



Copyright Amendment Act (No. 1) 1998

No. 104, 1998



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An Act to amend the *Copyright Act 1968*, and for related purposes

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An Act to amend the *Copyright Act 1968*, and for related purposes

[Assented to 30 July 1998]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Copyright Amendment Act (No.1) 1998*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (2) Items 6, 8, 10 and 12 in Schedule 2 and item 12 in Schedule 8 commence at the end of 18 months after the day on which this Act receives the Royal Assent.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Employed journalists' copyright

Copyright Act 1968

1 Subsection 35(4)

Repeal the subsection, substitute:

(4) If a literary, dramatic or artistic work:

- (a) is made by the author under the terms of his or her employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship; and
- (b) is so made for the purpose of inclusion in a newspaper, magazine or similar periodical;

the following paragraphs apply:

- (c) the author is the owner of the copyright only in so far as the copyright relates to:
 - (i) reproduction of the work for the purpose of inclusion in a book; or
 - (ii) reproduction of the work in the form of a hard copy facsimile (other than a hard copy facsimile made as part of a process of transmission) made from a paper edition of, or from another hard copy facsimile made from a paper edition of, an issue of the newspaper, magazine or similar periodical, but not including reproduction by the proprietor for a purpose connected with the publication of the newspaper, magazine or similar periodical;
- (d) except as provided by paragraph (c), the proprietor is the owner of the copyright.

2 Paragraph 35(5)(a)

After “photograph”, insert “for a private or domestic purpose”.

3 At the end of section 35

Add:

(7) In this section:

hard copy facsimile, in relation to a literary, dramatic or artistic work, means a facsimile which is in a material form and from which the work is visible to a human being without the use of any device.

private or domestic purpose includes a portrait of family members, a wedding party or children.

4 Application

The amendments made by this Schedule apply only in relation to works made after the commencement of this Schedule.

Note: Subsection 22(1) of the *Copyright Act 1968* specifies when a work is made.

Schedule 2—Labelling and packaging etc. of imported goods etc.

Copyright Act 1968

1 Subsection 10(1) (definition of *infringing copy*)

Omit all the words after “importer,”, substitute:

but does not include:

- (f) a non-infringing book whose importation does not constitute an infringement of that copyright; or
- (g) a non-infringing accessory whose importation does not constitute an infringement of that copyright.

2 Subsection 10(1)

Insert:

accessory, in relation to an article, means one or more of the following:

- (a) a label affixed to, displayed on, incorporated into the surface of, or accompanying, the article;
- (b) the packaging or container in which the article is packaged or contained;
- (c) a label affixed to, displayed on, incorporated into the surface of, or accompanying, the packaging or container in which the article is packaged or contained;
- (d) a written instruction, warranty or other information provided with the article;
- (e) a record embodying an instructional sound recording, or a copy of an instructional cinematograph film, provided with the article;

but does not include:

- (f) any label, packaging or container on which the olympic symbol (within the meaning of the *Olympic Insignia Protection Act 1987*) is reproduced; or
- (g) a manual sold with computer software for use in connection with that software.

3 Subsection 10(1)

Insert:

non-infringing accessory means an accessory made in:

- (a) a country that is a party to the International Convention for the Protection of Literary and Artistic Works concluded at Berne on 9 September 1886 as revised from time to time; or
- (b) a country that is a member of the World Trade Organization and has a law that provides consistently with the TRIPS Agreement for:
 - (i) the ownership and duration of copyright or a related right in works, sound recordings and cinematograph films; and
 - (ii) the owner of the copyright or related right to have rights relating to the reproduction of the work, sound recording or cinematograph film;

where:

- (c) the making of any copy of a work, or any reproduction of a published edition of a work, that is on, or is embodied in, the accessory; or
 - (d) the making of any record embodying a sound recording, or any copy of a cinematograph film, that is the accessory;
- was authorised by the owner of the copyright in that country in the work, edition, recording or film, as the case may be.

4 Subsection 10(1)

Insert:

TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights set out in Annex 1C to the Marrakesh Agreement establishing the World Trade Organization, done at Marrakesh on 15 April 1994.

Note: The English text of the Marrakesh Agreement establishing the World Trade Organization is set out in Australian Treaty Series 1995 No. 8.

5 Section 37

Omit “section 44A”, substitute “Division 3”.

6 At the end of section 37

Add:

- (2) In relation to an accessory to an article that is or includes a copy of a work, being a copy that was made without the licence of the owner of the copyright in the work in the country in which the copy was made, subsection (1) has effect as if the words “the importer knew, or ought reasonably to have known, that” were omitted.

7 Subsection 38(1)

Omit “section 44A”, substitute “Division 3”.

8 After section 44B

Add:

44C Copyright subsisting in accessories etc. to imported articles

- (1) The copyright in a work a copy of which is on, or embodied in, a non-infringing accessory to an article is not infringed by importing the accessory with the article.
- (2) Section 38 does not apply to a copy of a work, being a copy that is on, or embodied in, a non-infringing accessory to an article, if the importation of the accessory is not an infringement of copyright in the work.

9 Section 102

Omit “section 112A”, substitute “sections 112A and 112C”.

10 At the end of section 102

Add:

- (2) In relation to an accessory to an article that is or includes a copy of subject-matter in which copyright subsists by virtue of this Part, being a copy that was made without the licence of the owner of the copyright in the country in which the copy was made, subsection (1) has effect as if the words “the importer knew, or ought reasonably to have known, that” were omitted.

11 Subsection 103(1)

Omit “section 112A”, substitute “sections 112A and 112C”.

12 After section 112B

Add:

112C Copyright subsisting in accessories etc. to imported articles

(1) The copyright in:

- (a) a published edition of a work a reproduction of which is on, or embodied in, a non-infringing accessory to an article; or
- (b) a cinematograph film a copy of which is a non-infringing accessory to an article; or
- (c) a sound recording a record of which is a non-infringing accessory to an article;

is not infringed by importing the accessory with the article.

(2) Section 103 does not apply to:

- (a) a reproduction of a published edition of a work, being a reproduction that is on, or embodied in, a non-infringing accessory to an article; or
- (b) a copy of a cinematograph film, being a copy that is a non-infringing accessory to an article; or
- (c) a record embodying a sound recording, being a record that is a non-infringing accessory to an article;

if the importation of the accessory is not an infringement of copyright in the edition, film or recording, as the case may be.

