

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CLASSIFICATION (PUBLICATIONS, FILMS AND
COMPUTER GAMES) BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,
the Honourable Michael Lavarch MP)



CLASSIFICATION (PUBLICATIONS, FILMS AND
COMPUTER GAMES) BILL 1994

OUTLINE

This Bill provides for the classification of films, publications and computer games. It constitutes the Commonwealth's contribution to revising the current censorship laws in co-operation with the States and Territories.

2. There are considerable difficulties in administering Australia's current censorship laws as they are unnecessarily complicated and not uniform. The Australian Law Reform Commission was therefore asked to report on how the laws could be simplified and made more uniform and efficient while preserving the co-operative nature of the current scheme. This Bill has been prepared, in consultation with the States and Territories, following the Australian Law Reform Commission's recommendations in its Report entitled '*Censorship Procedure*'.

3. Reflecting the co-operative nature of Australia's censorship laws, the Bill is for a Federal Act for the Australian Capital Territory under section 122 of the Constitution. The Australian Capital Territory self-government legislation reserved to the Commonwealth the power to classify material for censorship purposes. This was to ensure that a national censorship scheme was preserved.

4. This Bill establishes the Classification Board and the Classification Review Board and sets out the procedures for classification of publications, films and computer games. Classification decisions are to be made in accordance with the National Classification Code and Guidelines to help apply the Code. Both the Code and the Guidelines must be agreed between the Commonwealth, States and Territories. The Bill contains procedural provisions relating to applications, decision making, notification of decisions and review of decisions. Standard financial and accounting provisions in relation to the administration of the two Boards are also included.

5. The Bill, when enacted, will not be able to be brought into force until complementary State and Territory legislation is enacted. Under the new scheme it is proposed that State and Territory legislation will adopt, in enforcement laws, the classification decisions made under the Commonwealth Act. It is the State and Territory legislation that will, in effect, govern the submission of films, publications and computer games to the Classification Board for classification. It will also deal with the consequences, in the respective jurisdictions, of the different classifications given by the Board to films, publications and computer games. The model State and Territory legislation is currently being prepared.

6. Under the new scheme the current compulsory classification of all films and videos will continue.
7. The current voluntary scheme in relation to publications is to be replaced by a partially compulsory scheme. Publications that straddle the Category 1 restricted classification, which is the lowest classification for restricted publications, and the upper end of the Unrestricted category will be required to be submitted for classification. The Bill enables the Director to call in such publications, called "submittable publications" in the Bill, for classification.
8. The new scheme will also provide for compulsory classification of computer games. An interim scheme to enable computer games to be classified was introduced earlier this year through amendments to the ACT Classification of Publications Ordinance 1983 which is administered by the Commonwealth.
9. The Bill is essentially procedural in nature and reflects the current approach to censorship matters agreed by the Commonwealth, States and Territories.

FINANCIAL IMPACT STATEMENT

10. Under current arrangements fees are levied under State and Territory legislation, collected by the Commonwealth, and shared equally between the Commonwealth, the States and the Northern Territory.
11. The Bill provides for the Commonwealth to levy classification fees in the future. In return for the States and Territories foregoing their fee powers, and in recognition of their enforcement costs, it is proposed that they each receive the average of their share over the last five years, a total of \$600,000 in 1994-95. This amount will be adjusted in future years by the change in the Consumer Price Index.
12. The Bill will also enable the Commonwealth to increase, over several years, charges for classification services so that there is substantial cost recovery. This will be done by introducing charges for new initiatives and increasing existing charges to reflect the cost of the service provided, thereby providing savings to the Commonwealth. These changes will not only fund the Government's initiatives to address the community need for readily accessible classification advice but also enable the provision of a more efficient and timely service to clients.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1: Short Title

13. This clause provides for the short title of the Act.

Clause 2: Commencement

14. Sections 1 and 2 commence on the day the Act receives the Royal Assent. The remaining provisions of the Act commence on a day to be fixed by Proclamation or, if they have not commenced within 12 months of the date of Royal Assent, they commence on the first day after that period. The 12 month period allowed before commencement is to enable the complementary State and Territory legislation to be enacted.

Clause 3: Purpose

15. This clause states that the purpose of the Act is to provide for the classification of publications, films and computer games for the Australian Capital Territory. The Act is intended to form part of a Commonwealth/State/Territory scheme for the classification of publications, films and computer games and for the enforcement of those classifications.

16. A note to the clause informs the reader that provisions dealing with the consequences of not having material classified and the enforcement of classification decisions are to be found in complementary State and Territory legislation.

Clause 4: Powers and functions under State or Territory laws

17. This clause enables the Classification Board, the Classification Review Board and the Director of the Classification Board to exercise powers and perform functions relating to the classification of publications, films and computer games that are conferred on them under an arrangement between the Commonwealth and a State or the Northern Territory.

18. This clause has been included in case all States or the Northern Territory do not agree to adopt the classifications under the Commonwealth Act in relation to films, publications and computer games. Enabling jurisdictions, in such cases, to confer functions as provided for in this clause will ensure a national scheme is preserved.

