

Tourism, Fair Trading and Wine Industry Development Legislation Amendment Bill 2005

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Tourism, Fair Trading and Wine Industry Development Legislation Amendment Act 2005*.

Policy Objectives of the Bill

The Bill makes three groups of amendments.

Amendments to Queensland classifications legislation

The Bill amends the *Classification of Publications Act 1991*, *Classification of Films Act 1991* and the *Classification of Computer Games and Images Act 1995* (the Queensland classifications legislation) to reflect recent legislative changes to classification markings in the Commonwealth *Classification (Publications, Films and Computer Games) Act 1995* (the Commonwealth Act) and to make some other minor changes.

In particular, the Bill also amends the definition of “publication” in the *Classification of Publications Act 1991* to make it the same as the definition of “publication” in the Commonwealth Act. The Bill also makes consequential amendments to the *Criminal Code* to ensure that classification types referred to in the Code are consistent with the changes made to the Queensland classifications legislation.

Amendment of the Land Sales Act 1984

Subsections 27(1) and 29(1) of the Act provide that if a purchaser invests money to purchase a proposed lot (eg “off-the-plan” units), and the vendor has not given the purchaser a registrable instrument of transfer for the lot

within 3½ years of the date of contract, the purchaser may avoid the instrument by written notice given to the vendor and the money may be returned with interest to the purchaser.

Subsection 28(1) of the Act provides for an extension by Regulation of the 3½ year period for a further 12 months to 4½ years.

Amendment of the Tourism Queensland Act 1979

The Bill also amends the *Tourism Queensland Act 1979* to provide Tourism Queensland with the power to enter into arrangements to facilitate the performance of its functions.

Reasons for the Bill - Classification Act amendments

The national scheme for classifications

The Queensland classifications legislation and the Commonwealth Act form the National Classification Scheme shared between the Commonwealth and the States and Territories for the classification of publications, films and computer games.

The National Classification Scheme is a cooperative arrangement under which a Classification Board classifies films, computer games and publications on behalf of the States and Territories. The Scheme commenced on 1 January 1996.

The National Classification Scheme was established following recommendations made by the Law Reform Commission about censorship procedure in 1991 (Report No. 55). One of the recommendations was the establishment of a legislative framework which would enable the Commonwealth, States and Territories to take a national approach to classification.

The National Classification Scheme is overseen by Australian Government, State and Territory Censorship Ministers, who regularly meet to discuss the operation of the scheme, its legislation and other issues such as topical research and guidelines reviews. Censorship Ministers are not involved in Classification Board decisions.

How the scheme is implemented

The Office of Film & Literature Classification is the Australian Government agency that administers the National Classification Scheme for all films, computer games and submittable publications that are exhibited, sold or hired in Australia.

These classification decisions are made by members of the Classification Board who are representative of the wider Australian community. Decisions may be reviewed by the Classification Review Board. In making classification decisions, the Boards are bound by the Commonwealth Act and classification guidelines.

Every film, video and computer game that is legally available in Australia, whether it is produced locally or comes from overseas, has to be classified by the Classification Board before it can be made available to the public. Some publications also need to be classified.

The classifications given to materials, (represented by symbols such as G, MA15+ or R18+ which are included, for example, on posters and video or computer game covers) are designed to help parents and other members of the community make informed decisions about what they or their children watch, read or play.

Role of the Commonwealth

The Commonwealth's contribution to the National Classification Scheme includes the Commonwealth Act, which establishes the Classification Board and sets out procedures the Classification Board follows in making its classification decisions. The Commonwealth Act also establishes a review mechanism, the Classification Review Board, which reviews decisions made by the Classification Board on application.

Role of Queensland and the other States and Territories

Under the National Classification Scheme, the States and Territories are responsible for the enforcement of classification decisions. Therefore, Queensland, like the other States and Territories, has its own classification legislation to complement the Commonwealth Act. This legislation sets out how films, publications and computer games can be sold, hired, exhibited, advertised and demonstrated in each State or Territory. Some States, such as Queensland have reserved censorship powers.

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The Queensland classifications legislation provides for a Classifications Officer to classify publications and computer games (not films) and issue evidentiary certificates.

Reason for the amendments contained in the Bill

In 2004, the Commonwealth made amendments through the *Classification (Publications, Films and Computer Games) Amendment Act 2004* (the Commonwealth Amendment Act) to introduce new standard classification markings for films and computer games, based on well known film classifications.

The Commonwealth Amendment Act also created a more effective distinction between those classification types that are advisory in nature (G, PG and M) and those to which legally enforceable restrictions apply (MA15+, R18+ and X18+).

