

1997

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES)**

**CHARGES BILL 1997**

**CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES)**

**AMENDMENT BILL 1997**

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Attorney-General,  
the Honourable Daryl Williams AM QC MP)



## **CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) CHARGES BILL 1997**

## **CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) AMENDMENT BILL 1997**

### **OUTLINE**

The Classification (Publications, Films and Computer Games) Charges Bill 1997 ('the Classification Charges Bill') provides for the imposition of charges for the classification of publications, films and computer games and for related services.

The Classification (Publications, Films and Computer Games) Amendment Bill 1997 ('the Amendment Bill') amends the *Classification (Publications, Films and Computer Games) Act 1995* ('the Act') consequent upon the proposed enactment of the Classification Charges Bill. The Amendment Bill contains administrative provisions relating to the collection of charges and the waiver of charges and prescribes time limits for the making of classification decisions.

At present, fees for applications for classification and other services are prescribed in Regulations made under the Act. The fees so prescribed are currently set at one hundred percent cost recovery for the provision of those services.

In the May 1997 Budget context, the Government decided to introduce full cost recovery for the Office of Film and Literature Classification ('OFLC') from 1 July 1998. This decision means that revenue from classification services must also cover matters ancillary to the provision of classification services. For this to occur, charges for classification and related services must be imposed as a tax.

An exception applies to applications for classification and evidentiary certificates by the Commonwealth, States and Territories for use in the investigation and prosecution of an offence against censorship laws. Under arrangements between the Commonwealth, States and Territories fees for these applications will not exceed the cost of providing the services and they will continue to be prescribed by regulations under the Act.

The Classification Charges Bill makes provision for amending the Schedules of charges by regulations made under that Bill. This is required as the revenue needed to meet full cost recovery for the OFLC will vary over time.

The Amendment Bill also simplifies the material to accompany an application for classification made for the purposes of investigating or prosecuting an offence against a law of the Commonwealth, a State or a Territory. This follows the failure of two prosecutions earlier this year due to a lack of compliance with all the formal requirements for classification applications.

### **FINANCIAL IMPACT STATEMENT**

The Classification Charges Bill provides for the imposition of charges. This is estimated to generate an additional \$2.15 million per annum in savings to outlays from 1998/99.

## REGULATION IMPACT ON BUSINESS

### Medium Impact

- Financial impact of the new charges will vary depending upon the nature of the material submitted and upon the size of the applicant's business.
- Business producing or importing products in small volumes for niche or specialist markets will pay proportionately more per unit than those producing or importing products in larger volumes for a mass market.
- The degree to which the increase in classification costs will be passed on to consumers will depend upon the operation of normal market forces.
- Imposition of charges will permit greater flexibility, for example, charging scales could be introduced to take account of market variables, such as consumer demand.
- No increase in administrative burden to business.

## REGULATION IMPACT STATEMENT

The following information is provided in accordance with Guidelines provided by the Office of Regulation Review, Industry Commission.

### A. PROBLEM IDENTIFICATION AND SPECIFICATION OF REGULATORY OBJECTIVES

The Government announced, as part of the May 1997 Budget, that full cost recovery will be introduced for the Office of Film and Literature Classification ('OFLC') from 1 July 1998. This decision seeks to ensure that those who benefit directly and indirectly from the work of the OFLC pay the full cost of its operations.

These operations include activities ancillary to classification services such as certain research, the community liaison officer scheme, policy development and ministerial support. While these activities are related to an efficient and effective classification and enforcement scheme they cannot, for Constitutional reasons, be included in the fee for the provision of classification services.

To implement this decision legislation is required to impose, as a tax, charges for applications for classification and related services.

### B. IDENTIFICATION OF ALTERNATIVES

The Government's decision does not affect or change the current co-operative legislative structure for the classification of publications, films and computer games which reflects the agreement of all Australian Governments. On this basis there were two available alternatives:

- 1) Continue to link the cost of making applications for classification of publications, films and computer games, and the provision of related services, to the cost of providing those services;
- 2) Provide for full cost recovery for the OFLC.