Schedule 3—Conversion and detention

Copyright Act 1968

1 Subsection 10(1)

Insert:

device includes a plate.

2 Subsection 116(1)

Repeal the subsection, substitute:

- (1) The owner of the copyright in a work or other subject-matter may bring an action for conversion or detention in relation to:
 - (a) an infringing copy; or
 - (b) a device used or intended to be used for making infringing copies.
- (1A) In an action for conversion or detention, a court may grant to the owner of the copyright all or any of the remedies that are available in such an action as if:
 - (a) the owner of the copyright had been the owner of the infringing copy since the time the copy was made; or
 - (b) the owner of the copyright had been the owner of the device since the time when it was used or intended to be used for making infringing copies.
- (1B) Any relief granted by a court in an action for conversion or detention is in addition to any relief that the court may grant under section 115.
- (1C) A court is not to grant any relief to the owner of the copyright in an action for conversion or detention if the relief that the court has granted or proposes to grant under section 115 is, in the opinion of the court, a sufficient remedy.
- (1D) In deciding whether to grant relief in an action for conversion or detention and in assessing the amount of damages payable, the court may have regard to the following:

- (a) the expenses incurred by the defendant, being a person who marketed or otherwise dealt with the infringing copy, in manufacturing or acquiring the infringing copy;
 - (b) whether the expenses were incurred before or after the infringing copy was sold or otherwise disposed of by the defendant;
 - (c) any other matter that the court considers relevant.
- (1E) If the infringing copy is an article of which only part consists of material that infringes copyright, the court, in deciding whether to grant relief and in assessing the amount of damages payable, may also have regard to the following:
- (a) the importance to the market value of the article of the material that infringes the copyright;
 - (b) the proportion the material that infringes copyright bears to the article;
 - (c) the extent to which the material that infringes copyright may be separated from the article.

3 Paragraph 116(2)(c)

Omit “plate”, substitute “device”.

4 Application

The amendments made by items 1, 2 and 3 do not apply to an action for conversion or detention brought before the commencement of this Schedule.

Schedule 4—Copying for the services of the Commonwealth, State and Territory Governments

Copyright Act 1968

1 At the beginning of Division 3 of Part VI

Insert:

148 Interpretation

In this Division:

copyright material, government and *government copy* have the same meanings as in Division 2 of Part VII.

2 After section 153D

Insert:

153E Applications to Tribunal under subsection 183(5)

- (1) The parties to an application to the Tribunal under subsection 183(5) for the fixing of the terms for the doing of an act comprised in a copyright where the act 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 183(5), the Tribunal is to consider the application and, after giving the parties to the application an opportunity of presenting their cases, is to make an order fixing the terms for the doing of the act.

153F Applications to Tribunal to declare collecting society for government copies

- (1) A company limited by guarantee may apply to the Tribunal for a declaration that the company be a collecting society for the purposes of Division 2 of Part VII.
 - (2) The parties to the application are the applicant and any person made a party by the Tribunal.
 - (3) The Tribunal may make a person a party if:
 - (a) the person asks to be made a party; and
 - (b) the Tribunal thinks that the person has a sufficient interest in either or both of the following questions:
 - (i) whether the applicant should be declared to be a collecting society;
 - (ii) whether any current declaration of a company as a collecting society should be revoked.
 - (4) After giving each party an opportunity of presenting its case, the Tribunal must:
 - (a) declare the applicant to be a collecting society for the purposes of Division 2 of Part VII; or
 - (b) reject the application.
 - (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) all government copies; or
 - (b) a specified class of government copies.
 - (6) The Tribunal may only declare the applicant to be a collecting society if the Tribunal is satisfied:
 - (a) that the applicant is a company limited by guarantee incorporated under a law in force in a State or Territory relating to companies; and
 - (b) in the case of an application for a declaration in relation to all government copies, 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 a class of government copies, that the applicant's rules permit
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the owner, or the agent of the owner, of the copyright in any copyright material a reproduction of which in accordance with section 183 would be within that class to become a member; and

- (d) that the applicant's rules prohibit the payment of dividends to its members; and
- (e) that the applicant's rules contain such provisions about all of the following matters as are adequate for the protection of its members:
 - (i) the collection of remuneration payable under section 183A;
 - (ii) the payment of administrative costs of the collecting society out of remuneration it collects;
 - (iii) the distribution of remuneration the collecting society collects;
 - (iv) the collecting society holding on trust remuneration for owners of copyright in copyright material who are not members of the society;
 - (v) access to the collecting society's records by its members; and
- (f) that the applicant's rules contain such other provisions as are required by the regulations to be included for the protection of members of the society.

(7) A declaration must specify the day on which it takes effect.

(8) If the Tribunal makes a declaration under this section, the Secretary to the Tribunal must publish the declaration in the *Gazette*.

153G Applications to Tribunal to revoke a declaration of a collecting society

- (1) Any of the following persons may apply to the Tribunal for the revocation of a declaration under section 153F:
 - (a) the collecting society;
 - (b) a member of the collecting society;
 - (c) a government.
- (2) The parties to an application are:

- (a) the applicant for revocation of the declaration; and
 - (b) if the collecting society is not the applicant for revocation of the declaration—the collecting society; and
 - (c) any person made a party by the Tribunal.
- (3) The Tribunal may make a person a party if:
- (a) the person asks to be made a party; and
 - (b) the Tribunal thinks that the person has a sufficient interest in the question whether the declaration of the collecting society should be revoked.
- (4) After giving each party an opportunity of presenting its case, the Tribunal must:
- (a) revoke the declaration of the collecting society; or
 - (b) reject the application.
- (5) The Tribunal may only revoke the declaration of a company as the collecting society if the Tribunal is satisfied that the company:
- (a) is not functioning adequately as the collecting society; or
 - (b) is not acting in accordance with its rules or in the best interests of its members who own copyright in copyright material or who are agents of copyright owners; or
 - (c) has altered its rules so that they no longer comply with any one or more of paragraphs 153F(6)(b) to (f); or
 - (d) has contravened section 183D or 183E (dealing with reporting and accounting, and alteration of rules).
- (6) A revocation must specify the day on which it takes effect.
- (7) If the Tribunal revokes the declaration of the collecting society, the Secretary to the Tribunal must publish notice of the revocation in the *Gazette*.