The amendments aim to create a uniform and more easily understood classification system for films and computer games. Research by the Office of Film and Literature Classification indicated that less than half of the population is aware of the computer games classification scheme and that consumers are very confused about the existing MA classification. Renaming the computer games classifications to mirror the well-known film classifications will assist parents in choosing games for their children.

The Bill renames the classifications but does not affect the material permissible within them. For example, consistent with the previous agreement of Censorship Ministers, the Bill does not introduce an R classification for computer games.

As a result of the changes made by the Commonwealth Amendment Act, the Queensland *Classification of Films Act 1991* and *Classification of Computer Games and Images Act 1995* requires amendment wherever the old classification types are cited, as noted in the table below:

Existing Film Classification Types	Existing Computer Games Classification Types	New Film and Computer Game Classification Types
G (General)	G (General)	G General
PG (Parental Guidance)	G(8+)(General)	PG Parental Guidance
M (Mature)	M (15+) (Mature)	M Mature
MA (Mature Accompanied)	MA(15+) (Mature Restricted)	MA 15+ Mature Accompanied

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R (Restricted)		R 18+ Restricted (this category applies to films only - computer games with R+ content will be refused classification)
X (Restricted)		X 18+ Restricted (this category applies to films only - computer games with X content are refused classification)
RC(Refused Classification)	RC (Refused Classification)	RC Refused Classification

While the changes are largely technical, they are necessary to maintain the integrity of the national classifications scheme in Queensland. Similar amendments are being made to classifications legislation in the other States and Territories.

The Bill also amends the definition of “publication” in the *Classification of Publications Act 1991* to make it the same as the definition of “publication” in the Commonwealth Act.

The Bill will also make consequential amendments to the *Criminal Code* to ensure that classification types referred to in the Code are consistent with the changes made to the Queensland classifications legislation.

The amendments are effectively technical changes and will not change standards or policy in Queensland in relation to the sale, distribution or possession of publications, films or computer games.

Reasons for the Bill – amendment of *Land Sales Act 1984*

The objectives of the *Land Sales Act 1984* include facilitation of property development in Queensland and protection of the interests of consumers in relation to property development.

Vision (Brisbane) Pty Ltd (Vision), a wholly owned subsidiary of the Austcorp Group (the developer) has received Development Approval from the Brisbane City Council for a mixed-use (residential, commercial, retail and tourist) development within 3 separate buildings in Brisbane city. The Vision site extends between Margaret and Mary Streets, in the block between Albert and Edward Streets in the Brisbane Central Business District.

The proposed residential component is located in the main tower of the development, a 72 story building. The estimated construction cost is \$300 million. Residential units in the Vision development are targeted at more sophisticated investors and the average price will be \$1 million. The overall value of the project is estimated at \$650 million and will employ up to 2,700 people during construction with up to 350 – 450 workers on site at any one time.

The developer is seeking a more general extension of time than allowed under section 28 of the Act as, due to the size and complexity of the development, the existing 1-year extension is unlikely to be sufficient to ensure completion of the development in time to provide purchasers with a registrable instrument of transfer as required under subsection 27(2) of the Act.

The purpose of the proposed amendment is to provide for a period of not greater than 5½ years. It is proposed that a minor amendment be made to the Act to provide that the extension period can be increased from 4½ years to 5½ years. The developer can then seek an extension under the amended Act. This proposal represents a minor extension of existing policy.

Reasons for the Bill – *Tourism Queensland Act 1979*

Under section 13 of the *Tourism Queensland Act 1979*, Tourism Queensland's primary objectives are to promote, market, develop and arrange tourism and travel to and within Queensland. The role of the Commercial Division of Tourism Queensland is to provide access to, and distribution of, Queensland tourism products through Sunlover Holidays and the Queensland Travel Centres.

Tourism Queensland is considering arrangements to licence the operations of the Commercial Division to a private tourism operator, which will allow Tourism Queensland to concentrate its resources in particular on primary marketing and destination management activities for Queensland.

Tourism Queensland's functions are specified in section 13 of the *Tourism Queensland Act 1979*. Section 13 provides for the direct performance of the specified functions by Tourism Queensland. Section 14 specifies Tourism Queensland's powers. The *Tourism Queensland Act 1979* does not currently provide the power for Tourism Queensland to facilitate the performance of its functions in an alternative way.

Currently Tourism Queensland must directly perform the functions specified in section 13 of the *Tourism Queensland Act 1979*. To provide

greater flexibility in the way that these functions are performed, the following amendments are included in the Bill.

Section 13 of the *Tourism Queensland Act 1979* will provide that the functions of the corporation are, amongst other things, to facilitate the following:

- the promotion and marketing, domestically and internationally, of tourism and travel;
- the development of the tourist and travel industry;
- the making of tourism and travel arrangements; and
- the provision of tourism and travel information services.

