Classification of Computer Games ond Images and Other Legislation Amendment Bill 2012

Explanatory Notes

Objectives of the Bill

The main purpose of the Classification of Computer Games and Images and Other Legislation Amendment Bill 2012 is to amend the *Classification of Computer Games and Images Act 1995* to provide for the demonstration, sale, supply and advertisement of computer games classified as R18+ in Queensland. The Bill also amends the:

- *Classification of Films Act 1991* to transfer to the Director of the (Commonwealth) Classification Board the function of granting exemptions to enable the exhibition of unclassified films at specified events, such as film festivals;
- *Neighbourhood Disputes Resolution Act 2011* to amend the short title of the Act*;* and
- *Recording of Evidence Act 1962* to enable the outsourcing of the recording and transcribing of legal proceedings in Queensland.

The Bill also makes:

- miscellaneous amendments to the *Classification of Publications Act 1991* consistent with the computer game and film classification legislation to provide protection against criminal liability for officials;
- amendments to the Criminal Code consequential to the amendments to the *Classification of Computer Games and Images Act 1995* in relation to defences for offences relating to child exploitation material; and
- consequential or minor amendments to a range of other Acts listed in the Schedules to the Bill.

Reasons for the Bill

Classification of Computer Games and Images Act 1995

Generally, computer games, films and certain publications must be classified before they can be legally sold or exhibited to the public.

Under the National Classification Scheme (NCS), the (Commonwealth) Classification Board primarily makes the classification decisions and the States and Territories enforce them.

The NCS is a cooperative arrangement between Commonwealth, State and Territory governments underpinned by an Intergovernmental Agreement on Censorship (the IGA) and supported by a legislative framework comprising the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) (the Commonwealth Act) and complementary State and Territory legislation. The relevant Queensland legislation for the NCS is the *Classification of Computer Games and Images Act 1995* (CG Act), the *Classification of Films Act 1991* (CF Act) and the *Classification of Publications Act 1991* (CP Act).

In July/August 2011, the Standing Committee of Attorneys-General (SCAG) agreed in principle to introduce an R18+ classification for computer games. The amendments to the Commonwealth Act to provide for an R18+ classification for computer games have been passed and will commence on 1 January 2013. To enable the scheme to operate nationally, amendments must be made to the complementary State and Territory legislation.

On 26 September 2012, the Commonwealth registered the new Guidelines for the Classification of Computer Games (Games Guidelines) on the Federal Register of Legislative Instruments and gazetted them that same day. Under the IGA, States and Territories must table the Guidelines in their respective Parliaments within 30 sitting days of their gazettal by the Commonwealth. The Games Guidelines incorporate the new adults-only R18+ classification. R18+ content is permitted to include material with high impact violence, provided it is not, in context, frequently gratuitous, exploitative or offensive to a reasonable adult.

Content that includes depiction of actual sexual activity, explicit depictions of simulated sexual activity, implied sexual violence that is visually depicted, interactive and not justified by context or related to incentives or rewards, or interactive illicit drug use will not be permitted in R18+ games and will continue to be refused classification.

Computer games with Refused Classification (RC) category content cannot be legally sold in any Australian jurisdiction.

Classification of Films Act 1991

Under the *Classification of Films Act 1991* (CF Act), films must generally be classified by the (Commonwealth) Classification Board before they can be exhibited in Queensland. However, the CF Act currently provides that 'approved organisations' can apply for an exemption to exhibit unclassified films at specified Queensland events (e.g. film festivals). These applications are currently decided by an officer in the Department of Justice and Attorney-General (DJAG).

All other States and Territories have either legislated, or arranged, for the Director of the Classification Board to be the sole decision maker in giving exemptions to allow unclassified films to be exhibited at specified events in those jurisdictions.

Neighbourhood Disputes Resolution Act 2011

The purpose of the *Neighbourhood Disputes Resolution Act* 2011 (NDR Act) is to assist neighbours to resolve issues about dividing fences and trees. Anecdotal evidence indicates that the title of the NDR Act can create confusion amongst members of the community who assume that it applies to all neighbourhood disputes and not just disputes about dividing fences and trees.

