

Justice Legislation Amendment Bill 2008

Explanatory Notes

Short Title

The short title of the Bill is the Justice Legislation Amendment Bill 2008.

Objective of the Bill

Consumer Credit Code Amendments

The uniform Consumer Credit Code (the Code) commenced in all Australian jurisdictions on 1 November 1996 and is part of a uniform national legislative scheme which applies to most consumer credit products. The Code is an appendix to the *Consumer Credit (Queensland) Act 1994* and governs the provision of credit to consumers for personal, domestic or household purposes. It sets out rules to govern the transactional aspects of consumer credit business and provides remedies and penalties when those rules are not followed. The national structure of the Code utilises a template which is held by Queensland. Under the Australian Uniform Consumer Credit Laws Agreement 1993, any amendments to the Code must be made to the Queensland template legislation.

Following the implementation of the Code, the Ministerial Council on Consumer Affairs agreed to undertake a Post Implementation Review (PIR) of the Code to determine whether its objectives were being achieved. The Code was also subject to a National Competition Policy (NCP) Review. Both Reviews recommended amendments to the Code and have been endorsed by the Standing Committee of Officials of Consumer Affairs and the Ministerial Council on Consumer Affairs. A key recommendation of the NCP Review is that ‘terms sale of land contracts’, ‘conditional sale agreements’ and ‘tiny terms contracts’ are brought within the scope of the Code, necessitating amendments to the Code.

The objective of the Bill is to amend the *Consumer Credit (Queensland) Act 1994* to ensure ‘terms sale of land contracts’, ‘conditional sale agreements’ and ‘tiny terms contracts’ are credit contracts under the Code

ensuring that appropriate consumer protection mechanisms are in place for consumers who utilise these arrangements.

Amendments to other Departmental Acts

The overall objective of the various amendments to a range of other Departmental Acts is to clarify and improve the operation of these Acts. These amendments include:

- consequential amendments to the *Classification of Publications Act 1991*, the *Classification of Films Act 1991* and the *Classification of Computer Games and Images Act 1995* as a result of changes in Commonwealth legislation;
- amendments to the *Classification of Publications Act 1991*, the *Classification of Films Act 1991* and the *Classification of Computer Games and Images Act 1995* to empower the Commercial and Consumer Tribunal to review decisions made under the three Queensland Classification Acts;
- amendments to the *Commercial and Consumer Tribunal Act 2003* in relation to the definition of empowering Acts;
- amendments to the *Property Agents and Motor Dealers Act 2000* to allow the Claim Fund established under the Act to be used to meet the costs for special investigators and receivers appointed by the Chief Executive; and
- amendments to the *Crime and Misconduct Act 2001* to make it clear that local government is, and always has been, subject to the Crime and Misconduct Commission's jurisdiction.

Reasons for the Bill

Consumer Credit Code amendments

'Terms sale of land contracts' (a 'sale on vendor's terms' or a 'wrap loan') involve the sale of land where the purchase price is payable to the vendor in instalments. The vendor allows the purchaser to take possession of the land but retains title until payment of the final instalment, at which time conveyance takes place. A 'wrap loan' refers to a vendor's terms contract where the vendor borrows money to finance the property, which they then on-sell (wrap) to the purchaser. Consumers may or may not be aware that they are being charged extra over and above the purchase price for the provision of vendor finance.

Consumer advocate and advisory groups have indicated typical ‘terms sale of land contracts’ involve:

- Purchasers in the lower income bracket, often not well versed in commercial matters and often experiencing difficulty in making repayments.
- Purchasers who may have been refused or are unable to access mainstream credit.
- Property being purchased for residential purposes.
- Payments being made directly into the vendor’s bank account.
- Interest not always being quoted in the contract, but incorporated in the overall purchase price.
- Interest being usually charged at a substantially higher rate to the purchaser than the rate the vendor is paying to a financial institution.
- Purchasers being made liable for additional charges such as the vendor’s legal costs, insurance, rates and maintenance for the property, as well as the initial deposit for the house.
- Property usually being purchased at a higher price than the vendor purchased it. Although this may be normal business practice, the amount paid is an amount above and beyond the market price.
- Purchasers using their First Home Buyers Grant for the deposit.
- If a purchaser defaults in the payment of the loan, the vendor finds another willing buyer and obtains the deposit for the property a second time. Many of the homes used in wrap loans roll over regularly.

Stakeholders have raised doubts about the application of the Code to ‘terms sale of land contracts’. The aim of the NCP recommendation is to ensure that consumers of ‘terms sale of land contracts’ have protection under the Code.

A ‘conditional sale agreement’ or ‘Romalpa agreement’ is an agreement for the sale of goods which operates in a similar manner to ‘terms sale of land contracts’. The purchase price is payable in instalments and the seller allows the purchaser to take possession of the goods but retains title until payment of the final instalment. Examples of these agreements involve the long-term purchase of household and domestic items or the sale of exclusive products, such as encyclopaedias or “learning aids” which are not otherwise available for sale for cash.

