

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) (Markings and Consumer Advice)
Determination 2014

The *Classification (Publications, Films and Computer Games) Act 1995* (the Act) facilitates the operation of the co-operative 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

Subsection 8(1) of the Act enables the Minister, by legislative instrument, to determine markings for each type of classification giving information about the classification and principles relating to the display of the markings and consumer advice.

Subsection 8(1A) of the Act provides that the Minister may determine principles relating to the manner in which the markings are to be displayed.

Subsection 8(1B) of the Act provides that the Minister may determine principles relating to the manner in which the consumer advice is to be displayed.

Purpose of instrument

This instrument seeks to improve on previous markings requirements by setting out simpler, less prescriptive, platform-neutral requirements for the display of markings and consumer advice for classified publications, films and computer games.

The determination replaces the following three markings determinations:

- *Classification (Markings for Films and Computer Games) Determination 2007*
- *Classification (Markings for Publications) Determination 2007*, and
- *Classification (Markings for Certified Exempt Films and Computer Games) Determination 2007*.

This means that, rather than having separate determinations, there will now be a single determination which will set out marking requirements for all classified content – i.e. publications, films and computer games.

The determination will not affect the continued operation of the *Classification (Advertising of Unclassified Films and Computer Games Scheme) Determination 2009* which covers the advertising of **unclassified** films and computer games.

In accordance with section 5, the primary objective of the instrument is to ensure that consumers continue to have ready access to clear classification information to inform their choices about publications, films and computer games. The instrument also seeks to provide flexibility for industry in terms of the manner in which markings and consumer advice are displayed. This is in recognition of the rapidly changing and technology-driven environment in which the publication, film and computer game industries operate.

The previous markings requirements for publications, films and computer games were highly detailed and prescriptive. The instrument removed most of these prescriptive requirements and focuses on ensuring that the markings and consumer advice that apply to a particular publication, film or computer game are prominent, readily identifiable and clearly legible. The markings and consumer advice are to be placed, either on the physical product, or if the publication, film or computer game is not a physical product, or the product size means it is impracticable to display the classification, before the point at which the consumer makes the decision to purchase or access the publication, film or computer game.

Issues giving rise to the need for the instrument

At the April 2013 meeting of the then Standing Council on Law and Justice (SCLJ), Classification Ministers agreed, among other things, to amend the Act to allow the Commonwealth Minister to determine high level principles in regard to classification markings.

On 11 September 2014, the *Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Act 2014* (Amending Act), which amended the Act to introduce these reforms, received Royal Assent. Schedule 5 of the Amending Act, which contains the relevant amendments on determined markings and consumer advice, commenced on 11 December 2014.

Schedule 5 of the Amending Act introduced subsections 8(1), 8(1A) and 8(1B) to the Act to allow the Minister to determine high level principles relating to classification markings and consumer advice as well as the manner of display of markings and consumer advice. A more principles-based markings determination was considered necessary to:

- streamline and simplify previous classification markings requirements;
- provide flexibility for industry to apply the markings requirements in the manner that is best suited to the varied ways that content is distributed and accessed, both offline and online; and
- ensure that consumers continue to have ready access to clear classification information to inform their choices about publications, films and computer games.

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

Consultation

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

Consumer groups: the Australian Christian Lobby (ACL), Australian Council on Children and the Media (ACCM) and Choice. Industry bodies: the Australian Independent Distributors Association (AIDA), Australian Home Entertainment Distributors Association (AHEDA), Bauer Media (Publications), EROS Association, Film Exhibition and Distribution Code Administration Committee (FEDCAC), Icon Films, Independent Cinema Association of Australia (ICAA), Interactive Games & Entertainment Association (iGEA), Motion Picture Distributors Association of Australia (MPDAA), National Association of Cinema Operators (NACO) and Studiocanal Australia.

Responses from iGEA, NACO and the joint submission of AIDA/MPDAA generally supported the principles-based approach, noting the Department's responsiveness to suggestions from the first round of consultation in August 2014. A number of additional minor changes have since been made in response to further comments in a second round of consultations in November 2014.

The main concern expressed primarily by representatives of the cinema exhibition industry during consultation related to the obligation to display consumer advice on advertising for classified films. This obligation existed in the revoked determinations but was qualified by an exemption in circumstances where a person was incapable of adding to the content of a film.

In response to ongoing industry concerns about an inability to change the content in certain circumstances, a short term limited exemption was introduced in Part 4 of the determination in relation to films and computer games. It applies if the person to whom the requirement applies in paragraph 15(1)(c) to display either a combination box or consumer advice is incapable of adding to the content of the advertisement. In such cases the display of the classification symbol rectangle or the classification symbol square applicable to the film or computer game will be sufficient.

