INTRODUCTION

1. On 27 June 1996 the Senate referred the Classification (Publications, Films and Computer Games) Regulations, Statutory Rules 1995 No. 401 (the Regulations), to the Committee for inquiry and report by the first day of the 1996 spring sittings.

2. The reference to the Committee followed the giving of Notice of Motion for the disallowance of the Regulations by Senator Bourne on 30 May 1996.

3. The Regulations, made pursuant to the *Classification (Publications, Films and Computer Games) Act 1995* (the Act), were approved by the then Governor-General on 12 December 1995 and came into effect on 1 January 1996. They impose a range of 32 fees for the various classification and related functions performed within the Office of Film and Literature Classification (OFLC).

4. The Committee conducted a public hearing in Sydney on 15 July 1996 at which Government and industry representatives were invited to present their respective positions in relation to the Regulations. Evidence was taken from Mr Norman Reaburn, Deputy Secretary of the Attorney-General's Department and Mr John Dickie, Director, Classification Board, and colleagues from the Office of Film and Literature Classification, representing the Government; and representatives of the Australian Visual Software Distributors Association Ltd (AVSDA), the Australian Recording Industry Association Ltd (ARIA) and the Eros Foundation Inc. The Committee wishes to express its appreciation to all parties for their cooperation with its inquiry.

5. The transcript of the Committee's hearing and copies of submissions have been tabled in conjunction with this report. Copies can be obtained from the Committee's secretariat on request. A reference in the report to a page of evidence refers to the relevant page of the transcript of the Committee's hearing on 15 July 1996.

BACKGROUND

6. The *Classification (Publications, Films and Computer Games) Act 1995* constitutes the Commonwealth's contribution to the comprehensive revision of Australia's censorship laws which has been undertaken in conjunction with the States and Territories. The revision was prompted by a recognition that the censorship laws were unnecessarily complicated and not uniform.

7. The Act consists of two main elements:

- provision for determining the standards against which publications, films and computer games are to be classified; and

- provision for an organisation, the Classification Board, to classify publications, films and computer games against those standards (and for appeals to be made to an appeals board, the Classification Review Board).

8. The third element in the revised scheme, which is carried out under complementary State and Territory legislation, regulates the sale, distribution and offering of publications, films and computer games in accordance with the classification given to them. It is the State and Territory legislation which requires the submission of prescribed categories of publications, films and computer games to the Classification Board for classification. Once classified by the Board, the State and Territory legislation adopts those classifications, except for Western Australia and Tasmania in relation to publications.

9. The purpose of the Regulations is to prescribe fees for applications made under the Act where provision is so made under the Act. Prior to the passage of the Act, fees for film and video classification were levied under State and Territory legislation, collected by the Commonwealth and shared equally between the Commonwealth, the States and the Northern Territory. Fees for computer game classifications were introduced in 1994 with the revenue retained by the Commonwealth. The balance of the costs of running the Office of Film and Literature Classification (OFLC), the Commonwealth body which provides administrative support for the classification activities of the Classification Board (formerly the Film Censorship Board), was funded by appropriations made through the Attorney-General's Department. These arrangements had been criticised by the Law Reform Commission in its 1991 report *Censorship Procedure* as being 'complicated and inefficient'.

10. The Regulations represent the introduction of a comprehensive scheme of charging by the Commonwealth for the classification services it provides under the national censorship scheme. In return for the States and Territories foregoing their fee powers, and in recognition of their enforcement costs, each State and Territory will receive the average of their share over the previous five years, a total of $600,000 in the first year. This amount will be adjusted in future years by the change in the Consumer Price Index.

11. The Explanatory Memorandum for the Classification (Publications, Films and Computer Games) Bill 1994 (the Bill) also stated:

> 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.

The Regulations

12. The Regulations represent the first stage of the previous Government's foreshadowed increase in OFLC charges as it sought to introduce substantial cost recovery for the OFLC's classification services. They came into effect as from 1 January 1996. They include the first increase in fees for the classification of films and videos since 1984, confirmation of the fee adopted in 1994 for the newly introduced system of classification of computer games, and have for the first time created a fee for the classification of publications, which had been subject to a voluntary scheme prior to the commencement of the Act.

13. The Committee was provided with an explanation of the basis of the fee increases at its public hearing on 15 July 1996. Mr Norman Reaburn, Deputy Secretary of the Attorney-General's Department, informed the Committee that the former Government had made a decision early in 1995 that the OFLC would be required to introduce and/or increase fees to recover costs associated with the provision of classification services on a user pays basis. The Government's expectation was that there would be full cost recovery on classification services by 30 June 1999. He added:

> This in effect changed the nature of the OFLC into an organisation a little more akin to a business unit within the government structure (Evidence, p. 3).

14. The May 1995 budget papers provided for the incremental reduction of the OFLC budget by $2 million over a three year period; $1/2 million in the first financial year, $1 million in the following year and a further $1/2 million in the following financial year. Mr Reaburn stated:

> The government cited that the OFLC must raise this additional amount from its classification activities (Evidence, p.4).

15. Mr Reaburn then described how there was being undertaken a two-stage review of the classification fees, the first stage of which is represented by the fee increases contained in the Regulations. He stressed that:

> The previous government decided that the first stage would be to alter existing fees in accordance with the basis of movement in the CPI since 1984. The year 1984 is the base because that was the last time the fees changed (Evidence, p.4).

16. The fees for computer game classifications were unchanged as they had only been set in 1994 on a partial cost recovery basis. The fees set in the Regulations for new services, such as in relation to classification of publications, were 'based on very preliminary cost estimates' (Evidence, p.4).

17. The second stage of the review will involve a complete review of the classification activities undertaken by the OFLC, both in relation to the processes used by the OFLC and in the quantification of the actual cost of each of the office's classification functions. A firm of private accountants has been retained which is expected to complete its review by the end of October 1996. Its report will be produced only after OFLC clients have had the opportunity to make input to the development of the pricing model and an implementation timetable. The report will be made available to Senators, OFLC clients and industry associations at that time.

18. Mr Reaburn stressed that the final level of fees charged for the OFLC's activities would be based on the findings of this review. He added, however, that:

> We are fairly confident that the current level of fees is pitched below what the ultimate level will be. The government decided that it would be better to in effect introduce the fees in two tranches than one much larger hit than this would be (Evidence, p. 9).

19. The former Government had made it clear that there would be no cross-subsidy between services so that, for example, the costs of operation of the film classification function should not cross-subsidise the publications classification function. The Committee was also advised that there would be a relatively standard fee imposed within each functional area so that, for example, films whose classification were relatively straightforward would pay the same as those subjected to a complex and detailed examination by the Classification Board.

20. The Committee was informed that the OFLC's functional review has already led to measures being implemented to reduce costs in some areas and to improve efficiency in service delivery, and that more can be expected.

21. Classification Board Director, John Dickie indicated that, once an appropriate fee structure had been settled, he expected that future increases would be in line with CPI movements (Evidence, p. 13).

22. Mr Dickie informed the Committee that the provision of classification services represents about 60% of the OFLC's workload (Evidence, p.122). Mr Reaburn stressed that the fee increases were to cover only these activities:

> Activities such as providing support to the Federal, State and Territory Ministers through the Standing Committee of Censorship Ministers, activities supporting the Federal Minister by way of Parliamentary questions and correspondence and the community input into the Classification Board would still remain Budget funded (Evidence, p. 58).

Thus, at the end of the process of industry cost-recovery, the Commonwealth budget will continue to make a substantial contribution towards the operating costs of the OFLC.

23. In relation to the level of payments to the States and Territories, Mr Reaburn indicated that the amounts paid would be required to be met from fees in addition to the required budget saving of $2 million within three years (Evidence, p.4). In negotiating the new arrangements the States and Territories were made aware by the Commonwealth that the classification fees would be increased, but that the increase in fees would be retained by the OFLC to offset its running costs (Evidence, p. 53).

24. The Regulations also provide for each State and Territory to receive, beyond the cash reimbursement, 100 free applications for classification of a publication, film or computer game or for an evidentiary certificate about action taken under the Act required for the purposes of prosecution. After the 100 free applications is exceeded, the Regulations provide for a 50% discount for the remainder of the year. While the Committee was informed that the relevant police force, or government body, would pay for the balance of the discounted fee, it is not clear whether the industry must carry the OFLC's costs incurred in such enforcement activity as part of the cost-recovery regime or whether they are budget-funded.

25. It should also be recorded that section 91 of the Act provides the Director of the OFLC with a discretion to waive payment of fees that would be payable under the Act by government or non-profit organisations where it is in the public interest to do so. Again, it is not clear whether the industry must carry these costs.

DISCUSSION OF INDUSTRY REPRESENTATIONS

26. The submissions to the Committee made by the three industry groups, and the conduct of the Committee's subsequent public hearing, saw the raising of a wide range of issues about the activities of the OFLC. The major concerns related to the quantum of the increase in fees for the classification of films/videos and, to a lesser extent, the level of the fee for the classification of publications; the introduction specifically of a fee for the classification of the covers of cassettes, compact disks and records; and the lack of consultation with the industry and the short notice given to the industry that the new fees were being introduced. The potential for greater industry self-regulation in the context of cost-recovery for the OFLC's services was also raised.

27. A number of interesting issues also arose in discussions which did not relate directly to the level of fees to be charged for the OFLC's classification activities. An example is the introduction by the Australian Recording Industry Association of a self-regulatory *Code of Practice for Labelling Product with Explicit and Potentially Offensive Lyrics*. The Committee proposes to address such issues in closer detail during its continuing activities.

The level of fees

Films, videos and publications

28. The Australian Visual Software Distributors Association (AVSDA), representing 25 members who account for 95% of financial turnover of the video distribution industry, and the Eros Foundation, which represents the 'adult' video and publications industries, expressed their concerns about the increase in classification fees for films/videos to include 12 years of CPI increases in one hit. The Australian Recording Industry Association (ARIA) added their concerns in relation to the classification of music videos. The Eros Foundation also challenged the introduction of a $50 fee for the classification of magazines, particularly for its effect on low volume units.

29. Under the previous system of classification fees being set in State and Territory legislation, a fee of $35 per jurisdiction for film classification led to an aggregate fee of $245. A similar structure in operation for video classification fees gave an aggregate fee of $280. (The extra $35 fee was a fee in ACT legislation for video classification which could not be prescribed by the ACT for films because of the relationship between the Commonwealth and the ACT).

30. Under the Regulations, the fee since 1 January 1996 for classification of a film or video in excess of 60 minutes running time has been $500, with a concessional fee of $350 for films or videos of less than 60 minutes. The increase has therefore been in the order of 100%.

31. AVSDA submitted that the Regulations should be repealed and replaced with a more phased approach over a three-year period prior to the implementation of cost recovery. Concerns were raised that there would be a significant negative impact on the industry of fee increases of such magnitude. In particular, small independent operators, the Australian film industry and distributors of foreign language or special interest titles would be adversely affected. The Eros Foundation also argued that there is already a flourishing 'illegal' or 'underground' industry, estimated to take some 50% of sales of the X-rated video product,

and that the increased classification fees may tempt more traders to join the black market operators, because of the large price advantages that they would enjoy.

32. Mr Reaburn was asked why the fees had not been increased progressively since 1984. He stated that:

> I think largely because of the creaking nature of the national classification/censorship scheme that existed prior to the beginning of the Commonwealth Act ... Essentially, the fees were set by each individual jurisdiction. I guess it had the inertia of involving eight different jurisdictions and that is why there had not been movement in the fees (Evidence, p. 5).

33. Mr Dickie added that:

> To get an increase in fees you had to get all the states and territories legislating at the one time so that the fee could go up as a coherent whole. The experience had been, with any alterations at all to state legislation, that it would take anything from six months to three years to be able to get some sort of conjunction, with all the states getting the whole act together (Evidence, p.5).

34. It was this somewhat chaotic historical context that had led the then Attorney-General, Michael Duffy, to ask the Law Reform Commission in 1990 to examine how censorship laws could be simplified and made more uniform and efficient, and the Commission's finding inter alia that a single fee for classification should be determined by the federal Attorney-General. The Committee notes that, largely because of the creaking nature of the classification/censorship scheme, another five years passed before the Law Reform Commission's recommendations were given effect.

35. In response to claims that the fees could have been phased in more gently, Mr Reaburn stressed that the previous government had recognised that the increase in fees necessary to move from 1984 levels to full cost recovery levels would be substantial, and that it had therefore decided to increase the fees in two tranches. The first tranche, contained in the Regulations now before the Committee, was a straight CPI-based increase since 1984. The second tranche will be determined once the analysis of the OFLC's operations and costs is completed.

36. Mr Dickie summarised the issue in the following terms:

> It is difficult to say anything [by way of explanation] other than that the government decided to go initially with a CPI increase. I suppose the major thing that you can say about that is that it immediately gives a serious indication of the sorts of fee changes that are inevitable. Gradual and comparatively small increases would take a period of time that the government felt it did not have (Evidence, p. 8).

37. The government representatives were asked to comment on the industry claims (which it termed as 'economic censorship') that the increased classification fees will have to be passed on to consumers, which may make it uneconomic to handle low volume units. They acknowledged that consumers of low volume products may be adversely affected when compared to the mass market. Apart from making the observation that, in fact, consumers had been the beneficiaries of the failure to increase fees for the past 12 years, Mr Dickie noted that what was being introduced was fee-for-service within a cost recovery scheme. While he was sympathetic to the argument, and indicated that the matter would be examined in the context of the review of his office's operations, such outcomes may be unavoidable.

38. Deputy Director of the Classification Board, Ms Andree Wright, referred to concerns that some very short community interest tapes of only 10 minutes duration should not be charged the up-to-60 minutes rate and indicated that a further concession fee may be appropriate. The Committee believes that this would be a commendable initiative and it is recommending that the issue of concessional fees should be examined by the reviewers of the OFLC's operations with a view to enabling films and videos of a community interest or educational nature to be charged a lower fee.

39. Ms Wright brought AVSDA's claims of serious adverse consequences from the fee increase into perspective by comparing the demand for the OFLC's classification services in the period from January to June 1996, when the new fees have been payable, and the immediately preceding periods.

40. In relation to possible harm to the Australian film industry, Ms Wright advised that applications for the classification of Australian product have remained virtually constant at around 11 per cent for the past four years. In the case of Film Australia, as an example, it had submitted 31 video tapes for classification in 1995 and 13 in the first half of 1996. Again, there is a relatively constant record of submission irrespective of the fee increases. The Committee notes, however, that the fact that Film Australia is a major beneficiary of the concessional under-60 minutes rate suggests that it has not had to feel the full impact of the fee increases.

41. Other statistics cited by Ms Wright and by the OFLC in supplementary material forwarded to the Committee after the public hearing also indicated that, on the evidence of six months' experience with the new fees, applications by video distributors had not declined. In fact, Miss Roslyn Wilson, Chairman of AVSDA, informed the Committee that no industry members had yet ceased operation or downsized as a result of the fee increases (Evidence, p.35).

CD and record covers

42. The representations of the Australian Recording Industry Association (ARIA) were primarily directed at opposing the introduction in the Regulations of a $25 fee for the classification of cassette tape covers, compact disk covers and record covers. ARIA saw the inclusion of the provision in the Regulations as inconsistent with its moves to introduce a self-regulatory code in cooperation with the OFLC and the censorship ministers.

43. Mr Reaburn pointed out that:

> Record covers and the words of songs printed on the backs of records or printed as separate sheets included with records and CDs have always been publications. They have always been subject to the publications regime ... their being made subject to a fee for the first time [is the only change] (Evidence, p. 44).

44. Mr Dickie confirmed that the fee was included in the Regulations so that if a record company was concerned about whether a cover should be classified it could submit it to the OFLC and an appropriate fee could be charged:

> This is just a contingency in case somebody submits a cover to us for classification (Evidence, p. 45).

45. The Committee accordingly finds no merit in ARIA's argument. It is doubtful that, under the *Acts Interpretation Act 1901* the Senate would have been able to meet ARIA's request to disallow the provisions of concern in the Regulations. This Act only provides for the disallowance of 'regulations' or 'a regulation', but not a part of a regulation.

The extent of consultation

46. One of the areas of great concern to the industry was that formal notification of the new fees regime only took place some 12 working days before they were to take effect. The industry's concern in this regard related to the disruption to their annual budgetary processes caused by the short notice and the fact that they had been led to believe that the fee increases would be the subject of industry negotiation and consultation.

47. The Regulations were signed by the then Governor-General on 12 December 1995. There was no argument amongst the witnesses that the first the industry was told of the exact level of the fees in the Regulations was at a cocktail party held in the middle of December. It is also clear that the industry had a longstanding expectation that the fees, when they did increase, could be expected to increase substantially. The Explanatory Memorandum to the Bill was presented in the House of Representatives on 29 June 1994. That document alerted the industry to the fact that, over several years, charges for classification services would be increased so that there would be substantial cost recovery. The industry was aware that fees had not been increased for some 10 years at that stage, and that they bore little relationship to the true cost of the provision of services by the OFLC nor to equivalent international fees.

48. The May 1995 Budget Papers revealed the Government's plans for the incremental reduction of the OFLC budget by $2 million over a three year period and that full cost recovery had to be achieved by 30 June 1999.

49. The Senate's Legal and Constitutional Legislation Committee, in its consideration of the OFLC's 1995-96 estimates of expenditure, was told on 30 May 1995 that the first phase fee increase would be in line with CPI increases since 1984, but that the second phase would involve a move to cost recovery, in consultation with the industry (Senate Estimates *Hansard*, 30.5.95, page L & C 124).

50. Mr Dickie stressed that:

> As soon as I had the budget figures, the forward estimates, I consulted with the MPDAA [the Motion Picture Distributors Association of Australia] and VIDA, as it then was [now AVSDA], to tell them what government expectations were over the next three years. I said that it would result in a fee increase but at that stage we did not know how much because we were getting the accountants in (Evidence, p. 7).

51. In subsequent correspondence to the Committee Mr Dickie wrote that:

> I informed the industry associations that the projections were that by the year 1998-99 the OFLC would be required to be off-Budget by an additional $2 million. The increase was to be phased in over a three year period (Evidence, p.98).

He added the observation that the VIDA office bearers at that time do not now hold positions with AVSDA, which may have contributed to a lack of awareness among AVSDA's current representatives. Clearly, the advice given was oral and AVSDA had no written record of the conversation on file for the benefit of successors.

