

## Application for Exemption or Declaration

This form is to be used for an application for an exemption or declaration\* under section 6H of the *Classification (Publications, Films and Computer Games) Act 1995* (the Act) and section 9 of the *Classification (Publications, Films and Computer Games) (Conditional Cultural Exemption Rules) Instrument 2015* (the Conditional Cultural Exemption Rules).

\* 'Exemption' means a waiver from, and 'declaration' means a variation to, the conditional cultural exemption requirements under the Act and the Conditional Cultural Exemption Rules.

Please complete each step of this form.

### Step One: Applicant details

Organisation name: FilmFest Ltd

Business/trading name(s): Melbourne International Film Festival

ABN: 12 006 902

Incorporated Association number:  Issuing state/territory:

Organisation address: Level 3, 290 Collins Street, Melbourne, Victoria, 3000

Is this organisation an Approved Cultural Institution (under Section 6F of the Act)?  Yes  No

Contact Name: s22

Email: s22

Telephone: s22

Facsimile:

Contact address (if different):

### Step Two: Details of the exemption or declaration sought

I attach the following as per Section 9 of the *Conditional Cultural Exemption Rules*:

- A statement of the purpose for which the organisation was formed and information regarding the activities, history and reputation of the applicant organisation
- A statement specifying the type, extent and duration of the exemption/declaration being requested (i.e. which standard conditions do you wish to be waived/varied for the organisation, event or material?)
- A statement of the reason(s) for seeking the exemption/declaration and any supporting evidence
- A statement outlining any public benefit of a waiver/variation to the standard provisions

### Step Three: Details of event

Does your request for an exemption/declaration relate to a specific event?  Yes  No

If **Yes**, please complete the following:

Name of event: Melbourne International Film Festival

Type of event: Film Festival

Purpose of event: Cultural event

Date event commences: **6 August 2020** Date event concludes: **23 August 2020**

Venue name(s) and address(es) (please also indicate whether each venue is indoors/outdoors):

Online - nationwide

(attach a separate document if additional space required)

URL of event details/promotional information: [www.miff.com.au](http://www.miff.com.au)

Does the event include (choose all that apply):

Unclassified films  Unclassified computer games  Submittable publications

### Step Four: Details of relevant material

Where the application relates to a specific event, please attach details of the following as per Section 9 of the Conditional Cultural Exemption Rules:

- titles of **all** unclassified works to be publicly exhibited /demonstrated /displayed at the event

age conditions for **all** unclassified works to be publicly exhibited /demonstrated /displayed at the event

the number of intended screenings for each unclassified film (if any) in each location (please see attached 2.1)

For each unclassified work for which you are requesting an exemption/declaration from the standard rules:

an adequate written synopsis or description of the film/computer game/publication

AND

for films/computer games: a detailed description of any classifiable elements that would be likely to be classified M or a higher classification

for publications: details of any content likely to be classified 'Category 1 – Restricted' or higher

**Step Five: Certification**

I am aware that if an exemption or declaration is granted, in some cases the Director **may** also waive the requirement, if any, for the event to be registered by the organisation.

I am aware the Director may request further information as required for the purpose of deciding whether to grant the exemption/declaration sought.

I am aware that it is at the Director's discretion to determine whether an exemption or a declaration is appropriate and to determine the extent and duration of the exemption or declaration.

I confirm that the information contained in the application form is complete and accurate and is not false or misleading in any way.

**Sig** s22 (on behalf of the organisation) **Date:** 30<sup>th</sup> June, 2020

**Na** s22

**Send your application by post to: The Director, Classification Board, Locked Bag 3, Haymarket NSW 1240 OR by courier to: Level 5, 23-33 Mary Street, Surry Hills NSW 2010**

Telephone: s22 s22

**Privacy Notice – Privacy Act 1988**

The Attorney-General's Department is collecting personal information on this form that has been provided for the purpose of seeking an exemption or declaration under section 9 of the *Classification (Publications, Films and Computer Games) (Conditional Cultural Exemption Rules) Instrument 2015* (the Instrument).

The collection of this information is authorised by the Instrument.

If the personal information is not provided, the application may not be processed.

The Department discloses some or all of this information to the Director of the Classification Board, the Minister with responsibility for classification and to state and territory government agencies with classification or enforcement responsibilities.

For more information about the Department's privacy practices, including how to access or correct your personal information or make a complaint, see the privacy policy at [the Classification Website](#) or contact our Privacy Contact Officer:

Privacy Contact Officer  
Attorney-General's Department  
3-5 National Circuit  
BARTON ACT 2600  
Call: 02 6141 2660  
Email: [privacy@ag.gov.au](mailto:privacy@ag.gov.au)

**MIFF 68 ½ - Synopses**

The below listing sets out the titles being presented in our program we are seeking a classification exemption for.

It is arranged by mode of presentation, including:

- Program Spotlights
- Regular Program (including Shorts Packages)
- Special Previews
- Special Event (VR)

And within that, alphabetically. Runtimes are expressed in minutes.