153H Time limit for deciding applications under section 153F or 153G

- (1) The Tribunal must make its decision on an application under section 153F or 153G within 6 months after the conclusion of the hearing of the application.
- (2) The 6 months time limit in subsection (1) does not apply if the Tribunal thinks that the matter cannot be dealt with properly within that period of 6 months, whether because of its complexity or because of other special circumstances.
- (3) If subsection (2) applies, the Tribunal must tell the applicant before the end of the 6 months period that the matter cannot be dealt with properly within that period.

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

- (1) If:
 - (a) a declaration (the *previous declaration*) is in force under section 153F; and
 - (b) the Tribunal, under that section, declares another company to be the collecting society for the purposes of Division 2 of Part VII in relation to a class of government copies that includes some of the government copies to which the previous declaration relates;the Tribunal must amend the previous declaration so as to exclude from the government copies to which it relates all government copies to which the declaration of the company referred to in paragraph (b) relates.
- (2) An amendment of a declaration under subsection (1) takes effect when the declaration of the company referred to in paragraph (1)(b) takes effect.
- (3) If:
 - (a) a declaration (the *previous declaration*) is in force under section 153F; and
 - (b) the Tribunal makes another declaration under that section in relation to:

- (i) all government copies; or
 - (ii) a class of government copies that includes all government copies to which the previous declaration relates;
- the Tribunal must revoke the previous declaration.
- (4) The revocation of a declaration under subsection (3) takes effect when the declaration referred to in paragraph (3)(b) takes effect.
 - (5) The Secretary to the Tribunal must publish in the *Gazette* notice of an amendment or revocation made under this section.

153K Applications to Tribunal for method of working out payment for government copies

- (1) A collecting society or a government may apply to the Tribunal for an order determining the method for working out remuneration payable under subsection 183A(2) for government copies made for the services of the government in a particular period.
- (2) The parties to an application are the collecting society and the government.
- (3) After giving each party an opportunity of presenting its case, the Tribunal must make an order determining the method.

Note: Subsection 183A(3) sets out matters that the method must provide for.
Subsection 183A(4) sets out matters that the method may provide for.

- (4) An order may also specify how and when payments of the amount worked out using the method determined are to be made.

3 After the heading to Part VII

Insert:

Division 1—Crown copyright

4 After section 182A

Insert:

Division 2—Use of copyright material for the Crown

182B Definitions

- (1) Subject to subsection (2), in this Division:

collecting society means a company in respect of which a declaration is in force under section 153F.

copyright material means:

- (a) a work; or
- (b) a published edition of a work; or
- (c) a sound recording; or
- (d) a cinematograph film; or
- (e) a television or sound broadcast; or
- (f) a work that is included in a sound recording, a cinematograph film or a television or sound broadcast.

government means the Commonwealth or a State.

Note: State includes the Australian Capital Territory, the Northern Territory and Norfolk Island: see paragraph 10(3)(n), as modified by the A.C.T. Self-Government (Consequential Provisions) Regulations (Amendment) (Statutory Rules 1989 No. 392).

government copy means a reproduction in a material form of copyright material made under subsection 183(1).

- (2) A reference in subsection (1) to a work does not include a reference to a literary work that consists of a computer program or a compilation of computer programs.

182C Relevant collecting society

A company is the relevant collecting society in relation to a government copy 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) all government copies; or
- (b) a class of government copies that includes the first-mentioned government copy.

5 At the end of Part VII

Add:

183A Special arrangements for copying for services of government

- (1) Subsections 183(4) and (5) do not apply in relation to a government copy (whenever it was made) if a company is the relevant collecting society for the purposes of this Division in relation to the copy and the company has not ceased operating as that collecting society.
- (2) If subsection 183(5) does not apply to government copies made in a particular period for the services of a government, the government must pay the relevant collecting society in relation to those copies (other than excluded copies) equitable remuneration worked out for that period using a method:
 - (a) agreed on by the collecting society and the government; or
 - (b) if there is no agreement—determined by the Tribunal under section 153K.
- (3) The method of working out equitable remuneration payable to a collecting society in respect of government copies (other than excluded copies) for a period must:
 - (a) take into account the estimated number of those copies made for the services of the government during the period, being copies in relation to which the society is the relevant collecting society; and
 - (b) specify the sampling system to be used for estimating the number of copies for the purposes of paragraph (a).
- (4) The method of working out the equitable remuneration payable may provide for different treatment of different kinds or classes of government copies.
- (5) Subsections (3) and (4) apply whether the method is agreed on by the collecting society and the government or is determined by the Tribunal.
- (6) In this section:

excluded copies means government copies in respect of which it appears to the government concerned that it would be contrary to

the public interest to disclose information about the making of the copies.

183B Payment and recovery of equitable remuneration payable for government copies

- (1) Equitable remuneration payable to a collecting society under subsection 183A(2) must be paid:
 - (a) in the manner, and at the times, agreed on by the collecting society and the government; or
 - (b) if the Tribunal has made an order under subsection 153K(3) specifying how and when payments are to be made—in the manner, and at the times, specified in the order.
- (2) If equitable remuneration is not paid in accordance with the agreement or the Tribunal's order, the collecting society may recover the remuneration as a debt due to the society in a court of competent jurisdiction.

183C Powers of collecting society to carry out sampling

- (1) This section applies if the method of working out equitable remuneration payable under subsection 183A(2) for government copies made for the services of a government has been agreed on by the government and the relevant collecting society or has been determined by the Tribunal.
- (2) The collecting society may give written notice to the government that the society wishes to carry out sampling in accordance with the method during a specified period at specified premises occupied by the government. The period specified must not start earlier than 7 days after the day on which the notice is given.
- (3) The government may give the collecting society a written objection, based on reasonable grounds, to the proposal to carry out sampling during the period, or at the premises, specified in the notice. However, if it does so, the notice of objection must propose an alternative period during which, or alternative premises at which, as the case may be, sampling may be carried out.
- (4) If the government gives the collecting society an objection, sampling may not be carried out during the period, or at the

premises, to which the objection relates unless the objection is withdrawn.

