

## **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) (Conditional Cultural Exemption*  
*Rules) 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**

Section 6G of the Act enables the Minister, by legislative instrument, to make rules (the conditional cultural exemption rules) prescribing matters that are required or permitted by Division 2 of Part 1A of the Act to be prescribed by the conditional cultural exemption rules, or matters that are necessary or convenient to be prescribed for carrying out or giving effect to that Division.

### **Purpose of instrument**

The purpose of this instrument is to prescribe matters allowed for by Division 2 of Part 1A of the Act. This Division establishes a consolidated set of rules which replaces the inconsistent provisions across each state and territory's classification enforcement legislation and which introduces streamlined and simplified exemption arrangements for festivals, events and cultural institutions. The requirement to apply to the Director of the Classification Board for a formal exemption from classification requirements is removed and instead, exemptions will continue to be available to support the arts and cultural sector but on a self-assessed, deregulated basis. Safeguards that are similar to those currently in place for festivals will ensure that the public is being protected - particularly children.

This instrument, the *Classification (Publications, Films and Computer Games) (Conditional Cultural Exemption Rules) Instrument 2015* (the conditional cultural exemption rules), prescribes matters allowed for by Division 2 of Part 1A, including conditions that approved cultural institutions and registered events must satisfy in order to be subject to conditional cultural exemptions for the screening, exhibition or demonstration of unclassified films, computer games or publications. The instrument also sets out definitions for some of the terms used in the instrument; the transitional arrangements that apply in relation to the introduction of the new self-regulatory arrangements; and mechanisms for satisfying conditions established in Division 2 of Part 1A of the Act.

### **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 include a new subset of exempt content that provides for unclassified content, subject to certain conditions, to be screened, exhibited or demonstrated by cultural institutions and festivals and other event operators.

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 content shown at film festivals, art galleries and other cultural institutions should be exempt from classification requirements but that providers of this content should not be exempt from obligations to take reasonable steps to restrict access to adult content.

The *Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Act 2014* (the Amendment Act) which introduced these reforms, received Royal Assent on 11 September 2014. Part 3 of Schedule 3 of the Amendment Act establishes, amongst other provisions, Division 2 of Part 1A of the Act which deals with conditional cultural exemptions and commences on 11 September 2015.

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

### **Consultation**

The Department consulted state and territory classification officials, the Director of the Classification Board and the following stakeholders:

#### Industry groups:

Film Festivals Australia  
The Motion Pictures Distributors Association of Australia  
The Independent Cinemas Association of Australia  
The Interactive Games & Entertainment Association  
The Film Exhibition and Distribution Code Administration Committee  
Festival Matters Moore

#### Sample of existing/potential clients:

Sydney Film Festival  
Melbourne International Film Festival  
Palace Cinemas  
Queer Screen  
The Australian Centre of the Moving Image  
Flickerfest  
Human Rights Arts and Film Festival  
The Festivalists  
Revelation Perth International Film Festival  
Cinewest

#### Government bodies:

Screen Australia  
National Film and Sound Archive  
Ministry for the Arts, Attorney-General's Department

#### Other interest groups:

Arts Law Centre  
The Australian Christian Lobby  
The Australian Council on Children in the Media

Written input was received from the Interactive Games and Entertainment Association (iGEA), an industry association representing computer games companies; the Motion Picture Distributors Association of Australia (MPDAA) and the Australian Independent Distributors Association (AIDA), both industry associations representing Australian film distributors; the Melbourne International Film Festival (MIFF); the Sydney Film Festival (SFF) and Palace Cinemas.

The Adelaide Film Festival (AFF), Film Festivals Australia (FFA), the Australian Centre for the Moving Image (ACMI) and Reedpop (a member company of iGEA and the organiser of the computer games expo PAX Australia), contacted the Department seeking clarification of certain requirements by telephone, meeting or by email but did not provide formal written input.

No stakeholders consulted expressed any opposition to the making of this instrument.

The main concern expressed during consultation related to a proposed limit of four film screenings per registered event per state or territory, and how this would be applied to festivals that tour to regional, rural or remote areas. The view was expressed that the instrument needed to be flexible enough to deal with such travelling film festivals.

The policy intent in this regard is for travelling film festivals to be able to register each tour stop or region as a separate event, with each event having a limit of four screenings per jurisdiction. The policy intention of this condition has been clarified in the final instrument by the inclusion of an explanatory note after subsection 6(1) and slight rewording of the condition.

