

1996

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

**CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES)
(ENFORCEMENT) (AMENDMENT) BILL 1996**

EXPLANATORY MEMORANDUM

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**CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES)
(ENFORCEMENT) (AMENDMENT) BILL 1996**

The Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Bill 1996 (the Bill) amends the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* (the Principal Act) to allow the Director of the Classification Board to grant exemptions and to approve organisations under Part VII of the Act.

Part VII of the Principal Act provides that the Minister may grant certain exemptions and approvals. Under this Part, an exemption may be granted in respect of a particular film, publication or computer game. This could be used, for example, to grant ongoing exemptions for educational or scientific films. Part VII also provides for the approval of organisations for the purposes of holding film festivals. An approved organisation may then be granted an exemption in order to show an unclassified film at a film festival. This type of exemption would generally be granted where a film is a special interest film that is unlikely to be otherwise exhibited in a commercial setting, or where a film that has not been classified for the purposes of Australian exhibition at the time of exhibition is being previewed at a film festival.

The Bill amends the Principal Act to provide that the Director of the Classification Board may also grant exemptions and approved organisations under Part VII.

The Bill also makes some minor and technical amendments to the Principal Act and some consequential amendments to the *Business Franchise ("X" Videos) Act 1990* and the *Taxation (Administration) Act 1987*.

Details of the Bill are as follows.

Clause 1 provides for the citation of the Bill once enacted.

Clause 2 provides that the Act will commence on the day it is notified in the Gazette.

Clause 3 identifies the Principal Act.

Clause 4 amends the definition of restricted publications area to correct an incorrect cross reference.

Clause 5 amends section 45 of the Principal Act to correct an incorrect reference to submittable publications.

Clause 6 amends section 55 of the Principal Act to provide that the Director, as well as the Minister, may grant an exemption in respect of a publication, film or computer game. This clause also makes a technical amendment to section 55 to change references to "the Act" to "this Act".

Clause 7 amends section 56 of the Principal Act to provide that the Director may also grant an exemption in respect of an approved organisation wishing to hold a film festival. Similarly to clause 6 this clause also changes references to "the Act" to "this Act".

Clause 8 amends section 57 of the Principal Act so that the Director may also approve organisations for the purposes of conducting film festivals. Where the Director approves an organisation, the approval will be notified in the *Commonwealth Gazette*. This is consistent with arrangements under legislation in other jurisdictions and will allow the Director, for example, to use a single instrument to approve a national organisation for the purposes of conducting film festivals in several jurisdictions.

Clause 9 inserts a new section 57A in the Principal Act. New section 57A provides that the Director, in exercising powers under Part VII, is to give effect to any directions or

guidelines issued by the Minister. This provision is intended to act as a check on the manner in which the Director grants exemptions and approvals.

Clause 10 amends section 58 of the Principal Act so that decisions of the Director are able to be reviewed by the Administrative Appeals Tribunal in the same manner as decisions of the Minister.

Clause 11 makes consequential amendments to the *Business Franchise ("X" Videos) Act 1990* and the *Taxation (Administration) Act 1987* to change references to *Publications Control Act 1989* to the *Classifications (Publications, Films and Computer Games) (Enforcement) Act 1995* and to change references to the *Classification of Publications Ordinance 1983* to the *Classifications (Publications, Films and Computer Games) Act 1995* of the Commonwealth. These amendments should have been made at the time that the Principal Act was passed but were overlooked. The references to the *Publications Control Act 1990* are out of date as that Act was repealed by the Principal Act on 1 January 1996. Similarly, the references to the *Classifications of Publications Ordinance 1983* are out of date as that Ordinance was repealed by the *Classifications (Publications, Films and Computer Games) Act 1995* of the Commonwealth on 1 January 1996. As a consequence, these amendments are expressed to be retrospective.

Section 41 of the *Interpretation Act 1967* provides that where an Act contains a reference to the short title of another Act and that other Act has been repealed and remade, then the reference is to be construed as including a reference to the remade Act. The *Publications Control Act 1989* was repealed by the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* and the substantive provisions of that former Act are contained in the new Act. Similarly, the *Classification of Publications Ordinance 1983* was repealed by the *Classifications (Publications, Films and Computer Games) Act 1995* of the Commonwealth and the substantive provisions of the repealed Ordinance are contained in that new Act. Section 41 of the *Interpretation Act 1967* should therefore be sufficient to preserve the substantive

operation of the provisions of the *Business Franchise ("X" Videos) Act 1990* and the *Taxation (Administration) Act 1987* that refer to the repealed legislation. These amendments are made retrospective, however, for abundant clarity.

The Schedule lists the amendments to the *Business Franchise ("X" Videos) Act 1990* and the *Taxation (Administration) Act 1987*.

The first amendment to the *Business Franchise ("X" Videos) Act 1990* is to the definition of " 'X' video". The existing definition relies on the *Classification of Publications Ordinance 1983*. This Ordinance was repealed and replaced by the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth

The amendments to paragraphs 5(3)(d) and 10(1)(c) and subparagraph 10(i)(d)(i) of the *Business Franchise ("X" Videos) Act 1990* substitute references to the new *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* as a ground for refusing to grant a licence or for cancelling a licence.

The amendment to the *Taxation (Administration) Act 1987*, similarly to the first amendment to the *Business Franchise ("X" Videos) Act 1990*, amends the definition of "'X' video". The existing definition relies on the *Classification of Publications Ordinance 1983*. The definition is amended to refer to the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth.