



## Classification (Waiver of Fees) Guidelines 2014

Policy guidelines made for the purpose of *Classification (Publications, Films and Computer Games) Act 1995*, section 91 (Waiver of Fees)

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### 1 Name of policy guidelines

These policy guidelines are the Classification (Waiver of Fees) Guidelines 2014.

### 2 Commencement

These Guidelines are to be applied in relation to applications for fee waivers received on or after 12 September 2014.

### 3 Purpose

- (1) These Guidelines set out policy considerations that may be relevant to the making of a decision in relation to a waiver application under subsection 91(1) of the *Classification (Publications, Films and Computer Games) Act 1995* (the Act). The public interest considerations in Guideline 6 (below) apply to applications made under subsections 91(a) and 91(c) of the Act only. The Minister should take into account any other factors that the Minister considers relevant to the merits of a waiver application in relation to applications made under subsections 91(a) and 91(c) of the Act only.
- (2) These Guidelines do not apply to an application for enforcement purposes under the Intergovernmental Agreement for the National Classification Scheme between the Commonwealth, States and Territories dated 28 November 1995.

Note: These Guidelines are not a legislative instrument and should be applied flexibly.

### 4 Definitions

In these Guidelines:

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

**material**, for a waiver application, means a publication, film, computer game or advertisement that is the subject of an application under the Act.

**waiver application** means an application under subsection 91 (1) of the Act for the waiver of all or part of the payment of fees payable, or notionally payable, under the Act.

Note: The following words and expressions used in these Guidelines have the same meaning as they have in the Act:

- adult
- advertisement
- computer game
- enforcement application
- film
- Minister
- publication.

## 5 Character of material

(1) Without limiting the meaning of subsection 91(1) of the Act, material will generally be taken to be:

- (a) **special interest material** if it relates to a subject, interest or pursuit that is of particular interest to a group of persons, such as a community group or a cultural group, as distinct from the public at large; and

Example: A hobby, recreational activity or a special event.

- (b) of **limited distribution** if it is intended to be published or otherwise made available in small quantities of not more than:

(i) for a film for public exhibition—3 prints or copies; or

(ii) for a publication, a film for sale or hire or a computer game—50 prints or copies; and

- (c) a **documentary record of an event** if it provides factual information about an event such as a public occasion (including the opening of public infrastructure, a sporting fixture, a horticultural display or an artistic performance) or a family or private occasion (including a wedding); and

- (d) of a **cultural or like nature** if it is about:

(i) the expression of a sporting or artistic activity such as singing or dancing or a craft or other physical or intellectual activity (including the sporting, art, craft or other activity of a particular group or community within the wider community); or

(ii) a community activity such as a historical re-enactment, a charity fundraising activity or an agricultural show; or

(iii) a religious or spiritual activity.

(2) For paragraph 91(1)(c) of the Act, the likely demand and the likely financial return to the applicant from the release of the material may be relevant to considering whether the special interest material has a limited distribution.

## **6 Public interest**

- (1) A waiver will generally be in the public interest if the material:
  - (a) involves a matter of interest to the public at large, or to a significant portion of the public; or
  - (b) provides a public benefit; or
  - (c) encourages or contributes to a desirable public purpose.
- (2) The following matters may be relevant to determining whether material is in the public interest:
  - (a) the general nature and content of the material; and
  - (b) the persons or class of persons to whom, or among whom, the material is intended, or likely, to be published; and
  - (c) the persons or class of persons who are likely to benefit directly or indirectly from publication of the material.

Note: Guideline 6 applies to applications made under subsections 91(a) and 91(c) of the Act only.

## **7 Waiver applications**

- (1) A written waiver application should:
  - (a) include the name and address of the applicant; and
  - (b) set out the grounds on which a waiver is sought; and
  - (c) state whether a full or partial waiver is sought; and
  - (d) if the applicant claims to be a non-profit organisation—include evidence of that fact.
- (2) A waiver application should be made with the application under the Act for which the waiver is sought.

## **8 Additional considerations for certain waiver applications**

- (1) This subclause applies if the application under the Act for which 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) the review of a decision mentioned in paragraph (a) or (b) above.

Note: The 'review of a decision' in Guideline 8(1)(c) excludes a decision of the Board to revoke, or refuse to revoke, a decision of the classification tool as these are not reviewable decisions within the meaning of section 42 of the Act.

- (2) The Minister should consider any statement submitted by the applicant that sets out:
- (a) information about the retail price of the material intended for sale, exhibition or hire (if applicable); and
  - (b) information about the number of copies or prints of the material that will be distributed for sale, exhibition or hire; and
  - (c) a description of the likely or intended audience for the material; and
  - (d) whether the material is to be released primarily for commercial purposes.
- (3) In relation to an applicant mentioned in paragraphs (1)(c) and (d) above, the Minister should consider any statement to the effect that:
- (a) the applicant was not the person or applicant who obtained the original decision under the Act; and
  - (b) for this reason, the applicant has not submitted a statement under subsection (2) above.

## **10 False or misleading information**

As a general rule, the Minister should reject a waiver application if there are reasonable grounds for believing it contains false or misleading information.

## **11 Material restricted to adults**

The Minister should generally not waive a fee for material of a kind mentioned in paragraph 91(1)(c) of the Act if the material is likely to be restricted to adults.

## **12 Extent of waiver**

- (1) The Minister should generally grant a full waiver of a fee for an applicant mentioned in an item in the following table if the material satisfies the conditions mentioned in the item.

<b>Item</b>	<b>Applicant</b>	<b>Conditions</b>
1	The Commonwealth, a State or Territory or an authority of the Commonwealth, a State or Territory	The material is to be released for public health, or educational purposes, and not primarily for commercial purposes
2	A non-profit organisation, established for the public benefit	The material is not to be released primarily for commercial purposes

<b>Item</b>	<b>Applicant</b>	<b>Conditions</b>
3	An applicant other than an applicant mentioned in item 1 or 2	<ul style="list-style-type: none"> <li>(1) The material is to be released for public health, or educational purposes, and not primarily for commercial purposes.</li> <li>(2) The applicant demonstrates that: <ul style="list-style-type: none"> <li>(a) the applicant will not gain materially (by promotion or otherwise), from the release of the material; and</li> <li>(b) the public will benefit from the release of the material</li> </ul> </li> </ul>

- (2) If the material does not satisfy a condition mentioned for it in subsection (1), the Minister should consider granting a waiver for 50% of the fee that would otherwise be payable.