Recording of Evidence Act 1962

The recording and transcribing of legal proceedings in Queensland is to be outsourced. Amendments are required to the *Recording of Evidence Act 1962* (Recording of Evidence Act) in order for the Government to be able to contract with a private provider to deliver these services.

Achievement of the Objectives

Classification of Computer Games and Images Act 1995

The Bill makes amendments to the CG Act to provide an enforcement regime for the R 18+ classification for computer games in Queensland. The amendments create offences regarding the sale, distribution and demonstration of R18+ computer games and provide for requirements regarding the labelling and advertising of R18+ games. In particular, the Bill makes amendments to the CG Act to:

- prohibit the public demonstration (or attempted demonstration) of an R18+ computer game in the presence of a minor (maximum penalty – 50 penalty units);
- prohibit the private demonstration of an R18+ computer game in the presence of a minor unless the person demonstrating the game is the parent or guardian or has the consent of a parent or guardian (maximum penalty -50 penalty units);
- prohibit the sale or delivery of an R18+ computer game to a minor (maximum penalty - 100 penalty units);
- prohibit the sale or delivery of computer games which, if classified, would be classified as R18+ (maximum penalty-100 penalty units); and
- prohibit the public demonstration of a computer game classified as MA15+ or R18+ unless the determined markings for the game are displayed before the game is demonstrated (maximum penalty-40 penalty units).

The Bill also amends the current definitions of "computer game" and "film" in the CG Act (and also the CF Act) by aligning these definitions with the uniform definitions adopted by the Commonwealth and all other States and Territories. This will mean that the definition of "computer game" will be confined to computer programs or associated data capable of generating a display on a medium that allows the playing of an interactive game. It will also include "add-ons" to the original game. This will remove anomalies in the scope and operation of the CG Act which currently defines computer game extremely broadly to include "a computer generated image" and an "interactive film". The amendments will not result in any gap in overall coverage as matter covered by the current definition of "computer game" will continue to be covered by other classification legislation, primarily the CF Act, or in some circumstances, the CP Act. In particular, "interactive films" will continue to be covered by the definition of "film" under the CF Act.

Classification of Films Act 1991

The Bill will amend the CF Act by providing that the Director of the Classification Board will be the sole decision maker in relation to giving exemptions to enable the exhibition of unclassified films at specified events, such as film festivals. This will bring Queensland into line with other States and Territories and promote the objectives of the national

cooperative classification scheme. The new arrangements will standardise and streamline the process of obtaining exemptions for national film event organisers who currently have to submit applications to both the Commonwealth and Queensland Governments. It will also relieve Queensland of the administrative burden of assessing hundreds of films for exemption each year, many of which have already been assessed by the Commonwealth.

Neighbourhood Disputes Resolution Act 2011

The Bill amends the title of the *Neighbourhood Disputes Resolution Act* 2011 (NDR Act) to the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* to clarify the scope of the NDR Act.

Recording of Evidence Act 1962

The Bill achieves the objectives by way of the proposed amendments to existing legislation described below.

Alternative Ways of Achieving Objectives

There are no alternative ways of achieving the policy objectives.

Estimated Cost for Government Implementation

The amendments will not have any significant cost implications for government.

Consistency with Fundamental Legislative Principles

Classification of Computer Games and Images Act 1995

Immunity from proceeding/prosecution

The amendments to the CG Act, CF Act and CP Act include provisions to protect specified persons who carry out functions under the classification legislation from criminal liability for acts done honestly and without negligence in the performance of their functions. This immunity raises an issue regarding consistency with the fundamental legislative principle of equality before the law. The immunity is justifiable because the performance of classification functions may involve possession and distribution of material which may constitute objectionable material or child exploitation material and which may otherwise constitute a criminal

offence. The protection is not an absolute immunity but is qualified by requirements of honesty and lack of negligence.

Offences and Penalties

The amendments to the CG Act create offences in relation to the demonstration, sale, delivery and advertisement of R18+ computer games. The maximum penalties for the R18+ offences range from 50 penalty units to 100 penalty units with the highest maximum penalties applying to the offences of sale or delivery of R18+ computer games to a minor and the sale or delivery of an unclassified computer game which if it was classified, would be classified as R18+.

