2019‑2020‑2021

The Parliament of the

Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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| **EXPOSURE DRAFT** |

Copyright Amendment (Access Reform) Bill 2021

No. , 2021

(Communications, Urban Infrastructure, Cities and the Arts)

A Bill for an Act to amend the *Copyright Act 1968*, and for related purposes

Contents

1 Short title 2

2 Commencement 2

3 Schedules 2

4 Compensation for acquisition of property 2

Schedule 1—Orphan works 2

Copyright Act 1968 2

Schedule 2—Fair dealing for quotation 2

Copyright Act 1968 2

Schedule 3—Libraries and archives etc. 2

Part 1—Amendment of the Copyright Act 1968 2

Copyright Act 1968 2

Part 2—Consequential amendments 2

Parliamentary Service Act 1999 2

Part 3—Application 2

Schedule 4—Education 2

Copyright Act 1968 2

Schedule 5—Use of copyright material by the Commonwealth or a State 2

Part 1—Amendments 2

Copyright Act 1968 2

Part 2—Application and transitional 2

Schedule 6—Registrar of the Copyright Tribunal 2

Part 1—Amendment 2

Copyright Act 1968 2

Part 2—Transitional 2

Schedule 7—Regulations relating to technological protection measures 2

Copyright Act 1968 2

Schedule 8—Archives 2

Copyright Act 1968 2

Schedule 9—Referrals 2

Part 1—Amendments 2

Copyright Act 1968 2

Part 2—Application 2

Schedule 10—Notifiable instruments 2

Part 1—Amendments 2

Copyright Act 1968 2

Part 2—Application 2

A Bill for an Act to amend the *Copyright Act 1968*, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *Copyright Amendment (Access Reform) Act 2021*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. |  |
| 2. Schedule 1 | The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent. |  |
| 3. Schedules 2 to 10 | A single day to be fixed by Proclamation.  However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. |  |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Compensation for acquisition of property

(1) If the operation of:

(a) this Act; or

(b) a provision inserted in the *Copyright Act 1968* by this Act;

would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in:

(a) the Federal Court of Australia; or

(b) the Supreme Court of a State or Territory;

for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

Schedule 1—Orphan works

Copyright Act 1968

1 At the end of section 113P

Add:

Exception—orphan works etc.

(7) Subsections (1) and (2) of this section do not apply to an act comprised in the copyright in copyright material if the act is covered by section 116AJA or 116AJB.

2 After Division 2AA of Part V

Insert:

Division 2AB—Limitation on remedies relating to orphan works etc.

116AJA Limitation on remedies relating to orphan works

(1) If:

(a) at a particular time, a person does an act comprised in the copyright in copyright material; and

(b) the act is an infringement of the copyright; and

(c) a reasonably diligent search for the owner or owners of the copyright was conducted within a reasonable period before that time; and

(d) the outcome of the search is that:

(i) the identity of the owner, or the identities of each of the owners, of the copyright is unknown; or

(ii) the identity of the owner is known but the owner cannot be contacted, or the identity of at least one of the owners is known but none of the owners whose identity is known can be contacted; and

(e) if:

(i) the copyright material is a work (within the meaning of Part IX); and

(ii) it is reasonably practicable for the author of the copyright material to be identified in accordance with Division 2 of Part IX as the author of the copyright material;

the author is identified in accordance with Division 2 of Part IX as the author of the copyright material;

a court must not grant relief against the person in respect of the infringement.

(2) For the purposes of this section, in determining whether a reasonably diligent search for the owner or owners of the copyright was conducted, regard may be had to the following matters:

(a) the nature of the copyright material;

(b) the purpose and character of the act comprised in the copyright;

(c) the manner in which the search was conducted;

(d) the person who conducted the search;

(e) the technologies, databases and registers that were available for searches;

(f) any relevant industry codes of practice.

(3) Subsection (2) does not limit the matters to which regard may be had.

(4) For the purposes of this section, in determining whether an act is an infringement of copyright, disregard sections 113P, 135ZZK, 135ZZZI and 183.

(5) For the purposes of this section, assume that paragraph 195(2)(a) were modified by inserting “or section 116AJA” after “this Part”.

(6) For the purposes of paragraph (1)(e), ***author***, in relation to a cinematograph film, means the maker of the film.

116AJB Limitation on remedies relating to former orphan works

(1) If:

(a) at a particular time, a person did an act (the ***past act***) comprised in the copyright in copyright material; and

(b) section 116AJA applied to the past act; and

(c) at a later time (the ***current time***):

(i) the identity of the owner, or the identities of at least one of the owners, of the copyright is or are known to the person; and

(ii) the owner, or at least one of the owners, can be contacted; and

(iii) the person does an act (the ***current act***) comprised in the copyright in the copyright material; and

(d) the current act is an infringement of the copyright;

then:

(e) the terms for the doing of the current act are:

(i) such terms as are (whether before or after the current time) agreed between the person and the owner or owners of the copyright; or

(ii) in default of agreement—such terms as are fixed by the Copyright Tribunal; and

(f) if the person complies with such terms as are agreed or fixed—a court must not grant relief against the person in respect of the infringement.

Note: See also section 153B.

(2) For the purposes of this section, in determining whether an act is an infringement of copyright, disregard sections 113P, 135ZZK, 135ZZZI and 183.

3 At the end of section 135ZZK

Add:

Exception—orphan works etc.

(6) Subsections (1) and (2) of this section do not apply to an act comprised in the copyright in copyright material if the act is covered by section 116AJA or 116AJB.

4 At the end of section 135ZZZI

Add:

Exception—orphan works etc.

(7) Subsections (1), (2), (3) and (4) of this section do not apply to an act comprised in the copyright in copyright material if the act is covered by section 116AJA or 116AJB.

5 After Subdivision C of Division 3 of Part VI

Insert:

Subdivision D—Applications relating to Part V

153B Applications to Tribunal under section 116AJB

(1) The parties to an application to the Tribunal under section 116AJB for the fixing of the terms for the doing by a person of an act comprised in a copyright are:

(a) the person; and

(b) the owner of the copyright.

(2) If an application is made to the Tribunal under section 116AJB, the Tribunal must consider the application and, after giving the parties to the application an opportunity of presenting their cases, must make an order fixing the terms for the doing of the act.

(3) The Tribunal must not make an order under subsection (2) fixing the terms for the doing of the act unless the Tribunal considers that the terms are reasonable.

Schedule 2—Fair dealing for quotation

Copyright Act 1968

1 Subsection 10(1)

Insert:

***authorised officer***, in relation to a library or archives, means:

(a) the officer in charge of the library or archives; or

(b) a person authorised by the officer to act on the officer’s behalf.

2 Subsection 10(1) (definition of *authorized officer*)

Repeal the definition.

3 Section 113D

Omit:

The following do not infringe copyright in any copyright material:

(a) certain use by or for persons with a disability;

(b) certain use for the purposes of libraries, archives and key cultural institutions;

(c) certain use by educational institutions.

substitute:

The following do not infringe copyright in any copyright material:

(a) certain use by or for persons with a disability;

(b) fair dealing for quotation;

(c) certain use for the purposes of libraries, archives and key cultural institutions;

(d) certain use by educational institutions.

4 After Division 2 of Part IVA

Insert:

Division 2A—Fair dealing for quotation

113FA Fair dealing for quotation

(1) A fair dealing with copyright material does not constitute an infringement of copyright in the copyright material to the extent that the dealing involves a quotation of the whole or a part of the copyright material, so long as the following conditions are satisfied:

(a) the dealing is:

(i) by a body administering a library or archives; or

(ii) by an authorised officer of a library or archives; or

(iii) by a body administering an educational institution; or

(iv) by a person authorised by an educational institution to act on behalf of the institution; or

(v) by the Commonwealth or a State; or

(vi) by a person authorised by the Commonwealth or a State to act on behalf of the Commonwealth or the State, as the case may be; or

(vii) by a person or organisation for the purpose of research;

(b) either:

(i) the quotation is for a non‑commercial purpose; or

(ii) the quotation is for a commercial purpose in relation to a product or service, but the quotation is immaterial to the value of the product or service;

(c) the copyright material has been made public;

(d) if:

(i) the copyright material is a work (within the meaning of Part IX); and

(ii) it is reasonably practicable for the author of the copyright material to be identified in accordance with Division 2 of Part IX as the author of the copyright material;

the author is identified in accordance with Division 2 of Part IX as the author of the copyright material; and

(e) if it is reasonably practicable for the title or name of the copyright material to be identified—the title or name of the copyright material is identified.

Note: A dealing with copyright material for the purpose of research may involve:

(a) the publication of the material; or

(b) otherwise making the material public.

(2) For the purposes of this section, in determining whether a dealing with copyright material constitutes a fair dealing with the copyright material, regard must be had to the following matters:

(a) the purpose and character of the dealing;

(b) the nature of the copyright material;

(c) the effect of the dealing upon the potential market for, or value of, the material;

(d) if only part of the material is dealt with—the amount and substantiality of the part dealt with, taken in relation to the whole material.

(3) Subsection (2) does not limit the matters to which regard may be had.

(4) For the purposes of this section, a quotation may be:

(a) a quotation of written material; or

(b) a quotation of other material.

(5) For the purposes of this section, the following are examples of a quotation:

(a) a quotation for the purpose of explanation;

(b) a quotation for the purpose of illustration;

(c) a quotation for the purpose of authority;

(d) a quotation for the purpose of homage.

Note: See also section 15AD of the *Acts Interpretation Act 1901*.

(6) For the purposes of this section, assume that paragraph 195(2)(a) were modified by inserting “or section 113FA” after “this Part”.

(7) For the purposes of paragraph (1)(d), ***author***, in relation to a cinematograph film, means the maker of the film.

Schedule 3—Libraries and archives etc.

Part 1—Amendment of the Copyright Act 1968

Copyright Act 1968

1 Subsection 10(1) (at the end of the definition of *archives*)

Add:

Note: An archives may be a ***key cultural institution*** (as defined by section 113L).

2 Subsection 10(1)

Insert:

***library*** means a library where:

(a) all or part of the collection comprising the library is accessible to members of the public directly or through interlibrary loans; or

(b) the principal purpose of the library is to provide library services for members of a Parliament.

Note 1: For ***Parliament***, see section 12 (references to Parliament).

Note 2: A library may be a ***key cultural institution*** (as defined by section 113L).

3 Subsections 10(2), (2A) and (2B)

Repeal the subsections, substitute:

(2) Without limiting the expression ***reasonable portion*** in this Act, if either of the following conditions is satisfied in relation to a literary, dramatic or musical work (other than a computer program):

(a) the work is in hardcopy form, and the hardcopy form has at least 10 pages;

(b) the work is in electronic form, the electronic form has pages, and the number of pages is at least 10;

a copy of part of the work is taken to contain only a ***reasonable portion*** of the work if:

(c) the pages that are copied do not exceed, in the aggregate, 10% of the number of pages in the work; or

(d) in a case where the work is divided into chapters—the pages that are copied exceed, in the aggregate, 10% of the number of pages in the work, but contain only the whole or part of a single chapter of the work.

(2A) Without limiting the expression ***reasonable portion*** in this Act, if:

(a) a literary, dramatic or musical work (other than a computer program) is in electronic form; and

(b) the electronic form of the work does not have pages;

a copy of part of the work is taken to contain only a ***reasonable portion*** of the work if:

(c) the content that is copied does not exceed, in the aggregate, 10% of the content in the work; or

(d) in a case where the work is divided into chapters—the content that is copied exceeds, in the aggregate, 10% of the content in the work, but consists of the whole or part of a single chapter of the work.

4 Paragraph 10(3)(ma)

Repeal the paragraph.

5 Subsection 29(7)

Omit “section 52”, substitute “section 113KJ”.

6 Section 39A

Repeal the section.

7 Subsection 40(4)

Repeal the subsection.

8 Subsection 40(5) (table)

Repeal the table, substitute:

| **Works, adaptations and reasonable portions** | | |
| --- | --- | --- |
| **Item** | **Work or adaptation** | **Amount that is reasonable portion** |
| 1 | A literary, dramatic or musical work (except a computer program), or an adaptation of such a work, where:  (a) the work or adaptation is in hardcopy form, and the hardcopy form has at least 10 pages; or  (b) the work or adaptation is in electronic form, the electronic form has pages, and the number of pages is at least 10 | (a) 10% of the number of pages in the work or adaptation; or  (b) if the work or adaptation is divided into chapters—the whole or part of a single chapter of the work or adaptation |
| 2 | Any of the following:  (a) a literary work in electronic form (other than a computer program or an electronic compilation, such as a database), where the electronic form of the work does not have pages;  (b) a dramatic work in electronic form, where the electronic form of the work does not have pages;  (c) an adaptation in electronic form of a literary work (other than a computer program or an electronic compilation, such as a database), where the electronic form of the adaptation does not have pages;  (d) an adaptation in electronic form of a dramatic work, where the electronic form of the adaptation does not have pages | (a) 10% of the content in the work or adaptation; or  (b) if the work or adaptation is divided into chapters—the whole or part of a single chapter of the work or adaptation |

9 Subsection 40(6)

Repeal the subsection.

10 Subsection 40(8)

Omit “, (2B)”.

11 Subsection 40(8)

Omit “, (6)”.

12 Section 47H

Before “An agreement”, insert “(1)”.

13 At the end of section 47H

Add:

(2) Subsection (1) does not imply that an agreement, or a provision of an agreement, may exclude or limit, or have the effect of excluding or limiting, the operation of a provision of this Act that is not mentioned in that subsection.

14 Division 5 of Part III

Repeal the Division.

15 Paragraph 80(c)

Omit “section 51”, substitute “section 113KG”.

16 Sections 104A and 104B

Repeal the sections.

17 Section 110A

Repeal the section.

18 Subparagraph 112(a)(ii)

Omit “49, 50,”.

19 Subparagraph 112(a)(ii)

After “113K,”, insert “113KC, 113KD, 113KE, 113KF,”.

20 Subparagraph 112(b)(ii)

Omit “49, 50,”.

21 Subparagraph 112(b)(ii)

After “113K,”, insert “113KC, 113KD, 113KE, 113KF,”.

22 Paragraph 113F(b)

After “is satisfied”, insert “, after reasonable investigation,”.

23 Section 113G

Repeal the section, substitute:

113G Interpretation

(1) In this Subdivision, a reference to an ***article contained in a periodical publication*** is a reference to anything appearing in such a publication.

(2) Subsection (1) does not apply to an artistic work appearing in a periodical publication unless the artistic work is covered by section 113KK.

24 Section 113H

Omit “authorized officer” (wherever occurring), substitute “authorised officer”.

25 Subsection 113H(2)

Omit “available to be accessed at the library or archives”, substitute “available to be accessed at the premises of the library or archives, or online,”.

26 Paragraph 113H(2)(b)

After “in”, insert “hardcopy form or”.

27 Paragraph 113H(2)(c)

Omit “at the library or archives”, substitute “at the premises of the library or archives, or online,”.

28 Subsection 113H(2) (note)

Omit “section 49 (Reproducing and communicating works by libraries and archives for users)”, substitute “section 113KD (supply of copies to persons) and section 113KE (supply of copies to other libraries or archives)”.

29 Subsection 113J(1)

Omit “authorized officer”, substitute “authorised officer”.

30 Paragraph 113J(1)(c)

After “archives”, insert “(whether using the internet or otherwise)”.

31 Subsection 113J(2)

Omit “authorized officer”, substitute “authorised officer”.

32 Subsection 113J(2)

Omit “available to be accessed at the library or archives”, substitute “available to be accessed at the premises of the library or archives, or online,”.

33 Paragraph 113J(2)(a)

After “archives”, insert “(whether using the internet or otherwise)”.

34 Paragraph 113J(2)(b)

After “in”, insert “hardcopy form or”.

35 Paragraph 113J(2)(c)

Omit “at the library or archives”, substitute “at the premises of the library or archives, or online,”.

36 Subsection 113J(2) (note)

Omit “section 49 (Reproducing and communicating works by libraries and archives for users)”, substitute “section 113KD (supply of copies to persons) and section 113KE (supply of copies to other libraries or archives)”.

37 Section 113K

Omit “authorized officer”, substitute “authorised officer”.

38 At the end of Subdivision A of Division 3 of Part IVA

Add:

113KA Infringing copies made on machines

If:

(a) a person makes an infringing copy of, or of part of, copyright material on a machine (including a computer); and

(b) the machine was installed by or with the approval of the body administering a library or archives:

(i) on the premises of the library or archives; or

(ii) outside those premises for the convenience of persons using the library or archives; and

(c) there is affixed to, or in close proximity to, the machine, in a place readily visible to persons using the machine, a notice of the prescribed dimensions and in accordance with the prescribed form;

then neither:

(d) the body administering the library or archives; nor

(e) an authorised officer of the library or archives;

is taken to have authorised the making of the infringing copy merely because the copy was made on the machine.

113KB Assisting a member of a Parliament

(1) An authorised officer of a library does not infringe copyright in copyright material by a use of the material if:

(a) the use is for the sole purpose of assisting a person who is a member of a Parliament in the performance of the person’s duties as such a member; and

(b) the principal purpose of the library is to provide library services for members of that Parliament.

(2) For the purposes of this section, ***use*** includes any act that would infringe copyright apart from this section.

113KC Making material available online

(1) An authorised officer of a library or archives does not infringe copyright in copyright material by making the copyright material available online (whether at the premises of the library or archives, or on the internet) if:

(a) the copyright material was acquired, in electronic form, as part of the collection of the library or archives; and

(b) the library or archives takes reasonable steps to ensure that a person who accesses the copyright material does not infringe copyright in the copyright material.

(2) An authorised officer of a library or archives does not infringe copyright in copyright material by:

(a) making, or causing another person to make, an electronic copy of the copyright material; and

(b) making the copy available online (whether at the premises of the library or archives, or on the internet);

if:

(c) the copyright material was acquired, in hardcopy form, as part of the collection of the library or archives; and

(d) the authorised officer is satisfied, after reasonable investigation, that an electronic copy of the copyright material cannot be obtained within a reasonable time at an ordinary commercial price; and

(e) the library or archives takes reasonable steps to ensure that a person who accesses the copyright material online does not infringe copyright in the copyright material.

Note: Other uses of the electronic copy might not infringe copyright because of other provisions of this Act, such as section 113H (preservation), 113J (research), 113M (preservation), 113KD (supply of copies to persons) or 113KE (supply of copies to other libraries or archives).

113KD Supply of copies to persons

Request

(1) Either:

(a) a person (the ***relevant person***); or

(b) a person acting on behalf of the relevant person:

may request the authorised officer of a library or archives (the ***first library or archives***) for the relevant person to be supplied with a copy of the whole or a part of copyright material that is held in the collection of:

(c) the first library or archives; or

(d) another library or archives.

(2) A request under subsection (1) must include a statement to the effect that:

(a) the relevant person requires the copy:

(i) for the purpose of research or study; or

(ii) for the purposes of the relevant person’s private and domestic use; and

(b) the relevant person will not use the copy for any other purpose.

(3) A request under subsection (1) must:

(a) be in writing; and

(b) be signed by:

(i) the relevant person; or

(ii) the person who made the request on behalf of the relevant person.

(4) To avoid doubt, sections 9 and 10 of the *Electronic Transactions Act 1999* apply in relation to a request under subsection (1).

Note 1: Section 9 of the *Electronic Transactions Act 1999* allows requests to be made by electronic means.

Note 2: Section 10 of the *Electronic Transactions Act 1999* allows signatures to be given by electronic means.

(5) However, if it is not practicable to make a request under subsection (1) in writing:

(a) the request may be made orally; and

(b) an authorised officer of the first library or archives must make, or cause to be made, a record of the request; and

(c) subsection (3) of this section does not apply to the request; and

(d) sections 9 and 10 of the *Electronic Transactions Act 1999* do not apply in relation to the request.

Supply of copy

(6) If:

(a) a request is made under subsection (1) by or on behalf of the relevant person; and

(b) an authorised officer of a library or archives is satisfied that it is reasonable to supply the relevant person with the copy to which the request relates;

the authorised officer does not infringe copyright in copyright material by:

(c) making, or causing another person to make, the copy to which the request relates; and

(d) supplying the copy to the relevant person.

Note: The copy could be made from another copy of the copyright material in the collection of the library or archives that was made without infringing copyright, for example, because of subsection 113H(1) (preservation), subsection 113J(1) (research) or section 113KF (retention copies).

(7) Subsection (6) does not apply in relation to a request under subsection (1) if the request includes a statement that, to the knowledge of the authorised officer, is untrue in a material particular.

(8) Subsection (6) does not apply in relation to a request under subsection (1) if:

(a) a charge is made for making and supplying a copy to which a request relates; and

(b) the amount of the charge exceeds the cost of making and supplying the copy.

(9) Subsection (6) does not apply to a request under subsection (1) for:

(a) a copy of the whole of copyright material (other than an article contained in a periodical publication); or

(b) a copy of a part of copyright material (other than an article contained in a periodical publication) that contains more than a reasonable portion of the copyright material;

unless an authorised officer of the first library or archives is satisfied, after reasonable investigation, that a copy (not being a second‑hand copy in hardcopy form) of the copyright material cannot be obtained within a reasonable time at an ordinary commercial price.

(10) For the purposes of subsection (9), if the characteristics of the copyright material are such that subsection 10(2) or (2A) is relevant to the question whether the copy contains only a reasonable portion of the copyright material, then that question is to be determined solely by reference to subsection 10(2) or (2A).

(11) For the purposes of subsection (9), in determining whether a copy (not being a second‑hand copy in hardcopy form) of the copyright material cannot be obtained within a reasonable time at an ordinary commercial price, the authorised officer must take into account:

(a) the time by which the relevant person requires it; and

(b) the time within which a copy (not being a second‑hand copy in hardcopy form) of the work at an ordinary commercial price could be provided to the relevant person; and

(c) whether an electronic copy of the work can be obtained within a reasonable time at an ordinary commercial price.

(12) Subsection (6) does not apply to the making of an electronic copy of the whole or part of copyright material in relation to a request under subsection (1) for communication to the relevant person unless, before or when the copy is communicated to the relevant person, the relevant person is notified in accordance with the regulations:

(a) that the copy has been made under this section and that the copyright material might be subject to copyright protection under this Act; and

(b) about such other matters (if any) as are prescribed.

Supply

(13) For the purposes of this section, ***supply*** includes supply by way of a communication.

113KE Supply of copies to other libraries or archives

Request

(1) An authorised officer of a library or archives (the ***first library or archives***) may request, or cause another person to request, an authorised officer of another library or archives (the ***second library or archives***) to supply the authorised officer of the first library or archives with a copy of the whole or a part of copyright material held in the collection of the second library or archives:

(a) for the purpose of including the copy in the collection of the first library or archives; or

(b) in a case where the principal purpose of the first library or archives is to provide library services for members of a Parliament—for the purpose of assisting a person who is a member of that Parliament in the performance of the person’s duties as such a member; or

(c) for the purpose of supplying the copy under section 113KD.

(2) Subsection (1) does not apply to a request if:

(a) the request is for a purpose covered by paragraph (1)(a) or (c); and

(b) the request relates to:

(i) a copy of the whole of copyright material (other than an article contained in a periodical publication); or

(ii) a copy of a part of copyright material (other than an article contained in a periodical publication), and the part contains more than a reasonable portion of the copyright material;

unless an authorised officer of the first library or archives is satisfied, after reasonable investigation, that a copy (not being a second‑hand copy in hardcopy form) of the copyright material cannot be obtained within a reasonable time at an ordinary commercial price.

(3) For the purposes of subsection (2), if the characteristics of the copyright material are such that subsection 10(2) or (2A) is relevant to the question whether the copy contains only a reasonable portion of the copyright material, then that question is to be determined solely by reference to subsection 10(2) or (2A).

(4) For the purposes of subsection (2), if a request under subsection (1) is made for the purpose of supplying the copy under section 113KD, then, in determining whether a copy of the copyright material cannot be obtained within a reasonable time at an ordinary commercial price, the authorised officer must take into account:

(a) the time by which the relevant person referred to in section 113KD requires the copy; and

(b) if the copyright material is in hardcopy form—the time within which a copy (not being a second‑hand copy in hardcopy form) of the copyright material at an ordinary commercial price could be provided to the relevant person in hardcopy form; and

(c) whether the copy can be obtained in electronic form within a reasonable time at an ordinary commercial price.