Stakeholders have identified problems with ‘conditional sale agreements’ of a similar nature to those described above with respect to ‘terms sale of land contracts’ and have raised doubts about the application of the Code to these agreements.

The aim of the NCP recommendation is to ensure consumers of ‘conditional sale agreements’ have protection under the Code.

‘Tiny terms contracts’ are contracts where the cost of credit is incorporated into the cash price and the transaction is represented as a sale of goods by instalment (without any credit charges or interest). ‘Tiny terms contracts’ appeal to purchasers who are unable to access credit through mainstream lenders as a result of a possible poor credit history, unstable employment record or other failure to meet bank lending criteria.

These contracts are mainly used to sell motor vehicles. In disguising the cost of credit, the contracts seek to avoid the Code. Under this scheme, vehicles are being sold on ‘interest-free finance’ to allow a purchaser to pay off their vehicle in instalments. The amount specified in the contract is the ‘purchase price’ of the vehicle which is the amount repayable by the purchaser. The ‘purchase price’ is inflated to incorporate the interest component of the sale. The practice is usually used by dealerships selling cheaper motor vehicles where their customers are more likely to want to enter into such payment arrangements which suit their financial situation.

Problems resulting from ‘tiny terms contracts’ are:

- The contract terms and conditions are usually extremely harsh.
- Some contract terms are ambiguous, and sometimes even unwritten, creating fundamental problems of contractual uncertainty.
- Dealers often do not provide the contract documentation or statements of account in the first instance or when requested, or the language of the documentation is unintelligible to most consumers.
- Dealers often resort to unscrupulous collection practices.
- The sale price of the vehicle is usually 3 or 4 times its value.
- The terms of the contract usually provide that the consumer has no equity in the vehicle until the last payment is made.
- The vehicle can be repossessed without notice as soon as a payment is missed.

- All vehicle repairs must be done at the yard where the vehicle is bought and the cost of repairs are added to the loan.

The NCP Review recommended amending the Code to clarify that the Code applies to ‘tiny terms contracts’.

Amendments to the Classification Acts

Queensland is part of a National Classification Scheme, being a co-operative arrangement between the Commonwealth, States and Territories. Each State and Territory has enacted classification and enforcement legislation to complement the *Classification (Publications, Films and Computer Games) Act 1995* (Cth).

Minor consequential amendments have been made to Queensland’s Classification Acts to reflect changes to the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) as a result of the *Classification (Publications, Films and Computer Games) Amendment Act 2007* (Cth) and the *Classification (Publications, Films and Computer Games) Amendment (Assessment and Advertising) Bill 2008* (Cth). The three Queensland Classification Acts affected by these consequential amendments are the *Classification of Publications Act 1991*, the *Classification of Films Act 1991* and the *Classification of Computer Games and Images Act 1995*.

The relevant amendments to the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) as a result of the *Classification (Publications, Films and Computer Games) Amendment Act 2007* include the following:

- amendments to facilitate the integration of the previous Office of Film and Literature Classification into the Australian Attorney-General’s Department;
- amendments to delineate the administration functions of the Classification Board from the Classification Review Board in order to reinforce their independence and subsequently redistribute powers between the Director of the Classification Board and the Convenor of the Classification Review Board; and
- amendments to streamline the classification scheme by:
 - (i) removing the necessity to reclassify films when certain additional content is added (such as captioning or navigation functions); and

- (ii) remove the necessity to make a separate application for classification when previously classified films are brought together on a single disk.

These amendments will make it easier to include accessibility features, such as captions for hearing impaired persons. They also respond to technological advances that now allow numerous films to be included on a single disc and the increasing popularity of boxed sets of DVDs. Where the films have all been previously classified individually, the requirement to resubmit them for classification simply because they have been put together on a single disk will be removed.

The Classification (Publications, Films and Computer Games) Amendment (Assessment and Advertising) Bill 2008 (Cth) will amend the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) to allow the Minister, by legislative instrument, to determine a scheme for the advertising of unclassified films and computer games. At the time of introduction of the Justice Legislation Amendment Bill 2008, the Classification (Publications, Films and Computer Games) Amendment (Assessment and Advertising) Bill 2008 (Cth) had been introduced into the Commonwealth Parliament but not yet passed. The consequential amendments to the three Queensland Classification Acts will thus commence upon proclamation to coincide with the commencement of the Commonwealth Act.

Currently only classified films and computer games can be advertised, with limited exceptions for public exhibition films released in cinemas but not for other films released on DVD or for computer games. Amendments were considered necessary to respond to the way in which film and computer games are distributed due to emerging technologies and the increasing threat of piracy. The film and games industries can no longer afford to stagger release dates across the globe. Therefore the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) has been amended to update the advertising classification scheme to account for rapid technological advances, changes in user preferences, and changes in advertising and marketing practices.

