

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 244

Issued by the Authority of the Attorney-General

*Classification (Publications, Films, and Computer Games) Amendment
Regulations 2007 (No. 2)*

The *Classification (Publications, Films and Computer Games) Act 1995* (the Act) facilitates the operation the national classification scheme, a cooperative arrangement between the Commonwealth, States and Territories. Among other things, the Act also establishes the Classification Board and Classification Review Board. Under the national classification scheme the Boards classify films (including videos and DVDs), computer games and certain publications.

Section 93 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Classification (Publications, Films and Computer Games) Amendment Act 2007* (the Amendment Act) makes amendments to section 14 of the Act to provide for certain applications for classification of films to be accompanied by an assessment by an additional content assessor. The amendments will come into effect on 15 September (six months after Royal Assent). The *Classification (Publications, Films and Computer Games) Regulations 2005* (the Regulations) need to be amended to prescribe fees for applications submitted under the new provisions.

The purpose of the amendments is to amend the Regulations to prescribe fees for applications accompanied by an assessment of additional content. Three categories of fees will be prescribed, depending on whether the Classification Board would have previously viewed material.

Section 47 of the Act provides that there must not be more than 20 members of the Classification Board, but permits a higher number to be prescribed. The regulations will prescribe a higher maximum number of 30 members.

In order to meet fluctuating demand for classifications the Board requires a greater degree of flexibility, particularly with relation to temporary members. Increasing the maximum number of Board members will give the Board the flexibility required to match varying increases in demand.

The Regulations will commence on 15 September 2007 to coincide with the commencement of the amendments to the Act.

All but one of the amendments to the Regulations arise from changes made by the Amendment Act to provide for three new categories of fees.

Sub-regulations 7 (e), (f), (g) – Fee for Classification of film(s) with additional content

Under existing regulation 7 the fee for classification of a film is calculated with reference to the duration of the material. The Act and State and Territory enforcement legislation require that if a film is modified after it has been classified, a fresh classification must be obtained before it can be exhibited, sold, hired or advertised. The inclusion of additional content on a storage device for the film, such as a DVD, causes that film to be ‘modified’ within the meaning of the Act. Therefore, the entire DVD or other storage device requires a fresh classification.

The amendments to regulation 7 insert three new paragraphs into regulation 7 to prescribe new fees for applications which are accompanied by an assessment of the additional content by an additional content assessor.

New paragraph 7 (e) provides that the fee for applications for classification of a film consisting of one or more classified films or exempt films (for which a certificate under Division 6 of the Act has been issued) and additional content submitted with an assessment of the additional content by an additional content assessor is the amount in item 2 of Division 2, Part 3, Schedule 1. Item 2 sets the fee at \$430. This amount has been calculated to cover the costs relating to the handling of the application together with the costs of the Board considering the additional content assessor’s assessment and viewing a small portion of additional content and associated actions.

New paragraph 7 (f) provides that the fee is the amount in item 3 of Division 2, Part 3, Schedule 1, plus the existing prescribed fee for a film, other than a film for public exhibition, for the duration of the exempt film for applications for classification consisting of one or more exempt films (for which a certificate under Division 6 of the Act has not been issued) and additional content. Item 3 of Division 2, Part 3, Schedule 1 prescribes a fee of \$205. This fee would apply unless the film has been previously certified exempt by the Board. The fee has been calculated on the basis that the Classification Board will view the exempt film(s) in full as well as considering the Additional Content Assessor’s recommendation regarding the additional content.

The costs relating to the handling of the application other than the Board’s consideration have been subtracted from the \$430 fee which applies to applications covered by paragraph 7 (e), hence a fee of \$205. These costs, both direct labour and applicable overhead rate, have been removed on the basis that they are also included in the fee applicable to the exempt film(s).

New paragraph 7 (g) will provide for situations in which a film submitted for classification with an assessment of the additional content by an additional content assessor consists of one or more classified films and/or one or more exempt films (for which a certificate under Division 6 of the Act has not been issued) and/or one or more exempt films (for which a certificate under Division 6 of the Act has been issued). The fee for the film will be the sum of the prescribed fee for a film, other than a film for public exhibition, for the duration of the exempt film and a fee of \$205, as prescribed by item 3 of Division 2, Part 3, Schedule 1.

Sub-regulation 9 (1)

Under existing regulation 9 applications for classification of films made under existing regulation 7 (c) or (d) which are accompanied by the priority processing fee, prescribed under existing Part 3 or Part 4 of Schedule 1, must be classified, refused classification or deemed not exempt by the Board with 5 business days after receipt of all the material required to enable classification (or exemption).

The amendments to sub-regulation 9 (1) will make available this priority processing facility for applications for classification submitted under the amendments detailed in new regulations 7 (e), (f) and (g).

New Regulation 17A

Under section 47 of the Act the maximum number of Classification Board members is 20. Proposed regulation 17A prescribes a higher maximum number of 30 unless a higher number is prescribed.

Schedule 1, Part 3, Division 2

This amendment inserts two new items into Division 2, prescribing the fees for the new categories of applications.

The Classification Board and the Classification Review Board were consulted on the amendments to the Regulations. The \$430 fee was proposed in the discussion paper entitled 'Simplifying the classification of DVDs: discussion paper' dated June 2006.

A Cost Recovery Impact Statement (CRIS) has been prepared and identifies that the fees are consistent with the Government's cost recovery guidelines.