

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Home Affairs

*Classification (Publications, Films and Computer Games) Act 1995*

*Classification (Waiver of Fees) Principles 2008*

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 (the Board) and Classification Review Board (the Review Board). Under the National Classification Scheme the Boards classify films (including videos and DVDs), computer games and certain publications.

Section 91 of the Act provides for the waiver of fees payable under the Act to the Board, the Director of the Board, the Review Board and the Convenor of the Review Board.

Subsections 91(1) and 91(1A) set out the following circumstances in which the Director and Convenor respectively may waive all or part of fees payable:

- (a) If in the Director's or Convenor's opinion it is in the public interest to do so for public health or educational reasons, or
- (b) If the body that would be liable or notionally liable is:
  - a. a Commonwealth, State or Territory body or authority, or
  - b. a non-profit organisation, or
- (c) If the payment is for special interest material having a limited distribution that is:
  - a. wholly or mainly a documentary record of an event, or
  - b. of a cultural or like nature, or
  - c. a short film from a new or emerging film maker,

and in the Director's or Convenor's opinion, it is in the public interest to do so.

Under subsection 91(1B) the payment of fees may only be waived in accordance with written principles determined by the Minister, in consultation with participating Ministers.

Amendments to section 91 of the Act made by the *Classification (Publications, Films and Computer Games) Amendment Act 2007* (the Amendment Act) gave the Convenor the power to waive fees. Before the amendments to section 91 commenced

on 15 September 2007, only the Director had the power to waive fees, including fees for applications relating to the Review Board.

Fees for applications made under the Act are prescribed in the *Classification (Publications, Films and Computer Games) Regulations 2005* (the Regulations).

The purpose of the *Classification (Waiver of Fees) Principles 2008* (the Principles) is to replace the *Classification (Waiver of Fees) Principles 2000* (the revoked Principles) which did not apply to the Convenor. For the most part, except as to give effect to the Convenor's new power, the Principles do not depart from the substance of the revoked Principles. However, changes have been made to the structure and drafting to improve clarity and usability.

The Principles were drafted in consultation with the State and Territory Censorship Ministers (as required under subsection 91(1B) of the Act). The Director of the Board and the Convenor of the Review Board were also consulted.

Details of the Principles are set out in the **Attachment**, including any substantive departures from the previous Fee Waiver Principles.

The Principles are a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (the LIA) and commence on the day after they are registered on the Federal Register of Legislative Instruments.

### Section 1 – Name of Principles

This section provides that the title of the Principles is the *Classification (Waiver of Fees) Principles 2008*.

### Section 2 – Commencement

This section provides for the Principles to commence on the day after they are registered on the Federal Register of Legislative Instruments.

### Section 3 – Purpose

This section sets out the purpose of the Principles. Subsection 3(1) states that the Principles set out matters to be considered, and information required, by the Director or the Convenor in making a decision about waiving all or part of the fee for a substantive application. Subsection 3(2) provides that the Principles do not apply to applications made for enforcement purposes under the intergovernmental agreement between the Commonwealth, the States and the Territories that is the foundation of the National Classification Scheme.

### Section 4 – Revocation

This section revokes the *Classification (Waiver of Fees) Principles 2000*.

### Section 5 - Definitions

This section sets out definitions for key terms used in the Principles. The only substantial change from the definitions in the revoked Principles is the use of the phrase ‘substantive application’ in place of ‘applications under the Act’. The phrase ‘substantive application’ is defined differently in respect of the Director and the Convenor and covers the majority of applications made under the Act for which fees are prescribed under the Regulations.

The note to Section 5 states that certain words and expressions used in these Principles have the same meaning as they have in the Act including computer game, Convenor, Director, enforcement application, film and publication.

### Section 6 – Character of Material

Paragraph 91(1)(c) and paragraph 91(1A)(c) of the Act provide that the Director or Convenor, respectively, may waive an applicant’s fees if

the payment is for special interest material having a limited distribution that is:

- a. wholly or mainly a documentary record of an event, or
- b. of a cultural or like nature, or
- c. a short film from a new or emerging film maker, and,

in the Director or Convenor's opinion, it is in the public interest to do so.

Section 6 of the Principles defines some of the terms in section 91 of the Act that relate to the character of material. Section 6 largely mirrors the equivalent section in the revoked Principles, but they differ in the following ways:

#### *Educational*

Educational material was defined in the revoked Principles. It is no longer defined in the new Principles because paragraphs 91(1)(a) and 91(1A)(a) of the Act ask the Director and Convenor to consider whether a waiver is in the public interest for public health or educational reasons **not** whether the material itself is educational.

#### *Limited distribution*

Fees may be waived for the classification of some material with a limited distribution. The limit on the number of copies of a computer game that will be taken to meet the description of 'limited distribution' has been raised from 20 prints or copies to 50 prints or copies, the same as for films for sale or hire. The burgeoning popularity of computer games and increasing media convergence makes it inappropriate and impractical to have a lower limit for the number of computer games. The limit on the number of copies of public exhibition films has not been changed as they are not comparable to films for sale or hire or computer games.

#### *Documentary record of an event*

The examples given in a separate paragraph of a 'documentary record of an event' in the revoked Principles have been incorporated into the body of the defined term in paragraph 6(c).