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**The Trouble With Being Born****Sandra Wollner, Germany, 2020, Runtime: 94**[https://www.imdb.com/title/tt9220966/?ref\\_=nv\\_sr\\_srsq\\_0](https://www.imdb.com/title/tt9220966/?ref_=nv_sr_srsq_0)

Requested capacity: s22 virtual capacity

A cyborg with the body of a 10-year-old girl lives with an adult man who she refers to as her father – he tends to her and it is inferred that he also uses her for sex. She is then reset after running away to be a young boy to be cared for by a lonely elderly woman who is still haunted by the death of her young brother sixty years earlier. The film features a tender but unnerving voiceover from the cyborg expressing thoughts and memories, though the viewer never knows her level of cognitive ability.

**Classifiable Elements:** Sex between an adult and a minor is inferred a number of times – though the minor is a cyborg/non-human, the character is played by a child actor with CGI elements.

An unnamed 10-year-old female child actor wearing a latex mask to make her appear less human plays the cyborg character. The actor poses clothed for suggestive/coy photos, and also appears naked with genitals replaced by a CGI machine-like 'hole'. She appears twice nude in the presence of her father – who it is inferred is having sex with her (not shown on-screen), and there are uncomfortable lingering touches. He also appears nude in one scene. Extensive notes are available as to the safe and responsible production methods used on set when working with the underage actor in the production.

There is also violence caused by the cyborg (gender-flipped) in the second half of the film – he pushes an elderly woman over in her apartment and watches her die while her dog laps up blood on the carpet.

The film was the recipient of an award at the Berlin Film Festival's Encounters section, and had been selected for the prestigious New Directors/New Films screening series at the Lincoln Centre in New York before its cancellation this year.

**Requesting an Unclassified 18+ exemption: content is consistent with an R18+ rating**

Titles	Pre-Feature Short Placements (where applicable)	Screening Capacity	Pre-emptive request for Encore Capacity (if Required)	Free Access Titles
[Redacted Content]				

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The Trouble With Being Born

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## Step 2 Responses:

### Step 2.1:

#### **A statement of the purpose for which the organisation was formed and information regarding the activities, history and reputation of the applicant organisation**

MIFF is a not-for-profit organisation that has been continuously running since 1952, making it the leading film festival in Australia and one of the world's oldest film festivals, alongside Cannes and Berlin. Presenting a curated global program of innovative screen experiences and the world's largest showcase of exceptional Australian filmmaking, MIFF is an accessible, iconic cultural event that provides transformative experiences for audiences and filmmakers alike.

MIFF is an Australian cultural icon which has had an essential role in putting Melbourne on the national and international cultural map. It has also been a key player in building a sense of community and connectedness in Melbourne through a decades-spanning commitment to the arts. The festival has an innate appreciation of its famously loyal audience (numbering 190,000 a year in annual attendance across a variety of screenings, events and activations), all of whom come to MIFF for bold, entertaining and adventurous programming, the delight of the shared festival experience, and to discover something new about themselves, or the world around them.

The Melbourne International Film Festival's vision for the future builds on MIFF's role at the centre of Melbourne's cultural life and in particular its success in generating both social and economic capital for Melbourne and Victoria. Complementing MIFF's highly anticipated festival program is MIFF's renowned industry program that includes an investment fund (the Premiere Fund) and the director's development program (Accelerator). MIFF's finance market (37°South) brings the national and international screen industry to Melbourne during the festival and celebrates Melbourne as a centre for screen business. MIFF also supports emerging arts and culture writers through its annual Critics Campus program, and takes the film festival experience to regional Victoria through the MIFF Travelling Showcase.

MIFF will continue to innovate and build on its decades of achievements to ensure that Melbourne remains the cultural capital of Australia, and that MIFF continues to be Australia's largest and most significant film festival in terms of international profile, audience size, the quality and breadth of its festival and industry programs.

**2.2 A statement specifying the type, extent and duration of the exemption/declaration being requested (i.e. which standard conditions do you wish to be waived/varied for the organisation, event or material?)**

We wish to apply for a festival exemption for film titles without Australian classification appearing within the program of our online film festival, known as MIFF (Melbourne International Film Festival) 68 ½.

The requested exemption would apply to the dates of presentation of the festival, August 6<sup>th</sup> – 23<sup>rd</sup>, 2020. The program would be announced publicly on Tuesday, July 14<sup>th</sup>, with ticketing available for films from the evening of the 14<sup>th</sup>.

Our finalized program includes 113 titles – inclusive of 68 feature films, 44 shorts, and 1 virtual reality piece. A number of titles (including all package shorts, and a small number of features) will be presented to audiences for free. It will be available to audiences at a level of Australia-only geoblocking (ie. people anywhere within Australia will be able to access the platform and stream titles). s22

All of the films will be presented during this period through MIFF's own proprietary streaming platform, available via linkthru (when development is complete) on [www.miff.com.au](http://www.miff.com.au).

Individual feature length films and Shorts Packages submitted are specified for a combination of either Unclassified 18+ or Unclassified 15+ exemption requests, identified specifically on each title synopses included in the application.

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Features will be presented individually, short films will be presented in four thematic packages (Australian Shorts, Animation Shorts, Documentary Shorts, International Shorts), with a small number also being played before features.

**Films will be presented within MIFF 68 ½ in the following ways:**

### **1. Program Spotlights**

Our Program Spotlights are a substitute for our former Galas/Headliners films within a regular MIFF program – ie. they are the biggest and more anticipated titles of the festival.