Currently, separate appeals tribunals are established under each of the three Queensland Classification Acts to hear and determine appeals against decisions of the classifications officer. Few appeals are ever lodged under any of the three Classification Acts, therefore an amendment is necessary to empower the Commercial and Consumer Tribunal to review decisions made under the three Classification Acts and avoid the necessity to

constitute three separate tribunals. The Commercial and Consumer Tribunal is empowered to review decisions made under various Acts. It has the infrastructure, capacity and expertise (the current Chair of the Commercial and Consumer Tribunal is the Chair of the three Classification Tribunals) to hear the minimal classification reviews expected.

Amendments to the *Commercial and Consumer Tribunal Act 2003*

Currently the schedule 2 dictionary definition of 'empowering act' includes the list of legislation under which the Commercial and Consumer Tribunal is empowered to hear, decide and review various matters.

As the empowering Acts themselves reference the Commercial and Consumer Tribunal, it is now thought unnecessary to include a list of such legislation in the schedule 2 definition of 'empowering Act'. This amendment, removing the list, will thereby avoid the need to continue to update the *Commercial and Consumer Tribunal Act 2003* every time a new empowering Act gives jurisdiction to the Commercial and Consumer Tribunal.

Amendments to the *Crime and Misconduct Act 2001*

Part 3 of the *Local Government and Industrial Relations Amendment Act 2008* amended the *Local Government Act 1993* to provide that local governments, with the exception of the Brisbane City Council, are not corporations.

An unintended effect of the above amendment was to arguably remove local government from the operation of section 20(1)(e) of the *Crime and Misconduct Act 2001* due to the loss of corporate status. However the Crime and Misconduct Commission's jurisdiction over local government was maintained pursuant to section 20(1)(f) of the *Crime and Misconduct Act 2001* because all local governments currently receive some State funding.

A regulation has recently been made pursuant to section 20(1)(h) of the *Crime and Misconduct Act 2001* prescribing local government as a unit of public administration. To avoid doubt and to remove the necessity to prove State funding of local governments prior to the making of the regulation; the *Crime and Misconduct Act 2001* is being amended to provide that a local government is a unit of public administration under section 20 of the *Crime and Misconduct Act 2001*. The amendment makes it clear that every local government and joint local government has always been, and, despite sections 34(3) and 49(4) of the *Local Government Act 1993*, continued to

be, a unit of public administration under the *Crime and Misconduct Act 2001*

Amendments to the *Property Agents and Motor Dealers Act 2000*

The *Property Agents and Motor Dealers Act 2000* allows a receiver to be appointed if the Chief Executive believes on reasonable grounds that a misappropriation has, or may have been committed in relation to a licensee's trust account. The Act also allows the Chief Executive to appoint a special investigator if the Chief Executive considers the trust account has not been kept as required under the Act.

To date the costs of such appointments have been met from the controlled budget for the Office of Fair Trading. Although these costs are recoverable, the time taken to effect this imposes a significant financial burden on the Office.

The Claim Fund established under the *Property Agents and Motor Dealers Act 2000* has significant resources, however the Act previously limited payments from this fund to meeting the costs of claims. The amendment will therefore extend the uses to which the Claim Fund may be used to cover the interim cost of appointing a receiver or special investigator.

Achievement of the Objective

Consumer Credit Code Amendments

'Terms sale of land contracts', 'conditional sale agreements' and 'tiny terms contracts' are arguably already covered by the Code. Support for this was recently provided in relation to vendor terms by the Victorian Supreme Court decision in *Geeveekay Pty Ltd & Ors v Director of Consumer Affairs Victoria [2008] VSC 50 (28 February 2008)*.

However, this was a single judge decision and doubts have been raised in the PIR and NCP Reports about the application of the Code to these types of credit arrangements. The amendments remove any uncertainty about the Code applying to 'terms sale of land contracts', 'conditional sale agreements' and 'tiny terms contracts'.

Amendments to the Classification Acts

Consequential to the changes to the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) arising from the *Classification (Publications, Films and Computer Games) Amendment Act 2007*, the three Queensland Classification Acts will be amended:

- to provide that where certain powers have been conferred on the Director of the Classification Board, these will be conferred on the Convenor of the Classification Review Board;
- to provide that it is the Minister rather than the Director of the Classification Board who now determines classification markings that must be displayed on classified items;
- to change the prohibition on the sale or exhibition of films under a title different to that under which they were originally classified, or in a form different to which they were originally classified, if those films are now included on a single device containing two or more classified films (such as boxed sets of DVDs); and
- to change the prohibition on the sale or exhibition of films in a different form from which they were originally classified, if certain alterations or additions are made (such as navigation functions or captions for the hearing impaired).