To allow sufficient time for industry to adapt their systems and procedures and incorporating advances in digital technology, the exemption applies for 12 months, to expire 11 December 2015. During this period the Department will work with industry to assist them to comply with the determination when the exemption ends.

Consumers rely upon classification information, including consumer advice, in making entertainment choices. These changes are therefore important for achieving the objectives and purpose of the National Classification Scheme.

Commencement

The instrument commences on 11 December 2014. 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) (Markings and Consumer Advice) Determination 2014*

Section 1 – Name

This section provides that the title of the instrument is the *Classification (Publications, Films and Computer Games) (Markings and Consumer Advice) Determination 2014*.

Section 2 – Commencement

This section provides for the instrument to commence on 11 December 2014.

Section 3 – Revocation

This section provides that the instrument revokes the following classification markings determinations:

- *Classification (Markings for Films and Computer Games) Determination 2007*
- *Classification (Markings for Certified Exempt Films and Computer Games) Determination 2007*, and
- *Classification (Markings for Publications) Determination 2007*.

This means that, rather than there being multiple separate instruments, there will now only be one instrument which sets out the markings requirements for classified publications, films and computer games.

Section 4 – Transitional

This section sets out the transitional arrangements for films and computer games classified prior to the commencement of the instrument. It also sets out separate transitional arrangements for publications classified prior to the commencement of the instrument.

Section 5 – Objective

This section provides that the primary objective of this determination is to ensure that consumers have ready access to clear classification information to inform their choices about publications, films and computer games.

Section 6 – Application

This section provides that the instrument applies to publications, films and computer games classified on or after the commencement date. For publications, films or computer games that are classified prior to the commencement of this instrument, section 4 of the instrument sets out transitional arrangements for compliance.

Section 7 – Definitions

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

Section 8 – Markings for films and computer games

Pursuant to paragraph 8(1)(a) of the Act, this section lists the determined classification markings for films and computer games. Determined markings for publications are not listed here as they are set out in Schedule 2 of the instrument.

Section 9 – Display of markings and consumer advice

This section provides that markings and consumer advice for films and computer games and markings and any consumer advice for publications must be displayed in accordance with this Part.

Section 10 – Placement of markings

This section provides that, where practicable, markings must be displayed:

- a) on the lower left corner of the front face of the thing on which it is displayed; or
- b) in close proximity to the title of the publication, film or computer game.

This means that, where a publication, film or computer game is a physical product, the marking must be displayed on the lower left corner of the front face of the thing on which it is displayed, or in close proximity to the title of the publication, film or computer game, unless it is not practicable to do so. Circumstances in which it might not be practicable to do so might include where the physical product is too small – such as in the case of a micro SD disk – or where the physical product is an unusual shape – i.e. does not have a front face.

Where a classified publication, film or computer game is not a physical product – such as where a publication, film or computer game is available for sale on an online store – markings must be displayed in close proximity to the title of the publication, film or computer game.

The previous markings determinations contained very specific requirements in relation to the placement of markings. These requirements differ depending on the particular type of classified product – i.e. a DVD, a container for a DVD, a poster. Subsection 10(1) seeks to simplify requirements for the placement of markings and provide flexibility for industry recognising that classified content is increasingly published online or on different devices and platforms.

Subsection 10(2) provides that for a ‘Category 1 Restricted’ publication or a ‘Category 2 Restricted’ publication contained in opaque packaging material, both the publication and the packaging must display the classification markings.

Section 11 – Visibility of markings

Paragraph 11(1)(a) provides that a marking must be displayed so that the marking is:

- a) prominent, readily identifiable and clearly legible; and
- b) easily distinguishable from the background and any other information or moving image with which the marking is displayed.

The revoked markings determinations for publications, films and computer games contain very detailed requirements on the size, opacity, colour and pixel-size of markings. Paragraph 11(1)(a) replaces and simplifies these prescriptive requirements.

In order to be ‘prominent’, a marking should be visible upon first glance by the consumer. In order to be ‘readily identifiable’, a consumer must be able to recognise the marking as one of the determined markings set out in the instrument. In order to be ‘clearly legible’, a consumer must be able to read the marking and any consumer advice from a reasonable distance. What constitutes a reasonable distance may change depending on the product. For example, the distance at which the marking and consumer advice on the cover of a DVD should be clearly legible will be different from the distance at which a marking on a poster or billboard should be clearly legible.

Paragraph 11(1)(b) is aimed at ensuring that a marking is not displayed in such a way as to be difficult for a consumer to distinguish it from background artwork or any other information or moving image.

Subsection 11(2) provides that a marking must not be obscured by other material. This subsection is aimed at ensuring that markings are not obscured in any way – such as by covering the marking with additional promotional stickers – when made available to the public.