52. Mr Dickie advised the Committee that the accountants' initial assessment of the OFLC's cost base and cost recovery requirements was received in November 1995, on the basis of which the then Government determined the levels of fees contained in the Regulations. The Government also agreed that the Act (and hence the fees) should commence on 1 January and not 1 March as had been mooted. Mr Dickie then contacted the industry to convene the meeting on 12 December 1995 at which they were informed of the government's decisions.

53. The Eros Foundation claimed not to have been advised of what was being planned prior to the mid-December meeting. ARIA claimed to learn of the fee increases only in June 1996. Mr Dickie referred to MPDAA and VIDA as 'the major associations that were our major fee people' (Evidence, p. 7). Ms Wright indicated that those of ARIA's members with publications and video operations would have learnt of the increases through them. She argued that the fact that ARIA itself had not learnt before June 1996, six months after the fees were introduced, also suggested that ARIA's members had not complained in the interim. The absence of complaint could be explained because no ARIA members had actually applied for a classification of a CD or record cover during the period and had accordingly paid no classification fees.

54. The omission of formal notification of the Eros Foundation, whose members account for around 20% of the OFLC's video classification activity, was unexplained. The OFLC stressed, however, that it maintains an open and regular liaison with industry representatives and clients and that speculation that classification fees would increase was commonplace in the industry in 1994-95 (Evidence, p.122).

55. The Committee does not accept that reliance on the "bush telegraph" is a proper mechanism for a government agency to inform or consult with the community or its clients. In view of the magnitude of the impact on the industry's operations of the then Government's

decisions, the Committee is concerned at the alarmingly informal nature of the OFLC's consultative processes.

56. AVSDA was concerned that, while it had received indications from the OFLC as early as January 1994 that they would be involved in the fees review process, none took place. Mr Dickie acknowledged that what he had considered 'consultation' could be construed by the industry only as 'advice'. In his view the industry was fully informed in general terms of what was proposed by the government. The actual quantum of the new fees was, once known, then notified in as timely a manner as possible.

57. The Committee notes that it is a well-established principle in public administration that any increases in fees, charges or taxes are announced on or very close to the day that they are to take effect, to avoid a rush of applications at the old fee level. The Committee nonetheless has considerable sympathy with the industry's argument that the OFLC's promised negotiation and consultation did not take place and that, when the industry was finally advised of what were the Government's plans, it was at such short notice that there was barely opportunity for the industry associations to notify their members before the new fees took effect.

58. The Committee stresses that the foreshadowed next round of fee increases calls for the closest possible involvement by industry, as the OFLC introduces a user-pays regime and substantial cost recovery. This has been acknowledged by the government representatives and commitments of close consultation have been made. The Committee is recommending that all relevant elements of the industry should be closely involved in the review process and be provided with copies of the review report as soon as practicable after its completion to emphasise the priority that must now be given by the Government to industry consultation.

The introduction of cost recovery for the OFLC

59. The previous Government's decision to move the OFLC from an essentially budget funded agency to one required to adopt substantial cost recovery (apart from its Community Service Obligation type functions) has many operational ramifications.

60. While it is always desirable that organisations within the public sector operate at high levels of efficiency and economy, there would be an expectation that the introduction of a cost recovery regime would require the adoption of systems of best practice.

61. In their opposition to the level of fee increases contained in the Regulations, the industry raised examples of OFLC practices, the continuation of which they questioned under a cost recovery scheme.

Double Charging

62. One major area of concern to AVSDA was the OFLC's practice of charging two fees when application is made for the same film to be released in both film and video format. AVSDA, for example, argued that the OFLC only physically views the content once and that, therefore, only one fee should be applicable.

63. The government representatives confirmed the practice of the double charge which was said to apply in about 17% of video applications. Naturally, when videos are submitted

subsequent to film release, they are assessed for classification separately in case the content has changed and a second fee is validly chargeable. The representatives also denied AVSDA claims, subsequently withdrawn by AVSDA, that a double charge was also being applied for film and video trailers.

64. Mr Dickie outlined the comparative resources applied to film and video classification. In relation to a film three board members will watch the film in its entirety, with the assistance of a projectionist. With video, there is no projectionist, a smaller theatre, and a panel of possibly only two classifiers. If there is a disagreed decision, a second panel may be required. In a contentious case, the whole board may have to examine the material.

65. Yet, as Ms Fiona Patten, President of the Eros Foundation, pointed out the fee is identical for the classification of films and videos, being based only on the duration of the material.

66. Mr Reaburn and Mr Dickie indicated that the double charge had arisen as an 'historical accident' and that it could be removed within the context of the review of the OFLC's operations. The revenue foregone would, of course, still have to be raised.

