

1996

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

**CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES)
(ENFORCEMENT) (AMENDMENT) BILL (NO. 2) 1996**

EXPLANATORY MEMORANDUM

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**CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES)
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The *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* ('the Principal Act') is part of a national classification scheme for publications, films and computer games. The Act provides for

- controls on the exhibition of films consistently with their classification,
- restrictions and conditions on the sale of films;
- restrictions and conditions on the sale of certain publications;
- restrictions and conditions on the sale of computer games; and
- controls on the way in which publications, films and computer games may be advertised.

The *Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Bill (No. 2) 1996* ('the Bill') amends the Principal Act to include provisions for the licensing of distributors of "X" classified films.

Provisions for the licensing of X video distributors are currently contained in the *Business Franchise ("X" Videos) Act 1990*. The decision of the High Court in the *Capital Duplicators case* in 1993 rendered ineffective those sections of the *Business Franchise ("X" Videos) Act 1990* that dealt with franchise fees. The remaining licensing provisions of that Act are of a regulatory rather than a revenue nature. These licensing provisions are therefore included as a new Part VI of the Principal Act consistently with the existing regulation of X films by that Act. The licensing scheme under new Part VI has many similarities to the scheme under the *Business Franchise ("X" Videos) Act 1990*.

The Bill also amends the Principal Act to facilitate the prosecution of offences and to provide for forfeiture of certain articles upon conviction for an offence

Financial implications

As outlined in the Budget papers, the fee for an X film licence will increase from the current level of \$50 per month under the *Business Franchise ("X" Videos) Act 1990* to \$10,000 for a 12 month licence under the new licensing scheme. This is expected to generate \$315,000 in 1996/97 and \$450,000 in a full year.

Details of the Bill are as follows

Clause 1 provides for the citation of the Bill once enacted

Clause 2 provides for the commencement of the Bill. The commencement is to be on a day fixed by the Minister by notice in the Gazette. This commencement is intended to facilitate the making of determinations and the making of other necessary administrative arrangements before the licensing provisions commence.

Clause 3 identifies the Principal Act

Clause 4 inserts a new definition into section 3 of the Principal Act. The definition of "X film" takes account of developing technology and potentially encompasses a wider range of material than "'X" video' under the existing *Business Franchise ("X" Videos) Act 1990*. That Act only requires licensing for the sale of video tapes and video discs with an X classification. The new definition of X film picks up the full range of formats for film. "Film" is defined in the Principal Act as having the same meaning as in the Commonwealth Act. That is:

“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, or
- (b) an advertisement for a publication, a film or a computer game; or
- (c) a recording for business, accounting, professional, scientific or educational purposes unless it contains a visual image that would be likely to cause the recording to be classified MA, R, X or RC,

Clause 5 amends section 20 of the Act to provide that it is an offence to sell X films without being licensed to do so. The *Business Franchise (“X” Videos) Act 1990* provided for the separate licensing of wholesale and retail X video sales. This distinction is not carried over by this Bill. It is simply the sale of X films which is required to be licensed. “Sell” is defined in the Principal Act and includes both wholesale and retail sale.

Clause 6 inserts new Part VI into the Principal Act. The new Part provides for a licensing scheme for the sale of X films as contemplated by the new subsection 20(2) above.

New section 54A defines terms used in Part VI. The concept of an “influential person” in relation to a body corporate is carried over from the *Business Franchise (“X” Videos) Act 1990*. The reference in subsection 54A(2) to an offence against Part VIII of the *Crimes Act 1900* is a reference to the offences of aiding and abetting, attempts, etc. This is relevant under new section 54L where conviction for an offence against the Act is a ground for cancelling a licence. Subsection 54A(2) means that a person may also have their licence cancelled for aiding and abetting the commission of an offence against the Act.

New section 54B provides for the Registrar of X Film Licences. The Registrar will be the administering officer in respect of X film licences.

New section 54C sets out the process for making an application for a licence to sell X films. Fees for applications will be determined under section 67 of the Principal Act.