Supply of copy

(5) Subject to this section, if a request is made under subsection (1) in relation to a copy, an authorised officer of the second library or archives does not infringe copyright in copyright material by:

(a) making, or causing another person to make, the copy; and

(b) supplying the copy to the authorised officer of the first library or archives.

Note: The copy could be made from another copy of the copyright material in the collection of the library or archives that was made without infringing copyright, for example, because of subsection 113H(1) (preservation), subsection 113J(1) (research) or section 113KF (retention copies).

(6) If, under subsection (5), an authorised officer of the second library or archives makes, or causes to be made, a copy of the whole or part of copyright material and supplies it to the authorised officer of the first library or archives in accordance with a request made under subsection (1):

(a) for all purposes of this Act, the copy is taken to have been made on behalf of an authorised officer of the first library or archives for the purpose for which the copy was requested; and

(b) an action must not be brought against the body administering the second library or archives, or against an authorised officer of the second library or archives, for infringement of copyright by reason of the making or supplying of that copy.

(7) Subsection (6) does not apply in relation to a request under subsection (1) if:

(a) a charge is made for making and supplying a copy to which a request relates; and

(b) the amount of the charge exceeds the cost of making and supplying the copy.

Supply

(8) For the purposes of this section, ***supply*** includes supply by way of a communication.

113KF Retention copies

If:

(a) a request (the ***original request***) is made under subsection 113KD(1) or 113KE(1) for the supply of a copy of the whole or a part of copyright material; and

(b) an authorised officer of a library or archives is authorised by subsection 113KD(6) or 113KE(5), as the case requires, to make, or cause to be made, the copy to which the request relates;

then:

(c) an authorised officer of the library or archives does not infringe copyright in the copyright material by making, or causing another person to make, a copy (the ***retention copy***) of the whole or the part, as the case may be, of the copyright material; and

(d) an authorised officer of the library or archives does not infringe copyright in the copyright material by using the retention copy for:

(i) making a copy of the whole or the part, as the case may be, of the copyright material in response to the original request, and supplying the copy in response to the original request; and

(ii) making further copies of the whole or the part, as the case may be, of the copyright material in response to future requests under subsection 113KD(1) or 113KE(1), and supplying those copies in response to those future requests.

Note: Other uses of the retention copy might not infringe copyright because of other provisions of this Act, such as section 113H (preservation), 113J (research), 113M (preservation) or 113KC (making material available online).

113KG Use of unpublished copyright material

Literary, dramatic, musical or artistic work

(1) If, at a time more than 50 years after the end of the calendar year in which the author of a literary, dramatic, musical or artistic work died, copyright subsists in the work but:

(a) the work has not been published; and

(b) a copy of the work, or, in the case of a literary, dramatic or musical work, the manuscript of the work, is kept in the collection of a library or archives where it is, subject to any regulations governing that collection, open to public inspection;

then:

(c) a person does not infringe copyright in the work by making or communicating a copy of the work:

(i) for the purposes of research or study; or

(ii) for the purposes of the person’s private and domestic use; or

(iii) with a view to publication; and

(d) an authorised officer of the library or archives does not infringe copyright in the work by:

(i) making, or causing another person to make, a copy of the work; and

(ii) supplying the copy to a person;

if the authorised officer is satisfied that the person requires the copy:

(iii) for the purposes of research or study; or

(iv) for the purposes of the person’s private and domestic use; or

(v) with a view to publication.

Sound recording or cinematograph film

(2) If, at a time more than 50 years after the time at which, or the expiration of the period during which, a sound recording or cinematograph film was made, copyright subsists in the sound recording or cinematograph film but:

(a) the sound recording or cinematograph film has not been published; and

(b) a record embodying the sound recording, or a copy of the cinematograph film, is kept in the collection of a library or archives where it is, subject to any regulations governing that collection, accessible to the public;

then:

(c) a person does not infringe copyright in the sound recording or cinematograph film by the making of a copy, or the communication, of the sound recording or cinematograph film:

(i) for the purposes of research or study; or

(ii) for the purposes of the person’s private and domestic use; or

(iii) with a view to publication; and

(d) an authorised officer of the library or archives does not infringe copyright in the sound recording or cinematograph film by:

(i) making, or causing another person to make, a copy of the sound recording or cinematograph film; and

(ii) supplying the copy to a person;

if the authorised officer is satisfied that the person requires the copy:

(iii) for the purposes of research or study; or

(iv) for the purposes of the person’s private and domestic use; or

(v) with a view to publication; and

(e) an authorised officer of the library or archives does not infringe copyright in the sound recording or cinematograph film by communicating, or causing another person to communicate, the sound recording or cinematograph film to a person if the authorised officer is satisfied that the person requires the communication:

(i) for the purposes of research or study; or

(ii) for the purposes of the person’s private and domestic use.

Supply

(3) For the purposes of this section, ***supply*** includes supply by way of a communication.

113KH Use of unpublished theses or similar literary works

(1) An authorised officer of a library or archives does not infringe copyright in copyright material by a use of the material if:

(a) the material forms part of the collection comprising:

(i) the library of a university or similar institution; or

(ii) an archives; and

(b) the material is:

(i) the manuscript of an unpublished thesis or similar literary work; or

(ii) a copy of an unpublished thesis or similar literary work; and

(c) a request has been made by, or on behalf of, a person to be supplied with a copy of the material; and

(d) the use of the material is for the purpose of:

(i) making, or causing another person to make, the copy; or

(ii) supplying the copy to the person; and

(e) the authorised officer is satisfied that the person:

(i) requires the copy for the purposes of research or study or for the purposes of the person’s private and domestic use; and

(ii) will not use it for any other purpose; and

(f) the authorised officer is satisfied that it is reasonable to supply the copy to the person.

Supply

(2) For the purposes of this section, ***supply*** includes supply by way of a communication.

113KJ Publication of unpublished works kept in libraries or archives

(1) If:

(a) a published literary, dramatic or musical work (the ***new work***) incorporates the whole or a part of a work (the ***old work***) to which subsection 113KG(1) applied immediately before the new work was published; and

(b) before the new work was published, the prescribed notice of the intended publication of the work had been given; and

(c) immediately before the new work was published, the identity of the owner of the copyright in the old work was not known to the publishers of the new work;

then, for the purposes of this Act, the first publication of the new work, and any subsequent publication of the new work (whether in the same or in an altered form) so far as it constitutes a publication of the old work, is taken not to be an infringement of the copyright in the old work or an unauthorised publication of the old work.

(2) Subsection (1) does not apply to a subsequent publication of the new work incorporating a part of the old work that was not included in the first publication of the new work unless:

(a) subsection 113KG(1) would, but for this section, have applied to that part of the old work immediately before that subsequent publication; and

(b) before that subsequent publication, the prescribed notice of the intended publication had been given; and

(c) immediately before that subsequent publication, the identity of the owner of the copyright in the old work was not known to the publisher of that subsequent publication.

(3) If a work, or part of a work, has been published and, because of this section, the publication is taken not to be an infringement of the copyright in the work, the copyright in the work is not infringed by a person who, after the publication took place:

(a) broadcasts the work, or that part of the work; or

(b) electronically transmits the work, or that part of the work (other than in a broadcast) for a fee payable to the person who made the transmission; or

(c) performs the work, or that part of the work, in public; or

(d) makes a record of the work, or that part of the work.

113KK Application of this Subdivision to illustrations accompanying articles and other works

For the purposes of this Subdivision, if:

(a) a literary, dramatic or musical work; or

(b) an article; or

(c) a thesis;

is accompanied by an explanatory or illustrative artistic work (the ***illustration***), the illustration is taken to be part of the work, article or thesis, as the case requires.

113KL Use of copyright material in the care of the National Archives of Australia

(1) An authorised officer of an archives covered by subparagraph (a)(i) or paragraph (aa) of the definition of ***archives*** in subsection 10(1) does not infringe copyright in copyright material by using the material if:

(a) the material forms part of the collection comprising the archives; and

(b) the collection is open to public inspection; and

(c) the use is for the purposes of:

(i) making a working copy of the material; or

(ii) making a reference copy of the material and supplying it to the central office, or to a regional office, of the National Archives of Australia.