The introduction of the R18+ classification of computer games seeks to strike an appropriate balance between the rights of adults to see and hear what they wish and the protection of minors from unsuitable material.

The level of penalties for the R18+ offences is considered justifiable in providing an appropriate deterrent to retailers of R18+ products in situations where there may be commercial rewards for non-compliance and the incentive to make cost/benefit assessments in relation to non-compliance. The penalties are also consistent with a regulatory regime aimed at ensuring appropriate safeguards for minors from exposure to material which may harm them.

Consistent with fundamental legislative principles, the maximum penalties of several other offences in the CF Act have been increased to ensure consistency and proportionality between penalties. In particular, the offences for the sale or delivery of MA15+ computer games to minors and the sale of unclassified computer games which, if they were classified, would be classified as MA15+, have been increased to 50 penalty units. As with the R18+ offences, the level of penalties is considered justifiable in providing an appropriate deterrent in situations where there may be significant commercial rewards for non-compliance.

Delegation of Legislative Power

The Bill extends to R18+ computer games, the existing section 17 which currently provides that a person who displays for sale an MA15+ computer game must comply with conditions prescribed under a regulation. No conditions are currently prescribed. While the provision raises an issue regarding the delegation of legislative power, the provision is justifiable as the maximum penalty for the offence is very low (10 penalty units) and any regulation to prescribe conditions could be disallowed by the Parliament.

Classification of Films Act 1991

Delegation of legislative power

The amendments to sections 57 and 58 of the CF Act raise an issue regarding the fundamental legislative principle that legislation must have sufficient regard to the institution of Parliament by allowing the delegation of legislative power only in appropriate cases and to appropriate persons and that it sufficiently subjects the exercise of the delegated legislative power to Parliament. Both the State films classification officer and the Director of the Classification Board presently have power to determine applications to exempt films in Queensland (although in practice only the State films classification officer performs this function). The Bill provides for the Director of the Classification Board to solely decide exemptions for films. The amendments also enable the Minister to issue directions or guidelines in relation to the application of the Act to which the Director must give effect. This is similar to legislation in other jurisdictions such as New South Wales and Victoria. The amendments are justified because the purpose is to streamline and standardise the process for applicants seeking exemption - in particular, national film festival organisers - and to promote the objectives of the national co-operative classification scheme.

Right to Review

The omission of section 59 of the CF Act raises an issue regarding the fundamental legislative principle that legislation should make rights dependent on administrative power only if subject to appropriate review. Under section 59, a decision by the State films classification officer to refuse an exemption could be reviewed on an application to the Queensland Civil and Administrative Tribunal (QCAT). The Bill provides for the Director of the Classification Board to be the sole decision maker in relation to applications for exemption. While there is no specific right of appeal from a decision by the Director, an applicant will still have the right to submit the film to the Classification Board for formal classification to enable the film to be exhibited publicly. However, if the film receives a classification which makes it illegal to be publicly screened, this would effectively confirm the Director's decision to refuse the exemption.

Offences and Penalties

To achieve proportionality and consistency with the offences in the CG Act the maximum penalties for several R18+ and MA 15+ offences have been increased. These offences are:

- exhibition of R18+ films when minor present (s22(2))
- sale or delivery of MA15+ and R18+ films to minors (S33)
- display and sale of objectionable and unclassified films (s24)

Consultation

Classification of Computer Games and Images Act 1995

There has been significant community consultation at a national level about the introduction of an R18+ classification for computer games, including:

- 14 December 2009: Release of the Commonwealth discussion paper;
- November 2010: National telephone poll conducted by the Commonwealth Government;
- 17 November 2009: Posting of Queensland Parliament online E-Petition, "Classification of Computer Games in Queensland";
- 25 May 2011, Public release of the Draft Guidelines for the Classification of Computer Games (including an online survey seeking feedback on the introduction of an R18+ classification and the Draft Guidelines); and
- 4 November 2011: Public release of revised Draft Guidelines for the Classification of Computer Games.

Classification of Films Act 1991

The Director of the (Commonwealth) Classification Board was consulted.

Recording of Evidence Act 1962

The Chief Justice, the President of the Court of Appeal, the Chief Judge, the President of the Land Court, the Chief Magistrate and the Queensland Civil and Administrative Tribunal were consulted on the proposed amendments.