### C. IMPACT ANALYSIS

#### Impact Group Identification

The new charges will impact on businesses, governments and individuals who make applications for classification of publications, films or computer games.

Commonwealth, State and Territory Government agencies requiring classifications for enforcement purposes will not be required to pay the new charges. However, a prescribed fee will be payable for such applications which will be calculated as a proportion of the classification charge which would otherwise apply.

Applications for classification are made by large and small private businesses. Such businesses are usually involved in the production, importation or distribution of classifiable publications, films and computer games to service general or special interest consumer demand within domestic markets.

The financial impact of the new charges will vary depending upon the nature of the material submitted and upon the size of the applicant's business. Typically, businesses

producing or importing products in small volumes for niche markets will pay proportionately more per unit than businesses producing or importing products in larger volumes for a mass market.

### **Assessment of Costs and Benefits**

Option 1 - The retention of a cost recovery approach to the provision of Commonwealth classification services would reduce the financial burden on industry and the classification cost to applicants, but would also reduce savings to Government outlays. It would also mean that those who benefit directly and indirectly from OFLC activities would not be required to meet the cost of those activities in full.

This option would recover 100% of classification costs from users in continuation of existing arrangements and fee levels. It would also require the cost of ancillary services relating to the policy and ministerial functions of the OFLC (approximately \$1.54 million per annum) and the cost of Commonwealth obligations under the cooperative national classification scheme (approximately \$0.61 million per annum) to remain budget funded by the Government.

Option 2 - The Government estimates that the charges required to achieve full cost recovery for OFLC will generate an additional \$2.15 million per annum in savings to outlays from 1998-99.

This additional revenue will be generated entirely from charges applying to applications for classification and related services. This option will result in a significant increase in classification charges from the current level of fees which came into effect on 1 November 1997.

A classification, which currently costs between \$100 and \$2,000, equates to a right to publicly exhibit, sell or distribute certain publications, films and computer games in Australia, which represents a market of approximately 17 million people. Under option 2, classification charges will rise by approximately 57% to levels which, it is understood, are broadly consistent with those applying in comparable countries overseas. Information provided by overseas ratings agencies indicates that currently in the United States of America fees for the rating of a feature film are approximately \$US24,000, or \$94 per million people. In Britain the classification fees for a film are approximately \$6,000, or \$109 per million people. In New Zealand, where the New Zealand Government has moved to recover all the costs of operating their OFLC from users, the fees are approximately \$1,500, or \$500 per million people. By comparison, under the new cost recovery arrangements classification charges for a film in Australia will rise to up to approximately \$2,000, or \$118 per million people.

The financial impact upon individual businesses will vary and the degree to which the increase in classification costs will be passed on to consumers will depend upon the operation of normal market forces.

The impact of the increased charges on large businesses can be expected to be relatively minor, whereas the impact of the new charges upon small businesses can be expected to be greater. A successful publication, film or computer game could achieve gross sales worth millions of dollars.

Low volume or special interest products on the other hand, may only generate sales worth hundreds or thousands of dollars. It can be expected that in such cases the increase in charges will either be passed on to consumers in full or, in some cases, may

reduce the commercial viability of importing or distributing certain products. Legislative provision has been made to waive classification charges on the basis of educational or public health grounds if the public interest is served.

At the same time the implementation of full cost recovery for OFLC should ensure that the OFLC maintains a strong service focus which will inevitably impact favourably on the provision of services to clients. Any reduction in revenue to be recovered from classification charges can be expected to have an adverse impact upon the level of services provided to industry by the OFLC.

Further, the move from a fee for service structure to the imposition of charges will permit greater flexibility in setting charges for various categories of material. For example, charging scales could be introduced to take into account market variables, such as consumer demand.

The new charging arrangement, *per se*, will have no bearing on OFLC running costs. However, it can be expected that the implementation of full cost recovery will require industry involvement in determining appropriate performance standards for OFLC. Relevant industry groups and users of OFLC services will be encouraged each year to input to the operations of the OFLC through consultative mechanisms.