Clause 5: Definitions

19. This clause defines words and expressions used in the Act. The principal definitions are:

- 'advertisement' for a publication, a film or a computer game means any form of advertising for the publication, film or game, and includes:
 - a) advertising, whether visual or audible, whether in the form of written or spoken words or other sounds and whether in a book, paper, magazine, poster, photograph, sketch, program, film or slide or in any other form; and
 - b) advertising on a container or wrapping enclosing the publication, film or game; and
 - c) advertising on an item of clothing advertising the publication, film or game;

'Board' means the Classification Board;

'Code' means the National Classification Code set out in the Schedule, or that Code as amended in accordance with clause 6;

- 'computer game' means a computer program and associated data capable of generating a display on a computer monitor, television screen, liquid crystal display or similar medium that allows the playing of an interactive game, but does not include:
 - a) a bulletin board; or
 - b) an advertisement for a publication, a film or a computer game;
 - c) business, accounting, professional, scientific or educational computer software unless the software contains a computer game that would be likely to be classified MA (15+) or RC;

'Convenor' means the Convenor of the Review Board;

- 'decision' means a decision of the Board:
 - d) to classify to refuse to classify a publication, a film or a computer game; or
 - e) to determine the consumer advice to apply to a film or a computer game; or
 - f) to approve or refuse to approve an advertisement for a publication, a film or a computer game or to impose conditions on such an approval; or
 - g) to grant a certificate of exemption for a film; or
 - h) to decline to deal with or to deal further with an application under this Act;

and includes a decision of the Board under section 38;

'Director' means the Director of the Board;

'film' includes a cinematograph film, a slide, video tape and video disc and any other form of recording from which a visual image, including a computer generated image, can be produced, but does not include:

- a) a computer game;
 - b) an advertisement for a publication, a film or a computer game;
 - c) a computer bulletin board; or
 - d) a recording for business, accounting, professional, scientific or educational purposes containing a computer generated image unless the image would be likely to be classified MA, R, X or RC;
 - 'interactive game' means a game in which the way the game proceeds and the result achieved at various stages of the game is determined in response to the decisions, inputs and direct involvement of the player;
- 'participating Minister' means a Minister of a State or Territory who is responsible for censorship matters where the State or Territory is a participant in the scheme referred to in section 3, but does not include such a Minister in relation to action to be taken under a provision of this Act if:
- a) the action relates to publications, films or computer games; and

- b) the State or Territory does not participate in the scheme in relation to publications, films or computer games, as the case may be;

'publication' means any written or pictorial matter, but does not include:

- a) a film; or
- b) a computer game; or
- c) an advertisement for a publication, a film or a computer game;

'Review Board' means the Classification Review Board;

'submittable publication' means an unclassified publication that, having regard to the Code and the classification guidelines to the extent that they relate to publications, contains depictions or descriptions of sexual matters, drugs, nudity or violence that are likely to cause offence to a reasonable adult to the extent that the publication should not be sold as an unrestricted publication.

Clause 6: Amendments to the Code

20. This clause provides that the National Classification Code (which must be applied in making classification decisions) is to be taken to be amended if the Minister and State and Territory Ministers who participate in the scheme agree to the amendment. If the Code is amended, the Commonwealth Minister must cause a copy of the amended Code to be published in the Gazette.

PART 2 - CLASSIFICATION

21. Part 2 sets out matters relevant to the classification of publications, films and computer games.

Division 1 - Preliminary

Clause 7: Types of classifications

22. This clause lists the different types of classifications for publications, films and computer games in ascending order, that is, starting with the unrestricted or general category and ending with the refused classification category.

Clause 8: Markings for classifications

23. This clause enables the Director, by notice in the Gazette, to determine both the markings for each type of classification and the manner in which those markings must be displayed. Markings comprise the symbols for, and give information about, the various classifications.

Division 2 - Classification of publications, films and computer games

Clause 9: Classification in accordance with the Code

24. Under this clause it is mandatory to classify publications, films and computer games in accordance with the provisions of both the National Classification Code and the classification guidelines determined under clause 12.

Clause 10: Classification in writing etc.

25. This clause requires the Board to make written classification decisions in relation to publications, films and computer games in response to applications for classification. An exception is under clause 38 where the Board may act to reclassify a publication, film or computer game on its own initiative.

Clause 11: Matters to be considered in classification

26. This clause lists matters to be taken into account in making a classification decision on a publication, film or computer game. They include the standards of morality generally accepted by reasonable adults and the literary, artistic or educational merit of the publication, film or computer game. These matters are in addition to the National Classification Code and the agreed guidelines that must, under clause 9, be applied in making such a decision.

Clause 12: Classification guidelines

27. This clause enables the Minister, with the agreement of each participating Minister, to determine guidelines to assist the Board in applying the criteria in the National Classification Code. The guidelines cannot be amended unless all participating Ministers agree. A copy of the guidelines and the guidelines as amended must be published in the Gazette.

Clause 13: Applications for classification of publications

28. This clause sets out the formal requirements that must be met in making an application for the classification of a publication. An application must be accompanied by the prescribed fee and a copy of the publication.

Clause 14: Applications for classification of films

29. This clause sets out the formal requirements for an application for the classification of a film. These include providing an adequate written synopsis of the film.

30. An application may also be accompanied by a copy of any advertisement that is proposed to be used to advertise the film. Separate applications are required to be made for a version of a film that is for public exhibition and a version that is for sale or hire (for example, a video tape).

Clause 15: Prescribed fees for certain films

31. This clause provides, in effect, for the payment of more than one prescribed fee where a film comprises more than one work (as defined in clause 5) and runs for more than 90 minutes. This clause seeks to prevent applicants submitting a compilation video tape consisting of several different film works under one application and one fee and subsequently marketing each of the works as separate films.