- (5) If the government has not objected, or has withdrawn any objection it made, before or during the specified period, a person authorised in writing by the society may, during that period, enter the premises specified in the notice and carry out sampling in accordance with the method on any ordinary working day for government staff who work in the premises.
- (6) The government must take reasonable steps to ensure that the person who attends at the premises is given all reasonable and necessary facilities and assistance for carrying out the sampling.

183D Annual report and accounts of collecting society

- (1) As soon as practicable after the end of each financial year, a company that was a collecting society during any part of the year must prepare a report of its operations as a collecting society during the year and send a copy of the report to the Attorney-General.
- (2) A collecting society must keep accounting records correctly recording and explaining the transactions of the society (including any transactions as trustee) and the financial position of the society.
- (3) Accounting records must be kept in a manner that will enable true and fair accounts of the society to be prepared from time to time and to be conveniently and properly audited.
- (4) As soon as practicable after the end of each financial year, a company that was a collecting society during any part of the year must:
 - (a) have its accounts audited by an auditor who is not a member of the society; and
 - (b) give a copy of the audited accounts and the auditor's report on the audit to the Attorney-General.
- (5) The Attorney-General must cause a copy of a document given to the Attorney-General under subsection (1) or paragraph (4)(b) to be laid before each House of the Parliament within 15 sitting days of that House after the Attorney-General received the document.

- (6) A collecting society must give its members reasonable access to copies of:
 - (a) all reports and audited accounts prepared by it under this section; and
 - (b) all auditors' reports on the audit of the accounts.
- (7) This section does not affect any obligations of a collecting society relating to the preparation and lodging of annual returns or accounts under the law under which it is incorporated.

183E Alteration of rules of collecting society

If a collecting society alters its rules, it must give a copy of the altered rules, together with a statement of the effects of, and reasons for, the alteration, to the Attorney-General and the Tribunal within 21 days after the day on which the alteration was made.

6 Application

- (1) If:
 - (a) a government copy was made before the first declaration of a collecting society in relation to a government copy of the same kind was made under section 153F of the *Copyright Act 1968*; and
 - (b) apart from this item, the owner of the relevant copyright would have been entitled to the benefit of terms agreed on, or fixed, under subsection 183(5) of that Act; and
 - (c) any payment due under terms referred to in paragraph (b) has not been made;section 183A has effect as if:
 - (d) section 153F of the *Copyright Act 1968* and Division 2 of Part VII of that Act had been in force when the copy was made; and
 - (e) the company the subject of the first declaration under section 153F of that Act in relation to a government copy of the same kind had been the relevant collecting society in relation to the copy when the copy was made; and
 - (f) the company had not ceased operating as a collecting society when the copy was made.

Schedule 4 Copying for the services of the Commonwealth, State and Territory Governments

- (2) Section 183A has effect in accordance with subsection (1) whether or not the company referred to in paragraph (1)(e) was the agent of the owner of the copyright involved.

Schedule 5—People with an intellectual disability and people with a print disability

Copyright Act 1968

1 Subsection 10(1) (definition of *handicapped reader*)

Repeal the definition.

2 Subsection 10(1) (definition of *institution assisting handicapped readers*)

Repeal the definition.

3 Subsection 10(1) (definition of *institution assisting intellectually handicapped persons*)

Repeal the definition.

4 Subsection 10(1)

Insert:

institution assisting persons with an intellectual disability means:

- (a) an educational institution; or
- (b) any other institution which has as its principal function, or one or its principal functions, the provision of assistance to persons with an intellectual disability and in relation to which a declaration under paragraph 10A(1)(d) is in force.

5 Subsection 10(1)

Insert:

institution assisting persons with a print disability means:

- (a) an educational institution; or
- (b) any other institution which has as its principal function, or one of its principal functions, the provision of literary or dramatic works to persons with a print disability and in relation to which a declaration under paragraph 10A(1)(c) is in force.

6 Subsection 10(1)

Insert:

person with a print disability means:

- (a) a person without sight; or
- (b) a person whose sight is severely impaired; or
- (c) a person unable to hold or manipulate books or to focus or move his or her eyes; or
- (d) a person with a perceptual disability.

7 Subsection 10(3)

Omit “intellectually handicapped persons” (wherever occurring), substitute “persons with an intellectual disability”.

8 Subsection 10(3)

Omit “an intellectually handicapped person’s copy” (wherever occurring), substitute “a copy for a person with an intellectual disability”.

9 Paragraph 10(3)(f)

Omit “handicapped readers”, substitute “persons with a print disability”.

10 Paragraph 10(3)(h)

Repeal the paragraph, substitute:

- (h) a reference to a copy of a work, or of a part of a work, for a person with a print disability is taken to be a reference to:
 - (i) a record embodying a sound recording of the work, or of the part of the work, being a record made by, or on behalf of, the body administering an institution assisting persons with a print disability and so made for the sole purpose of use in the provision, whether by the institution or otherwise, of assistance to a person or persons with a print disability; or
 - (ii) a Braille version, large-print version or photographic version of the work, or of the part of the work, being a Braille version, large-print version or photographic version, as the case may be, made by, or on behalf of, the body administering an institution assisting persons

with a print disability and so made for the sole purpose of use in the provision, whether by the institution or otherwise, of assistance to a person or persons with a print disability;

11 Paragraph 10(3)(ha)

Omit “an intellectually handicapped person or persons”, substitute “a person or persons with an intellectual disability”.

12 Subparagraph 10(3)(m)(i)

Omit “handicapped reader’s copy”, substitute “copy for a person with a print disability”.

13 Paragraph 10A(1)(c)

Omit “handicapped readers”, substitute “persons with a print disability”.

14 Paragraph 10A(1)(d)

Omit “intellectually handicapped persons”, substitute “persons with an intellectual disability”.

15 Section 47A (except paragraph (11)(b))

Omit “print-handicapped radio licence” (wherever occurring), substitute “print disability radio licence”.

Note: The heading to section 47A is altered by omitting “**print-handicapped radio licences**” and substituting “**print disability radio licences**”.

16 Paragraph 47A(11)(b)

Omit “print-handicapped radio licence”, substitute “*print disability radio licence*”.

