

AGREEMENT

between

THE COMMONWEALTH OF AUSTRALIA
THE STATE OF NEW SOUTH WALES
THE STATE OF VICTORIA
THE STATE OF QUEENSLAND
THE STATE OF WESTERN AUSTRALIA
THE STATE OF SOUTH AUSTRALIA
THE STATE OF TASMANIA
THE AUSTRALIAN CAPITAL TERRITORY and
THE NORTHERN TERRITORY OF AUSTRALIA

relating to

a revised co-operative legislative scheme
for censorship in Australia

Australian Government Solicitor
Robert Garran Offices
File 95058764

THIS AGREEMENT is made the twenty-eighth day of November 1995

BETWEEN:

THE COMMONWEALTH OF AUSTRALIA
THE STATE OF NEW SOUTH WALES
THE STATE OF VICTORIA
THE STATE OF QUEENSLAND
THE STATE OF WESTERN AUSTRALIA
THE STATE OF SOUTH AUSTRALIA
THE STATE OF TASMANIA
THE AUSTRALIAN CAPITAL TERRITORY and
THE NORTHERN TERRITORY OF AUSTRALIA

WHEREAS:

- A. Following consideration of the Australian Law Reform Commission's Report on Censorship Procedure, Commonwealth State and Territory Ministers responsible for censorship have agreed on a revised co-operative legislative scheme for censorship in Australia ("the new scheme"). However, Western Australia and Tasmania will not participate in the new scheme in relation to publications;
- B. The aim of the new scheme is to make, on a co-operative basis, Australia's censorship laws more uniform and simple with consequential benefits to the public and the industry;
- C. The new scheme accurately reflects, and maintains, the balance of responsibilities that has been arrived at between Australian jurisdictions. It also recognises that, in relation to the Code and classification guidelines, the Commonwealth, and the Participating States are equal partners and that policy on these matters is derived from agreement between all jurisdictions;
- D. In implementation of its part under the new scheme the Parliament of the Commonwealth has enacted the Classification (Publications, Films and Computer Games) Act 1995 ("the Act");
- E. Section 3 of the Act provides that the purpose of the Act is to provide for the classification of publications, films and computer games for the Australian Capital Territory and that the Act is intended to be part of a Commonwealth, State and

Territory scheme for the classification of publications, films and computer games and for the enforcement of those classifications;

- F. The Act establishes the Classification Board (“the Board”) and Classification Review Board (“the Review Board”) and the procedures under which classification decisions are made;
- G. Classification decisions under the Act are to be made in accordance with the Code and the classification guidelines;
- H. Under the Act each Participating Minister and the Commonwealth Minister are to agree:
 - (a) on the classification guidelines;
 - (b) on amendments to those guidelines; and
 - (c) on amendments to the Code;
- I. Under the new scheme the Participating States will enact legislation to provide for the enforcement of the classification decisions made under the Act which legislation sets out the consequences, in the respective jurisdictions, of the different classifications given by the Board or, on appeal, the Review Board, to films, computer games and, where applicable, publications; and
- J. Western Australia’s participation in the new scheme will be by conferral of functions under Western Australian legislation on the Board and the Review Board under an arrangement with the Commonwealth pursuant to the Western Australian legislation and section 4 of the Act.

NOW IT IS AGREED by the parties as follows:

PART I - INTERPRETATION

- 1. In this Agreement, except where a contrary intention appears:
 - (a) “classification guidelines” means the guidelines:
 - (i) determined by the Commonwealth Minister with the agreement of each Participating Minister; or

(ii) those guidelines as from time to time agreed to be amended by the Commonwealth Minister and each of the Participating Ministers

under section 12 of the Act;

