

CLASSIFICATION OF COMPUTER GAMES AND IMAGES (INTERIM) BILL 1995

EXPLANATORY NOTE

GENERAL OUTLINE

Objectives of the Legislation

The main objectives of the Bill are:

- (a) to classify all computer and video games published after the commencement of the legislation in accordance with guidelines agreed to by all States/Territories and the Commonwealth;
- (b) to ensure consumer information is provided to parents/guardians/care providers of children;
- (c) to prohibit the sale/distribution/exhibition of undesirable and exploitative material, especially material containing themes of sexual violence and abhorrent behaviour;
- (d) to enable the comprehensive classification of games that are exhibited or played in arcade parlours;
- (e) to ensure that an appropriate and proactive enforcement policy is adopted by vesting classification/certification powers in a State official, designated as the "Computer Games Classification Officer", in those circumstances when seized material has not already been classified by the Commonwealth Office of Film and Literature Classification.

Reasons for the Bill

The Commonwealth and all States and Territories have agreed that there is a need for computer games and images to be subject to a classification

regime so as to prevent exploitative and offensive material being sold/hired/displayed and also to provide consumer education to parents/guardians of children.

The Senate Select Committee on Community Standards Relevant to the Supply of Services Utilising Electronic Technologies, in its October 1993 report on *Video and Computer Games and Classification Issues* commended the proposal of Governments to establish and adopt uniform classification legislation for video and computer games. The Committee recommended that a high priority be accorded to achieving that goal and that censorship authorities maintain a monitoring role on the relevance of the legislation in a changing industry.

The computer and video games industry is expanding rapidly. In 1993 it was estimated that in the seven years since 1986 the video games industry alone had grown to a turnover of \$7 billion world-wide.

The Senate Select Committee received evidence that the arcade parlour industry in Australia employed approximately 5,000 people and that there were some 50,000 coin-operated arcade amusement machines. It was further estimated that the coin-operated arcade games account for only 30% of the official market, with the balance in video and computer games and bulletin boards.

At the present time, there is no legislation providing guidance to parents or targeting offensive material which is available to be purchased/hired and which can be loaded either onto computers or video games machines. The only specific legislative supervision is provided by the *Art Unions and Public Amusements Act 1992*. Pursuant to that statute a person must not conduct a public amusement unless licensed to do so and the chief executive has approved the public amusement and each game played on it. The chief executive must be satisfied that each game played on a public amusement is not offensive or obscene.

Accordingly, there is some supervision of the games played in arcade parlours, but there is no guidance on what games are "offensive or obscene" nor any mechanism for either consumer education or comprehensively protecting minors.

There is also concern that because of the level of technology involved with the use of video and computer games, many parents do not necessarily have the competency to ensure adequate parental guidance. It has been suggested that Governments need to provide some consumer education to

parents so that they are in a better position to monitor the material that their children have access to and play on video games machines or computers.

The proposed legislation will provide guidance to parents, and at the same time, ensure that there are adequate powers granted to both the Commonwealth Office of Film and Literature Classification and the State Censor so that a proactive enforcement policy can be put into place.

Estimated Cost for Government Implementation

There will be some extra costs for Government, in that inspectors will be able to seize material which presently is not subject to classification legislation, and the State Censor will be required to classify/certify seized material. However, costs for Government are not expected to be significant in the short to medium term.

Consultation

The proposed legislation has been the subject of consultation involving the Commonwealth and all States and Territories.

The Queensland legislation is modelled on provisions which were originally inserted in the ACT *Classification of Publications Ordinance 1983* by amendments introduced in February 1994.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

Clause 2 sets out the commencement date.

Clause 3 refers to the Dictionary for the Act contained in Schedule 2.

PART 2—CLASSIFICATION OF COMPUTER GAMES

Clause 4 provides that if a computer game is classified under the *Classification of Publications Ordinance 1983*, it has effect for the purposes of this Act. However, if a computer game is classified or refused classification under the Act is later classified under the *Classification of Publications Ordinance 1983*, the classification under this Act has effect.