17 Section 112

Omit “handicapped reader’s copy or an intellectually handicapped person’s copy” (wherever occurring), substitute “copy for a person with a print disability or a copy for a person with an intellectual disability”.

18 Subparagraph 112(b)(ii)

Omit “handicapped readers’ copies or intellectually handicapped persons’ copies”, substitute “copies for persons with a print disability or copies for persons with an intellectual disability”.

19 Section 135A (paragraph (b) of the definition of *institution*)

Omit “intellectually handicapped persons”, substitute “persons with an intellectual disability”.

20 Paragraph 135E(1)(c)

Omit “intellectually handicapped persons” (wherever occurring), substitute “persons with an intellectual disability”.

21 Section 135F

Omit “intellectually handicapped persons” (wherever occurring), substitute “persons with an intellectual disability”.

22 Paragraph 135U(1)(d)

Omit “intellectually handicapped persons” (wherever occurring), substitute “persons with an intellectual disability”.

23 Section 135ZB (paragraph (b) of the definition of *institution*)

Omit “handicapped readers”, substitute “persons with a print disability”.

24 Section 135ZB (paragraph (c) of the definition of *institution*)

Omit “intellectually handicapped persons”, substitute “persons with an intellectual disability”.

25 Section 135ZB (paragraph (b) of the definition of *licensed copy*)

Omit “handicapped readers”, substitute “persons with a print disability”.

26 Section 135ZB (paragraph (c) of the definition of *licensed copy*)

Omit “intellectually handicapped persons”, substitute “persons with an intellectual disability”.

27 Paragraph 135ZC(e)

Omit “handicapped readers”, substitute “persons with a print disability”.

28 Division 3 of Part VB (heading)

Repeal the heading, substitute:

Division 3—Copying of works by institutions assisting persons with a print disability

29 Section 135ZN

Omit “handicapped readers” (wherever occurring), substitute “persons with a print disability”.

Note: The heading to section 135ZN is altered by omitting “**handicapped readers**” and substituting “**persons with a print disability**”.

30 Section 135ZP

Omit “handicapped readers” (wherever occurring), substitute “persons with a print disability”.

Note: The heading to section 135ZP is altered by omitting “**handicapped readers**” and substituting “**persons with a print disability**”.

31 Paragraph 135ZP(1)(b)

Repeal the paragraph, substitute:

- (b) each record is made solely for the purpose of use in the provision, whether by the institution or otherwise, of assistance to persons with a print disability; and

32 Paragraph 135ZP(2)(b)

Repeal the paragraph, substitute:

- (b) each version is made solely for the purpose of use in the provision, whether by the institution or otherwise, of assistance to persons with a print disability; and

33 Section 135ZQ

Omit “handicapped readers” (wherever occurring), substitute “persons with a print disability”.

Note: The heading to section 135ZQ is altered by omitting “**handicapped readers**” and substituting “**persons with a print disability**”.

34 Subsection 135ZQ(1)

Omit “handicapped reader’s”.

35 At the end of subsection 135ZQ(1)

Add “, for a person with a print disability”.

36 Paragraph 135ZQ(2)(b)

Repeal the paragraph, substitute:

- (b) the relevant reproduction is used otherwise than in the making by, or on behalf of, that body, of a copy of the work, or of a part of the work, as the case may be, for a person with a print disability;

37 After subsection 135ZQ(4)

Insert:

- (4A) Subsection (1) is to be taken never to have applied to the making of a relevant reproduction of a work, or of a part of a work, if, within 3 months after the relevant reproduction was made, the body by whom, or on whose behalf, the relevant reproduction was made has not given to a collecting society (if any) a notice of the making of the relevant reproduction.
- (4B) The notice referred to in subsection (4A) must be in writing and must specify:
 - (a) the name of the body; and
 - (b) the work, or the part of the work, reproduced; and
 - (c) the date on which the reproduction was made.
- (4C) The copyright in a published literary or dramatic work is infringed by a person who does any of the acts specified in section 38 in relation to a relevant reproduction of a work, or of a part of a work, if the person knows, or ought reasonably to have known, that the reproduction was made solely for use in the making by, or on

behalf of, a body administering an institution assisting persons with a print disability of a copy of the work, or of a part of the work, as the case may be, for a person with a print disability.

38 Division 4 of Part VB (heading)

Repeal the heading, substitute:

Division 4—Copying of works etc. by institutions assisting persons with an intellectual disability

39 Section 135ZR

Omit “intellectually handicapped persons” (wherever occurring), substitute “persons with an intellectual disability”.

Note: The heading to section 135ZR is altered by omitting “**intellectually handicapped persons**” and substituting “**persons with an intellectual disability**”.

40 Subsection 135ZS(1)

Omit “intellectually handicapped persons” (wherever occurring), substitute “persons with an intellectual disability”.

Note: The heading to section 135ZS is altered by omitting “**intellectually handicapped persons**” and substituting “**persons with an intellectual disability**”.

41 Section 135ZT

Omit “intellectually handicapped persons” (wherever occurring), substitute “persons with an intellectual disability”.

Note: The heading to section 135ZT is altered by omitting “**intellectually handicapped person’s copies**” and substituting “**copies for a person with an intellectual disability**”.

42 Subsection 135ZT(1)

Omit “an intellectually handicapped person’s”, substitute “a”.

43 At the end of subsection 135ZT(1)

Add “, for a person with an intellectual disability”.

44 Paragraph 135ZT(2)(b)

Repeal the paragraph, substitute:

(b) the copy is used otherwise than in the making by, or on behalf of, that body of a copy of the whole or the part of the

eligible item or broadcast, as the case may be, for a person with an intellectual disability;

45 Subsection 135ZZF(2)

Omit “handicapped readers”, substitute “persons with a print disability”.

46 Subsection 135ZZF(3)

Omit “intellectually handicapped persons”, substitute “persons with an intellectual disability”.

47 Section 135ZZG

Omit “handicapped reader’s”.

48 Section 135ZZG

After “work”, insert “for a person with a print disability”.

49 Section 135ZZG

Omit “an intellectually handicapped person’s”, substitute “a”.

50 Section 135ZZG

After “item”, insert “for a person with an intellectual disability”.

51 Subsection 149A(3)

Omit “for the making of the sound broadcast, copy, handicapped reader’s copy, or intellectually handicapped person’s copy, as the case requires”.

