

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Justice
Classification (Publications, Films and Computer Games) Act 1995
Classification (Publications, Films and Computer Games) (Modifications of Films)
Instrument 2015

The *Classification (Publications, Films and Computer Games) Act 1995* (the Act) facilitates the operation of the cooperative legislative scheme for classification in Australia. The Act sets out procedures for the classification of films, computer games and some publications.

Authority for making the instrument

Paragraph 20A(2)(e) and subsection 21(3) of the Act enable the Minister to make a legislative instrument prescribing modifications that would not require the modified item to be classified.

This legislative instrument is made in relation to modifications to films only.

Purpose of instrument

Currently, the Act in paragraphs 20A(2)(a) to (d) and 21(2)(a) to (d) provide the statutory exceptions to the modification rule for films and games.

Paragraph 20A(2)(e) and subsection 21(3) of the Act allow a legislative instrument to be made to cover additional exceptions to the modification rule.

The legislative instrument adds to the statutory exceptions for films. It provide for a greater range of modifications to films that do not require classification again. The instrument covers four types of films modifications: a black and white film that has been coloured in full or in part; a colour film that has been changed to black and white in full or in part; an analogue film that has been converted to a digital format or a film in digital format that has been converted to an analogue format, for example to 35mm or 8mm.

Issues giving rise to the need for the instrument

At the April 2013 meeting of the then Standing Council of Law and Justice (SCLJ), Classification Ministers agreed, among other things, that the Act should be amended to expand the exceptions to the modification rule.

The reform arose from a recommendation of the Australian Law Reform Commission's (ALRC) 2012 Report on the National Classification Scheme, *Classification—Content Regulation and Convergent Media*. The ALRC considered that classified content should only become unclassified if it is modified in such a way that the modified content is likely to have a different classification from the original content. It stated that the Act also should not prescribe specific types of modifications that operate to declassify content (paragraph 8.28 and Recommendation 8–2 refer).

The *Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Act 2014* (Amending Act), which introduced these reforms,

received Royal Assent on 11 September 2014. Schedule 4 of the Amending Act covering modification exceptions took effect on 11 March 2015.

Schedule 4 of the Amending Act introduced, among other provisions, paragraph 20A(2)(e) and subsection 21(3) to the Act to allow the Minister to make a legislative instrument to cover additional exceptions to the modification rule. The instrument-making power was considered necessary to respond to technological advances that facilitate rapid and multiple modifications to films (and computer games). It enables the classification scheme to respond more quickly and to deal more effectively with the rapidly evolving content and content distribution environment.

Details of the instrument are included in the [Attachment](#).

Consultation

The Department consulted state and territory classification officials, the Classification Board and the following stakeholders.

Consumer group: The Australian Council on Children in the Media (ACCM).

Industry groups: The Australian Home Entertainment Distributors Association (AHEDA) (whose industry members will primarily be affected by this instrument) and the Motion Picture Distributors Association of Australia (MPDAA).

The AHEDA and the MPDAA support this instrument. None of the submissions received opposed the making of this instrument.

Commencement

The instrument commences on the date it is registered. This instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA).

In accordance with subsections 44(1) and 54(1) of the LIA, the instrument is not subject to disallowance or sunseting because the Act facilitates the establishment or operation of an intergovernmental scheme involving the Commonwealth and one or more of the states, and authorises the instrument to be made by the Minister.

The Hon Michael Keenan MP
Minister for Justice

Details of the *Classification (Publications, Films and Computer Games) (Modifications of Films) Instrument 2015*

Section 1 – Name

This section provides that the title of the instrument is the *(Publications, Films and Computer Games) (Modifications of Films) Instrument 2015*.

Section 2 – Commencement

This section provides for the instrument to commence on the day it is registered.

Section 3 – Definitions

This section sets out the definitions of terms referred to in the instrument.

Section 4 – Prescribed films modifications

Modifications of unclassified films that are later classified

Subsection 4(1) specifies that modifications of a kind prescribed under section 5 are covered by subsection 20A(2) of the Act.

That is, if a film is modified in line with the requirements of section 5, and is classified in unmodified form at a later time, both the modified and unmodified forms of the film have the same classification from that later time.

Section 20A of the Act applies in relation to a film classified on or after 1 January 2013, regardless of when the film was modified. This is specified in subsection 6(1) Part 2 Schedule 4 of the Amending Act.