**Presentation of these films is specifically limited to one particular session time only at the festival.** On top of the one-time screening, the films are additionally subject to a specific capacity set for each title for virtual tickets. The film is declared sold out and further unavailable to audiences if that capacity limit is reached.

### **2. Regular Program**

These feature films, feature documentaries and short film packages are intended to be available on demand through the festival period 6<sup>th</sup> – 23<sup>rd</sup> August (specifically introduced to availability on the site on the morning of 7<sup>th</sup> August, following our Opening Night Program Spotlight presentation of First Cow the evening before).

Each title is limited by a specific capacity set for virtual tickets. The film is declared sold out and further unavailable to audiences throughout the remainder of the festival period if that capacity limit is reached.

A very small number of features also screen specifically with pre-feature shorts – these are noted in the synopses sections as pairings.

Capacities are included underneath individual synopses – they are also available on the capacities chart included with this submission.

### **3. Special Previews**

This category includes three feature length works, where there is a particular programming preference is to limit to one particular session time only at the festival in light of an upcoming release elsewhere or similar.

On top of the one-time screening, the films are additionally subject to a specific capacity set for each title for virtual tickets. The film is declared sold out and further unavailable to audiences if that capacity limit is reached.

Capacities are included underneath synopses – they are also available on the capacities chart included with this submission.

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With all screenings, we will provide a notice of classification exemption at the attained age level (eg. 18+ or 15+), as per wording previously provided by the board, at point of sale and as pre-roll to content. We will additionally provide descriptive content warnings separately where necessary (ie. noting of any

impactful violence, sexual references, etc.) to best provide appropriate and responsible levels of forewarning to viewing audiences.

### **2.3 A statement of the reason(s) for seeking the exemption/declaration and any supporting evidence**

The Melbourne International Film Festival seeks a festival exemption for 113 titles, including 68 features, 44 shorts, and 1 virtual reality piece, for streaming within our online film festival presentation August 6<sup>th</sup> – 23<sup>rd</sup>, named MIFF 68 ½.

As a festival, MIFF is iconic to Melbourne; an extraordinary annual survey of the world of cinema, the largest celebration in the world of Australia's own filmmaking, and a pure point of togetherness for our city and creative communities. It is, now and always, a terrible thing to lose.

The cancellation of MIFF's traditional Winter delivery in Melbourne, amidst the developing COVID-19 situation, was both a necessary and responsible decision for reasons of public health and ongoing community safety.

At the time of writing (30<sup>th</sup> June), Victoria restrictions have been rolled back due to an increase in identified COVID cases, with a number of hotspot suburbs identified, and public conjecture apparent as to further restrictions being introduced locally or second waves of the virus perhaps taking. Looking forward, there is still no certainty to August and beyond as to what a 'real-world' screening and presentation landscape may look like for Australian festivals or those within the screen culture industry and their audiences.

The cancellation of a cinema-based delivery of our festival has been a heartbreaking loss for our team, our audiences, and the vast networks of artists and filmmakers who look to the festival each year - the latest blow in a local arts landscape that has been decimated in its capacity for public expression, and in the activities that sustain its surrounding industry and community.

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Our response to this situation has been to reinvent and reimagine the festival online. MIFF 68 ½ is what, unexpectedly, comes between the 68<sup>th</sup> and 69<sup>th</sup> edition of the Melbourne International Film Festival, presenting programming at a reduced scale (comparatively 380+ films in 2019, compared to a posited online delivered of 113 titles in 2020).

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It is worth saying that we enter into this activity in the context of already established international and local festival streaming precedent. Many international film festivals have moved similarly into this space since the outbreak of COVID (for instance, CPH:DOX, Canada's Hot Docs, America's SXSW and AFI Docs, among announced upcoming plans by major world cinema festivals such as Toronto Film Festival and Sundance Film Festival 2021). A number of prominent local Australian film festivals have also already moved and presented programs online similarly as well (including Breath of Fresh Air Film Festival, Tasmania, in May; Sydney Film Festival Virtual Edition in June, and Revelation Perth Film Festival (under the program name 'Couched') in July).

MIFF annually manages a large-scale festival exemption to the Australian Classification Board, regularly and responsibly reporting and administering the exemption of hundreds of films to mass audiences. We intend to treat this new space, which will be populated by films that align in tone, form and quality with our regular programming, with the same consideration and rigour in which we undertake our exemption every year.

## 2.4 A statement outlining any public benefit of a waiver/variation to the standard provisions

MIFF 68 ½ will deliver significant positive public benefit at the level of project, content and audience access.

As per response to section 2.3 of this application, MIFF sees the public benefit to the activities, as being:

- An opportunity to continue to support artists (both financially and in profiling, at a time of limited opportunity and high impact to the sector).
- An opportunity to find and foster audiences at a time where many are isolated, without the positive opportunity of engagement with the arts.
- Encourage audience connection and community building, including an expanded regional access to festival programming. The festival will also create positive access benefits by virtue of a significant element of free delivered programming.

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- Provide a creative and innovative response within the pandemic to positively contribute to the health of Australia's broader arts and culture sector.

MIFF 68 ½ is a context-specific program offering that will bring world class cinema to the homes of MIFF audiences this year, that will present and connect artists to virtual audiences. It is an opportunity, in these difficult times, to keep offering something to audiences, and to keep engaging with amazing filmmakers, and profiling and amplifying their work.