52 Subsection 195A(3)

Omit “handicapped readers” (wherever occurring), substitute “persons with a print disability”.

53 Subsection 195A(3)

Omit “intellectually handicapped persons” (wherever occurring), substitute “persons with an intellectual disability”.

54 Section 200AA

Omit “intellectually handicapped persons”, substitute “persons with an intellectual disability”.

Note: The heading to section 200AA is altered by omitting “**intellectually handicapped persons**” and substituting “**persons with an intellectual disability**”.

55 Subsection 248A(1) (paragraph (d) of the definition of *exempt recording*)

Omit “handicapped readers” (wherever occurring), substitute “persons with a print disability”.

56 Subsection 248A(1) (paragraph (e) of the definition of *exempt recording*)

Omit “intellectually handicapped persons” (wherever occurring), substitute “persons with an intellectual disability”.

Schedule 6—Copying of works etc. by institutions

Copyright Act 1968

1 Section 135A (definition of *student*)

Repeal the definition.

2 Section 135C

Repeal the section.

3 After subsection 135H(1)

Insert:

- (1A) If a determination has been made by the Tribunal under subsection (1), either the administering body or the collecting society may, at any time after 12 months from the day on which the determination was made, apply to the Tribunal under that subsection for a new determination of the amount of equitable remuneration payable to the collecting society by the administering body for the making, by or on behalf of that body, of a copy of a broadcast.

4 Subsection 135J(1)

Omit “per student of the institution concerned”.

5 After subsection 135J(1)

Insert:

- (1A) If a determination has been made by the Tribunal under subsection (1), either the administering body or the collecting society may, at any time after 12 months from the day on which the determination was made, apply to the Tribunal under that subsection for a new determination of the amount of equitable remuneration payable to the collecting society by the administering body for copies of broadcasts made by or on behalf of that body.

6 Subsection 135J(4)

Omit “and different classes of students of an institution administered by it”.

7 Subsection 135N(2)

Repeal the subsection.

8 Section 135ZB (definition of *student*)

Repeal the definition.

9 Section 135ZD

Repeal the section.

10 At the end of section 135ZM

Add:

(2) If:

- (a) any remuneration is paid under this Part in respect of a page of a document that is:
 - (i) a copy of the whole or a part of an article (other than a part that is an artistic work) contained in a periodical publication; or
 - (ii) a copy of the whole or a part of a literary or dramatic work contained in a published anthology of works; or
 - (iii) a copy of the whole or a part of a literary, dramatic or musical work other than an article contained in a periodical publication; and
- (b) the making of the page is not an infringement of the copyright in the article or work because of section 135ZJ, 135ZK or 135ZL; and
- (c) the page includes an artistic work or artistic works provided for the purpose of explaining or illustrating the article or work;

the following paragraphs apply:

- (d) one-half of the remuneration paid in respect of the making of the page is to be paid to the owner, or divided equally among the owners, of the copyright in the literary, dramatic or musical work or works which, or a part of which, appear on the page; and

- (e) one-half of that remuneration is to be paid to the owner, or divided equally among the owners, of the copyright in the artistic work or artistic works which, or a part of which, appear on the page.

11 After subsection 135ZV(1)

Insert:

- (1A) If a determination has been made by the Tribunal under subsection (1), either the administering body or the collecting society may, at any time after 12 months from the day on which the determination was made, apply to the Tribunal under that subsection for a new determination of the amount of equitable remuneration payable to the collecting society by the administering body for each licensed copy made by or on behalf of that body.

12 Subsection 135ZW(1)

Omit “per student of the institution concerned”.

13 After subsection 135ZW(1)

Insert:

- (1A) If a determination has been made by the Tribunal under subsection (1), either the administering body or the collecting society may, at any time after 12 months from the day on which the determination was made, apply to the Tribunal under that subsection for a new determination of the amount of equitable remuneration payable to the collecting society by the administering body for licensed copies made by or on behalf of that body.

14 Subsection 135ZW(4)

Omit “and different classes of students of an institution administered by it”.

15 Subsection 135ZZA(2)

Repeal the subsection.

16 Section 153A

Omit “television” (wherever occurring).

17 Subsection 153A(2)

Omit “per copy or per student of the relevant institution, as the case may be,”.

18 Paragraph 153A(3)(a)

Omit “seen and heard”, substitute “heard, or seen and heard, as the case may be”.

19 Subsection 153A(5)

Repeal the subsection, substitute:

- (5) In this section, *administering body*, *broadcast*, *collecting society* and *institution* have the same meanings as in Part VA.

20 Subsection 153C(2)

Omit “per licensed copy, or per student of the relevant institution, as the case may be,”.

21 Subsection 153C(5)

Repeal the subsection, substitute:

- (5) In this section, *administering body*, *collecting society*, *institution* and *licensed copy* have the same meanings as in Part VB.

Schedule 7—Copyright Tribunal

Copyright Act 1968

1 Subsection 136(1)

Insert:

Deputy President means a Deputy President of the Tribunal.

2 Subsection 136(1) (definition of *member*)

Omit “the Deputy President”, substitute “a Deputy President”.

3 Subsection 136(1) (definition of *party*)

Repeal the definition.

4 Subsection 136(1) (definition of *proceeding*)

Repeal the definition.

5 Subsection 136(1) (definition of *the Deputy President*)

Repeal the definition.

6 Section 138

Omit “, a Deputy President and such”, substitute “and such number of Deputy Presidents and”.

7 Subsection 140(1)

Omit “or as the Deputy President”.

8 After subsection 140(1)

Insert:

(1A) A person is not to be appointed as a Deputy President unless he or she is, or has been, a Judge of a federal court or of the Supreme Court of a State or Territory.

9 Subsection 140(2)

Omit “the Deputy President”, substitute “a Deputy President”.

10 Subsection 141(2)

Omit “or the Deputy President”.

11 After section 141

Insert:

141A Seniority of Deputy Presidents

- (1) The Deputy Presidents have seniority as Deputy Presidents according to the dates of their first appointment to the Tribunal, or, if 2 or more Deputy Presidents were appointed on the same day, according to the precedence assigned to them in their instruments of appointment.
- (2) At any time when only one person is holding office as a Deputy President, any reference in this Part to ‘the senior Deputy President’ is to be taken to be a reference to the Deputy President.