67. The Committee notes that the double charge contradicts the strict application of the fee-for-service concept. The Committee also notes that the current fee of $500 for the classification of a standard film or video of, say, two hours duration barely reflects the cost of the resources applied. Whether the current double fee of $1,000 is excessive or conservative can only be determined once the review exercise is completed. The Committee is recommending that the practice of making a double charge be discontinued. The OFLC's reviewers will need to take this recommendation into account in seeking to determine appropriate fees for the classification of films and videos in the future.

Opportunities For Increased Self-Regulation

68. Each of the three industry groups put forward proposals for increased self-regulation as a means to reduce OFLC costs and, hence, fees.

69. The major thrust from the video industry groups was that there is sufficiently uncontentious material in certain classifications that the industry, rather than the OFLC, should be given responsibility for its classification.

70. AVSDA noted that it already operates a Censorship Exemption Agency which examines videos for exemption under existing provisions in relation to films for business, accounting, professional, scientific or educational purposes, so long as they do not contain a visual image that would be likely to cause them to be classified in the MA or restricted categories. A similar exemption applies to computer games. Publications which had been subject only to a voluntary scheme of classification prior to the Act, are now subject to a partially compulsory scheme when their contents straddle the category 1 restricted classification, which is the lowest classification for restricted publications, and the upper end of the unrestricted category.

71. AVSDA also stressed that self-regulation in relation to lower level uncontentious G-rated material is used successfully in New Zealand, Canada and Britain, which is discussed in

greater detail below. Self-regulation is also used in Australia under the system of codes of practice on free-to-air television and pay TV.

72. AVSDA sought the extension of the existing exemption provisions to include all G-rated videos, including children's programs such as *Bananas in Pyjamas, Thomas the Tank Engine* and *Postman Pat;* sport shows (such as a portrayal of the history of the Olympics Games or games which had already been broadcast live on television); and music concerts (such as *Riverdance,* classical concerts). It sought similar exemptions for G-rated computer games.

73. AVSDA's Chairman, Miss Roslyn Wilson, made the point that, when submitting videos to the OFLC for classification, the industry had to provide a synopsis of its contents. Thus, it had to have screened the product beforehand and it would be fully aware if there was likely to be a classification problem.

74. Miss Wilson acknowledged that the OFLC system also provides consumer advice additional to the classification decision but she argued that this could continue to be provided under an industry code of practice monitored by the OFLC. The Committee notes that consumer advice is not generally provided for material classified G. As this category is suitable for viewing by all ages, it can be expected not to contain anything which might require consumer advice.

75. ARIA not only echoed AVSDA's call for classical music videos to be exempted from classification, it also sought exemption for 'indents' (videos imported in very low numbers of perhaps no more than three units per title), for imports in small numbers to be subject to a lower classification fee and, finally, urged the Committee to consider a system of industry classification of all music videos.

76. Deputy Director of the Classification Board, Ms Andree Wright, challenged the notion that the industry should self-regulate the G classification, especially when based on the argument that the material had been telecast on free-to-air television. She noted that episodes of *Ren and Stimpy* and *Mighty Morphin Power Rangers* had been broadcast as G-rated on television which the OFLC had classified PG. She added:

> So you cannot always predict it will be a straightforward G just because it turns out to be *Bananas in Pyjamas* ... where children's viewing is concerned, there are concerns that material might distress or harm children, so it is a border we take very seriously (Evidence, p. 42).

77. In fact, the OFLC's consumer research has consistently shown that it is parents of children 13 years or younger who are the most concerned, and the most responsive to, the OFLC's classifications. Therefore it is the G/PG border which is, in many ways, seen as the most crucial.

78. The Eros Foundation took up AVSDA's theme that uncontentious material could be subjected to a different classification regime. The Foundation's President, Ms Fiona Patten, argued that the X classification is less subjective than the others because of what is contained in X and what is not permitted, and could probably be classified by the industry a lot cheaper than by the OFLC. Ms Patten stressed:

> With appropriate enforcement so that checks are done that the industry is complying, the industry could easily comply (Evidence, p. 29).

79. Ms Wright stressed that, over the past two years, the OFLC had refused classification to 139 videos on the X/refused border. This is not, in the Committee's opinion, evidence of an uncontentious area.

80. Mr Reaburn summarised the Government's position in the following terms:

> The position of the parliament is perfectly clear from what is in the statute. There are some exemptions with scientific and educational material and so forth. But the government is not interested in creating alternative little OFLC's within various pockets of the industry. What the government is interested in is a clear and consistent approach to classification (Evidence, p. 45).

81. The Committee endorses the supremacy of the OFLC as the classifier of those categories of material which it is in the community interest should be classified. While there may be some reform of the OFLC's classification processes as a result of the introduction of user-pays, the Committee is recommending that the current range of statutory exemptions from classification should not be extended.