Clause 16: Applications for classification of computer games

32. This clause sets out the formal requirements for an application for the classification of a computer game including information about the game that must be set out in a document accompanying the application. If a computer game contains game play that is likely to be regarded as containing contentious material (as defined in clause 5) an application must also be accompanied by a video tape recording of that game play.

33. Processing of computer games classification applications will be more complex and time consuming than for a film. In recognition of this and the desire of the computer games industry to have, in many cases, a quick decision made (computer games are often released in Australia as part of a world wide launch) an applicant is also permitted to lodge an 'in-house' assessment of the computer game. This

assessment will be done by a person authorised by the Director who has received training from the Office of Film and Literature Classification. Assessments are restricted to cases where the applicant is of the view that the computer game will only receive a recommendatory classification (i.e., 'G', 'G (8+)' or 'M (15+)').

34. The recommendations in these assessments are, of course, not binding on the Classification Board. In some cases the Board will not agree with them. Where this occurs the applicant is given the opportunity to provide additional material before a final decision is made.

Clause 17: Considered form of film or computer game to be final

35. Under this clause, the Board must assume, in classifying a film or computer game, that the film or the game will be published only in the form in which it is considered for classification. A film classification is taken to be the classification for each work comprised in the film. This clause, which is reflected in current censorship legislation, is to deal with attempts that have been made to separate works on the one film after classification for marketing as separate films.

Clause 18: Screening of films and demonstration of computer games before classification

36. This clause ensures that the Board may see films and have computer games demonstrated before making classification decisions. The Board may decline to deal with an application for classification of a film or computer game, or deal further with the application, unless the applicant provides a copy of the film or computer game for screening or demonstration before the Board. To overcome problems in the past with poor quality prints of films, the Board is also empowered to decline to deal with an application if the copy provided is not complete and is inadequate to allow a proper consideration of the application.

37. In some cases it will be necessary, because of the complexity of some computer games, and the time involved in classification of them, particularly if all the various levels of a game are to be played, to have the applicant demonstrate the game. Applicants will usually have a 'cheat code' available to enable short cuts to be taken to reveal the material that may be of concern. The clause, therefore, also enables the Board to decline to deal with an application for classification of a computer game, or deal further with the application, unless the applicant demonstrates the computer game before the Board.

38. The clause also makes provision in relation to attendance at the screening or demonstration, the time and place of the screening or demonstration, and the Director's ability to retain a copy of the film or computer game for as long as required. The clause provides that neither the Commonwealth nor a member is liable for any damage caused to a copy of a film or computer game as a result of a screening or demonstration.

Clause 19: Board to decide consumer advice for films and computer games

39. This clause requires the Board to determine consumer advice giving information about the content of a classified film or classified computer game with the exception of films classified G. The determination of consumer advice in respect of the latter is discretionary.

Clause 20: Declassification of classified films or computer games

40. This clause sets out the circumstances in which a classified film or classified computer game may become unclassified. The clause provides that a classified film or classified computer game becomes unclassified if it is modified (other than by including an advertisement for a classified film or computer game with the same or a lower classification). In addition, a classified computer game becomes unclassified if it is found to contain contentious material that was not brought to the attention of the Board before the classification decision was made. This latter provision is directed, in particular, at the presence of codes in computer games which, if known, give access to other (usually stronger) material.

Clause 21: Classification of films or computer games containing advertisements

41. This clause prevents a film or computer game being classified if it contains an advertisement for a film or computer game that has not been classified or has a higher classification.

Division 3 - Submittable publications

Clause 22: Calling in submittable publications for classification

42. Under the proposed new legislative scheme the current voluntary scheme for

classification of publications is to be replaced by a partially compulsory scheme. Under the new scheme a publication falling within the definition of submittable publication (see clause 5) will be required, under the complementary State and Territory legislation, to be classified.

43. To ensure the partially compulsory scheme is effective, clause 22 enables the Director, by notice in writing, to call-in a publication for classification if the Director has reasonable grounds to believe that the publication is a submittable publication and the publication is being published in the A.C.T. or the Director has reasonable grounds to believe that it will be. Notice of a call-in must be published in the Gazette. To ensure an Australia wide coverage for this power it is proposed to include a similar provision in the complementary State and Northern Territory legislation.

44. Failure to comply with a notice under this clause is made a strict liability offence. It is, however, a defence to prosecution under the section if the defendant proves that he or she did not intend to publish the publication in the A.C.T. or cause, authorise, permit or licence the publication to be published in the A.C.T.. The offence has been made one of strict liability on the basis of recommendation 44 of the Australian Law Reform Commission's report *Censorship Procedure* (Report no 55). That recommendation was that the offence be drafted as one of strict liability if it was directed at professionals engaged in the dissemination of films and publications as a business. As the offence is a less serious one and is not subject to imprisonment it is appropriate to follow the ALRC's recommendation. As a strict liability offence, the defence of honest and reasonable mistake will still be available as well as the defence provided.

45. The clause expressly states that the offence is one of strict liability (in the past this has not been made express in the provision) to take into account the recommendations of the Model Criminal Code Officers Committee in their report *General Principles of Criminal Responsibility*. That report recommended the mental element for offences, or the intention to create an offence of strict liability, be expressly stated in offence provisions. Further, once these recommendations are implemented, any offence with no stated mental element will be assumed to have a mental element of recklessness. The inclusion of an express statement that the offence is one of strict liability will mean that no further amendment is necessary when the Commonwealth Criminal Code Bill (which implements the above recommendations) is enacted.

Division 4 - Calling in computer games

Clause 23: Calling in computer games for classification

46. The classification of computer games is a compulsory scheme. That is, it will be an offence under State and Territory law to sell, let on hire, exhibit, display or demonstrate a computer game that has not been classified.