Subsection 11(3) provides that a marking that is displayed on a screen must be displayed for a period of time that is sufficient to allow the marking to be read in full. Previous markings requirements specified minimum periods of time that a marking must be displayed on a screen which differed depending on the length of the classified film or computer game. This replaced those requirements. It allows industry to determine the period of time that is sufficient for a marking to be displayed on a screen, with the sole limitation that it should be long enough for a reasonable person to read the marking in full.

Section 12 – Format and proportion of markings

This section provides that for films and computer games, markings must be displayed in the format and proportions shown in Schedule 1. For publications, markings must be displayed in the format and proportions shown in Schedule 2.

Section 13 – Display of markings for publications, films and computer games

Subsection 13(1) provides a classified film or computer game must display the marking and consumer advice that applies to the film or computer game.

Subsection 13(2) provides a classified publication must display the marking and any consumer advice that applies to the publication. The reference to ‘any consumer advice’ is due to the fact that the unrestricted classification for publications can be issued with or without consumer advice.

Subsection 13(3) sets out the manner in which the marking and any consumer advice referred to in Subsections 13(1) and 13(2) must be displayed. Paragraph 13(3)(a) provides that if the classified publication, film or computer game is a physical product, the marking and any consumer advice must be displayed on the physical product. The term physical product is defined in section 7 of the instrument.

If the classified publication, film or computer game is not a physical product, or the size of the physical product means that it would not be practicable to display the marking and any consumer advice on the physical product, paragraph 13(3)(b) provides that the marking and any consumer advice must be displayed before the point of purchase of the publication, film or computer game.

It is the intention of this subsection that the only circumstance in which it will not be practicable to display the marking and any consumer advice on the physical product is where the physical product is so small that it would be impossible to fit a marking on the product – such as a micro-SD card.

If it is not practicable to display the marking and any consumer advice before the point of purchase, paragraph 13(3)(c) provides that the marking and any consumer advice must be displayed before the point of access. Circumstances in which it is not practicable to display the marking or any consumer advice before the point of purchase may include where there is no point of purchase – such as where a computer game is available for play by the public at a games expo or exhibition – or where it is not clear at the point of purchase which particular publication, film or computer game a consumer is purchasing – such as where a consumer buys a subscription which will allow access to classified content.

The purpose of this section is to provide a platform-neutral rule for the display of markings and consumer advice. The three-tiered rule allows some flexibility for industry in meeting the markings requirements, while also ensuring that consumers continue to have ready access to classification information before making a decision to purchase or access classified content.

Section 14 – Compliance with Advertising Determination

This section provides that, despite anything in the instrument, an advertisement for a film or a computer game must comply with the Advertising Determination if:

- a) the advertisement displays the message, and
- b) the film or the computer game has not been classified X 18+ or RC.

The display of markings for advertisements for an unclassified film is governed by the *Classification (Advertising of Unclassified Films and Computer Games Scheme) Determination 2009*. Nothing in the instrument will affect existing requirements to display the ‘check the classification’ message in relation to the advertising of unclassified films. Similarly, the instrument will not affect requirements in relation to ceasing to display the classification message once a film or computer game becomes classified.

Section 15 – Display of markings for an advertisement for a classified film or computer game

This section sets out the manner in which markings and any consumer advice for an advertisement for a classified film or computer game must be displayed. These requirements, while simplified in some parts, remain largely unchanged from requirements under the revoked markings determinations.

Paragraph 15(1)(a) provides that a printed advertisement for a film or computer game must display the combination box or, if the combination box would not be legible, the classification

symbol square or classification symbol rectangle that applies to the film or computer game. It is the intention of this paragraph that where the printed advertisement is small and, as a result, the combination box would not be legible, the classification symbol square or classification symbol rectangle may be displayed.

Paragraph 15(1)(b) provides that a printed advertisement for multiple films or computer games must display the markings and any consumer advice in accordance with paragraph 15(1)(a) as well as a legend that lists all classifications and the classification description. The requirement to display the legend is consistent with offences under state and territory complementary classification enforcement law.

Paragraph 15(1)(c) provides that a still or moving image that advertises a film or computer game on a screen must display:

- a) the combination box, or if the combination box would not be legible, the classification symbol square or classification symbol rectangle, and
- b) the consumer advice relating to the film or game.

Paragraph 15(1)(c) is subject to a time limited exemption in sections 18 and 19 in Part 4.

Paragraph 15(1)(d) sets out the manner in which physical products that contain only advertisements for one or more films or computer games must display markings and consumer advice. These requirements are consistent with related offences under state and territory complementary classification enforcement law.

Subsection 15(2) provides that the requirements in subsection 15(1) do not apply to an advertisement for a film or computer game that is in the form of a window cling, a display bin or a standee. This requirement has not changed from the revoked markings determination.