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However, as a not for profit organisation, MIFF 68 ½ is a project we are committed to presenting in its alignment with MIFF's mission and vision, and the positive impact we hope to bring to audiences and community at this important time, to create connectivity, and deploy the positivity, escapism, reflection and conversation building properties that art and creative expression can bring. To reiterate - MIFF 68 ½ is intended to sustain MIFF's amazing film programming in unique

circumstances, and our ability to connect with and foster audiences in the most difficult of moments.

In the midst of a terrible, tragic and threatening situation, we have the opportunity and the capacity to contribute positively to a community who is isolated, anxious, and uncertain.

We have the opportunity to continue to build and to deliver what drives us as an organisation: to bring our audience the story of the world – a more distant and disconnected place in 2020 - through unforgettable screen experiences; through wonderful and unique films; and specifically, to build community around them, regardless of what form that now needs to take. This is the intention of the project.

Beyond this, at a level of individual content, many elements of the confirmed program offer positive social benefits to audiences by speaking specifically and topically to our times. Part of the driving element of the festival, ongoing, is cultural relevance – to reflect and engage what people are thinking about and talking about right now, and elevate the opportunities for understanding and conversation at the level of community.

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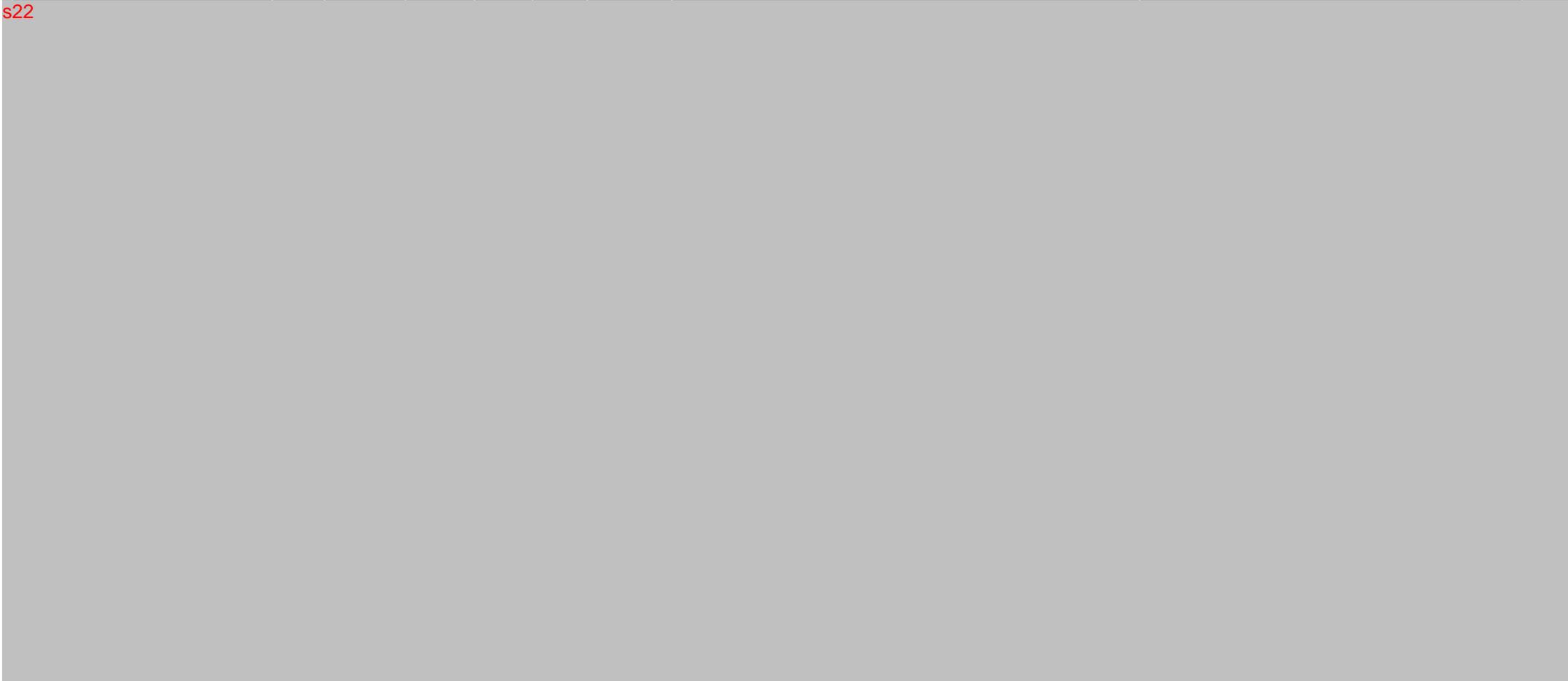
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Film Title	Film Duration	Recommended Rating	Exemption Requested	Cinema Capacity	Proposed Ticket Cap	Proposed Encore Screening Ticket Cap	Synopsis	Classifiable Elements	Ticket Price
<i>Program Spotlights</i>									