Notes on Provisions

Part 1 – Preliminary

Clause 1 provides that this Act may be cited as the *Classification of Computer Games and Images and Other Legislation Amendment Act 2012.*

Clause 2 provides for the commencement of the provisions of the Act.

Part 2 – Amendment of Classification of Computer Games and Images Act 1995

Clause 3 provides that this part amends the *Classification of Computer Games and Images Act 1995.*

Clause 4 inserts new section 2A which provides that this Act does not apply to a computer game that is an exempt computer game. "Exempt computer game" is defined in the Dictionary as having the same meaning as an exempt computer game under the Commonwealth Act. Exempt computer games are games which fall within specified categories – for example, business, accounting and professional software – which under the Commonwealth Act do not require classification.

Clause 5 amends section 4 to take account of the fact that the definition of "computer game" under the Act is being amended to align with the definition adopted by the Commonwealth and all other States and Territories. Currently the definition of "computer game" in the Act includes a range of things that are not included in the Commonwealth definition of "computer game", including an "interactive film" which is instead covered by the Commonwealth definition of "film". The amended definition means there is no need to make special provision for computer games which are classified as films under the Commonwealth legislation.

Clause 6 amends section 9 which prohibits the demonstration of unclassified computer games. The amendment provides that the demonstration of an unclassified computer game which, if it were

classified, would be classified as an R18+ game, is subject to a maximum penalty of 50 penalty units.

Clause 7 replaces section 10 which prohibits the demonstration of MA15+ computer games to minors under 15 years. The amendments create an additional prohibition on the demonstration, or attempted demonstration, of an R18+ computer game in a public place if a minor is present. The amendments also prohibit the demonstration (or attempted demonstration) in a public place of a R18+ computer game unless the determined markings for the game are displayed before the demonstration.

Clause 8 inserts a new section 10AA which prohibits the demonstration, or attempted demonstration, of an R18+ computer game in a place that is not a public place in the presence of a minor unless the person demonstrating the game is a parent or guardian or has the consent of a parent or guardian of the minor. The offence is subject to a maximum penalty of 50 penalty units.

Clause 9 amends section 10B which requires computer games that are available for playing on a pay and play basis to bear determined markings and consumer advice. The section also provides for a 30 day "grace" period to allow time for compliance immediately following a reclassification, or a revocation of classification or consumer advice, under the Commonwealth Act. The amendments do not change the effect of the section but are merely drafting style amendments to ensure consistency in style with other sections in the Act.

Clause 10 Amends section 12 which requires advertisements for classified computer games to contain determined markings and consumer advice. Consistent with other provisions in the Act, the amendments insert a "grace" period of 30 days to allow time for compliance immediately following a reclassification or a revocation of classification or consumer advice under the Commonwealth Act.

Clause 11 amends section 13 which prohibits false advertising of computer games to insert a "grace" period of 30 days to allow time for compliance immediately following a reclassification or a revocation of classification under the Commonwealth Act.

Clause 12 amends section 13A to take account of the fact that the definition of "computer game" under the Act is being amended to align with the definition adopted by the Commonwealth and all other States and Territories. Currently the definition of "computer game" in the Act includes a range of things that are not included in the Commonwealth

definition of "computer game", including an "interactive film" which is covered by the Commonwealth definition of "film". The amended definition means there is no need to make special provision for computer games which are classified as films under the Commonwealth legislation.

Clause 13 amends section 14 which requires containers for computer games to bear the determined markings for the game's classification and its consumer advice (if any). Consistent with other provisions in the Act, the amendments insert a "grace" period of 30 days to allow time for compliance immediately following a reclassification or a revocation of classification or consumer advice under the Commonwealth Act.

Clause 14 amends section 15 which requires a person who sells or attempts to sell a classified computer game to keep a classification notice for computer games prominently displayed. The amendments take account of the fact that the definition of "computer game" under the Act is being amended to align with the definition adopted by the Commonwealth and all other States and Territories and that an "interactive film" will be caught by the definition of "film" under the *Classification of Films Act 1991*, similar to the Commonwealth definition.