(2) Subsection (1) does not apply in relation to making and supplying a reference copy to the central office, or to a regional office, of the National Archives of Australia, unless the authorised officer of the archives is satisfied that:

(a) a reference copy has not previously been supplied to that office; or

(b) a reference copy previously supplied to that office has been lost, damaged or destroyed.

(3) In this section:

***reference copy***, in relation to copyright material, means a copy of the material made from a working copy for supply to the central office, or to a regional office, of the National Archives of Australia for use by that office in providing access to the material to members of the public.

***supply*** includes supply by way of a communication.

***working copy***, in relation to a copyright material, means a copy of the material made for the purpose of enabling the National Archives of Australia to retain the copy and use it for making reference copies of the material.

39 Subsection 113M(1)

Omit “authorized officer” (wherever occurring), substitute “authorised officer”.

40 Subsection 113M(2)

Omit “authorized officer”, substitute “authorised officer”.

41 Subsection 113M(2)

Omit “available to be accessed at the key cultural institution”, substitute “available to be accessed at the premises of the key cultural institution, or online,”.

42 Paragraph 113M(2)(b)

After “in”, insert “hardcopy form or”.

43 Paragraph 113M(2)(c)

Omit “at the key cultural institution”, substitute “at the premises of the key cultural institution, or online,”.

44 Subsection 113M(2) (note)

Omit “section 49 (Reproducing and communicating works by libraries and archives for users)”, substitute “section 113KD (supply of copies to persons) and section 113KE (supply of copies to other libraries or archives)”.

45 Section 195A

Repeal the section.

46 Sections 203A to 203H

Repeal the sections.

47 Subsection 248A(1) (paragraphs (ea) and (eb) of the definition of *exempt recording*)

Omit “authorized officer” (wherever occurring), substitute “authorised officer”.

Part 2—Consequential amendments

Parliamentary Service Act 1999

48 Section 38I

Omit “of sections 48A and 104A”, substitute “of section 113KB”.

49 Section 38I (note)

Omit “Sections 48A and 104A of the *Copyright Act 1968* apply”, substitute “Section 113KB of the *Copyright Act 1968* applies”.

Part 3—Application

50 Application—pre‑commencement requests

Scope

(1) This item applies if:

(a) before the commencement of this item, a request was made under:

(i) subsection 49(1) of the *Copyright Act 1968*; or

(ii) subsection 49(2A) of that Act; or

(iii) subsection 50(1) of that Act; and

(b) the request was not fulfilled before the commencement of this item.

Application

(2) Despite the amendments of the *Copyright Act 1968* made by:

(a) this Schedule (other than the repeal of sections 203A to 203H of that Act); and

(b) item 2 of Schedule 2 to this Act;

the *Copyright Act 1968* continues to apply, in relation to:

(c) the request; and

(d) the fulfilment of the request;

as if those amendments had not been made.

Schedule 4—Education

Copyright Act 1968

1 Subsection 27(4)

After “for the purposes of this Act”, insert “(other than section 113MA)”.

2 Section 28

Repeal the section.

3 Section 106 (at the end of the heading)

Add “**etc.**”.

4 Paragraph 106(1)(b)

Repeal the paragraph, substitute:

(b) as part of the activities of, or for the benefit of, a registered charity; or

(c) as part of the activities of, or for the benefit of:

(i) an educational institution; or

(ii) a library; or

(iii) an archives;

that:

(iv) is not established or conducted for profit; and

(v) is not a charity; or

(d) as part of the activities of, or for the benefit of, a club, society or other organisation:

(i) that is not established or conducted for profit; and

(ii) the principal objects of which are connected with the advancement of religion, education or social welfare; and

(iii) that is not a charity.

5 At the end of subsection 106(2)

Add:

; or (c) in relation to:

(i) an educational institution; or

(ii) a library; or

(iii) an archives;

of a kind mentioned in paragraph (c) of that subsection, if a charge is made for admission to the place where the recording is to be heard and any of the proceeds of the charge are applied otherwise than for the purposes of:

(iv) the educational institution; or

(v) the library; or

(vi) the archives;

as the case may be; or

(d) in relation to a club, society or other organisation of a kind mentioned in paragraph (d) of that subsection, if a charge is made for admission to the place where the recording is to be heard and any of the proceeds of the charge are applied otherwise than for the purposes of the club, society or other organisation, as the case may be.

6 Section 113D

Omit “by educational institutions”, substitute “for educational purposes”.

7 Before Division 4 of Part IVA

Insert:

Division 3A—Educational purposes—general

113MA Use of copyright material in the course of educational instruction

Scope

(1) This section applies if educational instruction is provided by an educational institution.

Use of copyright material

(2) The body administering the educational institution, or a person taking part in the giving or receiving of the educational instruction, does not infringe copyright in copyright material by using the material if:

(a) the use is in the course of giving or receiving the educational instruction; and

(b) any of the following apply:

(i) the use is a performance of the material;

(ii) the use is an act that causes the material to be seen or heard;

(iii) the use is the copying or communication of the material, and the use facilitates the performance of the material;

(iv) the use is the copying or communication of the material, and the use facilitates an act that causes the material to be seen or heard;

(v) the use is the making of an audio recording, or an audio‑visual recording, of the whole or a part of the material, and the use facilitates the performance of the material;

(vi) the use is the making of an audio recording, or an audio‑visual recording, of the whole or a part of the material, and the use facilitates an act that causes the material to be seen or heard; and

(c) if the use is the making of an audio recording, or an audio‑visual recording, of the whole or a part of the material—the recording is made available on a temporary basis to persons taking part in the giving or receiving of the educational instruction; and

(d) if the use is making the material available online (whether at the premises of the educational institution or on the internet)—the body administering the educational institution takes reasonable steps to limit access to the material to persons taking part in the giving or receiving of the educational instruction; and

(e) the use is not wholly or partly for the purpose of the educational institution obtaining a commercial advantage or profit.

(3) A provision of this Act (other than this section) does not, by implication, limit this section.

Interpretation

(4) In this section:

(a) a reference to copying copyright material includes a reference to making or copying an adaptation of the material; and

(b) a reference to communicating copyright material includes a reference to communicating an adaptation of the material.

(5) For the purposes of this section, ***use*** includes any act that would infringe copyright apart from this section.

113MB Use of works and broadcasts for educational purposes

(1) A teacher or student does not infringe copyright in a work by copying the whole or a part of the work if:

(a) the copying occurs in the course of educational instruction; and

(b) the copying is not done using:

(i) a device adapted for the production of multiple copies; or

(ii) a device capable of producing a copy or copies by a process of reprographic reproduction.

(2) Copying or communicating the whole or a part of copyright material does not infringe copyright in the material, if the material is copied or communicated:

(a) as part of the questions to be answered in an examination; or

(b) in an answer to such a question.

(3) In subsections (1) and (2):

(a) a reference to copying a work or copyright material includes a reference to making or copying an adaptation of the work or material; and

(b) a reference to communicating copyright material includes a reference to communicating an adaptation of the material.

(4) The making of a record of a sound broadcast, being a broadcast that was intended to be used for educational purposes, does not constitute an infringement of copyright in a work or sound recording included in the broadcast if:

(a) the record is made by, or on behalf of, the person or authority in charge of a place of education that is not conducted for profit; and

(b) the record is not used except in the course of instruction at that place.

(5) The making of a record of a sound broadcast is not an infringement of copyright in the broadcast if the record is made by, or on behalf of, the body administering an educational institution and is not used except for the educational purposes of that institution or another educational institution.

(6) For the purposes of sections 38 and 103, in determining whether the making of an article constituted an infringement of copyright, subsections (1), (2), (4) and (5) are to be disregarded.

(7) For the purposes of any provision of this Act relating to imported articles, in determining whether the making of an article made outside Australia would, if the article had been made in Australia by the importer of the article, have constituted an infringement of copyright, subsections (1), (2), (4) and (5) are to be disregarded.