New section 54D provides that the Registrar may require an applicant for a licence to furnish further information in relation to an application. This provision might be used by the Registrar, for example, to obtain information about the matters that the Registrar is required to consider before making a decision under proposed new section 54E.

New section 54E provides for the grant or refusal of an application for a licence. A licence may be issued subject to conditions where this would be in the public interest. The Registrar is required to consider specific matters listed at subsection 54E(4) before making a decision to grant or refuse to grant a licence under this section. Where the Registrar refuses to grant an application for a licence then the application fee will be refunded. A decision of the Registrar under this section to refuse to grant a licence or to impose conditions on a licence may be reviewed by the Administrative Appeals Tribunal through the application of new section 54Q.

New section 54F sets out the matters that must be specified in a licence.

New section 54G provides that a licence remains in force for a period of 12 months. This is different from the situation under the *Business Franchise ("X" Videos) Act 1990* where licences remain in force for a period of one month only.

New section 54H sets out the process for renewal of a licence. Unlike the process under the *Business Franchise ("X" Videos) Act*

1990 the Registrar will automatically renew a licence on receipt of an application made in accordance with this section. The period for which a renewal remains in force is the same as for an initial licence, that is, a period of 12 months.

New section 54J sets out the process for varying the conditions of a licence. A decision of the Registrar to vary licence conditions, similarly to a decision to impose conditions initially, may be reviewed by the Administrative Appeals Tribunal.

New section 54K provides a process for licensees to notify the Registrar of a change of the premises from which X films are sold. The premises in relation to which a licence is granted is one of the matters that is required to be specified on a licence under section 54F. This section ensures that this information remains accurate.

New section 54L specifies the grounds on which the Registrar may cancel a licence. Before making a decision to cancel a licence the Registrar is required to give the licensee the opportunity to show cause why the licence should not be cancelled. Where the Registrar does proceed to cancel a licence after considering any information provided by the licensee, this decision may be reviewed by the Administrative Appeals Tribunal through the operation of new section 54Q.

New section 54M requires a licensee to surrender a licence within 7 days of ceasing to sell X films.

New section 54N is similar to section 54M in that it requires a licensee to return a licence within 7 days of its expiration.

New section 54P requires the Registrar to give notice of decisions made under the Act to persons who are affected by those decisions.

Such a notice must be made in accordance with the Code of Practice in force under section 25B of the *Administrative Appeals Tribunal Act 1989*. The Code requires a notice to, among other things, contain a succinct explanation of the decision, a statement about the person's right to seek a review of the decision and information to assist them in seeking such a review.

New section 54Q sets out the rights of persons affected by a decision of the Registrar to apply to Administrative Appeals Tribunal for a review of that decision.

New section 54R gives a specific definition of "X film" as including unclassified and RC films for the purposes of the inspection provisions.

New section 54S provides for inspectors for the purposes of new Part VI. Inspectors are to be public servants.

New section 54T provides for the issue of identity cards to inspectors under the Act. Inspectors are required by section 54U to, at the request of the occupier of premises that are being inspected, either show their identity card or leave the premises.

New section 54U sets out the powers of inspectors under the Act in entering premises for the purposes of Part VI. Inspection may occur under this section either during business hours or at other times with the consent of the occupier. These inspection provisions are targeted at enforcing the Principal Act. The inspection provisions under the *Taxation (Administration) Act 1990* (which is where inspectors derive power for inspections under the *Business Franchise ("X" Videos) Act 1990*) only permits seizure of X videos connected with an offence against a tax law.

New section 54V sets out the requirements for obtaining the consent of the occupier to entry to premises by an inspector for the purposes of section 54U.

New section 54W limits the time period for which the Registrar may retain possession of films seized under section 54U.