Consequential to the changes to the *Classification (Publications, Films and Computer Games) Act 1995* (Cth), which will be effected by the *Classification (Publications, Films and Computer Games) Amendment (Assessment and Advertising) Bill 2008* (Cth), the *Classification of Films Act 1991* and the *Classification of Computer Games and Images Act 1995* will be amended to allow advertisements for unclassified films or computer games to be exhibited, published or sold if they are allowed under the Commonwealth Act. That is, they must be approved under the advertising scheme established by the Minister under a legislative instrument. This scheme will also provide for various safeguards such as commensurate advertising so that an unclassified film or computer game can only be advertised together with a classified film or game where it is likely classification is the same or lower than the classified product.

Appeals under the three Classification Acts

The three Queensland Classification Acts will be amended to give the Commercial and Consumer Tribunal jurisdiction to review decisions made under the three Classification Acts.

Amendments to the *Commercial and Consumer Tribunal Act 2003*

The definition of ‘empowering Act’ has been amended to remove the list of empowering Acts and instead state: “*an Act, other than this Act, under which the tribunal is empowered to deal with particular matters*”. This definition is considered sufficient, as the empowering Acts themselves reference the Commercial and Consumer Tribunal as having jurisdiction.

Amendments to the *Crime and Misconduct Act 2001*

The *Crime and Misconduct Act 2001* is being amended to provide that local government is a unit of public administration under section 20 of the *Crime and Misconduct Act 2001* and to declare that every local government and joint local government has always been, and, despite sections 34(3) and 49(4) of the *Local Government Act 1993*, continued to be, a unit of public administration under the *Crime and Misconduct Act 2001*.

Amendments to the *Property Agents and Motor Dealers Act 2000*

The *Property Agents and Motor Dealers Act 2000* will be amended to allow the Claim Fund to be used to pay the costs for receivers appointed under section 417 or a special investigator appointed under section 440. These costs are recoverable under section 434 (for a receiver) and section 445 (for a special investigator). The amounts that are recovered from the licensee will be paid into the Claim Fund.

Estimated Cost for Government Implementation

Nil.

Consistency with Fundamental Legislative Principles

The amendments to the *Crime and Misconduct Act 2001* may be interpreted as being retrospective in that they declare that local government and joint local government is, and has always been, a unit of public administration under the *Crime and Misconduct Act 2001*. This has always been the case so the Bill does not affect rights and liberties, or impose obligations, retrospectively.

The amendments to the *Commercial and Consumer Tribunal Act 2003* may be seen to have insufficient regard to the rights and liberties of individuals as they will result in the disbanding of the three Classification Tribunals, without compensation payable for loss of remuneration to the currently appointed members. However, the current members are only appointed on

a part-time basis for not more than three years, no appeals have been heard, and any existing appeals are to continue under the existing system so that parties and tribunal members will not be affected by the proposal.

The declaratory provision inserted in the *Commercial and Consumer Tribunal Act 2003* may be seen to have some retrospective effect. However, it is technical in nature, and merely clarifies what is an empowering Act for that Act.

Consultation

Community

With regard to the credit amendments, extensive consultation with industry and the community occurred during the PIR and the NCP Review. Stakeholder comments were considered when the final NCP recommendations were determined. An exposure draft Bill to amend the Code and Explanatory Paper were released for public consultation in October 2005. The Bill has been redrafted taking into account concerns raised by stakeholders.

Government

The proposed amendments to the Credit Code have been approved by the Ministerial Council on Consumer Affairs.

The Director of the Commercial and Consumer Tribunal and the various Government Departments that administer the empowering Acts for the *Commercial and Consumer Tribunal Act 2003* have been consulted about the proposed amendment to Schedule 2 of this Act.

The members of the three Classification Tribunals have been consulted about the proposal to abolish the three Classification Tribunals and give the Commercial and Consumer Tribunal jurisdiction to hear classification appeals.

Queensland Treasury was consulted in relation to the proposed amendments to the *Property Agents and Motor Dealers Act 2000*.

The consequential amendments to the Queensland Classification Acts are technical in nature and did not require consultation.

The Crime and Misconduct Commission, the Department of Premier and Cabinet, and the Department of Local Government, Sport and Recreation have been consulted on the proposed amendments to the *Crime and Misconduct Act 2001*.

The other amendments in the Bill have not been the subject of community consultation as they clarify and improve the operation of the relevant Acts.

Notes on Provisions

Part 1 Preliminary

Clause 1 provides that the short title is the *Justice Legislation Amendment Act 2008*.

Clause 2 provides for commencement of certain provisions.

The following provisions commence on a day to be fixed by proclamation-

- part 2, sections 7, 8 and 14(3) and (4)
- part 3, sections 19, 21, 23, 24 and 32 (to the extent that it inserts new section 72)
- part 6
- schedule

The remaining provisions will commence on assent.

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

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

Clause 4 amends section 8 so that a decision by the computer game classification officer in relation to the classification of a computer game

under section 5 can now be reviewed by the Commercial and Consumer Tribunal.

Previously section 8 provided that an appeal would be to the Computer Games and Images Appeals Tribunal.

Clause 5 amends section 8B to replace ‘director’ with ‘convenor’.