113MC Proxy web caching by educational institutions

Scope

(1) This section applies if:

(a) a computer system is operated by or on behalf of a body administering an educational institution; and

(b) the system is operated primarily to enable staff and students of the institution to use the system to gain online access for educational purposes to works and other subject‑matter (whether they are made available online using the internet or merely the system); and

(c) the system automatically makes:

(i) temporary electronic reproductions of works made available online through the system to users of the system in response to action by the users; and

(ii) temporary electronic copies of other subject‑matter made available online through the system to users of the system in response to action by the users; and

(d) those reproductions and copies are made by the system merely to facilitate efficient later access to the works and other subject‑matter by users of the system.

Copyright not infringed

(2) Copyright in a work or other subject‑matter reproduced or copied by the system as described in paragraphs (1)(c) and (d) is not infringed by:

(a) that reproduction or copying; or

(b) the later communication of the work or other subject‑matter, using that reproduction or copy, to a user of the system.

(3) This section does not limit section 43A, 43B, 111A, 111B or 113MA.

(4) Disregard this section in determining whether copyright in a work or other subject‑matter is infringed by an act that:

(a) involves a system like one described in subsection (1) except that the system is not operated as described in paragraphs (1)(a) and (b); and

(b) corresponds to an act described in paragraph (2)(a) or (b).

System

(5) For the purposes of this section, ***system*** includes network.

8 After section 113T

Insert:

113TA Implied licences

In determining whether there is an implied licence to do an act comprised in a copyright, disregard sections 113P and 113S.

9 Sections 200 and 200AAA

Repeal the sections.

10 Paragraph 248(2)(a)

Omit “referred to in subsection 28(1)”, substitute “covered by section 113MA”.

Schedule 5—Use of copyright material by the Commonwealth or a State

Part 1—Amendments

Copyright Act 1968

1 Subsection 10(1) (definition of *government*)

Repeal the definition.

2 Subsection 10(1) (definition of *government copy*)

Repeal the definition.

3 Subsection 10(1)

Insert:

***State*** has a meaning affected by paragraph (3)(n).

4 Paragraph 100AH(d)

Omit “section 183”, substitute “sections 183 and 183A”.

5 Section 153E (heading)

Omit “**183(5)**”, substitute “**183A(3)**”.

6 Subsections 153E(1) and (2)

Omit “183(5)”, substitute “183A(3)”.

7 At the end of section 153E

Add:

(3) The Tribunal must not make an order under subsection (2) fixing the terms for the doing of an act unless the Tribunal considers that the terms are reasonable.

8 After section 153E

Insert:

153EA Applications to Tribunal under subsection 183B(2)

(1) The parties to an application to the Tribunal under subsection 183B(2) for the fixing of the terms for the copying or communication of copyright material where the copying or communication is done for the services of the Commonwealth or a State are:

(a) the Commonwealth or the State, as the case may be; and

(b) the owner of the copyright.

(2) If an application is made to the Tribunal under subsection 183B(2):

(a) the Tribunal is to consider the application; and

(b) after giving the parties to the application an opportunity of presenting their cases, the Tribunal is to make an order fixing the terms for the copying or communication of the copyright material.

(3) The Tribunal must not make an order under paragraph (2)(b) fixing the terms for the copying or communication of copyright material unless the Tribunal considers that the terms are reasonable.

9 Section 153F (heading)

Omit “**government copies**”, substitute “**copyright material**”.

10 Subsection 153F(5)

Repeal the subsection, substitute:

(5) A declaration of a company as a collecting society for the purposes of Division 2 of Part VII may be a declaration in relation to:

(a) the copying or communication of all copyright material; or

(b) the copying or communication of a specified class of copyright material; or

(c) the copying of all copyright material; or

(d) the copying of a specified class of copyright material; or

(e) the communication of all copyright material; or

(f) the communication of a specified class of copyright material.

11 Paragraph 153F(6)(a)

Omit “in force in a State or Territory”, substitute “of the Commonwealth, a State or a Territory”.

12 Paragraphs 153F(6)(b) and (c)

Repeal the paragraphs, substitute:

(b) in the case of an application for a declaration in relation to:

(i) the copying or communication of all copyright material; or

(ii) the copying of all copyright material; or

(iii) the communication of all copyright material;

that the applicant’s rules permit the owner, or the agent of the owner, of the copyright in any copyright material to become a member; and

(c) in the case of an application for a declaration in relation to:

(i) the copying or communication of a class of copyright material; or

(ii) the copying of a class of copyright material;

that the applicant’s rules permit the owner, or the agent of the owner, of the copyright in any copyright material the copying of which, in accordance with section 183, would be within that class to become a member; and

(ca) in the case of an application for a declaration in relation to:

(i) the copying or communication of a class of copyright material; or

(ii) the communication of a class of copyright material;

that the applicant’s rules permit the owner, or the agent of the owner, of the copyright in any copyright material the communication of which, in accordance with section 183, would be within that class to become a member; and

13 Subparagraph 153F(6)(e)(i)

Omit “183A”, substitute “183B”.

14 Paragraph 153G(1)(c)

Repeal the paragraph, substitute:

(c) the Commonwealth;

(d) a State.

15 Section 153J

Repeal the section, substitute:

153J Amendment and revocation of previous declaration on the declaration of another collecting society

(1) If:

(a) a declaration (the ***previous declaration***) is in force under section 153F in relation to a company; and

(b) the Tribunal makes another declaration (the ***current declaration***) under that section in relation to another company; and

(c) the previous declaration is partly inconsistent with the current declaration;

the Tribunal must, by notifiable instrument, amend the previous declaration so as to ensure that the previous declaration is wholly consistent with the current declaration.

(2) The amendment of the previous declaration under subsection (1) takes effect when the current declaration takes effect.

(3) If:

(a) a declaration (the ***previous declaration***) is in force under section 153F in relation to a company; and

(b) the Tribunal makes another declaration (the ***current declaration***) under that section in relation to another company; and

(c) the previous declaration is wholly inconsistent with the current declaration;

the Tribunal must, by notifiable instrument, revoke the previous declaration.

(4) The revocation of the previous declaration under subsection (3) takes effect when the current declaration takes effect.

Inconsistency

(5) For the purposes of this section, the following principles apply in determining the extent to which a declaration under section 153F is consistent with another declaration under that section:

(a) only one company can be the relevant collecting society in relation to the copying of particular copyright material for the purposes of Division 2 of Part VII;

(b) only one company can be the relevant collecting society in relation to the communication of particular copyright material for the purposes of Division 2 of Part VII.

16 Section 153K

Repeal the section.

17 Division 2 of Part VII (heading)

Omit “**the Crown**”, substitute “**the Commonwealth or a State (general)**”.

18 Subsection 182B(1) (definition of *government*)

Repeal the definition.

19 Subsection 182B(1) (definition of *government copy*)

Repeal the definition.

20 Section 182C

Repeal the section, substitute:

182C Relevant collecting society

(1) A company is the relevant collecting society in relation to the copying of copyright material if there is in force, under Division 3 of Part VI, a declaration of the company as the collecting society for the purposes of this Division in relation to:

(a) the copying or communication of all copyright material; or

(b) the copying or communication of a class of copyright material that includes the first‑mentioned copyright material; or

(c) the copying of all copyright material; or

(d) the copying of a class of copyright material that includes the first‑mentioned copyright material.

(2) A company is the relevant collecting society in relation to the communication of copyright material if there is in force, under Division 3 of Part VI, a declaration of the company as the collecting society for the purposes of this Division in relation to:

(a) the copying or communication of all copyright material; or

(b) the copying or communication of a class of copyright material that includes the first‑mentioned copyright material; or

(c) the communication of all copyright material; or

(d) the communication of a class of copyright material that includes the first‑mentioned copyright material.

21 Section 183 (heading)

Omit “**the Crown**”, substitute “**the Commonwealth or a State**”.

22 Subsection 183(1)

Repeal the subsection, substitute:

(1) The Commonwealth or a State, or a person authorised in writing by the Commonwealth or a State to act on behalf of the Commonwealth or State, does not infringe copyright in copyright material by doing any act comprised in the copyright if:

(a) the act is done for the services of the Commonwealth or State; and

(b) the act does not infringe copyright only because of this subsection.

23 Subsections 183(4), (5), (6), (7), (8) and (9)

Repeal the subsections.

24 Subsection 183(11)

Omit “The reproduction, copying or communication of the whole or a part of a work or other subject‑matter”, substitute “The copying or communication of copyright material”.

25 Subsection 183(11)

After “this section”, insert “, section 183A and section 183B”.