The facilitation of these functions may be done directly by Tourism Queensland or in another way.

Section 14 of the *Tourism Queensland Act 1979* will provide Tourism Queensland with the power to enter into an arrangement with a person to facilitate the performance of certain of its functions.

Alternatives to the Bill

The policy objectives require statutory amendment to give them effect.

Administrative costs

There will be no cost to government as a result of the amendments in this Bill.

In particular, the amendments to the *Tourism Queensland Act 1979* effected by the Bill are facilitative. They do not require Tourism Queensland to enter into any arrangements for the performance of its functions in an alternative way but rather facilitate that process should it be considered appropriate. There are therefore no direct implementation costs in relation to the amendments to the *Tourism Queensland Act 1979*.

Fundamental Legislation Principles

The Bill is consistent with fundamental legislative principles.

Consultation - Amendments to Queensland classifications legislation

Consultation was carried out on the Commonwealth Act Amendments by the Office of Film and Literature Classification and the Commonwealth Attorney-General's Department.

This involved consultation with the Australian Consumers Association, community organisations including the Parents and Citizens Association, the Communications Law Centre, film exhibitors, film distributors, computer games distributors, home entertainment (video and DVD) retailers and distributors and the television industry.

Submissions to the review of the previous guidelines indicated that members of the public sought clear and easily understandable classification categories and supported the creation of a single set of classification symbols for films and computer games.

In a study commissioned by the Office of Film and Literature Classification in March 2002, 71 per cent of people agreed that the same classification symbols should be used for films and computer games. This research indicated that there are poor levels of awareness of the computer games classification scheme. For example, the study found that only 43 per cent of the population are aware that classification of computer games is undertaken. This contrasts dramatically with the 97 per cent awareness of the film classification symbols.

No separate consultation was carried out by Queensland due to the extensive consultation conducted by the Commonwealth on the classification types and as the amendments relating to the definition of "publication" and the consequential amendments to the *Criminal Code* are of a technical nature.

Consultation – Amendment of the *Land Sales Act 1984*

Given the facilitative nature of the amendments to the *Land Sales Act 1984*, consultation has not been undertaken outside Government.

The Department of the Premier and Cabinet (Law and Justice Policy and Economic Policy Divisions) has been consulted and is satisfied the extension is warranted. The Department of Public Works (DPW) was also consulted and advised that the projected timings by the developer were reasonable and accurate. Queensland Treasury have also been consulted and provided with the information outlined above and have not raised any concerns.

Consultation – Amendment of the *Tourism Queensland Act 1979*

Given the facilitative nature of the amendments, consultation has not been undertaken outside Government in relation to the amendments to the *Tourism Queensland Act 1979* contained in the Bill. However, extensive consultation with interested parties has already been undertaken, and will continue to be undertaken, as part of a proposal by Tourism Queensland to facilitate the performance of its functions in an alternative manner as provided for under the Bill.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 sets out the short title of the Act as the *Tourism, Fair Trading and Wine Industry Development Legislation Amendment Act 2005*.

Commencement

Clause 2 provides that Parts 2, 3, 4 and 5 of this Act (dealing with amendments to Queensland classifications legislation and consequential amendments to the *Criminal Code*) will commence or will be taken to have commenced, on 26 May 2005.

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

Act Amended

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

Classification under the Commonwealth Act

Clause 4 amends this section by replacing old classification types with the new types.

Prohibition against demonstration of unclassified computer game

Clause 5 amends this section by replacing old classification types with the new types.

Restriction on demonstration of MA(15+) computer game

Clause 6 amends this section by replacing an old classification type with the new type.

Prohibition against advertising certain computer games

Clause 7 amends this section by replacing old classification types with the new types.

Classified computer games containing advertisements for other computer games

Clause 8 amends this section by replacing old classification types with the new types.

Display for sale of MA(15+) computer game

Clause 9 amends this section by replacing an old classification type with the new type.

Sale of MA(15+) computer game to certain children prohibited

Clause 10 amends this section by replacing an old classification type with the new type.

Sale of unclassified computer games prohibited

Clause 11 amends this section by replacing old classification types with the new types.

Conversion of particular classifications of computer games to equivalent new classifications

Clause 12 inserts transitional provisions contained in a new Part 9. The new section will provide that:

- if a computer game had, before commencement of the amendments, a certain classification, after the amendments come into force, the game will be taken to have been provided with the new classification;
- a reference to an original classification is taken to be a reference to the new classification if permitted by the context; and
- a change in classification type does not affect a proceeding (regardless of when it started) for an offence alleged to have been committed before 26 May 2005 – the commencement date for the amendments.

Part 3 Amendment of *Classification of Films Act 1991*

Act amended

Clause 13 provides that this Part of the Bill amends the *Classification of Films Act 1991*.