47. However, the State and Territory legislative scheme, introduced earlier this year will not, in general, encompass computer games currently on the market because of the sheer number of games currently released and the resources needed to deal with them. Nevertheless, material in some computer games already released is of concern and clause 23 therefore makes provision (as does current State and Territory legislation) for the Director to call-in such games for classification. This power may, of course, also be used for games released after commencement of the scheme and should prove particularly useful where questions arise about whether games fall within the business, accounting, professional, scientific or educational exemption.

48. Under this clause a game may only be called-in if the Director has reasonable grounds to believe that the computer game is likely to contain contentious material (as defined in clause 5) and is being published in the A.C.T. or the Director has reasonable grounds to believe that it will be. Notice of call-in must be published in the Gazette.

49. Failure to comply with a call-in notice under this clause is a strict liability offence. It is, however, a defence to a prosecution under the clause if the defendant proves that he or she did not intend to publish the computer game in the A.C.T. or cause, authorise, permit or licence the computer game to be published in the A.C.T.. The reasons for creating this offence as a strict liability offence and expressly stating that to be the case are the same as for clause 22.

Division 5 - Notice of decisions

Clause 24: Classification certificates

50. This clause provides that a classification certificate must be issued for each publication, film and computer game that is classified by the Board. The information that must be included in the certificate is set out in sub-clause (2). Under clause 25 a

classification certificate constitutes sufficient written notice of a decision of the Board or the Review Board. It may also be given an evidentiary role under the complementary State and Territory legislation.

Clause 25: Notice of decisions

51. This clause provides that the Director or the Convenor must give written notice of a decision of the Board or of the Review Board, as the case requires, to the applicant as soon as practicable but no later than 30 days after the decision. A copy of the classification certificate is sufficient for this purpose. In relation to Board decisions, where there is no applicant, or the applicant is not the person on whose application an earlier decision was made, the Director must give the notice to the persons who, in his or her opinion, have an interest in the matter.

Clause 26: Applications for information

52. This clause enables a person to obtain a copy of a classification certificate or a notice of a decision on payment of the prescribed fee.

Clause 27: When decisions take effect

53. This clause provides that decisions are to take effect on the day on which notice of the decision is given under clause 25.

PART 3 - APPROVAL OF ADVERTISEMENTS

54. Part 3 sets out matters relevant to the approval of advertisements for publications, films and computer games. It is proposed that State and Territory enforcement legislation will prohibit the advertising of unclassified submittable publications, films or computer games (other than a film in respect of which a certificate of exemption has been issued under this Part) and prohibit the advertising of a publication, film or computer game which has been refused classification.

Division 1 - Approval of general advertisements

Clause 28: Approval of advertisements

55. This clause provides that the Board may approve or refuse to approve an advertisement for a publication, a film or a computer game either on application or on

its own initiative. The approval may be subject to conditions. It also contains the formal requirements for an application.

56. Matters to be taken into account in deciding whether to approve an advertisement include the matters to be taken into account in making a classification decision (as set out in clause 11) and the classification guidelines (clause 12). The Board must refuse to approve an advertisement if it is of the opinion that the advertisement falls within the various criteria set out in subclause (4). The Board is also specifically required to refuse to approve an advertisement for a publication if the publication has been refused classification or is an unclassified submittable publication. Similarly the Board must refuse to approve an advertisement for a film or computer game which has been refused classification or which has not been classified. An exception is made in the case of a unclassified film for which a certificate of exemption is in force under clause 32.

Clause 29: Calling in advertisements

57. As obtaining Board approval for advertisements for films, submittable publications and computer games will not be compulsory, this clause enables the Director to call-in such advertisements for consideration by the Board. The clause requires that the submittable publication, film or computer game is being, or the Director has reasonable grounds to believe that it will be, published in the A.C.T. Similar provisions will be required in State and Northern Territory legislation to ensure Australia wide coverage for this power.

58. Failure to comply with a call-in notice under this clause is a strict liability offence. It is, however, a defence to a prosecution under the section if the defendant proves that he or she did not intend to publish the publication, film or computer game in the A.C.T. or cause, authorise, permit or licence the publication, film or computer game to be published in the A.C.T.. The reasons for creating this offence as a strict liability offence and expressly stating that to be the case are the same as for clause 22.

Division 2 - Advertising for unclassified films

59. This Division reflects the arrangement in current censorship legislation devised in consultation with the industry and Commonwealth, State and Territory Censorship Ministers under which there is a limited exemption for advertising matter relating to unclassified films likely to be classified 'G', 'PG', 'M' or 'MA'. This scheme allows the use of film 'trailers' in a limited number of cases prior to classification.

Clause 30: Definitions

60. This clause defines terms used in this Division including "eligible film" which is defined to mean an unclassified film that complies with conditions determined by the Minister by notice in the Gazette. The conditions determined under the current scheme include conditions relating to the content of a film, supporting material that must accompany an application and the quota, out of the total of 30 exemptions allowed, allocated to the various distribution groups.

Clause 31: Certificates of exemption

61. This clause provides that a distributor or exhibitor of an eligible film may apply, in the manner set out in the clause, for a certificate of exemption in relation to the film for advertising purposes. It is proposed that, as is the case at present, State and Territory enforcement legislation will prohibit the advertising of an unclassified film unless a certificate of exemption has been granted in relation to the film under this clause.