Since 2003, the SFF has operated under the Sydney Film Festival Direction (the SFF Direction) issued by the New South Wales Attorney-General under sub-section 51(2) of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (NSW). The SFF Direction ceases to have effect on the commencement of Part 3 of Schedule 3 of the Amendment Act. The SFF Direction is the only such Ministerial Direction relating to a film festival and it applies only to the SFF. It enables the SFF to screen certain unclassified RC (Refused Classification) level films and also exempts that organisation from certain exemption application requirements with which all other film festivals organisations have had to comply.

In its submission on the draft instrument, the SFF expressed in-principle support for the introduction of more streamlined and less legally-complex arrangements for films that are exempt from classification requirements, but was also concerned that the new arrangements imposed a greater restriction and administrative burden on that organisation given its history of operating under the SFF Direction.

While there might be a slight increase in administrative burden on the SFF as a result of the SFF Direction ceasing to have effect, the exemptions arrangements set out in Division 2 of Part 1A of the Act and in the instrument, provide a reduction in administrative burden for all other festival and event organisers and cultural institutions. There is some discretionary flexibility under the conditional cultural arrangements, as section 6H enables organisations to apply to the Director of the Classification Board for exemption from, or variation to, any or all provisions of Division 2 of Part 1A of the Act or the 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. As this instrument is exempt from disallowance, a statement of human rights compatibility is not required.

The Hon Michael Keenan MP  
Minister for Justice

Details of the *Classification (Publications, Films and Computer Games) (Conditional Cultural Exemption Rules) Instrument 2015*

Section 1 – Name

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

Section 2 – Commencement

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

Section 3 - Transitional

This section sets out the transitional arrangements for exemptions granted by the Director of the Classification Board prior to the commencement of Part 3 of Schedule 3 of the Amendment Act and this instrument. It also sets out separate transitional arrangements for applications to the Director for such exemptions that were submitted, but on which no decision had been made, prior to the commencement of Part 3 of Schedule 3 of the Amendment Act and this instrument.

Section 4 – Definitions

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

Section 5 – Registration process for registered events

The explanatory note at the beginning of this section provides examples of the types of events that may satisfy the criteria for a registered event under section 6D of the Act.

Subsection 5(1) provides that the registration process referred to in paragraph 6D(c) of the Act is complete when the information that is required by the Department about the relevant organisation and the event has been recorded on the Department's application processing system or its replacement(s).

Subsection 5(2) specifies that the information that is required by the Department about the organisation that is organising the event must be complete and accurate and may include the information that is set out in paragraphs 5(2)(a) to (g).

Subsection 5(3) specifies that the information that is required by the Department about the event must be complete and accurate and may include the information that is set out in paragraphs 5(3)(a) to (k).

The Department's application processing system or its replacement(s), including forms for manual registrations, will set out for registering organisations what information is required to satisfy the requirements of subsections 5(2) and 5(3).

Subsection 5(4) sets out the requirements that apply if information about the organisation or the event changes after it has been registered. In such circumstances, the registration process is considered to be incomplete as it applies to the changed information. For example, if an extra film is added to the program of a film festival after that event has been registered, the

extra film will not be subject to the conditional cultural exemption applying to the rest of the event until its details have been registered in accordance with subsection 5(4). The changed information must be recorded on the Department's application processing system or its replacement(s) prior to the changes taking place.

Subsection 5(5) provides that, if an organisation is unable to record the information required by the Department, including any subsequent changes to that information, on the Department's application processing system or its replacement(s), the registration process is complete when that information is received by the Department.

Subsection 5(6) sets out the acceptable reasons for an organisation being unable to record the required information on the Department's application processing system or its replacement(s). It also specifies that running out of time is not an acceptable reason.

### Section 6 – Conditional cultural exemptions – registered events

Section 6C of the Act sets out criteria that must be satisfied for a registered event to be subject to a conditional cultural exemption. Section 6 of this instrument prescribes matters allowed for by section 6C of the Act.

Subsection 6(1) of the instrument prescribes, for the purpose of paragraph 6C(e) of the Act, that the relevant material, if film, must not be demonstrated, exhibited or screened more than four times per state or territory as part of the registered event. This condition only applies if the relevant material is film. This medium is generally linear in nature and each screening of the same film is generally of the same duration and provides the same content for each audience.

This condition at subsection 6(1) does not apply to computer games, for which demonstrations, exhibitions or screenings can vary considerably in relation to both the duration and the content experienced. Many computer games are non-linear in nature and to quantify the demonstrations, exhibitions or screenings would be neither equitable nor meaningful.

This condition at subsection 6(1) also does not apply to publications which may not always be included in an event with the intention that they are consumed in a linear or quantifiable manner at that event.