#### *Cultural or like nature*

Paragraph 6(d) modifies the definition in Paragraph 6(e) of the revoked Principles. However, these modifications do not, and are not intended to, expand or contract the range of material that might be considered 'of a cultural or like nature'. Rather the definition has simply been made more 'user friendly'.

### Section 7 – Public Interest

Paragraphs 91(1)(a) and 91(1A)(a) of the Act provide respectively for the Director or the Convenor to waive fees if in the Director's or Convenor's opinion it is in the public interest to do so for public health or educational reasons.

Paragraphs 91(1)(c) and 91(1A)(c) of the Act also provide respectively for the Director or the Convenor to waive fees if:

(c) the payment is for special interest material having a limited distribution that is:

- (i) wholly or mainly a documentary record of an event; or
- (ii) of a cultural or like nature; or
- (iii) a short film from a new or emerging film maker;

and, in the Director's or Convenor's opinion, it is in the public interest to do so.

Section 7 of the Principles guides the Director's and Convenor's assessment of whether a waiver will be in the public interest. A waiver will be considered to be in the public interest if the material itself is in the public interest. The section describes when material will be considered in the public interest and the matters the Director and Convenor must consider when deciding whether the material is in the public interest.

This section mirrors Section 7 of the revoked Principles with the exception that, to reflect the Convenor's new powers, it provides that both the Director and Convenor must consider the matters in subsection 7(2)(a)-(c).

#### Section 8 – Requirements for all waiver applications

This section sets out the administrative requirements for all waiver applications made under the Act. The requirements in this section are drawn from those in paragraphs 5(1)(a) to (d) and 5(2)(a) and (b) of the revoked Principles. Section 8 is intended to ensure that all applicants submit the minimum amount of information required for the Director or Convenor to assess a waiver application.

#### Section 9 – Additional requirements for certain waiver applications

This section imposes requirements additional to those set out in Section 8 where the substantive application for which the waiver is sought is an application for

- (a) the classification of a publication, film or computer game; or
- (b) the approval of an advertisement; or
- (c) a certificate of exemption; or
- (d) the review of a classification, approval or exemption mentioned in paragraph (a), (b) or (c).

Essentially subsection 9(2) requires applicants in the above categories to provide information that the Director and Convenor will need to assess whether the application meets the criteria in section 91 of the Act and in the Principles themselves. For example, paragraph 9(2)(b) requires applicants to provide information about the number of copies or prints of the material that will be distributed for sale, exhibition or hire. If an applicant was seeking a waiver on the grounds of paragraph 91(1)(c) or 91(1A)(c) of the Act it would be very difficult for the Director or Convenor to assess whether the material had a 'limited distribution' without this information before them.

The requirements in subsection 9(2) mirror those in subparagraphs 5(2)(c)(ii)(A)-(D) of the revoked Principles.

An exception has been created in subsection 9(3) for a review applicant who is not the original applicant (to the Classification Board). These applicants might not have the information required in subsection 9(2), such as the number of copies of the material the original applicant will distribute. In such cases, subsection 9(3) allows an applicant who was not the applicant for the classification, approval or exemption sought to be reviewed (ie the original applicant) to lodge a statement that they are not the original applicant and are unable to comply with subsection 9(2). Where information is required for making a decision, but where the applicant makes a

statement under subsection 9(3) it is assumed that the Convenor will have to obtain the information from other sources (eg by writing to the distributors or internet research).

#### Section 10 – False or misleading information

This section allows the Director or Convenor to reject a waiver application if there are reasonable grounds for believing it contains false or misleading information. This power was provided under subsection 5(3) of the revoked Principles but did not apply to the Convenor.

#### Section 11 – Material restricted to adults

This section provides that the Director or Convenor should not waive a fee for material of a kind mentioned in paragraph 91(1)(c) or 91(1A)(c) of the Act if the material is likely to be restricted to adults. As ‘adult’ in this section has the same meaning it has in the Act this means material that would be restricted to a person who is 18 or older. Such material includes films that are likely to be classified R 18+ or X 18+, and publications that are likely to be classified Category 1 – Restricted or Category 2 – Restricted.

Section 11 only applies to waiver applications made under paragraphs 91(1)(c) or 91(1A)(c) of the Act. Applications not made under those paragraphs are not subject to the restriction in section 11 of the Principles. Section 11 mirrors section 10 of the revoked Principles with the inclusion of paragraph 91(1A)(c) to reflect the Convenor’s power to waive fees.

#### Section 12 – Extent of waiver

This section limits the circumstances under which the Director and Convenor may grant a full fee waiver.

Subsection 12(1) sets out in a table the circumstances in which the Director or Convenor may grant a full waiver. Subsection 12(2) provides that if the material does not satisfy a condition set out in the table the Director or Convenor may grant a waiver for 50% of the fee that would otherwise be payable.

Under subsection 9(2) of the revoked Principles the Director could waive 25% of the fee payable for films or computer games that contained contentious material and for submittable publications. Under section 5 of the Act ‘contentious material’ means material that would be likely to cause a film or computer game to be classified M or higher.

An equivalent to subsection 9(2) has not been included in the Principles. This is because it is difficult to determine whether a film might contain contentious material before it is classified. The distinction between PG and M content can be particularly nuanced. In addition, because the majority of films are classified M an equivalent subsection would potentially apply to a large proportion of fee waiver applications.