Accountability

82. As a government instrumentality the operations of the OFLC have been properly subject to close scrutiny by the Federal Parliament. The OFLC is required to prepare and table an annual report in the Parliament and to account to the Senate estimates and legislation committees and to this Committee for the manner in which it operates and its use of public funds. These important processes will continue under the program of reform now in train.

83. AVSDA raised its concerns that accountability to the Parliament may not be enough. It submitted that:

> In line with the adoption by the OFLC of 'user pays' principles, the organisation must embrace a more accountable approach towards the industry which will be substantially funding it, so that the commercial realities the industry operates under are taken into account in administrative decision making (Evidence, p. 78).

Its principal recommendation was that there should be industry representation on the OFLC's managing board.

84. This recommendation raises a matter of some substance. The OFLC is essentially a branch of the Attorney-General's Department and the Director has the powers of a Secretary under the *Public Service Act 1922*. The staff are employed as public servants. Fees collected by the OFLC are retained in an account pursuant to section 35 of the *Audit Act 1901*, which reduces the call which needs to be made on the budget through appropriations. The payments to the States/Territories are made from Consolidated Revenue pursuant to subsection 90(2) of the Act, however.

85. The Classification Board, which consists of the Director, the Deputy Director, any Senior Classifiers and such other members as may be appointed by the Governor-General, to a maximum membership of not more than 20 members, is essentially concerned with the operations and integrity of the classification process and has no statutory managerial or financial responsibilities. These are vested solely in the Director.

86. The Act states that:

> 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 (subsection 48(2)).

87. This provision appears to preclude direct appointment of industry nominees to the Board. It may also exclude the appointment of a qualified accountant or lawyer whose presence on the Board would give the industry some comfort that debates on complex organisational and financial matters would have the benefit of commercial expertise.

88. The Committee acknowledges the validity of AVSDA's concerns about the current absence of accountability of the OFLC to the industry which is expected to pay for its services. In the longer term, amendment of the Act may be necessary, to bring the management of the OFLC into alignment with equivalent public sector bodies which have been fully or partially commercialised.

89. Whether that amendment provides for direct membership of the board by an industry representative (AVSDA cited the National Food Authority and the National Farm Chemical Regulation Authority in this respect) or simply permits commercially oriented members to be appointed is a matter for further consideration.

90. Section 50 of the Act provides for the Minister to appoint a person to be a temporary member of the Board for up to three months 'if, in his or her opinion, it is necessary to do so for the efficient dispatch of the Board's business'. In the Committee's opinion, such an appointment is most desirable in this period of review of the OFLC's operations as it moves towards a cost recovery regime, and is recommending accordingly.

INTERNATIONAL COMPARISONS

91. As an aid to the Committee's understanding of the level of fees contained in the Regulations, the Government representatives provided details of charges made for typically similar products by the New Zealand and British boards. The comparisons showed the new fees contained in the Regulations to be substantially lower than the equivalent fees of both overseas classification bodies. For example, the fee for the classification of a film of in excess of 60 minutes duration is A$960 by New Zealand's Office of Film and Literature Classification and A$1657 by the British Board of Film Classification, compared to Australia's $500.

92. The industry groups cautioned against such comparisons, because of differences in approach by the different governments. New Zealand, for example, exempts all film material at the unrestricted end of the spectrum. A labelling body, the Film and Video Labelling Body Inc, is empowered to rate films. It does so, in the first instance, on the basis of classifications by nominated overseas classification bodies such as Australia and Britain. The labelling body

is not empowered to rate films which have been restricted by these overseas bodies. Thus the fees charged by the New Zealand OFLC apply only to the more challenging material.

93. AVSDA provided considerable detail to the Committee about the New Zealand, British and Canadian classification systems. It submitted that the types of exemptions from classification permitted in New Zealand, such as children's shows, music and sporting activities, should be applied in Australia under an agreed industry-based code of practice. Under such an exemption regime, AVSDA indicated that it could view higher OFLC classification fees more favourably.

94. The Eros Foundation pointed out that there is no classification system in all countries of Europe and in the United States. The industry is subject to self regulatory codes and operates under enforcement legislation protecting minors and refusing certain material. There are, of course, no external fees under this approach. It also pointed out that its members pay the full fee of $500 for the classification of an X-rated video in Australia, which is restricted from sale or distribution in all States, while in New Zealand the $960 fee entitles the same material to be sold nationally.

95. Member of the Classification Board, Mr Simon Webb, emphasised that the New Zealand labelling body operates on a user pays basis. An applicant for labelling is still charged, so exemption of unrestricted material is not free. Thus comparisons of the fees of the two OFLCs for, say, MA material is valid. In relation to unrestricted material, a comparison would need to be made between the Australian OFLC and the New Zealand labelling body. Mr Webb described the New Zealand labelling fees as 'significant' (Evidence, p. 48).

