

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 199

Issued by the Authority of the Minister for Home Affairs

*Classification (Publications, Films, and Computer Games) Amendment
Regulations 2008 (No. 1)*

The *Classification (Publications, Films and Computer Games) Act 1995* (the Act) facilitates the operation of the National Classification Scheme, a cooperative arrangement between the Commonwealth, States and Territories. Among other things, the Act 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 Act sets out the requirements for applications for the classification of films and requires that the prescribed fee be paid for those applications.

The Act and State and Territory classification enforcement legislation requires 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 extra content with a previously classified or certified exempt film causes that film to be 'modified' within the meaning of the Act and therefore the entire product requires a fresh classification.

The *Classification (Publications, Films and Computer Games) Regulations 2005* (the Principal Regulations) prescribe fees for classification.

The Regulations amend the Principal Regulations to clarify charging arrangements for applications for the classification of certain films. These are films that comprise already classified and/or certified exempt film(s) plus extra content (such as deleted scenes, outtakes, commentaries and so on) that are not submitted under the Additional Content Assessor scheme (ACA scheme). (The ACA scheme is set out in section 14 of the Act. It allows for trained and authorised additional content assessors to recommend a classification for additional content that accompanies a previously classified or exempt film.)

The Principal Regulations require that the classification fee for applications that comprise already classified and/or certified exempt film(s) plus extra content that are not submitted under the ACA scheme be calculated according to the running time of the entire film.

The Regulations enable the running time of the previously classified or certified exempt film(s) to be disregarded for the purpose of calculating the classification fee.

The amendments to Principal Regulation 7 substitute a new paragraph 7(1)(c) which provides that the fee for a film, other than a film for public exhibition, or a film that:

- has undergone a title change, or
- is submitted under the ACA scheme, or
- consists of one or more previously classified or certified exempt films, plus extra content that is not submitted under the ACA scheme

is the amount mentioned in an item in Part 3 of Schedule 1 to the Principal Regulations for a film of the running time mentioned in the item. The effect of this paragraph is that, for standard sale/hire film classification applications which do not fall into any of the listed categories, the running time of the entire film is to be used to determine the appropriate application fee.

Paragraph 7(1)(c) currently has the same effect but applies to all films, other than films for public exhibition. It does not specifically exclude films that:

- have undergone a title change, or
- are submitted under the ACA scheme, or
- consist of one or more previously classified or certified exempt films, plus extra content that is not submitted under the ACA scheme.

The amendments to Principal Regulation 7 also insert three new subregulations: 7(1A), 7(1B) and 7(1C):

- Subregulation 7(1A) provides that the fee for a film mentioned in subregulation 7(1B) is the amount mentioned in an item in the (new) Division 1A of Part 3 of Schedule 1 of the proposed Regulations for film with the duration of the extra content.
- Subregulation 7(1B) provides that, for the purpose of (new) subregulation 7(1A), films are films that are not for public exhibition and that comprise previously classified or certified exempt film(s) plus extra content that are not submitted with an assessment of the additional content by an additional content assessor under the ACA scheme.
- Subregulation 7(1C) provides a definition for “duration of extra content” that is the running time of the entire film minus the running time of the classified or certified exempt film(s).

The effect of these new subregulations is that, for films that comprise previously classified or certified exempt film(s) plus extra content that have not been submitted under the ACA scheme, only the duration of the extra content is to be taken into account for the purpose of calculating the application fee.

The Regulations refer to “extra content” which is different from “additional content” as defined in section 5 the Act. “Additional content” is the material that can be assessed by additional content assessors under the ACA scheme and excludes material such as feature films, television programs and computer games. “Extra content” is any material other than the previously classified or certified exempt film(s) that is included in a classification application. “Extra content” is therefore much broader than “additional content”.

Extra content is supplementary to, and separate from, the classified or certified exempt film. It can include content such as ‘making-of’ documentaries, outtakes or featurettes. Extra content can also be a new version of the film which has been modified to include, for example, director’s commentary, additional scenes or ‘factoids’.

The Regulations require that the running time of the extra content will be used to determine the fee. The running time of the previously classified or certified exempt film(s) will be disregarded for the purpose of calculating the fee.

The Regulations also substitute a new subregulation 9(1) which clarifies the existing provisions relating to the payment of a priority processing fee for the classification of films. Specifically, it makes it explicit that the provisions relating to the priority processing of a film as set out in subregulations 9(2) and 9(3) only apply if the application is accompanied by both the classification fee and the priority processing fee.

Subregulation 9(1) currently does not explicitly provide that both fees must be paid but only refers to payment of the priority processing fee. Subregulation 9(1) also currently refers to both films and computer games. The Regulations amend subregulation 9(1) to only refer to films.

New subregulation 9(1A) clarifies the existing provisions relating to the payment of a priority processing fee for the classification of computer games. Specifically, it makes it explicit that the provisions relating to the priority processing of a computer game as set out in subregulations 9(2) and 9(3) only apply if the application is accompanied by both the classification fee and the priority processing fee.

Subregulation 9(1) currently does not explicitly provide that both fees must be paid but only refers to payment of the priority processing fee. Subregulation 9(1) also currently refers to both films and computer games. Subregulation 9(1A) only refers to computer games.

The Regulations also insert and amend a number of references and notes to reflect amendments made by the Regulations or to amend those which were inadvertently omitted or incorrect in the Principal Regulations.

The Regulations also insert a new Division 1A at Schedule 1, Part 3, to set out the fees for applications for the classification of previously classified or certified exempt film(s) with extra content that are not submitted under the ACA scheme. This new division shows the running time “time slices” and applicable fees for the duration of extra content for these films.

No industry consultation was undertaken in relation to the amendments as the Regulations clarify charging practices. Additional business compliance costs and other impacts on business and individuals or the economy associated with the Regulations have therefore been assessed as nil. As such, no Regulation Impact Statement was prepared for the Regulation.