#### D. OTHER REQUIREMENTS

##### Consultation

This decision was made by Cabinet in the Budget context.

Although consultation did not take place with industry on the decision, extensive consultation with industry did take place during the independent review of the OFLC's pricing policy conducted by Pivotal Management Pty Ltd during 1996-97.

The review, and related industry consultations, were conducted in the context of a previous Government decision to reduce the OFLC Budget allocation on the basis that the cost of providing classification services would be recovered from users. At that time, an incremental approach over three years was adopted in order to allow time for consultation with industry to take place and for industry to adjust to the increase in classification costs.

A survey of OFLC clients was conducted in June 1996 and a report produced. Formal industry consultation meetings were held in December 1995, September 1996 and March 1997. These consultations included industry bodies such as the Australian Visual Software Distributors Association, the Motion Picture Distributors Association of Australia, the Eros Foundation and the Amusement Arcade Machine Operators Association.

In the March 1997 consultation meetings, clients and industry bodies commented on the PIVOTAL Report "OFLC Pricing Policy Review". While industry expressed concern about any increase in classification fees and challenged the inclusion of costs related to enforcement, research and community education, the revised fee structure was endorsed and strong support for an incremental approach to implementing fee increases was expressed.

Further, under the *Classification Charges Bill* any changes to the classification charges which are set out in the Schedules to the Bill are to be made by regulations. Any such

changes will be the subject of industry consultation prior to the regulations being made.

### **Administrative Simplicity, Economy and Flexibility**

The proposed changes will not add to the administrative burden of business. There will be a marginal increase in the administrative workload of OFLC as a result of the requirement for increased consultation with relevant industry sectors.

### **Explanatory Material**

Explanatory material on the new charging arrangements, once finalised, will be provided to all OFLC clients and relevant industry bodies for the information of their members.

### **Conclusion**

The recovery of all OFLC operating costs from industry in accordance with option 2 has been adopted in order to increase savings in Government outlays and in order to ensure that those who benefit directly and indirectly from OFLC services and other activities pay the full cost of its operations.

The co-operative national classification scheme requires that classification decisions are made, in the public interest, by an impartial body which is broadly representative of the Australian community and that such decisions reflect current community standards. In requiring industry compliance with classification laws, the national classification scheme ensures that appropriate legal protections are maintained in the community interest.

It can be expected that the implementation of option 2 will ensure that high quality classification services continue to be delivered while maintaining a strong service orientation in responding to industry requirements.

## **E. REVIEW**

Industry has a legitimate interest in the cost effectiveness and efficiency of the OFLC's services. At the direction of the Attorney-General, discussions are being held with relevant industry groups and users of OFLC services on the establishment and composition of consultative mechanisms, representing users of OFLC services, to ensure ongoing industry input into the operations of the OFLC.

It is proposed that agreed performance indicators and outcomes be published in each OFLC Annual Report to Parliament. This will be in addition to the prescription in the Act of a time limit for the provision of classification services by OFLC.



## NOTES ON CLAUSES

### CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) CHARGES BILL 1997

#### Part 1 - Preliminary

##### Clause 1 - Short title

1. Provides for the Act to be cited as the *Classification (Publications, Films and Computer Games) Charges Act 1997*.

##### Clause 2 - Commencement

2. This Act commences on 1 July 1988.

##### Clause 3 - This Act binds the Crown

3. This clause provides that the Act binds the Crown in right of each of the States, the Australian Capital Territory and the Northern Territory. However, it does not bind the Crown in right of the Commonwealth. This is because the Commonwealth cannot tax itself. Special provision is made in the complementary Classification (Publications, Films and Computer Games) Amendment Bill 1997 to ensure that the Commonwealth, and its agencies and authorities are notionally liable to pay the charges, except in relation to enforcement applications.