12 Section 142

Repeal the section, substitute:

142 Acting President

The Governor-General may appoint the senior Deputy President available to act in the office of President:

- (a) during a vacancy in that office; or
- (b) during any period when the person holding that office is absent from duty or from Australia or is, for any other reason, unable to perform the functions of that office.

13 Paragraph 146(4)(b)

Omit “the Deputy President shall preside”, substitute “the senior Deputy President who is present is to preside”.

14 Subsection 146(5)

Omit “Deputy President”, substitute “senior Deputy President who is present”.

15 Subsection 146(8)

Omit “the Deputy President”, substitute “a Deputy President”.

16 Subsection 167(2)

After “member”, insert “or the Secretary to the Tribunal”.

Schedule 8—Imported copies of copyright material

Copyright Act 1968

1 Section 134B

Insert:

CEO means the Chief Executive Officer of Customs.

2 Section 134B (definition of *Comptroller-General*)

Repeal the definition.

3 Section 134B

Insert:

copy, in relation to copyright material, means:

- (a) if the copyright material is a work—an article in which the work is embodied; or
- (b) if the copyright material is a sound recording, or a sound broadcast as recorded in a sound recording—a record embodying the sound recording; or
- (c) if the copyright material is a cinematograph film or a television broadcast as recorded in a cinematograph film—an article in which the visual images or sounds comprising the film are embodied; or
- (d) if the copyright material is a published edition of a work—an article in which the edition is embodied.

4 Section 134B

Insert:

importer, in relation to copies of copyright material, includes a person who or which is, or holds himself, herself or itself out to be, the owner or importer of the goods comprising the copies.

5 Section 135

Omit “Comptroller-General” (wherever occurring), substitute “CEO”.

6 Subsection 135(3)

Repeal the subsection, substitute:

- (3) A notice under subsection (2):
 - (a) is to be given together with any prescribed document; and
 - (b) is to be accompanied by the prescribed fee (if any).

7 Subsection 135(5)

After “subsection (6)”, insert “or declared to be ineffective under subsection (6A)”.

8 After subsection 135(6)

Insert:

- (6A) If the CEO believes, on reasonable grounds, that it is no longer appropriate to give effect to a notice given under subsection (2), the CEO may, by writing, declare the notice to be ineffective.

Note: Subsection 195B(3) requires the CEO to notify the person who gave the notice of the decision declaring the notice to be ineffective.

9 Paragraph 135(7)(b)

Omit “withdrawn”, substitute “declared to be ineffective or revoked”.

10 Subsection 135(9)

Omit “section”, substitute “Division”.

11 Subsection 135(10)

Repeal the subsection, substitute:

- (10) This Division does not apply to the importation into Australia of copies of copyright material whose importation does not constitute an infringement of copyright because of section 44A or 112A.

12 After subsection 135(10)

Insert:

- (10A) This Division does not apply to the importation into Australia of copies of copyright material whose importation does not constitute an infringement of copyright because of section 44C or 112C.

13 Section 135AA

Omit “Comptroller-General” (wherever occurring), substitute “CEO”.

14 Section 135AB

Omit “Comptroller-General”, substitute “CEO”.

15 Section 135AC

Omit “Comptroller-General” (wherever occurring), substitute “CEO”.

16 Subsection 135AC(2)

Repeal the subsection, substitute:

- (2) A notice under subsection (1) must also state:
- (a) if it is given to the objector—the name, and (if known) the address of the place of business or residence, of the importer; and
 - (b) if it is given to the importer—the name, and the address of the place of business or residence, of:
 - (i) the objector; or
 - (ii) if the objector has nominated a person to be the objector’s agent or representative for the purposes of this Division—that person; and
 - (c) in each case—that the copies will be released to the importer unless:
 - (i) an action for infringement of copyright in relation to the copies is instituted by the objector within a specified period from the day specified in the notice; and
 - (ii) a written notice stating that the action has been instituted is given to the CEO within that period.

17 Subsection 135AC(3)

Omit “paragraph (2)(a)”, substitute “subparagraph (2)(c)(i)”.

18 Subsection 135AC(4)

Omit “paragraph (2)(a)”, substitute “subparagraph (2)(c)(i)”.

19 Subsection 135AC(5)

Omit “paragraph (2)(a)”, substitute “subparagraph (2)(c)(i)”.

20 At the end of section 135AC

Add:

- (8) The CEO may, at any time after the copies are seized, give to the objector:
 - (a) the name, and the address of the place of business or residence, of the person or body that made the arrangements, on behalf of the importer, for the copies to be brought to Australia or any information that the CEO has, and believes on reasonable grounds may help in identifying and locating that person or body; and
 - (b) any other information that the CEO has, and believes on reasonable grounds may be relevant for the purpose of identifying and locating the importer.

21 Section 135AD

Omit “Comptroller-General” (wherever occurring), substitute “CEO”.

22 Section 135AE

Omit “Comptroller-General” (wherever occurring), substitute “CEO”.

23 Section 135AF

Omit “Comptroller-General” (wherever occurring), substitute “CEO”.

24 Section 135AG

Omit “Comptroller-General” (wherever occurring), substitute “CEO”.

25 Section 135AH

Omit “Comptroller-General” (wherever occurring), substitute “CEO”.

26 Paragraph 135AI(b)

Omit “Comptroller-General”, substitute “CEO”.

27 Subsection 135AJ(1)

Omit “Comptroller-General”, substitute “CEO”.

28 Paragraph 135AK(a)

Omit “Comptroller-General”, substitute “CEO”.

29 Subsection 195B(1)

Omit “Comptroller-General of Customs” (wherever occurring), substitute “CEO”.

30 After paragraph 195B(1)(b)

Insert:

(ba) a decision of the CEO under subsection 135(6A) to declare a notice given under subsection 135(2) to be ineffective;

31 Subsection 195B(3)

Omit “Comptroller-General of Customs makes a reviewable decision referred to in paragraph (1)(c) or (d), the Comptroller-General”, substitute “CEO makes a reviewable decision referred to in paragraph (1)(ba), (c) or (d), the CEO”.

32 Subsection 195B(8)

Insert:

CEO means the Chief Executive Officer of Customs.