Clause 15 amends section 16 which prohibits a person from selling or attempting to sell, a classified computer game which contains an advertisement for a computer game with a higher classification. The amendments take account of the introduction of the R18+ classification by including the new classification in the listing of the higher classifications.

Clause 16 amends section 17 which requires a person who displays, or attempts to display, for sale an MA15+ computer game or advertisement for an MA 15+ computer game, to comply with conditions prescribed under a regulation. The amendment extends the requirement to comply with prescribed conditions to R18+ computer games or advertisements for R18+ computer games.

Clause 17 replaces section 18 which prohibits the sale or delivery of an MA15+ computer game to a minor under 15 years, unless the minor is accompanied by an adult. The section maintains the current prohibitions on the sale or delivery of MA15+ games and extends these to R18+ games. The section provides that a person must not sell, deliver or attempt to sell or deliver an R18+ computer game to a minor. A person does not commit the offence of selling or delivering an R18+ game if the person reasonably believes the minor has reached 18 years. A person also does not commit the offence in relation to delivery of either an MA 15+ or R18+ game, if

the minor is an employee of a computer game wholesaler or retailer and the delivery takes place in the course of business or if the person did not know, and could not reasonably be expected to have known, it was an MA15+ or R18+ game (eg a courier delivering an R18+ game).

Clause 18 amends section 19 which prohibits a person from selling or attempting to sell an unclassified computer game. The section provides a sliding scale of penalties depending on what the classification of the game would be if it were classified. The amendments prohibit the sale or attempted sale of an unclassified computer game which, if it were classified would be classified as R18+, and sets a maximum penalty of 100 penalty units for the offence.

Clause 19 amends section 21 which prohibits a person from selling or attempting to sell a classified computer game if the container, wrapping or casing bears a mark or other thing indicating the computer game has a classification other than the classification it has under the Act. Consistent with other provisions in the Act, the amendments insert a "grace" period of 30 days to allow time for compliance immediately following a reclassification or a revocation of classification under the Commonwealth Act.

Clause 20 amends section 23 which prohibits the demonstration of an objectionable computer game before a minor by increasing the maximum penalty to 100 penalty units.

Clause 21 amends section 29 which relates to liability for the offence of possession or making of an objectionable computer game. The section provides that in relation to certain kinds of objectionable computer game, a person is not liable for the offence in certain circumstances (i.e. if they took reasonable steps to have it classified and believed on reasonable grounds that it would be classified). The amendments take account of the fact that the definition of "objectionable computer game" has been amended to exclude computer games classified as R18+ and there is no need to exclude liability in relation to computer games which would fall into this category.

Clause 22 amends section 42 which gives an inspector the power to seize a computer game that the inspector reasonably believes is an objectionable computer game. The section currently requires the inspector to submit the computer game for classification as soon as practicable and to immediately return the computer game to the person from whom it was seized if it is classified. The amendments take account of the introduction of the R18+

classification by inserting a reference to R18+ in the classified games that must be returned.

Clause 23 inserts a new section 69A which provides that an official is not criminally liable for an act done honestly and without negligence in the performance of the official's functions under the Act.

Clause 24 inserts new Part 9, Division 3 which provides for transitional arrangements following the introduction of the amendments to the *Classification of Computer Games and Images Act 1995.* The transitional arrangements take account of the fact that matter which may have been classified as a computer game under the Act, may be within the definition of a "film" following the commencement of the amendments. New section 76 provides that if a computer game was in the process of being classified or reclassified under sections 5 or 6 of the Act, the classification or reclassification may be decided as if the computer game was still a computer game even if the computer game will be within the definition of a "film" following the amendments.

New section 77 provides that computer games which were classified under the Act will retain the classification they were given as computer games even if they would be categorised as a "film" following the amendments to the Act.

New section 78 provides that applications for exemption made under section 57 (ie exemption for demonstration at a specified event) before the commencement of the amendments, are to be decided as if the computer game was still a computer game. New section 79 similarly provides in relation to applications for exemptions under section 59 (ie exemption for medical, education or scientific computer games).