The amendment reflects the new delineation of administrative functions under the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) between the Classification Board and the Classification Review Board in order to reinforce their independence and the subsequent redistribution of powers between the director of the Classification Board and the convenor of the Classification Review Board. It is now the convenor of the Classification Review Board who has the power to require a relevant person to provide a copy of a computer game for the purpose of the Review Board conducting a review of that computer game.

Clause 6 amends section 12 to remove the reference to the ‘director’.

The *Classification (Publications, Films and Computer Games) Act 1995* (Cth) now provides that it is the Minister, rather than the director who has the power to determine markings for each type of classification and the manner in which they are to be displayed. This change reflects the integration of the previous Office of Film and Literature Classification, into the Australian Attorney-General’s Department, and the removal of the Director’s responsibilities for administration of the Office.

Clause 7 amends section 13A to remove the general prohibition on publishing an advertisement for an unclassified computer game. It now provides that a person may only publish, or attempt to publish, an advertisement for an unclassified computer game, if that advertisement is allowed under the Commonwealth Act.

Previously, advertisements for unclassified computer games could not be published. The *Classification (Publications, Films and Computer Games) Act 1995* (Cth) now allows the Minister, by legislative instrument, to determine a scheme for the advertising of unclassified computer games. This legislative instrument will set conditions on advertising unclassified computer games and establish an industry based self-assessment scheme.

Clause 8 amends section 16 to remove the general prohibition on selling or attempting to sell a computer game containing an advertisement for an unclassified computer game. It now provides that a person may only sell, or attempt to sell, a classified computer game containing an advertisement for

an unclassified computer game if the advertisement is allowed under the Commonwealth Act. Section 16 specifically provides for commensurate advertising so that computer games of a certain classification are not sold containing advertisements for computer games of a higher classification.

Previously, as the Act prohibited the publishing of advertisements for unclassified computer games, there was no provision in this section that provided guidance in relation to commensurate advertising for computer games sold with advertisements for unclassified computer games. The details of the commensurate advertising requirements for advertisements for unclassified computer games will be in the legislative instrument that determines the scheme for the advertising of unclassified films and unclassified computer games.

Clause 9 replaces the current Part 7, division 3 to reflect that the Commercial and Consumer Tribunal will now review decisions made by the computer games classification officer under section 56, section 58 and section 59 of the Act.

Clause 10 omits section 61 as it relates to the specific powers and procedures of the Computer Games and Images Appeals Tribunal.

Clause 11 amends the heading for section 67 so that it will read 'Regulation-making power', and omits section 67(3) that relates to the constitution, practice and procedure of the appeal body.

This change reflects that the Commercial and Consumer Tribunal will now review decisions made under the Act. Currently the Regulations provide for the constitution, practice and procedure of the Computer Games and Images Appeals Tribunal.

Clauses 12 and 13 amend the current transitional provisions, inserting new transitional provisions into the Act for appeals and existing proceedings for offences in relation to advertisements for computer games in part 4 of the Act.

Existing appeals (those started prior to the commencement of the amendments, but not yet determined) will continue to be heard by the Computer Games and Images Appeals Tribunal. Where there is an existing entitlement to appeal (that is, a person may be entitled to appeal against a decision made prior to the commencement of the amendments, but this appeal has not yet started), the new provisions empowering the Commercial and Consumer Tribunal to review the decisions will apply.

Any existing proceedings for offences relating to advertisements on clothing for computer games that were started but not ended before the commencement of the *Justice Legislation Amendment Act 2008* will continue. This transitional provision is required because clause 14 amends the definition of advertising to exclude advertising on clothing so that any provision in part 4 in relation to prohibitions on advertising computer games will no longer include advertising on clothing.

Clause 14 amends the Schedule 2 Dictionary.

Definitions of ‘CCT’, ‘CCT Act’ and ‘convenor’ have been added to the Dictionary. The definition of ‘advertisement’ has been amended, consequential to amendments made to the *Classification (Publications, Films and Computer Games) Act 1995* (Cth). The new definition of ‘advertisement’ explicitly includes advertising on the internet and excludes product merchandising, including, for example, on clothing.

Part 3 Amendment of *Classification of Films Act 1991*

Clause 15 states that this part amends the *Classification of Films Act 1991*.

Clause 16 amends the definitions in section 3.

A definition of ‘convenor’ has been added. The definition of ‘advertisement’ has been amended, consequential to amendments made to the *Classification (Publications, Films and Computer Games) Act 1995* (Cth). The new definition of ‘advertisement’ explicitly includes advertising on the internet and excludes product merchandising, including, for example, on clothing.

Clause 17 inserts a new section 3B.

This new section clarifies that when several previously classified films are brought together for distribution as a single package, for example in boxed sets of DVDs, the product does not require a new classification, even if the films are contained on one disc.

Therefore this section will provide that previously classified films that are brought together for distribution as a single package, will not contravene

the prohibitions in the Act in relation to exhibiting, selling or displaying unclassified films.