Clause 32: Granting of certificates of exemption

62. This clause provides that the Board may grant a certificate of exemption in relation to an eligible film unless the Board is of the opinion that the film would, if classified, be classified RC, X or R. Further, the Board cannot, without the written approval of the Minister, grant more than 30 certificates of exemption in one calendar year.

Clause 33: Board may refuse certificate

63. This clause enables the Board to refuse to grant a certificate of exemption if it is of the opinion that the applicant has not given the Board a copy of all advertising matter relating to the film.

Clause 34: Conditions of exemptions

64. This clause enables the Minister, by notice in the Gazette, to determine conditions to apply to the use of advertising matter in relation to films in respect of which certificates of exemption have been granted. Such conditions are already in place under the current scheme and include requirements as to the message to be placed on advertising and how it must be displayed.

Clause 35: Revocation of exemptions

65. This clause enables a certificate of exemption to be revoked if the Board is satisfied that there has been a breach of a condition applicable to the exemption.

Clause 36: Review of decision not to grant exemption

66. This clause provides that an applicant may apply to the Review Board for review of a decision not to grant a certificate of exemption unless the Board was required to refuse because it had already granted 30 certificates of exemption in the relevant year and did not have the written approval of the Minister to exceed that number (see clause 32(3)).

PART 4 - RECLASSIFICATION

67. This Part makes provision in relation to the reclassification of a publication, film or computer game and the reconsideration of an approval for or refusal to approve an advertisement after at least 2 years have elapsed since the classification, approval or refusal.

Clause 37: Limit on reclassification

68. This clause prohibits the reclassification of a publication, film or computer game or the reconsideration of a decision to approve or refuse to approve an advertisement within a period of 2 years commencing on the day on which the original decision was made. However, this prohibition does not prevent the Board from classifying a film or computer game which has become unclassified under the provisions of clause 20.

Clause 38: Reclassification etc, after 2 years

69. This clause enables the Board to reclassify a publication, film or computer game or reconsider the approval or refusal of an advertisement after a period of 2 years, either at the request of the Minister or on its own initiative. The Board is required to act under this section if the Minister requests it to do so. The Minister must make such a request if asked to do so by a participating Minister.

Clause 39: Notice of intention to reclassify etc.

70. Under this clause the Director must give notice of the Board's intention to reclassify a publication, film or computer game or reconsider an advertisement inviting submissions about the matter. The notice must be published at least 30 days before the Board proposes to consider the matter. If practicable, the Director must also give a copy of the notice to the person on whose application the former decision was made at least 30 days before the Board proposes to consider the matter.

Clause 40: Consideration of submissions

71. This clause provides that in reclassifying the publication, film or computer game or reconsidering the advertisement the Board is required to take into account issues raised in submissions made to the Board about the matter.

PART 5 - REVIEW OF DECISIONS

72. This Part sets down procedures relevant to the review of decisions of the Classification Board by the Classification Review Board.

Clause 41: The persons who may apply for review

73. This clause sets out the persons who may apply to the Review Board for a review of a decision. These are the Minister, the original applicant, the publisher of the publication, film or computer game and a person aggrieved by the decision. The Minister is required to apply for a review of a decision if requested to do so by a participating Minister.

Clause 42: Applications for review

74. This clause contains the formal requirements for an application for review of a decision.

75. The Minister may apply for review of a decision at any time but any other application for review must be made within 30 days after the applicant received notice of the decision or within such longer period as the Review Board allows. If an application for review is made by anyone other than the original applicant the Convenor is required to notify the original applicant in writing of the application and the day on which it is to be considered.

Clause 43: Dealing with applications

76. This clause provides that an application for review is to be dealt with in the same way as an application for classification or for approval of an advertisement. The provisions in clause 18 in respect of the screening of films and demonstration of computer games before the Board (except the provision about keeping a copy of the film or game) also apply in relation to the Review Board.

PART 6 - THE CLASSIFICATION BOARD

77. This part provides for the establishment, remuneration and terms and conditions of members, staffing, procedures, administration and accountability of the Board and the responsibilities and powers of the Director.

Division 1 - Establishment of the Board

Clause 44: Establishment of Classification Board

78. This clause establishes the Classification Board.

Clause 45: Constitution of Board

79. This clause provides that the Board is to comprise a Director, a Deputy Director, Senior Classifiers and other members.

Clause 46: Maximum number of members

80. This clause restricts the maximum number of Board members to 20.

Clause 47: Appointment of members

81. This clause provides that the members (other than temporary members) of the Board are to be appointed by the Governor-General. In appointing members, regard is to be had to the desirability of ensuring that the membership of the Board is broadly representative of the Australian community. The Minister is required to consult with participating State and Territory Ministers before recommending the appointment of a member (other than a temporary member).

Clause 48: Full-time and part-time appointments

82. This clause provides that while the Director, the Deputy Director and Senior Classifiers must be appointed as full-time members, other members may be appointed either as full-time or part-time members.

Clause 49: Temporary members

83. This clause provides that the Minister may appoint a temporary member for a maximum of 3 months if it is necessary to do so for the efficient dispatch of the Board's business.

Clause 50: Terms and conditions of appointment

84. This clause provides that a member (other than a temporary member) may be appointed for up to 5 years and may be re-appointed. However, a member's total period of appointment may not exceed 7 years. Other terms and conditions (if any) may be determined by the Governor-General.

Division 2 - Responsibilities and powers of the Director

Clause 51: Responsibilities and powers of the Director

85. This clause provides that the Director is responsible for ensuring that the business of the Board is conducted in an orderly and efficient way and, for that purpose, the Director is empowered to give directions as to the arrangement of the Board's business.