##### Clause 4 - Definitions

4. This clause defines words and expressions used in the Act. The principal definitions are:
  - *Classification Act* means the *Classification (Publications, Films and Computer Games) Act 1995*.
  - *interactive film* means a film referred to in subsection 14(4) of the Classification Act.
5. The clause also provides that an expression used in this Act has the same meaning as in the *Classification (Publications, Films and Computer Games) Act 1995* ('the Principal Act').

#### Part 2- Charges on Applications

##### Clause 5 - Application for classification of a publication

##### Clause 6 - Application for classification of a film

##### Clause 7 - Application for classification of a computer game

##### Clause 8 - Application for a copy of a classification certificate or a notice

**Clause 9 - Application for approval of an advertisement****Clause 10 - Application for a certificate of exemption****Clause 11 - Application for review of a decision****Clause 12 - Application for an evidentiary certificate**

6. These clauses impose the charges payable under sections 13, 14, 17, 27, 29, 32, 43 and 87, respectively, on applications made under those sections of the Principal Act, as amended by the Classification (Publications, Films and Computer Games) Amendment Bill 1997.
7. The amount of the charge payable is to be worked out by reference to the relevant Schedule to this Act, or Part thereof, referred to in the clauses.

**Part 3 - Regulations****Clause 13 - Regulations may amend a Schedule to this Act**

8. This clause enables regulations to be made to amend the Schedules to the Act which contain the charges for applications made under the Principal Act. This provision is needed to give continuing effect to the decision that the Office of Film and Literature Classification be fully funded from revenue obtained from its classification and other activities. The revenue needed to meet these costs will vary from time to time and it will be necessary to revise the charges contained in the Schedules to enable full cost recovery to be maintained.
9. The clause also ensures that any amendment of the Schedules to the Act is incorporated in a reprint of the Act.

**The Schedules**

10. Schedules 1 to 6 specify the charges for the various applications for which a charge is payable under the Principal Act.

**CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES)  
AMENDMENT BILL 1997**

**Clause 1 - Short title**

1. Provides for the Act to be cited as the *Classification (Publications, Films and Computer Games) Amendment Act 1997*.

**Clause 2 - Commencement**

2. This clause provides that, apart from Part 2 of Schedule 1 which commences on 1 July 1998, the Act commences on the day on which it receives the Royal Assent.

### Clause 3 - Schedule (s)

3. This clause provides for the amendment of each Act specified in the Schedule and that any other item in the Schedule has effect according to its terms.

### Schedule 1 - Amendment of the Classification (Publications, Films and Computer Games) Act 1995

#### Part 1 - Amendments that commence on the day on which this Act receives the Royal Assent

##### Item 1 - Section 5

4. This item amends section 5 (Definitions) of the *Classification (Publications, Films and Computer Games) Act 1995* ('the Principal Act'), to insert the following definition:
- **enforcement application** means an application that is made:
    - (a) by the Commonwealth, a State or a Territory, or by an authority or agency of the Commonwealth, a State or a Territory; and
    - (b) for the purpose of investigating or prosecuting an offence against a law of the Commonwealth, a State or a Territory.
5. This item, and items 2 to 10 that follow, are part of measures to simplify the requirements for applying for classification of publications, films and computer games and related matters for the purpose of investigating or prosecuting an offence against a law of the Commonwealth, a State or Territory. State and Territory legislation contains offence provisions regulating the exhibition, sale or hire of unclassified material and material classified under the Principal Act. Under State and Territory legislation a prosecution cannot be brought in respect of unclassified material until the material seized is classified.
6. Earlier this year, two Police prosecutions failed because of lack of strict compliance with section 14 of the Principal Act which sets out the requirements for making an application for the classification of a film. These requirements include that an application be accompanied by the prescribed fee and an adequate written synopsis of the film in English that includes a statement or summary of any incidents, or of the plot, depicted or intended to be depicted by the film. Applications for classifications of computer games are more onerous and must, in addition to the prescribed fee, be accompanied by a document setting out the title of the game, the year of production, the name of the publisher, the country of origin and a description of the game play. Further, if any game play is likely to be regarded as containing contentious material, the application must also be accompanied by a video tape recording of the game play.
7. While there are good policy reasons for requiring commercial applications for classification to be accompanied by the information required by the Principal Act, the same considerations do not apply to applications by enforcement authorities. Applicants for classification for enforcement purposes will usually not be in a position to provide the required material and may, in some cases, not have the necessary expertise to provide it.