Clause 18 amends section 21.

These amendments clarify that a person will not contravene the prohibition on exhibiting a film in a public place under a different title from that under which it was classified, if the film is now contained on a single device consisting of two or more classified films.

These amendments also clarify that a person will not contravene the prohibition on exhibiting a film in a public place, if certain alterations or additions are made that would not affect that classification.

The *Classification (Publications, Films and Computer Games) Act 1995* (Cth) has been amended to remove the requirement to re-submit films for classification following the addition of descriptions or translations such as sub-titling, captioning, dubbing or audio descriptions, and navigation junctions such as interactive menus to already classified films. Such additions do not provide new content, requiring classification or a review of the original classification.

Clause 19 amends section 21A to provide that a person may only exhibit, or attempt to exhibit, a classified film that contains an advertisement relating to an unclassified film if the advertisement is allowed under the Commonwealth Act. Section 21A specifically provides for commensurate advertising so that films of a certain classification are not shown with advertisements for films of a higher classification.

Previously there was a general prohibition on exhibiting advertisements for unclassified films. The details of the commensurate advertising requirements for advertisements for unclassified films will be in the legislative instrument that determines the scheme for the advertising of unclassified films and unclassified computer games.

Clause 20 amends section 25CC to replace ‘director’ with ‘convenor’

This change reflects the new delineation of administrative functions under the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) between the Classification Board and the Classification Review Board in order to reinforce their independence and the subsequent redistribution of powers between the director of the Classification Board and the convenor of the Classification Review Board. It is now the convenor of the Classification Review Board who has the power to require

a relevant person to provide a copy of a film for the purpose of the Review Board conducting a review of that film.

Clause 21 amends section 26 to remove the general prohibition on publishing, or attempting to publish an advertisement for an unclassified film and to remove section 26(2). It now provides that an advertisement for an unclassified film may only be published if it is allowed under the Commonwealth Act.

Previously, advertisements for unclassified films could not be published. The *Classification (Publications, Films and Computer Games) Act 1995* (Cth) now allows the Minister, by legislative instrument, to determine a scheme for the advertising of unclassified films and unclassified computer games. This legislative instrument will set conditions on advertising unclassified films and computer games and establish an industry based self-assessment scheme.

While there was previously a prohibition on advertising all unclassified films, the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) did provide for an exemption scheme where a limited number of films for public exhibition per year could be provided with an exemption by the Classification Board. This exemption would enable the film to be advertised prior to classification. This advertising exemption scheme has now been removed.

Clause 22 amends section 27 to remove the reference to the ‘director’.

The *Classification (Publications, Films and Computer Games) Act 1995* (Cth) now provides that it is the Minister, rather than the director who has the power to determine markings for each type of classification and the manner in which they are to be displayed. This change reflects the integration of the previous Office of Film and Literature Classification, into the Australian Attorney-General’s Department and the removal of the director’s responsibilities for administration of the Office.

Clause 23 amends section 28 to remove the general prohibition on publishing an advertisement for an unclassified film and removes an outdated reference to the ‘censor’. It now provides that an advertisement for an unclassified film may only be published if it is allowed under the Commonwealth Act as outlined above, in relation to section 26 and the advertising scheme determined by the Minister.

Clause 24 amends section 31 to provide that a person may only sell, or display for sale, a classified film that contains an advertisement relating to

an unclassified film if the advertisement is allowed under the Commonwealth Act. Section 31 specifically provides for commensurate advertising so that films of a certain classification are not sold containing advertisements for films of a higher classification.

The details of the commensurate advertising requirements for advertisements for unclassified films will be in the legislative instrument that determines the scheme for the advertising of unclassified films and unclassified computer games.

Clause 25 inserts a new section 36A. This section provides for a new prohibition that a person must not sell or display for sale, a film unless the film is sold or displayed for sale with the same title as the title under which it is classified.

This amendment will bring the Act into line with other States' Classification Acts and provide for a more consistent approach throughout the Act.

As with the amendments to section 21 noted above, this new section will clarify that a person will not contravene the prohibition on selling a film under a different title from that under which it was classified, if the film is now contained on a single device consisting of two or more classified films (such as a boxed set of DVDs). The new section will also clarify that a person will not contravene this new prohibition if certain alterations or additions are made such as the addition of descriptions or translations such as sub-titling, captioning, dubbing or audio descriptions, and navigation junctions such as interactive menus to already classified films.

Clause 26 amends section 52 to remove the outdated term 'censor' and replace it with 'films classification officer'.

Clause 27 replaces section 59.

Previously section 59 provided that an appeal from a decision made under this Act by the films classification officer under section 56 or section 58 would be to the Films Appeals Tribunal. The Commercial and Consumer Tribunal will now review these decisions.

Clause 28 amends section 60 to remove the reference to the 'director' and replace it with 'relevant entity'.