Subsection 6(1) is followed by an explanatory note that clarifies the policy intent that film festivals and events that tour to regional, rural or remote areas under the auspices of a "travelling film festival" or a "touring film festival" may register each tour stop or regional stop as a separate event. The explanatory note serves to clarify that subsection 6(1) is not intended to prevent film festivals or events from touring to regional, rural or remote areas if they have already screened the films four times.

Subsection 6(2) prescribes, for the purpose of paragraph 6C(f) of the Act, that a clear and legible notice must be prominently and publicly displayed at the relevant showing regarding any age restrictions that apply in relation to accessing to the relevant material.

Subsection 6(3) prescribes three conditions that must be satisfied for the purpose of paragraph 6C(g) of the Act. These are that:

- the registered event must be for a specified and limited duration [paragraph 6(3)(a)];
- the registered event must not be one in a series of identical or similar registered events that could be reasonably considered to have been arranged for the purpose of bypassing the limit of four film screenings per state or territory for a registered event specified in subsection 6(1) [paragraph 6(3)(b)]; and
- that the requirements of any exemption or declaration granted by the Director of the Classification Board in accordance with section 6H of the Act are satisfied [paragraph 6(3)(c)].

Paragraph 6(3)(b) is intended to prevent the registration of what is, for all intents and purposes, a single event, being registered as several shorter consecutive registered events, each with an allowable four screenings per state or territory thereby circumventing the intent of subsection 6(1). The purpose of this paragraph is to prevent the undermining of the broader purpose of the classification system that content intended for sale and/or distribution on a widespread (usually commercial) basis should be classified, without compromising the policy intent of strengthening the capacity of the cultural sector (generally non-commercial) to contribute to national life, support cultural diversity and encourage community engagement with arts and culture.

#### Section 7 – Approved cultural institutions

The explanatory note at the beginning of this section provides examples of the types of organisations that may satisfy the criteria for “approved cultural institutions” under section 6F of the Act. This explanatory note, and the explanatory note that appears at the beginning of section 5 serve to clarify the differences between approved cultural institutions and registered events.

Section 7 specifies that an approved cultural institution must have one or more trained persons and that the trained person(s) must do, or approve, any assessments of the likely classification of unclassified films or computer games or submittable publications that are required for the purposes of paragraphs 6E(b), 6E(c), 6E(d), 6F(1)(d) and 6F(2)(b) of the Act. It is not a requirement that the same trained person do all the assessments of likely classification, or approvals of such assessments, for the relevant showing.

While an approved cultural institution must have a trained person for this purpose, it is not a requirement that an approved cultural institution must always have a trained person once the assessments of the likely classification have been done or approved by the trained person. An organisation which otherwise meets the other requirements, will not cease to be an “approved cultural institution” if it does not have a trained person after any assessments of likely classification have been done or approved by a trained person.

## Section 8 – Conditional cultural exemptions – approved cultural institutions

This section prescribes, for the purpose of paragraph 6E(e) of the Act, that a clear and legible notice must be prominently and publicly displayed at the relevant showing regarding any age restrictions that apply in relation to accessing to the relevant material.

## Section 9 – Applications to the Director for exemption or declaration – subsections 6H(1) to (4) of the Act

Section 9 sets out the requirements for applications to the Director of the Classification Board for exemption or declaration under subsections 6H(1) to (4) of the Act.

Subsection 9(1) sets out the requirements that all such applications must satisfy.

Subsection 9(2) provides that all such applications must include the information that is required by the Director in relation to the organisation. Paragraphs 9(2)(a) to (g) set out what the information required by the Director may include.

Subsection 9(3) provides that all such applications must include the information that is required by the Director in relation to the event. Paragraphs 9(3)(a) to (m) set out what the information required by the Director may include.

Requirements under subsection 9(1) are mandatory and apply to all applications for exemption or declaration under section 6H of the Act.

Subsections 9(2) and 9(3) are expressed in terms of what information the Director “may” require rather than what information “must” be provided, as this information may vary depending on whether the application seeks an exemption or declaration in relation to an organisation which may relate to several events, or in relation to a particular film, computer game or publication, or a single event. To require that all information “must” be provided in relation to all applications would place an undue regulatory and administrative burden on the applicant.

The form(s) for applications to the Director for exemption or declaration under section 6H of the Act will provide greater certainty and guidance for applicants in relation to what information is likely to be required, depending on the nature of the exemption or declaration sought. As is set out in an explanatory note at the beginning of section 9, applications for exemption or declaration under section 6H of the Act must be in the form approved, in writing, by the Director.