- (b) “Code” has the same meaning as in the Act;
- (c) “Commonwealth” means the Commonwealth of Australia;
- (d) “Commonwealth Minister” means the Commonwealth Minister responsible for the administration of the Act;
- (e) “computer game” has the same meaning as in the Act;
- (f) “decision” has the same meaning as in the Act;
- (g) “film” has the same meaning as in the Act;
- (h) “Participating Minister” means:
 - (i) as to publications, the Minister responsible for censorship matters in each Territory and, other than Western Australia and Tasmania, each State; and
 - (ii) as to films and computer games, the Minister responsible for censorship matters in each State and Territory,

which has secured the passage, or the making, of the legislation relevant in its case provided for by Part III of this Agreement and caused that legislation to come into force;

- (i) “Participating State” means:
 - (i) as to publications, each Territory and State, other than Tasmania and Western Australia; and
 - (ii) as to films and computer games, each Territory and State;
- (j) “Party” means a party to this Agreement;
- (k) “publications” has the same meaning as in the Act;
- (l) “State” means a State of the Commonwealth of Australia that is at the relevant time a Party to this Agreement;

- (m) "Territory" means the Australian Capital Territory and the Northern Territory of Australia provided that such a Territory is, at the relevant time, a Party to this Agreement; and
- (n) "the Ministers" mean all Participating Ministers and the Commonwealth Minister.

2. In this Agreement, unless a contrary intention appears or the context otherwise requires:
 - (a) a reference to a Recital is a reference to the relevant Recital of this Agreement;
 - (b) a reference to a Part is a reference to the relevant Part of this Agreement;
 - (c) a reference to a clause, sub-clause or paragraph is a reference to the relevant clause, sub-clause or paragraph of this Agreement;
 - (d) words importing the singular shall include the plural and vice versa; and
 - (e) words importing any gender shall include each of the other genders.

PART II - OPERATION OF AGREEMENT

3. (1) This Agreement shall come into force when it has been executed by the Commonwealth, all the States and each Territory.
- (2) This Agreement may, after its coming into force, be amended only by the unanimous agreement of all the Parties to it.
- (3) A Party may withdraw from this Agreement by notice in writing to each other Party, the notice to take effect on the date to be specified in the notice which is not less than one month from the date on which the notice is given.

PART III - ESTABLISHMENT OF SCHEME

4. Each Participating State is to enact legislation to enforce classification decisions of the Board and the Review Board as to publications, films and computer games.
5. The State of Western Australia is to enact legislation enabling the functions as to classification of films and computer games under that legislation to be conferred on the Board and the Review Board.

6. The foregoing provisions of this Part are subject to the right of any State or Territory to include in its legislation provisions as to the consequences within its jurisdiction of particular decisions of the Board and the Review Board.

PART IV - ADMINISTRATION OF SCHEME

7. Subject to this Agreement,

- (a) any decision to be made by the Ministers in relation to the new scheme ; or
- (b) the consideration by the Ministers of other matters relating to the administration of the new scheme,

is to be effected through the Standing Committee of Attorneys-General in accordance with its procedures.

PART V - PAYMENTS TO STATES AND TERRITORIES

8. (1) Pursuant to section 90 of the Act, the Commonwealth shall pay:

- (a) in respect of the year commencing on the date of commencement of the Act (“the first year”),
 - (i) to each State and the Northern Territory, the average of the annual amounts received by each of them under existing fee sharing arrangements over the last five years ending on the 31 December 1995, or if that amount is less than \$75,000, the amount of \$75,000;
 - (ii) to the Australian Capital Territory, the same amount as that payable to each State and the Northern Territory under sub-paragraph (i) above;
- (b) in respect of each year subsequent to the first year, to each State and Territory the amount payable to that Party under paragraph 8(1)(a) as progressively adjusted for each of those years by multiplying that amount by a factor calculated by dividing the Consumer Price Index for that Party, as published by the Australian Bureau of Statistics for the year ending on the quarter closest to the end of the year for which an amount is payable to that Party hereunder, by the Consumer Price Index for that Party, as so published for the year ending on the quarter closest to the said commencement.

- (2) The amounts payable under subclause (1) are to be paid to a Party by the Commonwealth within three months after the end of the year in respect of which the amount is payable.

