

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 152

Issued by the Authority of the Minister for Home Affairs
Classification (Publications, Films and Computer Games) Act 1995
Classification (Publications, Films and Computer Games) Amendment Regulations
2010 (No. 1)

Section 93 of the *Classification (Publications, Films and Computer Games) Act 1995* (the Act) provides, in part, that the Governor-General may make regulations 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 provides that:

- an application for classification of a publication, film or computer game must be accompanied by the prescribed fee;
- an applicant for the classification of a publication, film or computer game that is made for enforcement purposes must pay the prescribed fee; and
- the Director of the Classification Board (the Director) or Convenor of the Classification Review Board (the Convenor) must give written notice of a decision of the Classification Board or the Classification Review Board to the applicant (a section 26 notice).

The Act also allows for:

- a person to apply for a copy of a Classification Certificate provided they have paid the fee; and
- a person to apply to the Director or the Convenor for a certificate in relation to action taken, or not taken, under the Act by the Director or Classification Board or Convenor or Classification Review Board (a section 87 certificate).

The *Classification (Publications, Films and Computer Games) Regulations 2005* (the Principal Regulations) currently prescribe the fees to be paid in relation to those applications for classification, a copy of a Classification Certificate and a section 87 certificate.

The amending Regulations amend the Principal Regulations to ensure that applications from a state or territory (state) for a film, publication or computer game to be classified and for a section 87 certificate do not count as two applications, which incur separate fees, in respect of the first 100 such applications.

The amending Regulations also make a number of other minor changes to the Principal Regulations, including that that states receive 100 free eligible documents (applications for classification, a copy of a classification certificate, a section 26 notice or section 87 certificate) per financial rather than calendar year.

Details of the amending Regulations are set out in the Attachment.

A consultation draft of the amending Regulations was circulated for comment to all States and Territories. No jurisdiction objected to the changes. Responses on the consultation draft were received from NSW, Victoria and WA. No further consultation was necessary as the amending Regulations impose no increased compliance costs for legitimate business. The amending Regulations have no to low regulatory impacts on business and individuals.

The amending Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The amending Regulations commence on 1 July 2010.

ATTACHMENT

Details of the Classification (Publications, Films and Computer Games) Amendment Regulations 2010 (No. 1)

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Classification (Publications, Films and Computer Games) Amendment Regulations 2010 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on 1 July 2010.

Regulation 3 – Amendment of Classification (Publications, Films and Computer Games) Regulations 2005

This regulation provides that the *Classification (Publications, Films and Computer Games) Regulations 2005* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – Regulation 10

Regulation 10 of the Principal Regulations currently prescribes the fee to be charged in relation to a copy of a classification certificate pursuant to section 27 of the Act and notes that the fee is subject to regulation 19.

Item [1] removes the phrase “and subject to regulation 19,” from regulation 10 because the amending Regulations delete the current paragraph 19(1)(b). This refers to a copy of a classification certificate for which regulation 10 prescribes the fee to be charged.

Item [2] – Subregulation 19(1), definition of *eligible document*, paragraphs (b) and (c)

Previously, where a state made an application for an *eligible document*, it could receive the first 100 *eligible documents* in any given calendar year without needing to pay a fee. For any further documents, the state received a 50 per cent discount on the relevant fee in respect of regulation 5, 7, 8 or 10 applications. The definition of *eligible document* in subregulation 19(1) of the Principal Regulations had the effect that if a state applied for a film, publication or computer game to be classified and also requested a section 87 certificate, this was counted as two applications.

Item [2] amends regulation 19 to provide that, where a state requests both an application for classification and a section 87 certificate in relation to the same matter, for the first 100 such requests, this counts as a single *eligible document*. This is achieved by altering the definition of *eligible document* so as to allow a request for both to count as a single *eligible document*. The result is that where both documents

are applied for together, the first 100 applications are free. This decreases the cost burden on the states enforcing their classification offences.

Item [2] also deletes the current paragraph 19(1)(b) which refers to a copy of a classification certificate or of a notice under section 26 of the Act. This change is made for two reasons. First, the documents covered by paragraph 19(1)(b) are not mentioned in the Inter-Governmental Agreement on Censorship (IGA). Accordingly, it is preferable for the IGA and the Principal Regulations to be consistent. Secondly, there is currently no demand for these documents.

Item [3] – Subregulations 19(2) and (3)

Subregulations 19(2) and (3) of the Principal Regulations previously referred to a calendar year.

Item [3] amends subregulations 19(2) and (3) to provide that states receive 100 free *eligible documents* per financial rather than calendar year. This change is made so as better to align the system of free eligible documents with reporting requirements for the Classification Board. Since the amending Regulations commence on 1 July 2010, item [3] also obviates the need for transitional arrangements.

Item [4] – Paragraph 19(3)(a)

Paragraph 19(3)(a) of the Principal Regulations previously referred to paragraphs (a) or (b) of the definition of *eligible document*.

Item [4] amends paragraph 19(3)(a) to remove the reference to paragraph (b) of the definition of *eligible document*. This is a consequential change needed because of the deletion of the current paragraph 19(1)(b) by item [2].

Item [5] – Subregulation 19(3)

Subregulation 19(3) of the Principal Regulations previously referred to the fee prescribed in regulations 7, 8 or 10.

Item [5] amends subregulation 19(3) to delete the reference to regulation 10. This is a consequential change as a result of the deletion of the current paragraph 19(1)(b) by item [2].

Item [6] – Subregulation 19(4)

Subregulation 19(4) of the Principal Regulations previously prescribed a fee to be paid if 100 *eligible documents* had already been requested in a calendar year.

Item [6] amends subregulation 19(4) to refer to a financial rather than calendar year. This change is made consequential to the change made by item [3].

Item [7] – Paragraph 19(4)(a)

Paragraph 19(4)(a) of the Principal Regulations previously referred to paragraph (c) of the definition of *eligible document*.

Item [7] amends the paragraph so that it refers to paragraph (b) of the definition. This change is being made because the substance of the current paragraph (c) is moved to paragraph (b) by item [2].

Item [8] – After subregulation 19(4)

Item [8] adds a new subregulation 19(5). This is an avoidance of doubt provision which clarifies that once the 100 free *eligible documents* have been used by a state, it is no longer possible to count both a classification certificate and a section 87 certificate as a single *eligible document*. Any further pairs of documents submitted continue to be treated as two individual documents, for which two fees are payable. These further requests receive the previous discount rate, namely a 50 per cent discount for the fees prescribed by regulations 5, 7 or 8 (and 10) and no discount for the fee prescribed in regulation 18.