For example:

1. A film (the original film) is produced on 1 February 2013. The film is modified (the modified film) on 1 July 2013. On the day this instrument comes into effect, the original film is classified. The modified film receives the same classification and consumer advice as the original film on that day (contingent on the modified film satisfying the other requirements of this legislative instrument). This is because the original film was classified after 1 January 2013 and after the instrument came into effect.
2. A film is produced on 1 June 2012. The film is modified on 1 July 2012. The original film is classified on 1 August 2012. The modified film is unclassified because the original film was classified before 1 January 2013.

The Explanatory Memorandum to the Amending Act stated that the new section 20A is intended to address a legislative anomaly relating to modified content being treated differently under the Act depending on whether the modification is made before or after the

content is classified. Section 21 of the Act states that a classified film or classified computer game becomes unclassified when a modification is made to it, unless the modification is of a kind listed as an exception to this modification rule. A gap was identified because section 21 only dealt with modifications made to classified films and classified computer games, and not with modifications made **before** films or computer games are classified. The new section 20A addressed this legislative anomaly and expanded the modification rule.

Classified films that are later modified

Subsection 4(2) specifies that subsection 21(1) of the Act does not apply to modifications of a kind prescribed under section 5.

This means that if a film is modified in line with the requirements of section 5, the modified film receives the same classification as the original film.

Section 21 of the Act applies in relation to a film classified on or after 1 January 2013. This is specified in subsection 6(2) Part 2 Schedule 4 of the Amending Act.

For example:

1. A film is classified on 1 January 2013. On the day this instrument comes into effect, the film is modified. The modified film receives the same classification and consumer advice on that day (contingent on the modified film satisfying the requirements of this legislative instrument).
2. A film is classified on 1 December 2012. On 1 January 2013 the film is modified. The modified film is unclassified because the original film was classified before 1 January 2013.

Section 5 – Rule for modifications of films

A modified film receives the same classification as the original film if the modification satisfies the Rule in section 5. This is specified in subsection 5(1).

The rule in subsection 5(1) covers colourising a film in full or in part (or vice versa) and digital remastering (or vice versa).

A film that has been converted from analogue to digital or ‘digitally remastered’ takes its ordinary or dictionary meaning. *The Macquarie Dictionary* (Third Edition) defines ‘remaster’ as ‘to produce a new master (of an old recording) ... so as to provide an improved audio quality’. The term ‘digitally remastered’ refers to a new recording containing sound and/or picture quality enhancement of an existing recording. For example, this process could involve removing dust particles and fixing sound degradation and other imperfections from the existing film and accompanying audio before being digitally recorded. The dictionary definition can apply equally to digitally remastered films so that it refers to the production of a new high quality master digital recording of an existing film recorded on an older technology such as 35 mm or 8 mm film gauge.

The above changes to the film as modified may alter what is seen and/or heard by the person viewing the film. As a consequence the above changes may give the film, or scenes in the film, a different impact.

It is also intended that a modification that satisfies more than one criterion in subsection 5(1) will also satisfy the Rule. For example, a film that is both changed from black and white to colour and also converted to digital format will comply with the rule.

Subsection 5(2) states that the modifications exception will not apply if the modification: adds any footage, or audio not included in the original film; omits any footage or audio present in the original film; or is likely to cause a film, as modified, to be given a different classification to the original film.

However, subsection 5(2) of the instrument **does not** result in the modified film being unclassified if any of the following exceptions apply—paragraphs 20A(2)(a), (b), (c) or (d), or 21(2)(a), (b), (ba), (c), or (d) of the Act.

Exemptions from the modification rule in paragraphs 20A(2)(a), (b), (c) or (d); and 21(2)(a), (b), (ba), (c) or (d) of the Act currently include the addition or removal of advertisements; the addition or removal of navigation functions; the addition or removal of translation material provided it is not likely to give the film as modified a higher classification; and a format change from 2D to 3D (or vice versa) if it is not likely to give the modified film a different classification.

A format change of a film from 2D to 3D (or vice versa) specified in paragraphs 20A(2)(d) and 21(2)(ba) of the Act, which also adds or omits footage and/or audio; or has content that is likely to affect the original film's classification, will result in the modified film being unclassified.

Section 6 – Rule does not prevent classification of modified films

Section 6 recognises that the modification rules do not prevent an application being submitted to the Board to classify a modified film or the use of an approved classification tool to classify a modified film. A decision by an approved classification tool is deemed by the operation of subsection 22CF(1) of the Act to be a decision of the Board.