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The Trouble With Being Born	104	R18+	18+	s22			<p>A cyborg with the body of a 10-year-old girl lives with an adult man who she refers to as her father – he tends to her and it is inferred that he also uses her for sex. She is then reset after running away to be a young boy to be cared for by a lonely elderly woman who is still haunted by the death of her young brother sixty years earlier. The film features a tender but unnerving voiceover from the cyborg expressing thoughts and memories, though the viewer never knows her level of cognitive ability.</p>	<p>Sex between an adult and a minor is inferred a number of times – though the minor is a cyborg/non-human, the character is played by a child actor with CGI elements.</p> <p>An unnamed 10-year-old female child actor wearing a latex mask to make her appear less human plays the cyborg character. The actor poses clothed for suggestive/coy photos, and also appears naked with genitals replaced by a CGI machine-like 'hole'. She appears twice nude in the presence of her father – who it is inferred is having sex with her (not shown on-screen), and there are uncomfortable lingering touches. He also appears nude in one scene. Extensive notes are available as to the safe and responsible production methods used on set when working with the underage actor in the production.</p> <p>There is also violence caused by the cyborg (gender-flipped) in the second half of the film – he pushes an elderly woman over in her apartment and watches her die while her dog laps up blood on the carpet.</p> <p>The film was the recipient of an award at the Berlin Film Festival's Encounters section, and had been selected for the prestigious New Directors/New Films screening series at the Lincoln Centre in New York before its cancellation this year.</p>	\$14/\$12
In a small village amongst the mountains of Lesotho, an 80 year old widow awaits the return of her only									



**Australian Government**  
**Classification Board**

s22

FilmFest Ltd  
Level 3, 290 Collins Street  
MELBOURNE VIC 3000  
Email: s22

Dear s22

**Decision on application for section 6H declaration in relation to the *Melbourne International Film Festival (MIFF) 68½***

I refer to your application for a declaration under subsection 6H(2) of the *Classification (Publications, Films and Computer Games) Act 1995* (the **Act**). The application was submitted on 1 July 2020.

The application sought a declaration from me to modify the conditional cultural exemption requirements as set out in subsection 6C(e) of the Act and clause 6(1) of the *Classification (Publications, Films and Computer Games)(Conditional Cultural Exemption Rules) Instrument 2015* (the **Instrument**) as it applies to unclassified films to be screened as part of MIFF 68½. This event is to be held from Thursday, 6 August 2020 to Sunday, 23 August 2020 being delivered digitally via the New Zealand-based platform, *Shift72*.

I have now considered all of the information in the written application, and have decided to exercise my power under subsection 6H(1)(b) **to grant a declaration to approve** the MIFF 68½ showing 110 unclassified films, as per the conditions contained in the attached *Declaration*.

In accordance with subsection 6H(6) of the Act, applications for review of this decision may be made to the Administrative Appeals Tribunal (AAT), details of which are contained at the end of the declaration.

I thank you for your time and effort in submitting this exemption application and wish you and the MIFF 68½ every success.

Yours sincerely,

s22

Margaret Anderson  
Director

03 July 2020



**Australian Government**  
**Classification Board**

**DECLARATION FOR THE MODIFICATION OF  
CONDITIONAL CULTURAL EXEMPTION REQUIREMENTS**

**Applicant:** FilmFest Ltd

**Decision Maker:** Margaret Anderson, Director, Classification Board

**Legislative Basis:** This decision is made under subsection 6H(1)(b) of the *Classification (Publications, Films and Computer Games) Act 1995* (the **Act**)

I have considered the application from FilmFest Ltd (the **Applicant**) received on 1 July 2020. The Applicant sought exemption from the 'four screenings rule' as set out in subsection 6C(e) of the Act and clause 6(1) of the *Classification (Publications, Films and Computer Games)(Conditional Cultural Exemption Rules) Instrument 2015* (the **Instrument**) as it applies to 110 unclassified films to be screened as part of the Melbourne International Film Festival (MIFF) 68½ (the **Festival**). The films are:

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*The Trouble With Being Born;* s22

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**Issue**

Owing to the responses to the COVID-19 global pandemic by the Commonwealth, State and Territory governments that have temporarily closed cinemas, the Applicant proposes conducting the Festival in an on-demand-style format, using the New Zealand-based platform *Shift72*, from **Thursday, 6 August 2020** to **Sunday, 23 August 2020**. The Applicant has advised that the Festival will be geo-blocked to Australia, with available tickets capped as per *Table 1: Screening Schedule – Cinema capacity and proposed capped ticket sales*.

**Table 1: Screening Schedule – Cinema capacity and proposed capped ticket sales**

<b>No.</b>	<b>Package Type*</b>	<b>Film Title</b>	<b>Run Time (mins)</b>	<b>Cinema Capacity</b> (had the film been screened in cinemas)	<b>Proposed Ticket Cap</b>	<b>Audience Age Restrictions</b> (MA 15+ or R 18+)	<b>Overall (Highest) Rating</b> (MA 15+ or R 18+)
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No.	Package Type*	Film Title	Run Time (mins)	Cinema Capacity (had the film been screened in cinemas)	Proposed Ticket Cap	Audience Age Restrictions (MA 15+ or R 18+)	Overall (Highest) Rating (MA 15+ or R 18+)
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56	Ind.	The Trouble With Being Born	104	s22		R 18+	R 18+
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## Considerations

### *The 'four screenings rule'*

Section 6C of the Act provides for material that is demonstrated, exhibited or screened as part of a registered event to be subject to a Conditional Cultural Exemption (CCE), if certain criteria are met.