96. Mr Reaburn also informed the Committee that some classification organisations charge on a sliding scale, depending on the amount of work put into any particular classification decision. At this stage the Government has determined that a fixed fee for the OFLC's service is a more certain and better way to approach the matter (Evidence, p. 11). The OFLC also pointed out that such a scheme could be expected to be strongly resisted by industry and that it would be difficult to apply. Further, the Act requires the prescribed fee to accompany an application, so it would not be possible to determine the prescribed fee in advance of a classification decision being made (Evidence, p. 121).

97. The Committee would expect the external review of the OFLC to take account of the strengths and weaknesses of international precedents in framing its recommendations for reform.

SUMMARY

98. When the Senate asked the Committee to examine the Classification (Publications, Films and Computer Games) Regulations the issues had seemed relatively clear. The industry had complained that the classification fees contained in the Regulations involved fee increases of up to 100%, and had been imposed with about 12 days' notice and without prior consultation with the industry. The industry had sought the disallowance of the Regulations and the introduction of a more gently phased fee increase.

99. As this report has made clear, the Regulations are only a first step in the implementation of the previous Government's plans for the introduction of a regime of substantial cost recovery by the OFLC for its classification activities. All the indications, including international comparisons of fees charged by comparable classification agencies, suggest that future rounds of fee increases are likely to be substantial if the former Government's cost recovery program is continued.

100. The Government has appointed a firm of accountants to study how the OFLC approaches its task and what costs are involved. It has indicated that it proposes to involve the industry in the review process and to make any report available to the industry once published. The Committee is making a recommendation in this respect to give emphasis to the importance of the issue of industry consultation.

101. The industry has raised some valid concerns about the manner in which the OFLC goes about its work, and has rightly stressed the need not only for consultation but also for the OFLC to be made accountable to the industry for the level of its charges. There must also be as clear a distinction drawn as possible between the OFLC's commercial services and its community service obligations, to avoid the transference of costs properly matters for the budget to the industry.

102. Reform of some of the OFLC's processes has commenced and more change is inevitable as it moves from an essentially departmental structure to one more akin to a business unit. Questions will properly be asked about such issues as the practice of double charging and the level of resources being applied to classifying relatively uncontentious material. The Committee will ensure that it monitors the review process closely because the general community as well as the industry has a close interest in the outcome.

103. Questions were also raised with the Committee by the Eros Foundation about the manner of appointment of the firm of accountants undertaking the OFLC review. The material from Eros was received too late in the Committee's inquiry to be addressed in this report. The Committee will take up the issues raised by Eros in the course of its continuing examination of the review process.

104. On the evidence before it, the Committee has concluded that the level of fees contained in the Regulations are set at realistic levels for the classification services that are being provided by the OFLC. There is clear evidence that the industry has shown no signs of being adversely affected by them some six months after their introduction. It is likely that, had the OFLC engaged in a proper process of consultation with the industry, the industry would not have opposed the interim fees contained in the Regulations and the Committee's inquiry would not have been required. While the Committee is supporting the continuation of the current fees regime, it believes that no future increases should be approved by the Senate until their basis has been subjected to detailed examination by this Committee. The Committee indicates that it expects that full and genuine consultation will have taken place with all affected elements of the industry before further fee increases are sought.

105. The Committee recommends:

(1) That the Senate not disallow the Classification (Publications, Films and Computer Games) Regulations as contained in Statutory Rules 1995 No. 401;

(2) That the Government engage in close consultation with all relevant elements of the industry in relation to the review of the operations of the Office of Film and Literature Classification currently underway and release the review report to industry and to this Committee upon its completion;

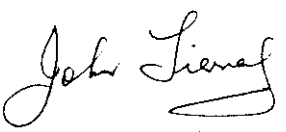
(3) That the Minister appoint a temporary member to the Classification Board to provide commercial expertise to the Board during the review process;

(4) That the practice of applying a double charge when application is made simultaneously for the classification of a title for both film and video release be discontinued;

(5) That the reviewers of the operations of the Office of Film and Literature Classification should examine whether the system of fee concessions could be extended to assist the release of films and videos of a community interest or educational nature;

(6) That the current range of statutory exemptions not be extended; and

(7) That the Standing Committee on Regulations and Ordinances give notice within the prescribed period for disallowance in relation to the Classification (Publications, Films and Computer Games) Regulations containing the second tranche of fee increases for the classification activities of the Office of Film and Literature Classification, in order to allow the Select Committee on Community Standards Relevant to the Supply of Services Utilising Electronic Technologies to inquire into the Regulations and report to the Senate about their acceptability.



Senator John Tierney
Chairman