Clause 5 empowers the Computer Games Classification Officer to classify or refuse to approve the classification of an unclassified game. The Officer may act on his/her own initiative or as a result of representations by third parties. In determining the appropriate classification for a game, or determining to refuse to approve classification of a game, the Officer can have regard to section 25A, section 34(1)-(4) and relevant definition provisions of the *Classification of Publications Ordinance 1983*. The relevant non-definitional provisions of the Ordinance are attached to the Act, though do not form part of it.

Clause 6 enables the Computer Games Classification Officer to reclassify a game which has been previously classified or which has been refused approval for classification.

Clause 7 enables the Computer Games Classification Officer to ask a publisher of a computer game to give the Officer a copy for the purposes of classification or reclassification. The clause sets out the procedure which the Officer must follow, and provides that if the game is classified or refused approval for classification (other than a child abuse computer game) it must be immediately returned to the publisher.

Clause 8 allows a person who has been adversely affected by a decision of the Computer Games Classification Officer under clause 5 to appeal within 28 days after becoming aware of the decision to the appeal body.

PART 3—DEMONSTRATION OF COMPUTER GAMES

Clause 9 prohibits a person demonstrating or attempting to demonstrate an unclassified computer game in a public place. This provision applies to a computer game published before the commencement of the Act only if it is an objectionable computer game.

Clause 10 prohibits a person demonstrating or attempting to demonstrate in a public place an “MA(15+)” computer game if a child under 15 who is not accompanied by an adult is present. Subclause (2) provides a defence to prosecution if the person believes on reasonable grounds that the child is at least 15 or is or will be accompanied by an adult.

PART 4—ADVERTISING AND SUPPLY OF COMPUTER GAMES

Clause 11 prohibits a person using or attempting to use an advertisement for a computer game if:

- the advertisement has been refused approval under the Ordinance;
- it is used other than in the form in which it was approved; or
- it is used other than in accordance with the conditions subject to which approval was given.

Clause 12 provides that a person must not publish or attempt to publish an advertisement for a computer game unless it bears the determined markings so that they are clearly visible, having regard to the size and nature of the advertisement.

Clause 13 prohibits false advertising of computer games.

Clause 14 provides that a person must not sell or attempt to sell a computer game unless the container, wrapping or casing in which it is contained bears the determined markings.

Clause 15 provides that a person who is selling or attempting to sell a classified computer game in a public place must keep displayed a notice about classifications in the form determined under the section 26 of the *ACT Publications Control Act 1989* for a computer game.

Clause 16 sets out requirements for persons selling or attempting to sell a classified computer game containing advertisements for other classified games or objectionable computer games.

Clause 17 sets out restrictions on persons who display or attempt to display for sale an “MA(15+)” computer game or an advertisement for such a game.

Clause 18 restricts the sale or delivery or attempted sale or delivery of an “MA(15+)” computer game to a child under 15 years of age, unless accompanied by an adult.

Clause 19 prohibits the sale or attempted sale of unclassified computer games which are published after the commencement of the Act. Unclassified games published before the commencement of the Act, with the exception of objectionable computer games, are not subject to this section.

Clause 20 prohibits the sale of improperly marked unclassified computer games.

Clause 21 prohibits the sale of improperly marked classified computer games.

PART 5—OBJECTIONABLE COMPUTER GAMES

Note: The term “objectionable computer game is defined in Schedule 2 to mean an unclassified computer game, or an unapproved advertisement for a computer game, that—

- (a) describes, depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence, or revolting or abhorrent phenomena, in a way that offends against standards of morality, decency and propriety generally accepted by reasonable adults; or

- (b) depicts a minor (whether engaged in sexual activity or otherwise) who is, or is apparently, under 16 in a way that is likely to cause offence to a reasonable adult; or
- (c) promotes, incites or instructs in matters of crime or violence; or
- (d) has been refused classification or approval.

Clause 22 prohibits the demonstration or attempted demonstration of an objectionable computer game in a way that it can be seen by persons in a public place.

Clause 23 prohibits the demonstration of an objectionable computer game in the presence of a child. A child is an individual under 18 years.