86. The clause also gives broad powers for the purpose of managing the Board's administrative affairs including entering into contracts and acquiring or disposing of personal property. However, the Director is not permitted to enter into contracts which involve more than \$250,000 (or a higher amount as prescribed) without the approval of the Minister.

Clause 52: Powers of Director under State/Territory laws

87. Under the proposed State and Territory complementary legislation it is proposed that there be provisions conferring specific powers on the Director. This is a quite

separate issue from that reflected in clause 4 and will, amongst other things, enable the Director to call-in submittable publications, computer games, or advertisements which are being published in a State or Territory (other than the ACT).

88. This clause enables the Director to exercise such powers. The Director may exercise powers conferred by a provision of a State or Northern Territory law that corresponds to clause 22 (Calling in submittable publications for classification); clause 23 (Calling in computer games for classification) or clause 29 (Calling in advertisements). In addition, the Director may exercise powers conferred by a law of a State or Territory that relates to the granting of exemptions from a State or Territory law relating to publications, films or computer games and the approval of organisations in relation to films. There are provisions to this latter effect under current legislation which enable films in specific areas (e.g. health education) to be granted exemption from classification and for classification exemptions for films to be shown at film festivals by approved organisations. This clause also permits the Director to approve forms under State and Territory laws and to exercise powers under the provisions of such other State and Territory laws as are prescribed.

Division 3 - Staff

Clause 53: Staff

89. This clause provides that the staff of the Board are to be Commonwealth public servants. The Director has all the powers of a Secretary in relation to the branch of the Australian Public Service comprising the Office of Film and Literature Classification (which services the current Boards). The Director may make arrangements with an authority of the Commonwealth for the services of officers of that authority to be made available to the Board.

Clause 54: Consultants

90. This clause permits the Director to engage consultants to assist the Board in the performance of its functions. This provides the Director with the flexibility of engaging persons to perform particular work where special expertise is not otherwise available.

Division 4 - Procedure of the Board

Clause 55: Board to regulate its procedure

91. This clause provides that, subject to the provisions in this Division, the procedure of the Board is as determined by the Director.

Clause 56: Decisions of the Board

92. This clause sets down procedures relevant to the Board's consideration of an application or of an advertisement. The Director is permitted to give directions as to the constitution of the Board for these purposes. The decision of the majority of the members dealing with the matter prevails. However, in the event the members are equally divided in opinion then the Director has a casting vote as well as a deliberative vote. If the Board as constituted does not include the Director and is equally divided in opinion then the Director must vary the constitution of the Board by adding 1 or more other members and the Board must consider the matter again. The Director is also empowered to decide the way in which both the decisions of the Board and the opinions of individual members are to be recorded.

Clause 57: Procedures that apply to meetings of the Board

93. This clause sets out the procedures to apply to meetings of the Board. The Director is to convene such meetings of the Board as he or she thinks necessary for the efficient performance of the Board's functions. The Director is to decide the places in which meetings are held and must preside at all meetings at which he or she is present. If the Director is not present, the Deputy Director is to preside and if the Deputy Director is not present the members present are to appoint a member to preside. At a meeting, 5 members constitute a quorum and questions arising at the meeting are to be determined by a majority of the members present and voting. The person presiding at the meeting has a deliberative vote and, if necessary, a casting vote.

94. The clause also provides that if a matter relating to the classification of a publication, film or computer game or the approval of an advertisement is referred to a meeting of the Board only members who have read the publication, seen the film or advertisement or seen the computer game demonstrated may vote on the matter.

Division 5 - Administrative Provisions

Clause 58: Delegations

95. This clause enables the Director to delegate all or any of his or her powers under the Act to another member except in relation to his powers in public service matters under sub-clause 53(2). If the Board determines, by resolution, that it is desirable for the efficient running of the Board, the Director may delegate all or any of the Board's powers with respect to classification of publications, films or computer games or approval of advertisements to an officer of the Australian Public Service performing duties in the Office of Film and Literature Classification. This provision, which accords with a recommendation of the Australian Law Reform Commission in its Report on *Censorship Procedure* is to assist the Board with its increased workload under the new scheme. The ALRC considered that the power might be utilised in relation to publications and some straight-forward films.

Clause 59: Remuneration and allowances

96. This clause provides that members are to be paid remuneration and allowances determined by the Remuneration Tribunal or, if there is no determination in force, such remuneration and other allowances as are prescribed.

Clause 60: Leave of absence

97. Under this clause, members' recreation leave entitlements are set by the Remuneration Tribunal. These entitlements are subject to any recreation leave entitlements that are preserved by section 87E of the Public Service Act 1922. The clause also empowers the Minister to grant other forms of leave.

Clause 61: Outside employment

98. This clause provides that a full-time member may not engage in other paid employment, except service in the Defence Force, without the consent of the Minister.

Clause 62: Resignation

99. This clause provides that a member may resign by writing to the Governor-General and a temporary member may resign by writing to the Minister.

Clause 63: Disclosure of interests

100. This clause provides that a member who has a conflict of interest in relation to a matter before the Board must disclose to the Board the matters giving rise to that conflict as soon as possible after the member becomes aware of it. Where there is such a conflict of interest the member must not take part in the decision of the Board in relation to the matter unless the Director (or, if it is the Director who has the conflict of interest, the Minister) agrees.