26 At the end of section 183

Add:

(12) Subsection (1) does not apply to an act comprised in the copyright in copyright material if the act is covered by section 116AJA or 116AJB.

27 Sections 183A, 183B and 183C

Repeal the sections, substitute:

183A Notice and terms of use—owner of the copyright

Notice

(1) If an act comprised in the copyright in copyright material has been done under subsection 183(1) for the services of the Commonwealth or a State, the Commonwealth or State must:

(a) as soon as practicable, inform the owner of the copyright, as prescribed, of the doing of the act; and

(b) give the owner such information relating to the doing of the act as the owner from time to time reasonably requires.

Note: See also section 183B (special arrangements—collecting society).

(2) Paragraph (1)(a) does not apply if it appears to the Commonwealth or State that it would be contrary to the public interest to comply with that paragraph.

Terms of use

(3) If an act comprised in the copyright in copyright material has been done under subsection 183(1) for the services of the Commonwealth or a State, the terms for the doing of the act are:

(a) such terms as are agreed (whether before or after the act is done) between the Commonwealth or State and the owner of the copyright; or

(b) in default of agreement—such terms as are fixed by the Copyright Tribunal.

Note: See also section 183B (special arrangements—collecting society).

Agreement or licence

(4) An agreement or licence (whether made or granted before or after the commencement of this Act) fixing the terms on which a person other than the Commonwealth or a State may do acts comprised in a copyright is inoperative with respect to the doing of those acts, after the commencement of this Act, under subsection 183(1), unless the agreement or licence has been approved by:

(a) in the case of the government of the Commonwealth—the Minister; or

(b) in the case of the government of a State—the Minister of the State with responsibility for copyright.

Purchaser of article

(5) If:

(a) an article is sold; and

(b) the sale of the article is not, by virtue of subsection 183(1), an infringement of a copyright;

the purchaser of the article, and a person claiming through the purchaser of the article, is entitled to deal with the article as if the Commonwealth or State, as the case may be, were the owner of that copyright.

Exclusive licensee

(6) If an exclusive licence is in force in relation to any copyright, this section has effect as if any reference in this section to the owner of the copyright were a reference to the exclusive licensee of the copyright.

183B Special arrangements—collecting society

(1) If:

(a) an act comprised in the copyright in copyright material has been done under subsection 183(1) for the services of the Commonwealth or a State; and

(b) the act consists of:

(i) the copying of the copyright material; or

(ii) the communication of the copyright material; and

(c) if subparagraph (b)(i) applies—a company is the relevant collecting society in relation to the copying of the copyright material for the purposes of this Division; and

(d) if subparagraph (b)(ii) applies—a company is the relevant collecting society in relation to the communication of the copyright material for the purposes of this Division; and

(e) the company has not ceased operating as that collecting society; and

(f) the Commonwealth or State chooses to deal exclusively with the relevant collecting society in relation to the copying or communication of the copyright material;

subsections 183A(1) and (3) do not apply in relation to the copying or communication of the copyright material.

Terms of use

(2) If, as a result of subsection (1) of this section, subsection 183A(3) does not apply to the copying or communication of copyright material in a particular period for the services of the Commonwealth or a State, the terms for the copying or communication of the material are:

(a) such terms as are agreed between the Commonwealth or State and:

(i) in the case of the copying of the copyright material—the relevant collecting society for the copying of the copyright material; or

(ii) in the case of the communication of the copyright material—the relevant collecting society for the communication of the copyright material; or

(b) in default of agreement—such terms as are fixed by the Copyright Tribunal.

(3) If remuneration is not paid in accordance with:

(a) the agreement; or

(b) the Copyright Tribunal’s order fixing the terms for the copying or communication of the copyright material;

then:

(c) in the case of the copying of the copyright material—the relevant collecting society for the copying of the copyright material may recover the remuneration as a debt due to the society in a court of competent jurisdiction; and

(d) in the case of the communication of the copyright material—the relevant collecting society for the communication of the copyright material may recover the remuneration as a debt due to the society in a court of competent jurisdiction.

(4) Subsection (2) does not apply to the copying or communication of copyright material for the services of the Commonwealth or a State if it appears to the Commonwealth or State that it would be contrary to the public interest to disclose information about the copying or communication of the copyright material.

183C Implied licences

In determining whether there is an implied licence to do an act comprised in a copyright, disregard sections 183, 183A and 183B.

28 At the end of Part VII

Add:

Division 3—Use of copyright material provided to the Commonwealth or a State

183G Use of copyright material provided to the Commonwealth or a State

(1) The copyright in copyright material is not infringed by a use of the copyright material if:

(a) the use is by:

(i) the Commonwealth or a State; or

(ii) a person authorised in writing by the Commonwealth or a State; and

(b) the material was provided to the Commonwealth or State; and

(c) the use is for the services of the Commonwealth or State; and

(d) the use is not wholly or partly for the purpose of the Commonwealth or State obtaining a commercial advantage or profit; and

(e) the use is reasonable having regard to:

(i) the purpose for which the material was provided to the Commonwealth or State; or

(ii) any related purpose.

(2) For the purposes of this section, ***use*** includes any act that would infringe copyright apart from this section.

Part 2—Application and transitional

29 Transitional—declaration of collecting society

(1) If:

(a) a declaration of a company as a collecting society for the purposes of Division 2 of Part VII of the *Copyright Act 1968* was in force immediately before the commencement of this item; and

(b) the declaration was in relation to all government copies;

the declaration has effect, after the commencement of this item, as if it were a declaration in relation to the copying of all copyright material.

(2) If:

(a) a declaration of a company as a collecting society for the purposes of Division 2 of Part VII of the *Copyright Act 1968* was in force immediately before the commencement of this item; and

(b) the declaration was in relation to government copies of a specified class of copyright material;

the declaration has effect, after the commencement of this item, as if it were a declaration in relation to the copying of that class of copyright material.

30 Application—pre‑commencement use of copyright material

Scope

(1) This item applies if an act (the ***past act***) comprised in a copyright was done under subsection 183(1) of the *Copyright Act 1968* before the commencement of this item.

Application

(2) Despite the amendments of the *Copyright Act 1968* made by this Schedule, that Act continues to apply, in relation to:

(a) the past act; and

(b) in a case where the past act was the making of a government copy—a company, so far as it is the relevant collecting society in relation to the government copy for the purposes of Division 2 of Part VII of the *Copyright Act 1968*;

as if:

(c) those amendments had not been made; and

(d) item 29 of this Schedule had not been enacted.

Schedule 6—Registrar of the Copyright Tribunal

Part 1—Amendment

Copyright Act 1968

1 Subsections 170(2), (4) and (5)

Omit “the Minister”, substitute “the Chief Executive Officer and Principal Registrar of the Federal Court of Australia”.

Part 2—Transitional

2 Transitional—instrument of appointment of the Registrar of the Copyright Tribunal

Scope

(1) This item applies to an instrument of appointment of the Registrar of the Copyright Tribunal that was:

(a) made by the Minister under subsection 170(2) of the *Copyright Act 1968*; and

(b) in force immediately before the commencement of this item.

Effect of instrument

(2) The instrument has effect after the commencement of this item as if it had been made under that subsection (as amended by this Schedule) by the Chief Executive Officer and Principal Registrar of the Federal Court of Australia.

Schedule 7—Regulations relating to technological protection measures

Copyright Act 1968

1 Paragraph 249(4)(a)

Repeal the paragraph.

2 Subsection 249(4) (note)

Repeal the note.

3 Paragraph 249(8)(a)

Repeal the paragraph.

Schedule 8—Archives

Copyright Act 1968

1 Subsection 10(1) (paragraph (a) of the definition of *archives*)

Repeal the paragraph, substitute:

(a) archival material in the custody of:

(i) the National Archives of Australia; or

(ii) the State Archives and Records Authority established by the *State Records Act 1998* (NSW); or

(iii) the Public Record Office established by the *Public Records Act 1973* (Vic.); or

(iv) the Queensland State Archives established by the *Public Records Act 2002* (Qld); or

(v) the State Records Office established by the *State Records Act 2000* (WA); or

(vi) the office of State Records established by the *State Records Act 1997* (SA); or

(vii) the Archives Office of Tasmania established by the *Archives Act 1983* (Tas.); or

Schedule 9—Referrals

Part 1—Amendments

Copyright Act 1968

1 Subsection 135ZZT(1C) (note)

Omit “reference”, substitute “referral”.