Subsection 6C(e) of the Act requires that the relevant material not be exhibited, demonstrated or screened more than the number of times specified in the Instrument. Subsection 6(1) of the Instrument provides that the relevant material, if a film, *must not* be exhibited, demonstrated or screened *more than four times*, per state or territory, as part of the registered event.

Clearly, the legislation has been drafted in contemplation of a festival taking place in a fixed physical venue. Accordingly, certain matters arise to be considered in the context of an online festival and the CCE framework.

### *Director's powers under subsection 6H of the Act*

Under subsection 6H(1)(a) of the Act, I may, if I consider it appropriate to do so, exempt a particular publication, film, computer game, event or organisation from any or all provisions of either Division 2 of Part 1A of the Act, or of the Instrument.

Alternatively, under subsection **6H(1)(b)**, I may declare that any or all provisions of Division 2 of Part 1A of the Act, or of the Instrument, apply, subject to modifications; that is, I may amend the requirements as they apply to a particular publication, film, computer game, event or organisation.

I may only exercise these powers upon application, and *FilmFest Ltd* has made an application.

The Act and the Instrument do not require me to consider any specific matters in determining whether to grant an exemption from, or a modification to, the requirements.

I have turned my mind to various matters, including but not limited to:

#### *1. The structure of the Melbourne International Film Festival and its film program*

The Melbourne International Film Festival (MIFF) is a not-for-profit organisation that has been continuously running since 1952. It is a major film festival in Australia and one of the world's oldest film festivals, alongside Cannes and Berlin. Presenting a curated global program of innovative screen experiences, and the world's largest showcase of exceptional Australian filmmaking, MIFF is an accessible, iconic cultural event that provides transformative experiences for audiences and filmmakers alike.

MIFF is an Australian cultural icon which has played an essential role in putting Melbourne on the national and international cultural map. It has also been a key player in building a sense of community and connectedness in Melbourne. The festival has an innate appreciation of its famously loyal audience, all of whom come to MIFF for bold, entertaining and adventurous programming, the delight of the shared festival experience, and to discover something new about themselves, or the world around them.

Complementing MIFF's highly anticipated festival program is MIFF's renowned industry program that includes an investment fund (the Premiere Fund) and the director's development program (Accelerator).

MIFF also supports emerging arts and culture writers through its annual Critics Campus program, and takes the film festival experience to regional Victoria through the MIFF Travelling Showcase.

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MIFF 68½ is what, unexpectedly, comes between the 68th and 69th edition of the Melbourne International Film Festival, presenting programming at a reduced scale—380+ films were screened in 2019, compared with the proposed 113 films that will be screened as MIFF 68½ in 2020.

In 2020, a total of 113 films will constitute the Festival and it is proposed that they will be screened digitally. The Applicant is using the New Zealand-based platform, *Shift72*, to host the Festival. As per the information supplied by the Applicant, three of the 113 films, *Dingo*, *Hyenas* and *The Leadership*, have been classified by the Australian Classification Board, and therefore, these three films do not form part of the application for the modification of the CCE.

The *Program Table* supplied by the Applicant states that tickets will be capped as per the figures shown in **Table 1: Screening Schedule – Cinema capacity and proposed capped ticket sales**. I acknowledge that the calculation of the figures shown in the *Proposed Ticket Cap* column are comparable to the figures shown in the *Cinema Capacity* column, which is based on the number of seats that would have been available, had the Festival been delivered in the traditional cinema environment. In regards to the on-demand-style format of film screenings, I understand that the Festival will be geo-blocked to Australia, and whilst ticket prices range from \$12 to \$20 per film, there are a number of unclassified films, namely:

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which are being offered free of charge to viewers.

## 2. The 'four screenings rule'

Regarding the four screenings rule, this geographic requirement is clearly not designed for an online environment. While there may be an argument that each individual viewing of each film from a different device could itself be a separate showing of the film, I am inclined, instead, to the view that I am able to assess the restricted number of screenings by reference to when a film is shown by the Applicant (which in the case of this Festival is by capped tickets, as per **Table 1: Screening Schedule – Cinema capacity and proposed capped ticket sales**), rather than by reference to different viewers or devices.

Accordingly, although the films will be screened on-demand, I am satisfied that the applicant is able to control the number of showings (by capping ticket sales and geo-blocking) in order to satisfy the requirement of a restricted number of viewings per state and territory, per registered event.

## 3. Audience age restrictions for films

I note from the descriptions of the 110 unclassified films provided by the Applicant, that only one film is suitable for all ages. A further 42 films are likely to be classified MA 15+, and the remaining 67 films have an age restriction of R 18+. Accordingly, the 42 films likely to be classified MA 15+ and the 67 films likely to be classified R 18+ require age restrictions to be imposed—certainly at point of sale of the tickets, and ideally also immediately prior to the films' screening.

## Final decision

I have considered the material submitted by the Applicant and have decided to exercise my power under subsection 6H(1)(b) of the Act to **grant a declaration to approve this event**, as per the *Conditions* set out below, across all Australian jurisdictions for the films detailed in **Table 2: Approved films with audience age restrictions noted**.

I have reached this decision on the basis that the exemption sought by FilmFest Ltd would not be in contradiction with the purpose of the National Classification Scheme (NCS) which is to ensure that content should generally be classified before it is exhibited or sold in Australia.