New section 80 provides that exemptions given to computer games under section 58 (ie exemption for demonstration at a specified event) and section 59 (ie exemption for medical, education or scientific computer games) will continue to have effect for the purposes of the *Classification of Films Act 1991* and will be taken to have been given under equivalent exemption provisions in the film classification legislation.

New section 81 provides for the situation where, immediately before the commencement of the section, a person had a right to apply to QCAT for a review of a decision about a computer game that after the commencement of the section will be a "film". In this case, the application can continue to be made and decided as if the film was still a computer game. New section 82 provides that if an application for review has been made, but not

decided, by QCAT, the application may be decided as if the film was still a computer game.

Clause 25 amends key definitions in Schedule 2, including "computer game", "consumer advice", determined markings" and "objectionable computer game".

Part 3 – Amendment of Classification of Films Act 1991

Clause 26 provides that this Part amends the *Classification of Films Act 1991.*

Clause 27 inserts a new section 2A which provides that this Act does not apply to a film that is an exempt film. "Exempt film" is defined to have the same meaning as "exempt film" in the Commonwealth legislation. "Exempt films" include films in specified categories (eg business, accounting, professional, live performance and musical presentation) which do not require classification.

Clause 28 amends section 3 to omit the definitions of "approved organisation" and "computer program" and amend the definition of "film" to align the definition with the Commonwealth definition of "film".

Clause 29 amends section 22(2) which prohibits a person from publicly exhibiting or attempting to exhibit, a film classified as R18+ if a minor is present. The amendment increases the maximum penalty to 50 penalty units.

Clause 30 amends section 26 which prohibits the publishing of certain advertisements. The amendments make it clear the prohibition applies to the publication of an advertisement for an objectionable film.

Clause 31 omits section 28(2) as this prohibition on the publication of an unclassified film is provided for in section 26(1).

Clause 32 amends section 33 which prohibits the sale or delivery of MA 15+ or R18+ films to certain minors. The amendments increase the maximum penalty for sale or delivery of an R18+ film to a minor to 100 penalty units.

Clause 33 amends section 34 which prohibits the display and sale of objectionable and unclassified films by increasing the maximum penalties. The maximum penalty for display or sale of an unclassified film that, if it were classified, would be classified as G, PG or M will be 10 penalty units: for an unclassified film that, if it were classified, would be classified as MA15+ will be 50 penalty units; for an unclassified film that, if it were classified, would be classified as R 18+ will be 100 penalty units and for an X18+ film or an unclassified film that, if it were classified, would be classified as X18+ will be 150 penalty units.

Clause 34 amends section 38 which prohibits the private exhibition of an R18+ or objectionable film in the presence of a minor without the consent of a parent or guardian. The amendments clarify that the prohibition does not apply if the person exhibiting the film is a parent or guardian and increases the maximum penalty to 50 penalty units to achieve consistency with the equivalent offence in the computer games classification legislation.

Clause 35 replaces the heading to Part 7 to take account of the fact that this part now includes a new exemption for films for medical, educational or scientific purposes.

Clause 36 replaces sections 56 to 59 which currently provide for exemptions to enable the exhibition of films by approved organisations. The amendments provide for the transfer to the Director of the Classification Board of the function of granting these exemptions. Generally this exemption is utilised by film festival organiser and community groups to exhibit an unclassified film at film festivals and community events.

New section 56 provides that an entity may apply to the Director of the Classification Board for an exemption from the Act or a provision of the Act in relation to a particular film that the entity intends to exhibit. The requirements for a valid application are similar to the current requirements, apart from the fact that there is no longer a requirement that only an approved organisation can apply. Any individual or entity is entitled to apply, without seeking prior approval to be gazetted an approved organisation.

New section 57 gives the Director of the Classification Board the power to give an exemption from the Act, or a specified provision of the Act, to allow the exhibition of a film specified in the application and allows the Director to impose conditions on the exemption. The section requires the

Director to give effect to any directions or guidelines issued by the Minister about the exemption.

Clause 37 inserts new sections 59A and 59B which provide for a new exemption in relation to films for certain purposes, such as medical purposes. This exemption mirrors a similar exemption in the computer games classification legislation. New section 59A provides that the films classification officer may exempt an entity from the Act in relation to films that are of a medical, educational or scientific character or intended to be used for a medical, educational or scientific purpose. The exemption may be given on conditions. New section 59B provides that if the films classification officer refuses to give an exemption under new section 59A an entity may apply to the Queensland Civil and Administrative Tribunal for a review of the decision.