2 Subsection 135ZZU(3) (note)

Omit “reference”, substitute “referral”.

3 Subsection 135ZZZO(4) (note)

Omit “reference”, substitute “referral”.

4 Subsection 135ZZZP(3) (note)

Omit “reference”, substitute “referral”.

5 Subsection 144A(3)

Omit “reference” (last occurring), substitute “referral”.

6 Subsection 146(3)

Omit “reference” (wherever occurring), substitute “referral”.

7 Division 3 of Part VI (heading)

Omit “**references**”, substitute “**referrals**”.

8 Subsection 153A(5)

Omit “referral or application”, substitute “application or referral”.

9 Subdivision G of Division 3 of Part VI (heading)

Omit “**references**”, substitute “**referrals**”.

10 Section 153P (heading)

Omit “**References**”, substitute “**Referrals**”.

11 Subsection 153P(2)

Omit “reference”, substitute “referral”.

12 Section 153Q (heading)

Omit “**References**”, substitute “**Referrals**”.

13 Subsection 153Q(2)

Omit “reference”, substitute “referral”.

14 Subdivision GA of Division 3 of Part VI (heading)

Omit “**references**”, substitute “**referrals**”.

15 Section 153U (heading)

Omit “**References**”, substitute “**Referrals**”.

16 Subsection 153U(2)

Omit “reference”, substitute “referral”.

17 Section 153V (heading)

Omit “**References**”, substitute “**Referrals**”.

18 Subsection 153V(2)

Omit “reference”, substitute “referral”.

19 Subdivision H of Division 3 of Part VI (heading)

Omit “**References and applications**”, substitute “**Applications and referrals**”.

20 Section 154 (heading)

Omit “**Reference**”, substitute “**Referral**”.

21 Section 154

Omit “reference” (wherever occurring), substitute “referral”.

22 Section 155 (heading)

Omit “**Reference**”, substitute “**Referral**”.

23 Section 155

Omit “reference” (wherever occurring), substitute “referral”.

24 Section 156 (heading)

Omit “**reference**”, substitute “**referral**”.

25 Section 156

Omit “reference” (wherever occurring), substitute “referral”.

26 Section 157A

Omit “reference or application” (wherever occurring), substitute “application or referral”.

27 Section 157B (heading)

Omit “**reference or application**”, substitute “**application or** **referral**”.

28 Section 157B

Omit “reference or application” (wherever occurring), substitute “application or referral”.

29 Subsection 158(1)

Omit “reference” (wherever occurring), substitute “referral”.

30 Subsection 159(1)

Omit “reference”, substitute “referral”.

31 Section 160

Omit “reference” (wherever occurring), substitute “referral”.

32 Section 161 (heading)

Omit “**Reference**”, substitute “**Referral**”.

33 Subsection 161(4)

Omit “reference”, substitute “referral”.

34 Subsection 161(6)

Omit “reference”, substitute “referral”.

35 Subsection 166(1)

Omit “references and applications” (wherever occurring), substitute “applications and referrals”.

36 Paragraph 166(2)(a)

Omit “reference”, substitute “referral”.

37 Subsection 169A(1)

Omit “reference”, substitute “referral”.

38 Subsections 169A(2) and (3)

Omit “references”, substitute “referrals”.

39 Section 232 (heading)

Omit “**References and applications**”, substitute “**Applications and referrals**”.

Part 2—Application

40 Application—pre‑commencement proceedings instituted in the Copyright Tribunal

Scope

(1) This item applies if proceedings by way of a reference to the Copyright Tribunal were instituted before the commencement of this item.

Application

(2) Despite the amendments of the *Copyright Act 1968* made by this Schedule (other than the amendments of section 161 of that Act), that Act continues to apply, in relation to those proceedings, as if those amendments had not been made.

41 Application—pre‑commencement referrals to the Federal Court of Australia

Scope

(1) This item applies if, before the commencement of this item, the Copyright Tribunal referred a question of law to the Federal Court of Australia under subsection 161(1) of the *Copyright Act 1968*.

Application

(2) Despite the amendments of section 161 of the *Copyright Act 1968* made by this Schedule, that section continues to apply, in relation to the referral, as if those amendments had not been made.

Schedule 10—Notifiable instruments

Part 1—Amendments

Copyright Act 1968

1 Paragraph 135ZZT(1A)(a)

Omit “by notice in the *Gazette*”, substitute “by notifiable instrument”.

2 Subsection 135ZZT(1B)

Repeal the subsection.

3 Paragraph 135ZZU(2)(a)

Omit “by notice in the *Gazette*”, substitute “by notifiable instrument”.

4 Section 135ZZX

Omit “by notice in the *Gazette*”, substitute “by notifiable instrument”.

5 Paragraph 135ZZZO(2)(a)

Omit “by notice published in the *Gazette*”, substitute “by notifiable instrument”.

6 Subsection 135ZZZO(3)

Repeal the subsection.

7 Paragraph 135ZZZP(2)(a)

Omit “by notice published in the *Gazette*”, substitute “by notifiable instrument”.

8 Section 135ZZZT

Omit “by notice published in the *Gazette*”, substitute “by notifiable instrument”.

9 Paragraph 153F(4)(a)

Before “declare the applicant”, insert “by notifiable instrument,”.

10 Subsection 153F(8)

Repeal the subsection.

11 Paragraph 153G(4)(a)

Before “revoke the declaration”, insert “by notifiable instrument,”.

12 Subsection 153G(7)

Repeal the subsection.

13 Paragraph 153P(4)(a)

Before “declare the applicant”, insert “by notifiable instrument,”.

14 Subsection 153P(5)

Repeal the subsection.

15 Paragraph 153Q(4)(a)

Before “revoke the declaration”, insert “by notifiable instrument,”.

16 Subsection 153Q(5)

Repeal the subsection, substitute:

(5) If the Tribunal revokes the declaration of the collecting society, the revocation must specify the day on which it takes effect.

17 Paragraph 153U(4)(a)

Before “declare the applicant”, insert “by notifiable instrument,”.

18 Subsection 153U(5)

Repeal the subsection.

19 Paragraph 153V(4)(a)

Before “revoke the declaration”, insert “by notifiable instrument,”.

20 Subsection 153V(5)

Repeal the subsection, substitute:

(5) If the Tribunal revokes the declaration of the collecting society, the revocation must specify the day on which it takes effect.

Part 2—Application

21 Application—declarations, appointments and revocations

(1) The amendments of section 135ZZT of the *Copyright Act 1968* made by this Schedule apply in relation to a declaration made after the commencement of this item.

(2) The amendment of section 135ZZU of the *Copyright Act 1968* made by this Schedule applies in relation to a revocation that happened after the commencement of this item.

(3) The amendment of section 135ZZX of the *Copyright Act 1968* made by this Schedule applies in relation to an appointment made after the commencement of this item.

(4) The amendments of section 135ZZZO of the *Copyright Act 1968* made by this Schedule apply in relation to a declaration made after the commencement of this item.

(5) The amendment of section 135ZZZP of the *Copyright Act 1968* made by this Schedule applies in relation to a revocation that happened after the commencement of this item.

(6) The amendment of section 135ZZZT of the *Copyright Act 1968* made by this Schedule applies in relation to an appointment made after the commencement of this item.

(7) The amendments of section 153F of the *Copyright Act 1968* made by this Schedule apply in relation to a declaration made after the commencement of this item.

(8) The amendments of section 153G of the *Copyright Act 1968* made by this Schedule apply in relation to a revocation that happened after the commencement of this item.

(9) The amendments of section 153P of the *Copyright Act 1968* made by this Schedule apply in relation to a declaration made after the commencement of this item.

(10) The amendments of section 153Q of the *Copyright Act 1968* made by this Schedule apply in relation to a revocation that happened after the commencement of this item.

(11) The amendments of section 153U of the *Copyright Act 1968* made by this Schedule apply in relation to a declaration made after the commencement of this item.

(12) The amendments of section 153V of the *Copyright Act 1968* made by this Schedule apply in relation to a revocation that happened after the commencement of this item.