Section 16 – Display of markings for an advertisement for a classified publication

This section provides that printed advertisements for a classified publication must display the markings set out in Schedule 2 that apply to the classified publication.

Subsection 16(b) provides that the markings shall be increased or reduced in size or scale, along with the rest of the material included in the advertisement. The purpose of this subsection is to ensure that, where an advertisement for a classified publication is increased or reduced in size, the marking is also increased or reduced in size and scale with the advertisement.

Subsection 16(c) provides that markings required under this section must remain in proportion to that material included in the advertisement based upon the publication's front cover scale. This section is aimed at ensuring that where the cover of a publication is used as an advertisement for that publication, the marking remains in proportion to the front cover if the advertisement is increased in size.

Section 17 – Cross promotions

This section provides that for a product that is not a film or computer game that includes a reference to a film or computer game and a reference to the film or computer game being

available for viewing, playing, sale or hire, the product must display the marking and consumer advice in the manner required under the instrument as if the product were an advertisement for a film or computer game.

The purpose of this section is to ensure that products which contain a ‘call to action’ for a classified film or computer game – i.e. the product entices the consumer to view, play, buy or hire a film or computer game – display the required classification information for the advertised film or computer game.

Section 18 – Limited exemption to 15(1)(c) where person incapable of adding content to an advertisement on a screen

Section 18 provides a limited exemption to the requirement in paragraph 15(1)(c).

The exemption applies if the person to whom the requirement in 15(1)(c) to display either a combination box or consumer advice is incapable of adding to the content of the advertisement. In such cases the display of the classification symbol rectangle or the classification symbol square applicable to the film or computer game will be sufficient to comply with the paragraph.

Section 19 – Expiry

This section provides that the limited exemption in section 18 expires on 11 December 2015.

Schedule 1

Item 1.01 – Meaning of markings required under paragraph 13(1)(a)

This section provides that a marking required under paragraph 13(1)(a) means:

- a) the combination box that applies to the film or computer game, or
- b) if the combination box would not be legible, the classification symbol rectangle or square, or
- c) if the classification symbol rectangle or square would not be legible, the classification symbol or classification character.

The purpose of this section is to provide a preferred hierarchy for markings required under paragraph 13(1)(a). The preferred marking is the combination box as it includes both the marking and consumer advice and therefore provides ready access to classification information for consumers, which is consistent with the objective of the instrument. Where the combination box would be legible, it should be displayed. Where the combination box would not be legible, the classification symbol rectangle or square may be displayed. Where the classification symbol rectangle or square would not be legible, the classification symbol or classification character may be displayed.

Item 1.02 – Indicated markings do not include black background

This item provides that a marking that is superimposed on a black background need not include the black background.

Item 1.03 – Colour of classification symbol boxes and classification description boxes not displayed on screens

This item provides that where classification symbol boxes and classification description boxes not displayed on screens are in colour, they must be coloured in accordance with the applicable CMYK values in Schedule 1.

Where the classification symbol boxes and classification description boxes are in black and white, they may be either coloured in accordance with the applicable CMYK values in Schedule 1, or in black and white.

Item 1.04 – Colour of classification symbol boxes and classification description boxes displayed on screens

This item provides that where classification symbol boxes and classification description boxes displayed on screens are in colour, they must be coloured in accordance with the applicable RGB values in Schedule 1.

Item 1.05 – Font for classification symbol

This item provides that the font for a classification symbol must be in FF Din Bold font.

Item 1.06 – Font for text in consumer advice boxes and classification description boxes

This item provides that the font for text in consumer advice boxes and classification description boxes must be in Univers condensed regular type.

Schedule 1 – Part 2 – Classification characters, symbols and descriptions

This part sets out the classification character, symbols and descriptions determined under section 8 of the instrument.

Schedule 1 – Part 3 – Classification symbol boxes and classification description boxes

This part sets out the classification symbol boxes and classification description boxes determined under section 8 of the instrument.

Schedule 1 – Part 4 – Alternative classification symbol boxes – MA 15+ and R 18+

This part sets out the alternative classification symbol boxes for MA 15+ and R 18+

Schedule 1 – Part 5 – Examples of combination boxes

This part sets out examples of combination boxes with 2, 3 or 4, and 5 lines of consumer advice.

Schedule 2- Item 1.01 – Indicated markings do not include black background

This item specifies that where a marking is superimposed onto a black background, the marking need not include the black background on the indicated marking as shown in Part 2 of Schedule 2.

Schedule 2 – Part 2 – Markings

This part sets out the determined markings for classified publications.

Schedule 3 – Classification legislation in force before 1 January 1996

This schedule sets out the classification legislation that was in force before 1 January 1996, which is referred to in the transitional arrangements in section 4 of the instrument.