Clause 38 inserts new section 66A which provides that an official (as defined in the section) is not criminally liable for an act done honestly and without negligence in the performance of the official's functions under the Act.

Clause 39 inserts new Part 9, Division 5 which provides for transitional arrangements following the commencement of the amendments to the Act. The transitional arrangements are necessary to take account of the transfer to the Director of the Classification Board of the function of giving exemptions for film festivals and other specified film event screenings. Section 77 provides for the situation where applications for exemption have been made under previous section 57, but have not been decided, before the section commences. These applications will continue to be decided under the current arrangements (in practice, by the film classification officer). Section 78 preserves the validity of an exemption given under previous section 58 immediately before the commencement of the section. This means that if an organisation has been given an exemption but the exhibition of the film has not occurred before the amendments commence, the organisation can rely on the exemption it has obtained and does not have to seek a new exemption under the new arrangements. Sections 79 and 80 preserve certain rights of review by QCAT. Section 79 provides that if an organisation had a right to seek a review of a decision refusing an exemption under previous section 58, they continue to have that right. Section 80 provides that if an application for review of such a decision has been made to QCAT, but not decided, the application can continue to be decided as if the amendments had not commenced.

Part 4 – Amendment of Classification of Publications Act 1991

Clause 40 provides that this Part amends the *Classification of Publications Act 1991*.

Clause 41 inserts new section 39 which provides that an official is not criminally liable for an act done honestly and with out negligence in the performance of the official's functions under the Act.

Part 5 – Amendment of Criminal Code

Clause 42 provides that this Part amends the Criminal Code.

Clause 43 amends the example in section 228E (3) to take account of the fact that the definition of "computer game" in the *Classification of Computer Games and Images Act 1995* has been amended to align with the uniform definition of "computer game" adopted by all other Australian jurisdictions. The clause also omits section 228 E (5)(a) to take account of the fact that the new definition of "computer game" does not include an "interactive film" or any other thing which is classified as a film under Commonwealth legislation. Accordingly, there is no need to make special provision for computer games which are classified as R, R18+, or X18+ films under the Commonwealth legislation.

The clause amends section 228 E(8) to correct an anomalous omission by ensuring the definition of "certificate" includes certificates issued under the *Classification of Films Act 1991* as well as other state classification legislation. The clause also amends section 228 E(8) to include in the definition of "classification exemption" exemptions given under the *Classification of Films Act 1991*.

Part 6 –Amendment of Land Act 1994

Clause 44 provides that this Part amends the *Land Act 1994*.

Clause 45 replaces Part 11 which provided for transitional arrangements in the *Land Act 1994* to take account of the repeal of the *Dividing Fences Act 1953* and the enactment of the *Neighbourhood Disputes Resolution Act 2011*. New section 521ZB takes account of the fact that the short title of the *Neighbourhood Disputes Resolution Act 2011* is being amended to the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*. Accordingly, a reference to the *Dividing Fences Act 1953* in documents under the Land Act may be taken to be a reference to the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

Part 7 – Amendment of Neighbourhood Disputes Resolution Act 2011

Clause 46 provides that this Part amends the *Neighbourhood Disputes Resolution Act 2011*.

Clause 47 amends the short title and provides that the new short title is *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

Part 8 – Amendment of Recording of Evidence Act 1962

Clause 48 provides that this part amends the *Recording of Evidence Act 1962*.

Clause 49 amends section 4 (definitions) to omit the definitions of "recorder" and "shorthand reporter". A new definition of "recorder" is inserted to mean a person who carries out a recording service. "Recording service" is defined as the recording of relevant matter in a legal proceeding under new section 5, the transcription of a record under an arrangement with the chief executive under new section 5A or the transcription of a record by a public service employee of the Department of Justice and Attorney-General.

The clause amends the definition of "court" to put beyond doubt that "court" includes a tribunal. This amendment makes the inclusion of

"tribunal" in the definition of "legal proceeding" superfluous and it is therefore omitted from that definition.

