead costs such as venue, projection equipment hire and public liability insurance.

The Australian Government appropriation for these matters is reflected in the continuing appropriation to the OFLC.

### **Consultations**

The OFLC undertook consultation with all clients who had submitted applications in the previous two years. A number of those clients participated in interviews with the OFLC in order for the OFLC to gauge future demands for classification and the impact of emerging technologies on the type of product likely to be submitted for classification.

Briefings were held with each client sector in which clients provided comments and raised issues about the structure and amount of the new fees. All issues raised by clients were considered by the OFLC when reviewing the proposed product structures and fees.

The main concern from industry was the amount of the new fees. Some clients also expressed a view that the cost of classification should be born by the Australian Government. Industry also commented that, in light of the increased fees, there should be more active enforcement of the classification system, in order that the value of the classification is not undermined by unclassified product being widely available in the market.

Details of the proposed Regulations and fee changes are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be satisfied.

The proposed Regulations will be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The proposed Regulations will commence on 1 December 2005.

**ATTACHMENT****Details of the proposed Classification (Publication, Films and Computer Games) Regulations 2005****Regulation 1 - Name of Regulations**

This regulation provides that the proposed Regulations will be the *Classification (Publications, Films and Computer Games) Regulations 2005*.

**Regulation 2 - Commencement**

This regulation provides that the proposed Regulations will commence on 1 December 2005.

**Regulation 3 – Repeal and transitional**

This regulation provides that the Principal Regulations will be repealed but that regulation 12 of the Principal Regulations will remain operational until 31 December 2005. This is because existing regulation 12 operates on a calendar year cycle pursuant to the Intergovernmental Agreement on Censorship (see proposed regulation 19 for a detailed explanation).

**Regulation 4 - Interpretation**

This proposed Regulation will provide interpretations of various terms used throughout the Regulations.

**Regulation 5- Classification of Publications**

Proposed regulation 5 will provide the categories for classification of publications, as permitted under subparagraph 13(1)(d)(i) and section 22A of the Act.

Part 1 of Schedule 1 to the Principal Regulations outlines the fees for classification of publications. Currently fees are charged based on the form of the publication, ranging from \$100 for a calendar, card or audio rising to \$130 for a magazine.

Under the proposed Regulations, fees will be charged based on the number of pages of each publication. The new fees will reflect the actual cost of classifying publications and the fact that the amount of time taken to classify a publication is linked to the number of pages of the publication. New fees will range, from \$520 for 0-76 page publications, up to \$1,840 for publications over 800 pages.

The largest increase in fees for industry under the proposed amendments will be for Publications as the OFLC will move from a flat fee irrespective of the number of pages to a page based product. This change will reflect activity based costs. The impact of this fee increase may be offset if clients make use of the new product, Serial Classification (see proposed regulation 6) where an applicant may request that the classification granted for a nominated original issue will also apply to all or some future issues of a periodical.

This proposed regulation will also introduce a new fee for ‘Revised publications’ which is a reference to the alteration of a publication that has already been classified, by the subsequent replacement of the content or parts of the content in respect of which the publication was classified. This fee will be \$210. There will also be a new fee for title changes for publications of \$360.

### **Regulation 6 – Declaration of serial publication classification**

Proposed regulation 6 will introduce a fee for serial publications, as provided under subsection 13(3) and section 22A of the Act. A serial publication is a classification granted for future issues of a periodical where the classification will not change. This will enable an applicant to apply for a declaration from the Classification Board that the classification granted for the original issue of a periodical also applies to either (a) all future issues, (b) a specified number of future issues, or (c) all future issues published within a specified period.

There will be a standard fee of \$1,130 when the application for classification of a publication indicates that the applicant will seek a declaration. This will have the effect of reducing the cost of classification for publications. Rather than paying the prescribed fee for each issue of a publication, the applicant will be able to pay the set fee and have a classification made for a number of future issues. Without the introduction of the serial publication fee, there would have been a major impact on the publication industry, with a possible consequence of the increase in fees being a reduction in the amount of product submitted for classification.

The Director of the Classification Board has determined written principles which will be used to decide whether to make such a declaration. The *Classification (Serial Publications) Principles 2005* have been agreed to by the Attorney-General, and State and Territory Ministers responsible for censorship, in accordance with section 4 of the Act.

### **Regulation 7 – Classification of Films**

Proposed regulation 7 will change the categories for the classification of films for which fees may be charged under subparagraph 14(1)(d)(i) and section 22A of the Act.

There are currently four categories of films in the Principal Regulations and fees are charged in 15 minute increments. Fees currently range from \$510 for classification of a film for sale or hire that is 15 minutes or less in length, to \$2,590 for a film for public exhibition and sale or hire over 300 minutes in length.