This change reflects the redistribution of powers between the director of the Classification Board and the convenor of the Classification Review Board. The convenor of the Classification Review Board now has the power to issue a classification certificate following a decision of the

Review Board, however the director will continue to issue classification certificates following a decision of the Classification Board. Therefore, the definition of 'relevant entity' covers both situations.

Clause 29 amends section 65 to so that it will read 'Regulation-making power' and omits section 65(5) that relates to the constitution, practice and procedure of the appeal body.

This change reflects that the Commercial and Consumer Tribunal will now review decisions made under the Act. Currently the Regulations provide for the constitution, practice and procedure of the Films Appeals Tribunal.

Clauses 30, 31 and 32 amend the transitional provisions and insert new transitional provisions for appeals, existing exemptions for advertisements given under the Commonwealth Act, and existing proceedings for offences in relation to advertisements for films in part 4 of the Act.

Existing appeals (those started prior to the commencement of the amendments, but not yet determined) will continue to be heard by the Films Appeals Tribunal. Where there is an existing entitlement to appeal (that is, a person may be entitled to appeal against a decision made prior to the commencement of the amendments but this appeal has not yet started), the new provisions empowering the Commercial and Consumer Tribunal to hear the appeal will apply.

While there was previously a prohibition on advertising all unclassified films, the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) did provide for an exemption scheme where a limited number of films for public exhibition per year could be provided with an exemption by the Classification Board. This exemption would enable the film to be advertised prior to classification. This advertising exemption scheme has now been removed. Transitional arrangements will provide that those films provided with an exemption prior to the amendments will continue to be able to be advertised.

Any existing proceedings for offences relating to advertisements on clothing for films that was started but not ended before the commencement of the *Justice Legislation Amendment Act 2008* will continue. This transitional provision is required because clause 16 amends the definition of advertising to exclude advertising on clothing so that any provision in part 4 in relation to prohibitions on advertising films will no longer include advertising on clothing.

Part 4 **Amendment of *Classification of Publications Act 1991***

Clause 33 states that this part amends the *Classification of Publications Act 1991*.

Clause 34 amends section 3 (Definitions). The definition of ‘advertisement’ has been amended, consequential to amendments made to the *Classification (Publications, Films and Computer Games) Act 1995* (Cth). ‘CCT’ is also defined to mean the Commercial and Consumer Tribunal and ‘CCT Act’ to mean the *Commercial and Consumer Tribunal Act 2003*.

The Commercial and Consumer Tribunal will now review decisions made by the publications classification officer under the Act.

Clause 35 replaces the current section 11 to reflect that the Commercial and Consumer Tribunal will now review decisions made by the publications classifications officer and to omit provisions that relate to specific powers and procedures of the Publications Appeals Tribunal.

Clause 36 amends section 11C(4)(e) to reflect that the Commercial and Consumer Tribunal will now review decisions made by the publications classifications officer in relation to display orders.

Clause 37 amends section 11D consequential to the amendments in section 11C and to reflect that it is the Commercial and Consumer Tribunal that will now review decisions made by the publications classifications officer in relation to display orders.

Clause 38 amends section 37 to reflect that the Commercial and Consumer Tribunal will now review decisions made by the publications classifications officer in relation to exemptions and to omit provisions that relate to specific powers and procedures of the Publications Appeals Tribunal.

Clause 39 amends section 38 to so that it will read ‘Regulation-making power’, and omits section 38(3) that relates to the constitution, practice and procedure of the appeal body.

This change reflects that the Commercial and Consumer Tribunal will now hear appeals under the Act. Currently the Regulations provide for the constitution, practice and procedure of the Publications Appeals Tribunal.

Clause 40 amends Part 6 (Savings and transitional provisions) and provides for transitional provisions for appeals.

Existing appeals (those started prior to the commencement of the amendments, but not yet determined) will continue to be heard by the Publications Appeals Tribunal. Where there is an existing entitlement to appeal (that is, a person may be entitled to appeal against a decision made prior to the commencement of the amendments but this appeal has not yet started), the new provisions empowering the Commercial and Consumer Tribunal to hear the appeal will apply.

Part 5 Amendment of *Commercial and Consumer Tribunal Act 2003*

Clause 41 states that this part amends the *Commercial and Consumer Tribunal Act 2003*.

Clause 42 makes a minor punctuation amendment to section 100.

Clause 43 amends the heading of Part 9 to now read ‘Transitional and Declaratory Provisions’.

Clause 44 omits part 10 and inserts a new Part 9, division 2 containing a declaratory provision.

The declaratory provision removes any doubt that an Act, before the commencement of this provision, that authorised any of the following, was an empowering Act for the *Commercial and Consumer Tribunal Act 2003*:

- a proceeding to be started in the tribunal;
- a decision to be reviewed by the tribunal; or
- any other matter or thing to be dealt with by the tribunal.

This is despite the fact that the empowering Act may not have been listed in the previous definition of ‘empowering act’ in schedule two, that contained a list of empowering Acts for the purpose of this definition.