Clause 24 prohibits the sale, or attempted sale, of an objectionable computer game.

Clause 25 prohibits the keeping or possession of objectionable computer games on any premises from which classified computer games are sold.

Clause 26 prohibits the possession of an objectionable computer game for the purposes of sale or demonstration in a public place.

In addition, subclause (3) prohibits a person knowingly having possession of a child abuse computer game. “Child abuse computer game” is defined in Schedule 2 to mean “a computer game that is an objectionable computer game because it depicts a child (whether engaged in sexual activity or otherwise) who is, or is apparently, under 16 years in a way likely to cause offence to a reasonable adult person”.

Clause 27 prohibits:

- the making or production; or
- the copying;

of an objectionable computer game for the purpose of gain. In addition clause 27 prohibits the making, producing or copying of a child abuse computer game.

Clause 28 prohibits the procurement of a minor or the attempted procurement of a minor to be in any way concerned in the making or production of an objectionable computer game.

Clause 29 provides that a person is not guilty of an offence under section 26 (Possession of Objectionable Computer Games) or section 27 (Making

an Objectionable Computer Game) in certain circumstances. The defence does not apply to those objectionable computer games falling within paragraphs (b)-(d) of the definition.

PART 6—INVESTIGATION AND ENFORCEMENT

Clause 30 allows for the appointment of both Departmental staff and Police Officers to be inspectors.

Clause 31 sets out the terms of appointment of inspectors.

Clause 32 provides for the issuing of identity cards to Departmental inspectors, as well as the material which the card must contain.

Clause 33 requires the production or display of an inspector's identity card prior to exercising a power in relation to a person. The section does not apply to a uniformed police officer.

Clause 34 sets out the rights of inspectors to enter places.

Clause 35 sets out the procedures which an inspector must follow where the inspector intends to ask the occupier of a place for consent to enter.

Clause 36 sets out the ability, and the procedures, which an inspector must follow when applying to a Magistrate for a warrant to enter a place.

Clause 37 enables, and prescribes the procedures to be followed where an application is made for a warrant other than in person. In particular, the clause sets out the procedures where an application is made for a warrant by phone, fax, radio or other form of communication.

Clause 38 sets out an inspector's general powers after entering a place.

Clause 39 sets out the basis on which an inspector is entitled to enter or search a vehicle, and the powers which the inspector may exercise.

Clause 40 sets out the powers an inspector may exercise to enable a vehicle to be entered.

Clause 41 sets out the power to seize evidence by an inspector who has entered a place with the occupier's consent or pursuant to a warrant issued by a Magistrate.

Clause 42 sets out additional powers of inspectors to seize computer games when a representation has been made to the Computer Games Classification Officer, and the Officer reasonably believes the computer game is an objectionable computer game.

Clause 43 sets out the powers of, and the procedure to be followed by, an inspector when seizing things.

Clause 44 requires an inspector to give to the person from whom a thing is seized a receipt unless this would be impracticable or unreasonable.

Clause 45 provides for the return of a seized thing, other than a child abuse computer game, to the owner within specified time periods unless proceedings have been instituted.

Clause 46 enables the owner of a seized thing, other than a child abuse computer game, to have access to it until it is either forfeited or returned.

Clause 47 provides a power for an inspector to require a person to state that person's name and address in specified circumstances and the procedure that must be followed.

Clause 48 sets out the procedure to be followed by a police officer to arrest a person without warrant for failure to give that person's name and address to an inspector.

Clause 49 provides a power for an inspector to require information from persons where the inspector reasonably believes that:

- an offence against the Act has been committed; and
- a person may be able to give information about the offence.

Clause 50 makes it an offence for a person to give false or misleading information to an inspector.

Clause 51 prohibits a person, without reasonable excuse, obstructing an inspector in the exercise of a power. The section sets out the procedure an inspector must follow if the inspector decides to proceed with the exercise of the power as well as the ability of a departmental inspector to ask a police officer to assist with the enforcement of the section.

Clause 52 sets out the procedure to be followed by a police officer to arrest a person without warrant for obstructing an inspector.

Clause 53 prohibits the impersonation of an inspector.