Definitions

Clause 14 amends this section by replacing old classification types with new types.

Prohibition against exhibition of certain films in public places

Clause 15 amends this section by replacing old classification types with the new types.

Classified films - exhibiting advertisements for other films

Clause 16 amends this section by replacing old classification types with the new types.

Attendance of certain minors at exhibition of certain films - offence by exhibitor

Clause 17 amends this section by replacing old classification types with the new types.

Attendance of minor at exhibition of certain films - offence by other persons

Clause 18 amends this section by replacing an old classification type with the new type.

Minors not to be present at exhibition of certain films – offence by minor

Clause 19 amends this section by replacing an old classification type with the new type.

Power to require particulars of name, address and age

Clause 20 amends this section by replacing old classification types with the new types.

Offences relating to particulars

Clause 21 amends this section by replacing old classification types with new types.

Classified films containing advertisements for other films

Clause 22 amends this section by replacing old classification types with the new types.

Display for sale of “MA” or “R” film

Clause 23 amends this section by replacing old classification types with the new types.

Sale of “MA” or “R” film to certain minors prohibited

Clause 24 amends this section by replacing old classification types with the new types.

Display and sale of objectionable and unclassified films prohibited

Clause 25 amends this section by replacing old classification types with the new types.

Exhibition of an “R” or objectionable film before a minor

Clause 26 amends this section by replacing an old classification type with the new type.

Display and sale of objectionable film prohibited

Clause 27 amends this section by replacing an old classification type with the new type.

Keeping together of classified and objectionable films prohibited

Clause 28 amends this section by replacing an old classification type with the new type.

Possession of objectionable film

Clause 29 amends this section by replacing an old classification type with the new type.

No liability in certain circumstances

Clause 30 amends this section by replacing an old classification type with the new type.

Evidentiary provisions

Clause 31 amends this section by making a minor drafting change to correct the erroneous use of double quotation marks around the classification type in the Act.

Certain classified films not indecent or obscene

Clause 32 amends this section by replacing old classification types with new types.

Clause 33 inserts a new Division heading referring to saving and transitional provisions for a previous amendment Act.

Clause 34 inserts a new Division heading referring to transitional provisions for a previous amendment Act.

Conversion of particular classifications of films to equivalent new classifications

Clause 35 inserts a new Division heading containing transitional provisions for this amendment Act. A new section inserts transitional provisions providing that:

- if a film had, before commencement of the amendments, a certain classification, after the amendments come into force, the film will be taken to have been provided with the new classification;
- a reference to an original classification is taken to be a reference to the new classification if permitted by the context; and
- a change in classification type does not affect a proceeding (regardless of when it started) for an offence alleged to have been committed before 26 May 2005 – the commencement date for the amendments.

Part 4 Amendment of *Classification of Publications Act 1991*

Act amended

Clause 36 provides that this Part of the Bill amends the *Classification of Publications Act 1991*.

Definitions

Clause 37 modifies the definition of “publication” so that it is the same as the definition of “publication” in the Commonwealth *Classification (Publications, Films and Computer Games) Act 1995*. Cross references are provided to other relevant definitions to assist in understanding the new definition.

Part 5 Amendment of *Criminal Code*

Act amended

Clause 38 provides that this Part of the Bill amends the *Criminal Code*.

Defences for ss 228A—228D

Clause 39 amends section 228E of the *Criminal Code* by replacing old classification types with the new types.

Part 6 Amendment of *Land Sales Act 1984*

Act amended

Clause 40 provides that this Part of the Bill amends the *Land Sales Act 1984*.

Extension of period mentioned in s 27 for giving of registrable instrument

Clause 41 amends section 28(1) of the *Land Sales Act 1984* by removing 4 ½ years and replacing it with 5 ½ years.

Part 7 Amendment of *Tourism Queensland Act 1979*

Act amended

Clause 42 provides that this Part of the Bill amends the *Tourism Queensland Act 1979*.

Functions of corporation

Clause 43 amends section 13(1) to provide that, in relation to the promotion and marketing, domestically and internationally, of tourism and

travel, the development of the tourist and travel industry, the making of tourism and travel arrangements, and the provision of tourism and travel information services, the functions of the corporation are to facilitate the doing of those things. As provided by new section 13(5), this may continue to be achieved by the corporation directly doing these things.

Section 13(2) is also amended to clarify that the corporation's primary responsibilities are to facilitate the promotion, marketing and development of tourism and travel to and within Queensland.

Powers of corporation

Clause 44 inserts new section 14(3) to empower the corporation to enter into an arrangement with a person for the doing of a thing mentioned in new section 13(1)(a)(i) to (iv). New section 14(5) defines the term *arrangement*.