8. As the efficacy of the Commonwealth, State and Territory co-operative censorship scheme is dependent on an effective enforcement regime, it is proposed to amend the Act so there are no unnecessary impediments to achieving this end. Accordingly, the Bill proposes a much simplified requirement where applications for classification of publications, films and computer games are made for enforcement purposes. Although this will make dealing with these applications more onerous for the Classification Board, it has the necessary expertise to deal with the material, unlike enforcement authorities.
9. This objective has been achieved in the Bill by removing enforcement applications from the general application provisions and inserting special provisions relating to the material that must accompany enforcement applications (see new section 22A to be inserted by Item 8 in the Schedule).

**Item 2 - Section 13**

**Item 3 - Subsection 14(1) and paragraph 14(4)(a)**

**Item 4 - Paragraph 15(2)(b)**

**Item 5 - Subsection 15(3)**

**Item 6 - Subsection 17(1)**

10. These items amend the sections referred to above to remove enforcement applications from the Principal Act provisions dealing with applications for classification of publications, films and computer games. In relation to the amendment to section 15 of the Principal Act (Items 4 and 5) that section enables the Board to decline to deal with an application for the classification of a film and to deal with it instead as an application for classification of a computer game, if the applicant provides additional material. The requirement to provide additional material will not apply to an enforcement application under the proposed amendments.

**Item 7 - At the end of section 22**

11. This item adds a new subsection (2) to section 22 of the Principal Act. Section 22 provides that a film or computer game must not be classified if it contains an advertisement for a film or computer game that had not been classified or that has a higher classification. The new subsection 22(2) removes the restriction where an application for classification is made for enforcement purposes.
12. While section 22 reflects the appropriate policy objectives for commercial applications, it is not relevant to classifications for enforcement purposes. In such cases enforcement authorities have no control over what a film or computer game they have seized contains and which must, nevertheless, be classified for enforcement purposes. Any film so classified, that includes advertisements of the kind referred to in section 22, will not be able to be sold or exhibited commercially under prohibitions contained in State and Territory enforcement provisions.

**Item 8 - At the end of Division 2 of Part 2**

13. This item inserts a new section 22A in the Principal Act which sets out the requirements where an application for classification is made for enforcement purposes. Such applications must be in writing, made in the form approved by the Director of the Classification Board in writing, signed by and on behalf of the applicant and be accompanied by a copy of the publication, film or computer game. An applicant must also pay the prescribed fee for the application, however the fee need not accompany the application. In relation to enforcement applications, the practice has been for the Office of Film and Literature Classification to invoice the relevant authorities for the cost of the application.

**Item 9 - Subsection 27(2)**

**Item 10 - Section 87**

14. Section 27 deals with applications for information about classification decisions and section 87 enables the Director to issue, on application, evidentiary certificates about action taken under the Principal Act. The purpose of these amendments is to ensure that, where an application is made for enforcement purposes, the fee for the application need not be paid before the information or the certificate is provided. Section 87 is also to be amended to refer to a certificate about action not taken under the Act (for example, that particular material has not been classified) as well as action that has been taken under it.

**Item 11 - Section 94 (paragraph (c) of the definition of  *censor* )**

15. This makes a technical drafting amendment to this provision.

**Part 2 - Amendments that commence on 1 July 1998**

**Item 12 - Section 5 (paragraphs (a) and (c) of the definition of  *decision* )**

**Item 13 - Section 5 (definition of  *decision* )**

16. These items make technical drafting amendments to the definition of  *decision*  in the Principal Act.

**Item 14 - Section 5**

**Item 15 - Section 5**

17. These items insert, in the Principal Act, a definition of **prescribed charge** (to mean the charge prescribed by the *Classification (Publications, Films and Computer Games) Charges Act 1997*) and **prescribed fee** (to mean the fee prescribed by regulations made under this Act), respectively.