Further:

- It is my view that the policy intention of the four screening rule is to strike a balance between providing the community with access to diverse film content, and the overarching principle of the NCS that films should generally be classified before exhibition.
- The CCE arrangements complement the NCS by facilitating the exhibition of culturally important, unique and diverse unclassified material to audiences which may not otherwise have access to such content. Inaccessibility to content is further aggravated in 2020 by the physical-distancing constraints imposed upon people in response to the COVID-19 pandemic.
- The Federal Government has established certain rules which are required to be met for CCE exemptions to apply. My view is that I should not grant exemption from, or modifications to, the relevant provisions in the Act or the Instrument, *unless* I am satisfied there is a compelling reason or reasons to do so. The constraints imposed upon cinema proprietors and film exhibitors by the response of various governments within Australia to the COVID-19 pandemic of 2020 resulting in the temporary but on-going closure of cinemas and theatres is a sufficient reason for me to consider granting exemption from or to modifying the CCE rules, requirements and/or restrictions. In this regard, I have therefore considered the exemptions and the declaration sought in the context of a digitally-delivered film festival and note that MIFF has geo-blocked accessibility to the unclassified films and is capping the ticket sales, and that age restrictions on unclassified films shall still be satisfied.

**Table 2: Approved films with audience age restrictions noted** contains the proposed **film schedule** listing the 110 unclassified films, some of which are being delivered in packages (9 in total) as one continuous film, approved to be streamed via the New Zealand-based platform *Shift72*, noting the 109 films (71 packages) with age restrictions, which form part of MIFF 68½.

**Table 2: Approved films with audience age restrictions noted**

No. (by Package)	No. (by film)	Film Title	Run Time (mins)	Proposed Ticket Cap	Audience Age Restrictions (MA 15+ or R 18+)
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s22

No. (by Package)	No. (by film)	Film Title	Run Time (mins)	Proposed Ticket Cap	Audience Age Restrictions <small>(MA 15+ or R 18+)</small>
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s22 [Redacted]

56	56	The Trouble With Being Born	104	s22	R 18+
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s22 [Redacted]

**Conditions:**

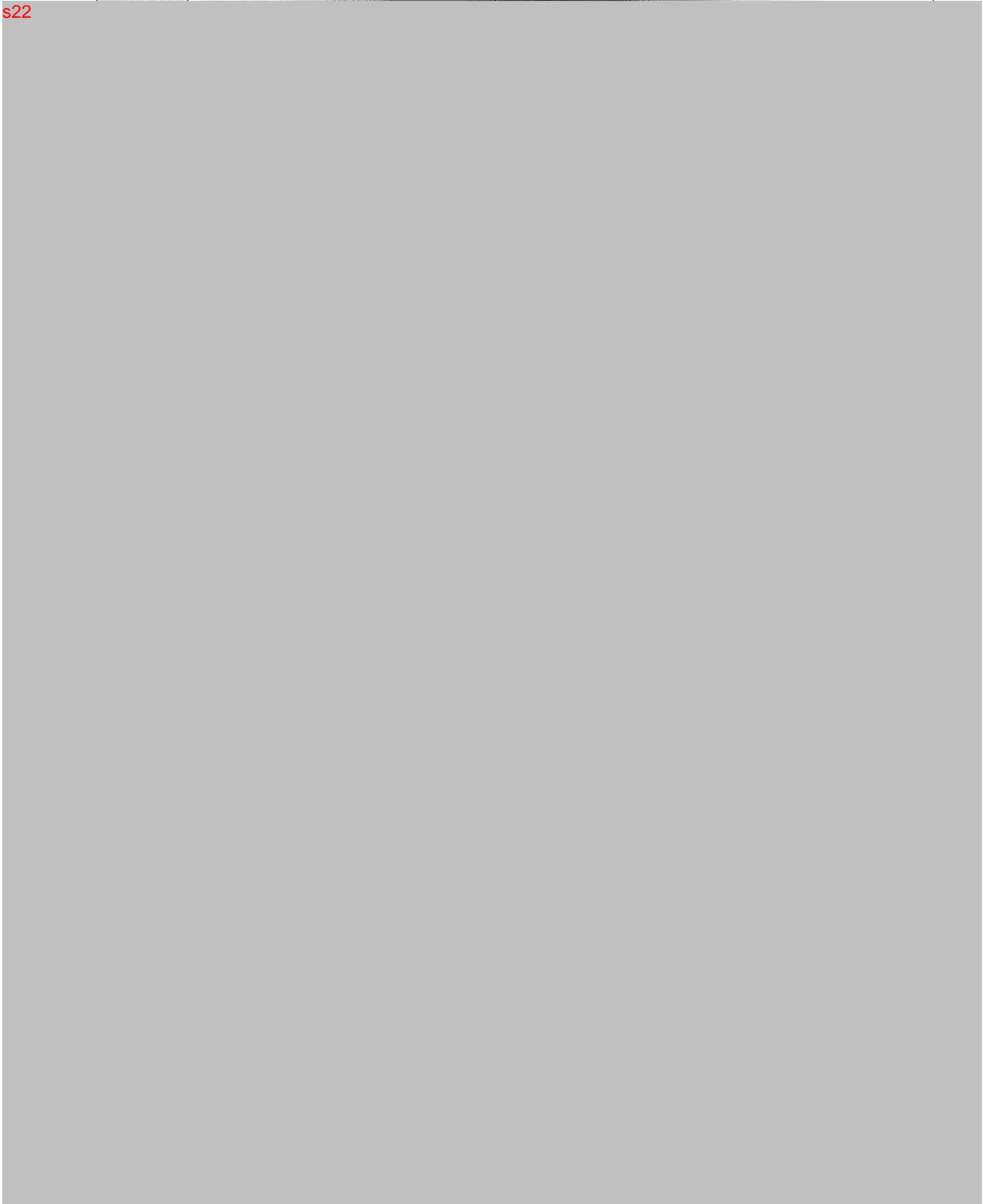
1. The films specified above in **Table 2: Approved films with audience age restrictions noted** shall be streamed online, in an on-demand-style format via the New Zealand-based platform *Shift72*, only under the auspices of MIFF 68½ from **Thursday, 6 August 2020 to Sunday, 23 August 2020** and with the indicated capped ticket sales per film.
2. For the purposes of section 6C(f) of the Act and section 6(2) of the Instrument, a clear and legible notice must be prominently and publicly displayed at the relevant showing of a film regarding any audience age restrictions that apply in relation to access to the relevant material. In regards to this online film festival, this requirement will be satisfied *so long as the age restrictions are clearly displayed at the point of sale of a ticket to the relevant film*. **If possible**, the age restriction should be repeated in a “pre-roll” prior to the film downloading and playing. The following age restrictions apply to the films/packages set out in **Table 3 Audience Age Restrictions** and must be adhered to:

**Table 3: Audience Age Restrictions per Screening**

Film / Package	Film Title	Audience Age Restrictions (MA 15+ or R 18+)
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Film / Package	Film Title	Audience Age Restrictions (MA 15+ or R 18+)
55	The Trouble With Being Born	<b>Only</b> persons aged <b>18</b> years and over are present at the relevant showing

s22



Film / Package	Film Title	Audience Age Restrictions (MA 15+ or R 18+)
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**Appeal provisions**

In accordance with subsection 6H(6) of the Act, applications for review of this decision may be made to the Administrative Appeals Tribunal (**AAT**) which provides an independent merits review. Information on how to apply to the AAT and the fees and time limits for making such applications is available from the AAT's website ([www.aat.gov.au](http://www.aat.gov.au)).

s22



Margaret Anderson

Director

July 2020

03

**Australian Government****Department of Communications and the Arts****Event Registration Summary**

**Registration number:** E2020C115\2

**Date of Registration:** 19/08/2020

**The following details have been recorded for the purpose of satisfying the registration requirements in paragraph 6D(c) of the *Classification (Publications, Films and Computer Games) Act 1995* and the *Classification (Publications, Films and Computer Games)(Conditional Cultural Exemption Rules) Instrument 2015*.**

**Details of organisation operating event:**

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**Organisation name:** FilmFest Ltd

**Business Address:** Level 3, 290 Collins Street, Melbourne VIC 3000

**Postal Address:** GPO Box 4982, Melbourne VIC 3001

**Email Address:** s22

**Phone Number:**

**Registering person:**

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**Name of contact:** s22

**Contact number:**

**Details of event:**

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**Name of Event:** MIFF 68 1/2

**Type of event:** Festival

**Url:** n/a

**Dates of event:** 06/08/2020 to 23/08/2020

**States, event dates and locations of screening dates:**

State	Location	Start Date	End Date
VIC	Online, Melbourne VIC; Indoor	06/08/2020	23/08/2020

**Unclassified films:**

Title	Alternate Title	Age Restriction
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The Trouble With Being Born

Restricted to  
persons aged 18+



The registering person has certified on behalf of the organisation, that they have understood the requirements of Division 2 of Part 1A of the *Classification (Publications, Films and Computer Games) Act 1995* and the Conditional Cultural Exemption Rules, and that these requirements will be met. These requirements include:

- none of the unclassified film(s), computer game(s) or submittable publication(s) in this event would be likely to be classified Refused Classification (RC);
- none of the unclassified film/s in this event would be likely to be classified X 18+ and none of the submittable publication/s in the event would be likely to be classified Category 2 – restricted;
- access will be restricted to people aged 18 years and over to any unclassified film(s) or computer game(s) that are likely to be classified R 18+, or any publication likely to be classified as Category 1 – Restricted;
- that unless accompanied by an adult access will be restricted to people 15 years of age and above for any unclassified film or computer game likely to be classified as M or MA 15+;
- that a clear and legible notice will be prominently and publicly displayed at the relevant venue showing regarding any age restrictions that apply in relation to access to the material;
- none of the unclassified films will be exhibited more than 4 times per State or Territory as part of this registered event (Note Film festivals 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 event must be for a specified and limited duration and not one in a series of registered events that has been arranged primarily for the purpose of circumventing the limit of 4 film screenings per state/territory.

Please note that any screening, demonstration and/or exhibition of the above unclassified material other than in accordance with this registration will not be subject to a conditional cultural exemption under the legislation.

If there are changes to the event as registered, the registration record must be updated via the portal at the [www.classification.gov.au](http://www.classification.gov.au) website prior to the changes taking place.

Information provided in this registration will be provided to officials in the relevant State and Territory governments and may be used for law enforcement purposes.