Clause 64: Termination of appointment

101. Under this clause a member's appointment may be terminated by the Governor-General for misbehaviour or physical or mental incapacity. Also, the Governor-General is required to terminate a member's appointment if any of the circumstances set out in sub-clause (2) exist.

102. With incapacity cases the Governor-General can retire a member who is a member of a Commonwealth superannuation scheme if he or she agrees and provided the requirements in sub-clauses (4) and (5) are met.

Clause 65: Acting appointments

103. This clause provides for the Deputy Director to act as Director during a vacancy in the office of Director, or where the Director is unable to perform the duties of the office, and for the appointment of another member to act as Director if the Deputy Director is not available. The clause also enables the appointment of a person to act in the office of a member (other than the Director) during a vacancy in that office, or if the holder of the office is unable to perform the duties of the office.

104. Provision is also made to preserve the validity of anything done by a person who purports to act where there is no basis for so doing.

Clause 66: Annual report

105. This clause ensures that the Board is accountable to the Minister and the Parliament. Under the clause, the Director is required to give the Minister a report of the management of the administrative affairs of the Board and financial statements for the Board and Review Board for each financial year. The financial statements must be in a form approved by the Minister for Finance and are required to be given to the

Auditor-General for report on the matters set out in sub-clause (3) before being given to the Minister. The Minister is required to table the report, financial statements and the report of the Auditor-General in each House of the Parliament.

Clause 67: Proper accounts and records to be kept

106. This clause makes the Director responsible for ensuring that proper accounts and records are kept of all transactions relating to the administrative affairs of the Board and Review Board. The Director is also required to ensure that all payments of money appropriate for the purposes of the Boards are correctly made and properly authorised and that proper control is maintained over assets held, and liabilities incurred, on behalf of the Commonwealth.

Clause 68: Audit

107. This clause defines the powers and responsibilities of the Auditor-General to inspect, report on and audit the financial affairs of the Board and Review Board. The Auditor-General must inspect the records of the Boards at least once in each financial year. The Auditor-General must report to the Minister on the results of the inspection and audit and must immediately draw the attention of the Minister to any major irregularities disclosed.

Clause 69: Access to accounts and records

108. This clause ensures that the Auditor-General, or a person authorised by him or her, has full and free access to, and may take copies of, the accounts and records maintained for the Board and the Review Board that relate to financial affairs and assets. In addition, a person may be required to give the Auditor-General, or a person authorised by him or her, information necessary for the functions of the Auditor-General. If a person does not comply with such a requirement they are guilty of an offence.

Clause 70: Proceedings arising out of administration of Board or Review Board

109. This clause allows proceedings, whether judicial or otherwise, relating to the management of the administrative affairs of the Board or the Review Board to be instituted by or against the Commonwealth.

PART 7 - THE REVIEW BOARD

110. This part provides for the establishment of the Review Board, the remuneration and terms and conditions of its members, the procedures, and accountability of the Review Board and the responsibilities and powers of the Convenor.

Division 1 - Establishment of the Review Board

Clause 71: Establishment of Classification Review Board

111. This clause establishes the Classification Review Board

Clause 72: Constitution of Review Board

112. This clause provides that the Review Board is to comprise a Convenor, a Deputy Convenor, and between 3 and 8 other members.

Clause 73: Appointment of members of the Review Board

113. This clause provides that the members of the Review Board are to be appointed by the Governor-General and that in appointing members, regard is to be had to the desirability or ensuring that the membership of the Review Board is broadly representative of the Australian community. The Minister is required to consult with participating State and Territory Ministers before recommending the appointment of a member.

Clause 74: Members of the Review Board to be part-time

114. This clause provides that the members of the Review Board are to be appointed as part-time members.

Clause 75: Terms and conditions of appointment

115. This clause provides that the maximum term of appointment is 5 years and that a member is eligible for reappointment. However, the total period of appointment must not exceed 7 years. Other terms and conditions (if any) may be determined by the Governor-General.

Division 2 - Responsibilities and powers of the Convenor

Clause 76: Responsibilities and powers of the Convenor

116. This clause provides that the Convenor is responsible for ensuring that the business of the Review Board is conducted in an orderly and efficient way and that the Convenor may give directions as to the arrangement of the business of the Review Board or its constitution for a particular purpose. Any such direction is to be subject to the requirement in clause 77 about the constitution of the Review Board in performing its functions.

Division 3 - Procedure of the Review Board

Clause 77: Constitution of Review Board for the purpose of its functions

117. This clause provides that, for the purpose of performing its functions, the Review Board is to be constituted by at least 3 members nominated by the Convenor.

Clause 78: Decisions of the Review Board

118. This clause sets down procedures relevant to the Review Board's consideration of a matter. If the members of the Review Board dealing with a matter are divided in opinion the decision of the majority prevails. However, in the event the members are equally divided in opinion then the Convenor has a casting vote as well as a deliberative vote. If the Review Board as constituted does not include the Convenor then the Convenor must vary the constitution of the Review Board by adding 1 or more other members and the Review Board must consider the matter again. The Convenor may decide the way in which decisions of the Review Board and the opinions of individual members are recorded.

Division 4 - Administrative provisions

Clause 79: Remuneration and allowances

119. This clause provides that members' remuneration and allowances will be as determined by the Remuneration Tribunal or, if there is no determination in force, such remuneration and other allowances as are prescribed.

