Classification of Computer Games & Images and Other Legislation Amendment Bill 2012
Submission 002

# Submission to the Legal Affairs and Community Safety Committee

## Re: Classification of Computer Games and Images and Other Legislation Amendment Bill 2012

***prepared on behalf of the Land Court of Queensland***

I refer to the letter of 5 November 2012 addressed to the President of the Land Court from Mr Ray Hopper MP of the Legal Affairs and Community Safety Committee seeking submissions in relation to the *Classification of Computer Games and Images and Other Legislation Amendment Bill 2012* (the Bill).

The Land Court makes the following submissions in relation to Part 8 of the Bill which proposes to amend the *Recording of Evidence Act 1962* (the Act):

**(1) Recorders to be under the direction of the court or judicial person**

It is noted that the power of the chief executive to appoint "shorthand reporters" will be deleted by the Bill and that the definition of "recorder" will be amended to mean "a person who carries out a recording service". A "recording service" is defined in the Bill to mean, relevantly, the transcription of a record under the Act under an "arrangement" under section 5A or by a public service employee in the department (see Clause 49 of the Bill).

Under the Act as it currently stands, all shorthand reporters and recorders are required to take an oath of office (see s.7 of the Act) and it is provided that every person recording a legal proceeding under the Act shall be an officer of the court and be under the direction of the court or judicial person in which or before whom the legal proceeding is being heard, in relation to (amongst other things) performing the person's duty or other matter (see s.8 of the Act).

Clause 51 of the Bill proposes to delete ss.7 and 8 of the Act without any replacement provisions – it appears that the "devil will be in the detail" of the "arrangements" that the chief executive may now make with persons to provide a recording service under proposed new section 5A (see Clause 50 of the Bill). Public service employees will presumably be governed by the terms of their employment and the *Public Service Act 2008*.

The Court considers it would be appropriate to amend the Bill to expressly empower courts and judicial persons to give directions, as and when required, to recorders who have been engaged by the chief executive under section 5A and also to public service employees who provide a recording service under the Act.

It is noted that proposed new s.5(1), inserted by Clause 50 of the Bill, provides that all relevant matter in a legal proceeding is to be recorded (ie. the evidence, rulings, directions, summing-up, etc.) and new s.5(3) says "Subsection (1) applies subject to any direction given by the court in which, or judicial person before whom, the legal proceeding is being taken". In other words, the court or judge may give a direction about the recording of relevant matter in a legal proceeding, but this appears to be a watering down of the current Act which expressly

provides that the recorder is under the direction of the court or judge when performing the person's functions (see s.8(b) of the Act).

RECOMMENDATION: That the Bill be amended to maintain the current position under the Act that recorders are under the direction of the court or judicial person when the recorder is performing his/her functions.

**(2) Arrangements for Recording Services – Issues of Confidentiality, Privacy and Quality**

Clause 50, inserting new section 5A, provides that the chief executive may enter into an "arrangement" with a person to provide either or both of the following services –

(a) the recording of relevant matter in legal proceedings under section 5;
(b) the transcription of records under the Act.

It appears that these provisions are aimed at facilitating the outsourcing of recording and transcription services. Issues of confidentiality and privacy ought to be addressed in the Bill, as well as quality control measures.

RECOMMENDATION: That the Bill provide expressly that the "arrangements" entered into by the chief executive must include provisions to require the recorder to ensure that confidentiality, privacy and quality of transcripts are maintained.

**(3) Retention and Disposal of Master Recordings**

Under the Act, a record on a master-tape cannot be destroyed, by order of the court or otherwise, unless and until a transcription of the record has been made. There appear to be no exceptions to this.

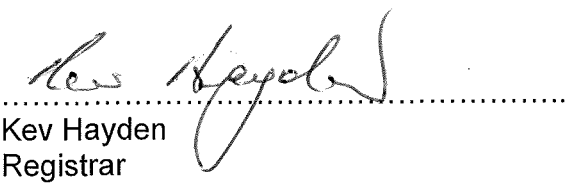
As a result, the Land Court has many years' worth of master-tapes in on-site and off-site storage locations which contain records of proceedings that have not been transcribed and will never be transcribed as there is no need for it. Some of these master-tapes date back to the early 1990s (and sometimes earlier), and many are reel-to-reel tapes so it is doubtful whether the tapes are able to be played back given their age and condition. Further, the majority of tapes relate to case files which no longer exist and have been destroyed in accordance with the requirements of the Land Court's Retention and Disposal Schedule approved under the *Public Records Act 2002*. Accordingly, there seems little or no utility in keeping such tapes.

The Land Court has limited physical storage capacity. The keeping of master-tapes in on-site and off-site storage locations places a burden on the Court's physical and financial resources. It is understood that this is an issue for all Queensland courts, not just the Land Court.

In the circumstances, the Court considers it would be appropriate to allow the destruction of master-tapes after 7 years. The 7-year period is nominated as the

appropriate retention period as it is consistent with the minimum retention periods identified in the Court's Retention and Disposal Schedule.

RECOMMENDATION: That the Bill be amended to allow the destruction of master recordings where a transcription has not been made by order of the court or otherwise after 7 years.



Kev Hayden
Registrar
Land Court of Queensland
21 November 2012