The proposed Regulations will reduce the number of categories of films to two and streamline the fees payable. The new product groups will be:

- classification of a film for public exhibition (new paragraphs 7(a) and 7(b) with references set out in Schedule 1 Part 2)
- classification of other films (new paragraphs 7(c) and 7(d) with the fees set out in Schedule 1 Part 3) which includes films for sale and/or hire.

The fees payable for classification will be charged based on time in incrementing 60 minute allotments. This structure reflects that the cost of classification depends on the length of the film. The fee categories also reflect the increasing amount of material that is submitted for classification on a DVD and the inappropriateness of continuing to assess DVDs as 'interactive or click on films' which currently attract a flat fee regardless of the amount of material on the DVD submitted for classification.

Fees will range from \$510 for a film other than for public exhibition up to 60 minutes, to \$5,090 for a film over 240 minutes that is for public exhibition.

The amount of the fee review increase for films other than for public exhibition will be approximately 12% for the most popular length product over the last financial year.

It is estimated that there will be a 70% increase for the most commonly used public exhibition categories. This is in part due to the costs of specialist equipment and staff (such as a Theatre and Projectionist) which will be directly costed to the public exhibition products that use them rather than across all product groups.

Paragraph 7(b) and 7(d) will provide a fee for a title change in relation to both public exhibition (\$600) and other films (\$390).

### **Regulation 8- Classification of Computer Games**

Proposed regulation 8 will change the fees for classification of computer games charged under paragraph 17(1)(d) and section 22A of the Act.

The Principal Regulations currently impose two levels of fees for classification of computer games depending on the amount of information provided about the game with the application, with fees ranging from \$360 to \$590.

The proposed Regulations (see regulation 4) will introduce six new fee categories for computer games. The level of fee charged will depend on (1) the complexity of the computer game (2) the amount of information about any contentious elements of the computer game and (3) where the applicant has submitted a report from an authorised assessor about the likely classification of the computer game (as provided for under subsection 17(3) of the Act).

The fees for each category of computer games will range between \$470 and \$2,040. The fee increase of 31% for the most popular computer game category is significantly lower than the corresponding increase in the OFLC's costs since the last fee review, as the proposed cost based fee accurately reflects the significant work undertaken by industry Assessors authorised under section 17(3) of the Act to provide assessments and recommendations to the Classification Board for most computer games. Less commonly used categories will have significantly higher fees due to the complex nature of computer games and the large amount of Board Member time required to properly examine and classify them where the detailed content and access knowledge of industry has not been provided.

There will be a fee for a title change for a computer game of \$460.

**Regulation 9 – Priority Processing**

This item will introduce a new Priority Processing fee, payable in addition to the application fee under paragraphs 7(c), 7(d) or regulation 8, which will enable a client to apply for priority processing.

A priority processing application requires the Classification Board to classify the product within five business days after receiving all the required evidence to classify the material. There is no change to the requirement that the Board notify the applicant as soon as practicable, but not later than 30 days after the decision as provided in subsection 26(4) of the Act.

This priority processing fee will be introduced for classification of films other than public exhibition films and for computer games, and will be set at \$400. Priority processing is not available for films for public exhibition as these products are unique and require special operational arrangements by the OFLC. If the OFLC did not comply with the five day deadline, the priority processing fee will be returned to the applicant.

**Regulation 10 – Certain Information**

Under the Principal Regulations the fee for information is set at \$50. Such information includes a copy of a classification certificate (under section 27 of the Act) or a Copy of Notices of Decision (under section 26 of the Act).

The proposed Regulations will increase the fee for obtaining this information from the OFLC. The fees will be set at \$90 for both types of documents.

There is significant administrative work involved in matching a request for information of this type. The accuracy of information is of paramount importance to clients and the OFLC procedures need to be detailed to ensure that clients receive accurate certificates so they do not proceed with business activities that may be in breach of legislation.

**Regulation 11 – Certificate that film or computer game is exempt**

This proposed regulation will introduce a new fee, under subparagraph 28A(2)(c)(i) of the Act, for obtaining a certificate that a film (public exhibition or other) or computer game is exempt from classification. Such an application is voluntary. Should a client decide to obtain a certificate confirming that the film or computer game is exempt from classification the fee for this service will be the same as the fee for classification.

**Regulation 12 – Approval of an advertisement**

This proposed regulation will increase the fee for an application for approval of an advertisement under paragraph 29(2)(d) of the Act from either \$70 or \$100 to \$450. The existing fee does not accurately reflect the costs of undertaking a process that is similar to the classification process for a short film combined with a cross check of THE OFLC records to ensure that the content of the advertisement is in line with the classification of the product being advertised. The proposed fee will more accurately reflect the costs of the service.



**Regulation 13 – Certificate of exemption for advertising purposes**

This proposed regulation will increase the fee for an application under paragraph 32(2)(d) of the Act for a certificate of exemption for a film for advertising purposes from \$200 to \$510.