Clause 80: Resignation

120. This clause provides that a member may resign by writing to the Governor-General.

Clause 81: Disclosure of interests

121. This clause provides that a member who has a conflict of interest in relation to a matter before the Review Board must disclose to the Review Board the matters giving rise to that conflict as soon as possible after the member becomes aware of it. Where there is such a conflict of interest the member must not take part in the decision of the Review Board in relation to the matter unless the Convenor (or, if it is the Convenor who has the conflict of interest, the Minister) agrees.

Clause 82: Termination of appointment

122. Under this clause a member's appointment may be terminated by the Governor-General for misbehaviour or physical or mental incapacity. Also, the Governor-General is required to terminate a member's appointment if any of the circumstances set out in sub-clause (2) exist.

123. With incapacity cases the Governor-General can retire a member, who is a member of a Commonwealth superannuation scheme, if he or she agrees and provided the requirements in sub-clauses (4) and (5) are met.

Clause 83: Acting Appointments

124. This clause provides for the Deputy Convenor to act as Convenor during a vacancy in the office of Convenor, or where the Convenor is unable to perform the duties of the office, and for the appointment of another member to act as Convenor if the Deputy Convenor is not available. The clause also enables the Minister to appoint a person to act in the office of a member (other than the Convenor) during a vacancy in that office, or if the holder of the office is unable to perform the duties of the office.

125. Provision is also made to preserve the validity of anything done by a person who purports to act where there is no basis for so doing.

Clause 84: Annual Report

126. This clause ensures that the Review Board is accountable to the Minister and Parliament . The Convenor must provide the Minister with a report of the management of the administrative affairs of the Review Board as soon as practicable after the end of each financial year. The Minister is required to table the Report in each House of the Parliament.

PART 8 - MISCELLANEOUS

Clause 85: Review by AAT

127. This clause provides that an application may be made to the Administrative Appeals Tribunal for review of a decision of the Director under clause 15 (concerning the prescribed fee for films which, in the Director's opinion, comprise more than one work and run for more than 90 minutes) or clause 89 (the waiver of fees by the Director).

Clause 86: Evidentiary certificates

128. This clause provides that the Director may, upon payment of a prescribed fee, issue a certificate about action taken under the Act. Provisions as to the evidentiary weight which such certificates will carry will be a matter for the complementary State and Territory legislation.

Clause 87: Service of notices

129. This clause provides that notice under the Act is taken to have been given if it is served by one of the three methods set out in the clause.

Clause 88: Payments to the States and Territories

130. This clause provides that the Minister may enter into an agreement with a participating Minister under which amounts are to be paid to the participating Minister's State or Territory in respect of the administration by the State or Territory of the classification scheme referred to in clause 3. Payments under such agreements are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

131. This clause is necessary because one of the conditions attached to the agreement of the States and Territories to the Bill proceeding was they would receive an agreed payment in return for forgoing their fee powers. Under the current censorship legislation classification fees are levied under State and Territory legislation. They are collected by the Office of Film and Literature Classification. Fifty percent of the fees are retained by the Commonwealth and the other fifty percent is returned to the States and the Northern Territory. Under the new scheme fees will be levied under the Bill and retained by the Commonwealth.

132. The States and Territories have agreed to accept the average amount returned to them over the last 5 years adjusted yearly by the Consumer Price index. The Australian Capital Territory is to receive a similar share. The moneys paid to the States and Territories will help them offset the cost of enforcement of classification decisions under their legislation.

Clause 89: Waiver of fees

133. This clause enables the Director, on application, to waive fees in certain circumstances. The Director may waive payment of fees if it is in the public interest to do so for public health or educational reasons or if the body that would be liable for the fee is an agency of the Commonwealth, a State or Territory or is a non-profit organisation. The Director must notify the applicant of the decision and reasons within 28 days after making the decision. The notice is to include a statement that an application may be made to the Administrative Appeals Tribunal for review of the decision.

Clause 90: Act not to apply to broadcasting services under the Broadcasting Services Act

134. This clause makes it clear that the classification scheme does not apply to any broadcasting services to which the Broadcasting Services Act 1922 applies. That Act contains its own regulatory provisions in relation to such services.

Clause 91: Regulations

135. This clause enables the Governor-General to make regulations in relation to matters arising under the Act.

PART 9 - TRANSITIONAL PROVISIONS AND REPEALS

Clause 92: Definitions

136. This clause defines "censor", "former Board" and "former Review Board" for the purposes of this Part.

Clause 93: Members of the Board and Review Board

137. This clause provides for members of the former Board and former Review Board at the commencement of this Act to continue to hold corresponding offices on the Board and the Review Board for the remainder of the terms of their former offices. Service as a member of the former Board and former Review Board is deemed to be service as a member of the Board or the Review Board for the purposes of this Act.

Clause 94: Decisions of former Board and former Review Board

138. This clause provides for classification and other decisions of a censor and the former Board and the former Review Board to have effect as if they were decisions of the Board or Review Board, as the case requires, under this Act.

Clause 95: Pending applications

139. This clause provides that if an application for classification, approval of an advertisement, a certificate of exemption or review of a decision is pending, on the date of commencement of this Act, the application may be dealt with as if it had been made under this Act.

Clause 96: Repeals

140. This clause repeals the Customs (Cinematograph Films) Regulations and the Classification of Publications Ordinance 1983 of the Australian Capital Territory.

SCHEDULE

National Classification Code

141. The Schedule contains the National Classification Code which sets out the criteria which must be applied in making decisions on the classification to be given to publications, films and computer games. The Code has been agreed by all Censorship Ministers for this purpose.

142. The principles to be given effect to, as far as possible, in making classification decisions are set out at the beginning of the Code.