The clause amends the definition of "judicial person" to put beyond doubt that judicial person includes a judge.

The clause amends the definition of "record under this Act" to reflect that the Act does not authorise recording, but rather requires recording of legal proceedings.

The clause also makes amendments to update the description of the technology used in recording legal proceedings. A new definition of "master recording" replaces "master-tape". A new definition of "medium" replaces "tape". Consequential amendments arising from these changes are made to the definitions of "dictation-tape" and "record under this Act".

Clause 50 omits section 5 (power to direct recording under this Act) and replaces it with a new section 5 (recording of relevant matter in legal proceedings) which provides that all relevant matter in a legal proceeding is to be recorded. "Relevant matter" is defined in subsection (5). The requirement that all relevant matter be transcribed is subject to the judicial discretion in subsection (4).

New section 5 provides that the recording may be done under an arrangement entered into under new section 5A, or by an employee of the Department of Justice and Attorney-General. In relation to Queensland Civil and Administrative Tribunal proceedings, recording may be done by a member or adjudicator of that tribunal.

The clause also inserts new section 5A (arrangements for recording services) which provides that the chief executive, Department of Justice and Attorney-General may enter into arrangements with a person for the provision of recording or transcribing services. An evidentiary provision is included which provides that a certificate by the chief executive, Department of Justice and Attorney-General, as to the arrangement in force under section 5A with a stated person on a stated day is evidence of that matter. Such a certificate may be used by a court if a question ever arises under section 10 as to whether a record or a transcription sought to be provided to the court is a record under the Act or a transcription of a record under the Act.

The clause also inserts new section 5B (availability of copies of records and transcriptions) which requires the chief executive, Department of Justice and Attorney-General, or a delegate, to ensure that arrangements are put in

place which enable a person to purchase or otherwise obtain a copy of a record or a transcription of a record. This requirement does not apply to the extent that legislation provides, or a court orders, that a copy of a record or a transcription must not be made available. The arrangements must include the provision of records or transcriptions to judicial persons at no cost and to other persons at no cost or for a lesser cost, as permitted by regulation.

Clause 51 omits sections 6 to 9 which relate to the appointment of shorthand reporters and recorders under the Act and are no longer required.

Clause 52 amends section 10 (record and transcription to be evidence) by omitting subsection (2) and inserting a new subsection (2) which provides for the receipt by a court or judicial person of a transcription made under the Act as evidence of anything recorded in the transcription, subject to it being shown that it is not an accurate transcription. The process of certification of transcriptions under this section is not continued.

Clause 53 amends section 11 (depositions of witnesses) to reflect the removal of the process of certification from section 10.

Clause 54 amends section 11A (retention and destruction of records) to omit subsection (4) and insert a new subsection (4) and related new subsection (8). The changes remove the reference to a court or judicial person directing the recording of a proceeding, and are consequential upon the wording of new section 5.

Clause 55 amends section 11B(2) (access to out-of-session recording prohibited) to reflect that a person who is a recorder under the new definition of "recorder" in section 4 will require access to out-of-session recordings.

Clause 56 amends section 12 (offences), firstly to omit subsections (1) and (1A). These offences are no longer required as there will be no appointed recorders or shorthand reporters. Subsection (2)(c) is amended to remove the reference to certification, consequent to the removal of the process of certification from section 10. Subsection (2)(d) is omitted for the same reason.

Clause 57 amends section 13 (regulations) to omit subsection (2)(a), consequent upon the cessation of appointment of recorders or shorthand reporters.

Subsection (2)(e) is amended to ensure that the regulation making power in the Act to provide for, regulate and control the making and issuing of transcriptions, is broad enough to include copies of records.

Clause 58 omits section 15 as the transitional effect of that section is complete.

Clause 59 inserts new section 17 which provides that any appointment as a shorthand reporter or recorder under the Act ends upon the commencement of the section.

Part 9 – Other amendments

Clause 60 provides that each of the Acts listed in Schedule 1 is amended by replacing the references to the *Neighbourhood Disputes Resolution Act 2011* with a reference to the Act by its new short title, the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011.*

Clause 61 provides that Schedule 2 amends the Acts mentioned in it.