Clause 7 amends section 64 of the Principal Act to provide that the requirement to have an unclassified film, publication or computer game classified before commencing prosecution does not apply where the offence is purely based on the unclassified nature of a computer game or film. The offences which are affected are:

- (i) subsection 6(1) - exhibition of an unclassified film in a public place;
- (ii) section 15 - in respect of the sale of an unclassified film;
- (iii) subsection 19(1) - in respect of keeping an unclassified film on premises where classified films are sold;
- (iv) subsection 33(1) - sale or demonstration of an unclassified computer game, and
- (v) subsection 40(1) - in respect of keeping an unclassified computer game on premises where classified computer games are sold or demonstrated.

The requirement to have a film classified would continue to apply in respect of prosecutions for those offences where the subsequent classification of the film is an element of the offence. For example, the offence in subsection 21(1) of the Principal Act of selling or delivering to a minor an unclassified film which is subsequently classified RC. All unclassified publications will need to continue to be classified before

prosecution may be commenced because of the different treatment of publications under the Act

Clause 8 inserts a new section 64A to provide that where a person is convicted of an offence in respect of RC (Refused Classification) material then the Court may order that the material is forfeited to the Territory

Clause 9 provides for amendments to the *Taxation (Administration) Act 1987* as set out in the Schedule. The *Business Franchise ("X" Videos) Act 1990* provides that the *Taxation (Administration) Act 1987* is incorporated and is to be read as one with that Act. The *Taxation (Administration) Act 1987* has complementary provisions specifying that the *Business Franchise ("X" Videos) Act 1990* is a tax law and there are also several references to "X" videos in relation to the inspection powers under the *Taxation (Administration) Act 1987*. These amendments to the *Taxation (Administration) Act 1987* remove the references to the *Business Franchise ("X" Videos) Act 1990* and the references to "X" videos from that Act

Clause 10 repeals the *Business Franchise ("X" Videos) Act 1990*. The transfer of licences to the new scheme under the Principal Act is provided for in the transitional provisions of clauses 11 to 18

Clause 11 is an interpretative aid to the provisions in clauses 12 to 18 inclusive of the Bill

Clause 12 provides for the continuing effect of those licences issued under the *Business Franchise ("X" Videos) Act 1990* ('the former Act') which had not expired at the time of commencement of the Bill. Such licences continue in force under new Part VI of the Principal Act as if they had been granted under that Part. This clause does not extend the term of those licences. These licences will expire at the end of the monthly period and may then be renewed for a 12 month period under new section 54H

Clause 13 provides that applications made to the Commissioner for Revenue under the former Act that are still pending on commencement of the new licensing provisions are to be dealt with by the Registrar under new Part VI as if they were applications made under the new licensing arrangements. Applicants will be required to pay any difference between the application fee under the former Act and application fee under the relevant corresponding section of Part VI before the Registrar can grant or renew a licence.

Clause 14 provides that a notice to vary the conditions of a licence that was issued under the former Act is taken to be given by the Registrar under new Part VI. This provision is a counterpart to clause 12 in that it carries over actions in respect of a licence under the former Act to the new Part VI.

Clause 15 is similar to clause 14 as it provides that a notice of a change to trading premises given to the Commissioner under the former Act is taken to have been given to the Registrar under new Part VI. The Registrar will deal with the notification to change the premises specified on the licence as if the notification had been given under the new Part VI.

Clause 16 provides that where a licensee had been given notice to show cause why their licence should not be cancelled under the former Act, then that notice is taken to have been revoked. The cancellation proceedings do not carry over to the new Part VI as the grounds for cancellation under section 54L are different to the grounds under the former Act.

Clause 17 carries over the obligation to return a licence to the Registrar where the licensee has ceased trading or the licence has expired

Clause 18 preserves appeals to the Administrative Appeals Tribunal against decisions of the Commissioner as if they were appeals against

decisions of the Registrar Where the appeal concerns a decision of the Commissioner to refuse an application to renew a licence, which does not have a directly equivalent provision in the new Part VI, the licensee has a further 7 days to apply to the Registrar for a renewal of the licence

The Schedule lists the amendments to the *Taxation (Administration) Act 1987* to remove the references to “X” videos and to the former Act