**Item 16 - Subparagraph 13(d)(i)**

**Item 17 - At the end of section 13**

**Item 18 - Subparagraph 14(1)(d)(i)**

**Item 19 - At the end of subsection 14(1)**

**Item 20 - Subsection 15(3)**

**Item 21 - At the end of subsections 15(3) and (4)**

**Item 22 - Subsection 16(1)**

**Item 23 - Subsection 16(2)**

**Item 24 - Paragraph 17(1)(d)**

**Item 25 - At the end of subsection 17(1)**

**Item 26 - At the end of subsection 22A(2)**

**Item 27 - Subsection 27(2)**

**Item 28 - At the end of subsections 27(2) and (3)**

**Item 29 - Paragraphs 29(2)(d), 32(2)(d) and 43(1)(d) and subsection 87(2)**

**Item 30 - At the end of subsections 87(2) and (3)**

18. The effect of the amendments to be made to the Principal Act by these items is to require applications for the classification of publications, films and computer games (sections 13, 14 and 17, respectively), applications for information (section 27), applications for approval of advertisements (section 29), applications for certificates of exemption to allow advertising of unclassified eligible films (section 32), applications for a review of Classification Board decisions by the Classification Review Board (section 43) and applications for evidentiary certificates (section 87) to be accompanied by the charges prescribed under the *Classification (Publications, Films and Computer Games) Charges Act 1997* rather than by the prescribed fee as is the case at present under the Principal Act.
19. As the Commonwealth cannot tax itself, notes are also included under the respective application sections to inform the reader that where the Commonwealth, or an agency or authority of the Commonwealth, is an applicant reference should be made to section 91A which makes the Commonwealth and its agencies and authorities notionally liable to pay the charge.
20. Items 20 and 21 make consequential amendments to section 15 of the Principal Act which enables the Board, in its discretion, to deal with an application for the classification of a film as an application for classification of a computer game. Similarly, items 22 and 23 make consequential amendments to section 16 of the Principal Act which deals with the fee payable where a film comprises more than one work and runs for more than ninety minutes.

**Item 31 - After section 87**

21. This item inserts a new section 87A in the Principal Act. The new section will require the Classification Board to make a classification decision within twenty business days or such shorter period as may be prescribed by regulations for the application. The time when the period runs is to be worked out in a way prescribed by the regulations. Where the Board does not make a decision within the relevant period, the Director must state the reason for the Board not doing so in the Annual Report given to the Minister under section 67 of the Principal Act.

22. Because of the volume of applications that may be received at any one time it is not always possible to make classification decisions on enforcement applications within 20 business days. The section therefore excludes such applications. The time limits for dealing with these applications will be worked out with the enforcement authorities concerned.

#### **Item 32 - Subsection 91(1)**

23. This item will replace subsection 91(1) of the Principal Act with a new subsection to allow charges (as well as prescribed fees) that are payable, or notionally payable under the Act, to be waived by the Director in the circumstances set out in that section.

#### **Item 33 - After section 91**

24. This item will insert new sections 91A, 91B and 91C into the Principal Act.
25. New section 91A recognises that the Commonwealth cannot make itself liable to pay a fee or charge imposed under its legislation. However, the section states that the Commonwealth (or an agency or authority thereof that cannot be made liable to taxation by a Commonwealth law) should be notionally liable to pay a fee or charge payable under the Principal Act. The new section enables the Minister for Finance and Administration to give such written directions as are required to give effect to this policy.
26. New section 91B deals with the cancellation of exemptions from the payment of fees and charges under this Act under the provisions of another Act.
27. New section 91C provides that a fee payable under the Principal Act is recoverable as a debt due to the Commonwealth.



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