Clause 45 amends the schedule 2 dictionary to change the definition of ‘empowering Act’ and correct an incorrect reference in the definition of ‘public examination’.

The definition of ‘empowering act’ has been amended to mean: “*an Act, other than this Act, under which the tribunal is empowered to deal with particular matters*”. The list of empowering acts currently in the schedule 2 dictionary will be removed. The new definition is considered sufficient as the empowering Acts themselves reference the Commercial and Consumer Tribunal as having jurisdiction.

Part 6 Amendment of Consumer Credit Code

Clause 46 states this part and the schedule amends the Consumer Credit Code (the Code) set out in the appendix to the *Consumer Credit (Queensland) Act 1994*.

Clause 47 inserts new sections 10A, 10B and 10C to the Code.

New section 10A specifies the circumstances for the Code to apply to particular contracts for the sale of land by instalments. The circumstances are stated in section 10A(1), including that the purchase price must exceed the cash price of the land. An important element is the amended meaning of ‘cash price’ in Schedule 1 (clause 50). New section 10A(2)(d) ensures credit providers disclose the charge for the credit, either as credit fees (charges) or as an annual percentage rate. A ‘wrap contract’ may contain both forms. Outgoings such as rates, water charges and house and contents insurance have been excluded from determining the charges. Although responsibility for such outgoings is often imposed on the purchaser, these items were excluded because they are not sufficiently connected with the provision of credit. To assist interpretation, a definition of “outgoings” is provided in section 10A(4).

New section 10B provides for the inclusion under the Code of particular contracts for the sale of goods by instalments. The Code will apply to a contract for the sale of goods if the amount payable to purchase the goods under the contract is payable in instalments and exceeds the cash price of the goods. Section 10B(2) makes clear that the new section does not apply to contracts for the hire of goods.

New section 10C captures contracts containing instalment payments that exceed the cash price of the goods and which are related to the contract for the actual sale of the goods. This section ensures certain contractual

arrangements currently being utilised in the marketplace will be subject to the Code.

Clause 48 amends section 15(B)(c) of the Code consequential to the amendment to the definition of 'cash price' in Schedule 1 of the Code (clause 50).

Clause 49 inserts new section 187 in the Code containing transitional provisions about the provision of credit for a sale of land or goods by instalments before the section's commencement.

Clause 50 replaces the definition of 'cash price' in the Code. The amendment adopts the concept of market value.

Part 7 **Amendment of *Crime and Misconduct Act 2001***

Clause 51 states that this part amends the *Crime and Misconduct Act 2001*.

Clause 52 inserts a new paragraph (da) into section 20(1) of the *Crime and Misconduct Act 2001* to provide that a local government is a unit of public administration.

Clause 53 amends the chapter heading to Chapter 8 of the *Crime and Misconduct Act 2001* and amends the headings for parts 2, 3 and 4 of Chapter 8 of the *Crime and Misconduct Act 2001*.

Clause 54 inserts a declaratory provision to the effect that to remove any doubt and to remove the necessity for proof of the funding for local governments, every local government and joint local government has always been, and despite sections 34(3) and 49(4) of the *Local Government Act 1993*, continued to be a unit of public administration.

Part 8 **Amendment of *Property Agents and Motor Dealers Act 2000***

Clause 55 states that this part amends the *Property Agents and Motor Dealers Act 2000*.

Clause 56 amends section 408 to make it clear that the funds transferred to the Claim Fund each financial year by the Treasurer can also be used to pay the remuneration or costs of a receiver or special investigator.

Clause 57 amends section 409 in relation to how the Claim Fund can be applied.

In addition to paying all claims allowed against the fund, the Claim Fund may now be used to pay the remuneration and costs of either or both a receiver appointed under section 417 or a special investigator appointed under section 440.

A note is included to state that these costs are recoverable under section 434 (for a receiver) and section 445 (for a special investigator). The amounts that are recovered will be paid into the Claim Fund under section 494.

Clause 58 amends section 433 in relation to money not dealt with by the receiver.

This section has been amended to reflect the new capacity to pay the remuneration and costs of receivers and special investigators from the Claim Fund. This section relates to the order of priority that money should be paid out of the Claim Fund. Money must now be paid from the fund in the following order:

- (a) to reimburse claims paid from the fund in relation to licensee;
- (b) to pay unsatisfied claims against the fund in relation the licensee;
- (c) to pay the remuneration and costs of a special investigator appointed under section 440;
- (d) to pay the remuneration and costs of a receiver under section 417; and
- (e) to pay claims by the licensee against the money.

Clause 59 amends section 434 consequential to the amendments to section 409, thereby enabling the remuneration and costs for receivers to be paid out of the Claim Fund.

Clause 60 amends section 445 consequential to the amendments to section 409, thereby enabling the remuneration and costs for special investigators to be paid out of the Claim Fund.

Schedule Minor amendments

The schedule includes minor drafting amendments to the Consumer Credit Code.

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