Clause 54 provides that while exercising a power, either an inspector or a person acting under the direction of an inspector, damages anything, notice must be given to the owner of any non-trivial damage.

Clause 55 allows a person to claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise for the power under Part 6. A Court may only award a compensation if it is satisfied that it is just in the circumstances of the particular case. In addition, a regulation may prescribe matters that may, or must, be taken into account by a Court when considering whether it is just to make a compensation Order.

PART 7—EXEMPTIONS

Clause 56 enables the Computer Games Classification Officer to approve in writing an entity as an approved entity, and further sets out the procedure which must be followed by the Officer.

Clause 57 sets out the procedure to be followed where an approved entity makes application for an exemption of a computer game that the entity intends to demonstrate at a specified event.

Clause 58 enables the Computer Games Classification Officer to exempt an approved entity from all or part of the Act for a specified game to be demonstrated a specified event, with or without conditions.

Where the Computer Games Classification Officer exercises his discretion in favour of a computer game intended to be demonstrated by an approved entity, the game is not indecent or obscene material for the purposes of the *Criminal Code* or the *Vagrants, Gaming and Other Offences Act 1931*.

Clause 59 empowers the Computer Games Classification Officer to exempt an entity from the Act or specified provisions with respect to computer games of a medical, educational or scientific character or intended to be used for a medical, educational or scientific purpose. An exemption can be granted with conditions and revoked if the conditions are not complied with. For so long as the exemption remains in force the computer

game is not indecent or obscene material for the purposes of the *Criminal Code* or the *Vagrants, Gaming and Other Offences Act 1931*.

Clause 60 sets out a right of appeal to the appeal body against a refusal of the Computer Games Classification Officer to either approve or revoke the approval of an entity or to refuse to give an exemption under section 58 or 59.

PART 8—MISCELLANEOUS

Clause 61 sets out the procedures followed where an appeal is made to the appeal body either under section 8 or section 60.

Clause 62 sets out certain evidentiary matters concerning the appointment or power of the computer games classification officer, the officer's delegate and an inspector and certificates or delegations signed by the Computer Games Classification Officer.

Clause 63 provides that all offences other than those under section 28 or involving a child abuse computer game, are summary offences. Those involving section 28 or child abuse computer games are punishable on indictment.

Clause 64 enables the Court, on the conviction of a person for an offence, to order the forfeiture of anything used to commit the offence or anything else the subject of the offence.

Clause 65 provides that a forfeited thing becomes the State's property and may be dealt with as directed by the chief executive.

Clause 66 provides that a classified computer game and an approved advertisement are not indecent or obscene material for the purpose of the *Criminal Code* or the *Vagrants, Gaming and Other Offences Act 1931*.

Clause 67 enables the Governor in Council to make regulations for the Act, including the constitution, practice and procedure of the appeal body.

Clause 68 enables the Computer Games Classification Officer to delegate, with the written approval of the chief executive, the Officer's powers under the Act to another officer of the Department or someone else prescribed by regulation.

Clause 69 empowers the chief executive to approve a form for use under the Act.

Clause 70 provides that the Act expires two years after its commencement.

PART 9—AMENDMENT OF ART UNIONS AND PUBLIC AMUSEMENTS ACT 1992

Clause 71 provides that the *Art Unions and Public Amusements Act 1992* is amended as set out in Schedule 1.

SCHEDULE 1

Schedule 1 sets out amendments to the *Art Unions and Public Amusements Act 1992*.

Amendments are made to sections 76(b), 80(1) and 80(3) by deleting references to games that are played on public amusements. Games which are played on public amusements will no longer be approved by the chief executive under the *Art Unions and Public Amusements Act 1992*, but instead will be subject to the classification provisions of the *Classification of Computer Games Images (Interim) Act 1995*.

SCHEDULE 2

Schedule 2 sets out the dictionary for the Bill.

ATTACHMENT

For the purposes of section 5 of the Bill, the Attachment sets out those parts of sections 25A and 34 of the *Classification of Publications Ordinance 1983* (ACT) which are applied under the Act.