- (3) If there is an excess in any year in the fees levied and received under the Act over the total of the amounts paid to the States and Territories under subclause (1) and the amount incurred in the administration of the Board, the Review Board and the Office of Film and Literature Classification the Commonwealth shall pay that excess to the States and Territories in equal parts within three months after the end of the relevant year.

PART VI - AMENDMENT OF CODES AND GUIDELINES

9. The Code or classification guidelines are not to be amended unless:
- (a) the Ministers agree to a proposal made by any of the Ministers;
 - (b) that proposal, unless considered minor by the Ministers, is the subject of a process, as determined by the Ministers, of public consultation which at least involves the invitation of submissions by the public;
 - (c) after consideration of those submissions and the opinions expressed in public consultations the Ministers are to resolve whether the proposal and an amendment or amendments to give effect thereto should proceed; and
 - (d) if it is so resolved:
 - (i) the Commonwealth Minister is to cause a copy of the amended Code or amended guidelines, as the case may be, to be published in the Australian Government Gazette; and
 - (ii) the Ministers are to table the amended Code or amended guidelines, as the case may be, in their respective Parliaments within 30 sitting days after the publication referred to in sub-paragraph (i).

PART VII - FEES FOR CERTIFICATES AND APPLICATIONS

10. (1) The Commonwealth is to provide or allow each State and Territory free of cost in each year, the first of which is to commence on the date of commencement of the Act, up to a total of one hundred of either;
- (a) evidentiary certificates, referred to in section 87 of the Act; or
 - (b) applications for classification of publications, films or computer games
- or both, requested for use in enforcement proceedings by a State or Territory.

- (2) Where the Commonwealth provides or allows a State or Territory within any such year the maximum number specified in sub-clause (1), the Commonwealth is:
- (a) to provide further evidentiary certificates at the prescribed fee; and
 - (b) to allow, at one half of the prescribed fee, further applications for classification of publications, films and computer games,
- within that year by that State or Territory for use in enforcement proceedings.
- (3) A State or Territory may elect to have the amount payable by it under sub-clause (2) deducted from what would have been paid to that State or Territory by the Commonwealth under clause 8 if no such election were made.

PART VIII - TABLING OF THIS AGREEMENT AND AMENDMENTS

11. Each Party shall cause to be tabled a copy of this Agreement and any amendments in their respective Parliaments within 30 sitting days after the coming into force of the Agreement or any amendments.

IN WITNESS WHEREOF this Agreement has been respectively signed for and on behalf of the parties as at the day and year first above written.

SIGNED by the Honourable Michael)
Lavarch, Attorney-General of the)
Commonwealth of Australia,)
in the presence of:)
)

SIGNED by the Honourable Jeffrey William)
Shaw QC MLC Attorney-General)
and Minister for Industrial)
Relations of the State of New South)
Wales, in the presence of :)
)

SIGNED by the Honourable)
Jan Wade MLA Attorney-General)
of the State of Victoria, in the)
presence of:)
)

SIGNED by the Honourable)
Ken Davies MLA Minister for)
Emergency Services and Consumer)
Affairs of the State of Queensland,)
in the presence of:)
)

SIGNED by the Honourable Cheryl)
Edwardes MLA Attorney-General of the)
State of Western Australia, in the)
presence of)
)

SIGNED by the Honourable K. Trevor)
Griffin MLC Attorney-General,)
Minister for Consumer Affairs of the)
State of South Australia, in the)
presence of:)
)

SIGNED by the Honourable Ronald)
Cornish, MLA Attorney-General and)
Minister for Justice of the State of)
Tasmania, in the presence of:)
)

SIGNED by Mr Gary Humphries,)
MLA Attorney-General of the)
Australian Capital Territory, in the)
presence of:)
)

SIGNED by the Honourable Steve)
Hatton MLA Attorney-General of the)
Northern Territory, in the presence of:)
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