The existing fee does not accurately reflect the costs of undertaking a process that requires the Classification Board to consider all of the information required under the Act, and make a judgement regarding the likely classification of a film that has not been viewed. The proposed fee will more accurately reflect the costs of the service.

**Regulation 14 – Fee for review of a decision**

The Principal Regulations currently provide that the fees for review range from between \$210 for an advertisement, to \$6,470 for a film for public exhibition and for sale or hire with a running time of more than 300 minutes.

This proposed regulation will change the fee for an application under paragraph 43(1)(d) of the Act for review of a decision of the Classification Board to a set amount of \$8,000 for all circumstances.

To set Classification Review Board fees at full cost recovery (approx \$20,600 per application) will make the costs prohibitive for applicants. A fee of \$8,000 is considered reasonable, with the balance of the fee being treated as a community obligation and funded by alternative means.

**Regulation 15 – Partial refund of application fee**

This proposed regulation will introduce a new refund system which will apply where an applicant withdraws an application for classification under the Act before a decision has been made in relation to that application.

The application for refund of an application fee must be in writing and in the form that is acceptable to the Director.

Where an applicant withdraws an application between submitting it and two days later, the entire application fee will be refunded. Where an application is withdrawn between three and five days after being submitted the application fee less \$120 will be refunded. Where an application is withdrawn between six days and the date on which the classification decision is made, the application fee less \$280 will be refunded. Once the classification decision is made there will be no refunds available. The amounts retained by the Director will reflect the likely cost incurred by the OFLC in processing the application to that point.

Within 28 days of receipt of the refund application, the Director will be required to determine the amount of the fee to be refunded, and notify the applicant of that decision.

**Regulation 16 –Partial refund of application for review**

This proposed regulation will introduce a new refund system which will apply where an applicant withdraws an application for review under the Act before a decision has been made by the Review Board in relation to that application.

The application for refund of an application fee must be in writing and in a form that is acceptable to the Director.

Where an applicant withdraws an application between submitting it and two days, the application fee less \$1,600 will be refunded. Where an application is withdrawn between three days and prior to commencement of the Review Board hearing, the application fee less \$4,000 will be refunded. Once the Review Board hearing commences there are no refunds available. The amounts retained by the Director will reflect the likely cost incurred by the OFLC in processing the application to that point, particularly as a significant amount of work occurs early in convening the Review Board.

Within 28 days of receipt of the refund application, the Director will be required to determine the amount of the fee to be refunded, and notify the applicant of that decision.

**Regulation 17 - Withdrawal of application for classification for which a priority processing fee has been paid**

Priority processing is a new service being provided. Due to the short time period that the Classification Board has to classify the material there will be no refunds of the priority processing fee of \$400. An applicant who withdraws an application for priority processing will lose this \$400 fee, and \$300 of the application fee applicable under paragraphs 7(c) and 7(d) or regulation 8. The remainder of the application fee will be refunded.

Within 28 days of receipt of the refund application, the Director will be required to determine the amount of the fee to be refunded, and notify the applicant of that decision.

**Regulation 18 – Issue of a certificate**

Under the Principal Regulations, fees are charged for the issue of certificates under section 87 of the Act. The fees range for \$80 to \$200.

This proposed regulation will change the fees for issue of a certificate under section 87 of the Act. The new fees will range between \$710 and \$1,410. The proposed fees accurately reflect the cost of providing these services, and are based on the cost of providing similar services to commercial clients, but also include the cost of additional processes required by the OFLC and Classification Board to ensure the integrity of the chain of evidence for enforcement matters. Also, the OFLC procedures include additional checking and approval processes to ensure accuracy where enforcement matters are likely to be used for evidentiary purposes in the courts.

The fees are outlined in Part 7 of Schedule 1. The three categories of fee are the same as those in the Principal Regulations.

- A certificate of verification that involves verifying the decision through checking records and having a confirmatory viewing of the publication, film or computer game at a fee of \$1,410.
- A certificate confirming a classification and title at a fee of \$710.
- A statement describing a classified publication, film or computer game at a fee of \$710.

**Regulation 19 – When certain fees are reduced or not payable**

This proposed regulation will outline when certain fees are reduced or not payable by State and Territory agencies.

Pursuant to the Intergovernmental Agreement on Censorship it was agreed that the Australian Government will provide the States and Territories, free of charge, up to a total of 100 of either evidentiary certificates or applications for classification, publications and computer games requested for the use in enforcement proceedings in a given year. Once this 100 free quota is reached, the Australian Government agreed to provide evidentiary certificates at the prescribed fee and classifications at one half of the prescribed fee. The proposed Regulation is giving effect to this agreement.

**Schedule 1**

This item will provide a Schedule, to specify the new fees for the particular services described above.