Schedule 9—Educational institutions

Copyright Act 1968

1 Subsection 10(1) (before paragraph (a) of the definition of *educational institution*)

Insert:

- (aa) an institution at which education is provided at pre-school or kindergarten standard;

2 Subsection 10(1) (paragraphs (g), (h) and (j) of the definition of *educational institution*)

Repeal the paragraphs, substitute:

- (g) an institution in relation to which there is in force a notice published under subsection 10A(4) that includes a declaration that the principal function of the institution is the provision of courses of study or training for one of the following purposes:
 - (i) general education;
 - (ii) the preparation of people for a particular occupation or profession;
 - (iii) the continuing education of people engaged in a particular occupation or profession;
 - (iv) the teaching of English to people whose first language is not English;
- (h) an undertaking within a body administering an educational institution of a kind referred to in a preceding paragraph of this definition in relation to which there is in force a notice published under subsection 10A(4) that includes a declaration that the principal function, or one of the principal functions, of the undertaking is the provision of teacher training to people engaged as instructors in educational institutions of a kind referred to in a preceding paragraph of this definition, or of 2 or more such kinds; or
- (i) an institution, or an undertaking within a body administering an educational institution of a kind referred to in a preceding paragraph of this definition, in relation to which there is in

force a notice published under subsection 10A(4) that includes a declaration that the principal function, or one of the principal functions, of the institution, or undertaking, is the providing of material to educational institutions of a kind referred to in a preceding paragraph of this definition, or to educational institutions of 2 or more such kinds, and that that activity is undertaken for the purpose of helping those institutions in their teaching purposes.

3 Subsection 10(1) (definition of *educational institution*)

Omit “but does not include an institution that is conducted for the profit, direct or indirect, of an individual or individuals”.

4 Paragraph 10A(1)(b)

Repeal the paragraph.

5 After paragraph 10A(4)(a)

Insert:

- (aa) sets out the principal function or principal functions of the institution or of an undertaking within the body administering the institution; and

6 After subsection 10A(5)

Insert:

- (5A) A collecting society may apply to the Copyright Tribunal for review of a declaration included in a notice published under subsection (4) of this section for the purposes of paragraph (g), (h) or (i) of the definition of *educational institution* in subsection 10(1).

Note: For applications to the Tribunal for review see section 153L.

7 Before section 154

Insert:

153L Applications to Tribunal for review of declarations of certain educational institutions

- (1) This section applies where an application is made to the Tribunal under subsection 10A(5A) for review of a declaration included in a

notice published under subsection 10A(4) for the purposes of paragraph (g), (h) or (i) of the definition of *educational institution* in subsection 10(1).

- (2) The parties to the application are:
 - (a) the collecting society that made the application; and
 - (b) the body administering the institution that caused the notice to be published.
- (3) After giving each party an opportunity to present its case, the Tribunal must:
 - (a) confirm the declaration; or
 - (b) set aside the notice.
- (4) If the Tribunal sets aside the notice, the Tribunal must cause to be published in the *Gazette* a notice that:
 - (a) sets out full particulars of the name and address of the institution; and
 - (b) contains a statement to the effect that the notice previously published by the body administering the institution under subsection 10A(4) has been set aside.

Upon publication of the Tribunal's notice, the notice published under subsection 10A(4) ceases to have effect for the purposes of paragraph (g), (h) or (i) of the definition of *educational institution* in subsection 10(1).

- (5) The Tribunal may only set aside a notice if it determines that the principal function, or the principal functions, as the case may be, of the institution concerned are not as described in the declaration included in the notice.

8 Saving

If, immediately before the commencement of this Schedule, a declaration under paragraph 10A(1)(b) of the *Copyright Act 1968* was in force, that Act has effect, in relation to the declaration and the institution to which the declaration relates, as if this Act had not been enacted.

Schedule 10—Minor amendments

Copyright Act 1968

1 Section 44A

After “37” (wherever occurring), insert “(1)”.

2 Division 5 of Part III (heading)

Repeal the heading, substitute:

Division 5—Copying of works in libraries or archives

Note: The heading to section 52 is altered by adding at the end “**or archives**”.

3 At the end of paragraph 91(a)

Add “and”.

4 Paragraph 91(b)

Repeal the paragraph, substitute:

- (b) in a television broadcast (other than a broadcast transmitted for a fee payable to the person who made the broadcast) made from a place in Australia under the authority of:
 - (i) a licence allocated by the Australian Broadcasting Authority under the *Broadcasting Services Act 1992*; or
 - (ii) a class licence determined by that Authority under that Act; and

5 Paragraph 91(d)

Repeal the paragraph, substitute:

- (d) in a sound broadcast (other than a broadcast transmitted for a fee payable to the person who made the broadcast) made from a place in Australia under the authority of:
 - (i) a licence allocated by the Australian Broadcasting Authority under the *Broadcasting Services Act 1992*; or
 - (ii) a class licence determined by that Authority under that Act.

6 After section 91

Insert:

**91A Copyright in broadcasts authorised under both
Radiocommunications Act and Broadcasting Services Act**

Copyright may subsist in a television broadcast or sound broadcast under subparagraph 91(a)(iii) or (c)(iii) even though copyright does not subsist in the broadcast under paragraph 91(b) or (d) because the broadcast was transmitted for a fee to the person who made the broadcast.

7 Paragraph 99(b)

Omit “or permit granted under the *Broadcasting Act 1942*”, substitute “allocated by the Australian Broadcasting Authority under the *Broadcasting Services Act 1992*”.

8 At the end of section 99

Add:

; and (c) a person who makes a television broadcast or sound broadcast under the authority of a class licence determined by the Australian Broadcasting Authority under the *Broadcasting Services Act 1992* is the owner of any copyright subsisting in the broadcast.

9 Section 109

After “broadcast” (first occurring), insert “(other than a broadcast transmitted for a fee payable to the person who made the broadcast)”.

10 Section 112A

After “102” (wherever occurring), insert “(1)”.

11 Subsection 132(3)

Omit “plate”, substitute “device”.

12 Subsection 133(4)

Omit “plate”, substitute “device”.

13 Section 134

Omit “plate” (wherever occurring), substitute “device”.

14 Part VA (heading)

Repeal the heading, substitute:

**Part VA—Copying of transmissions by educational
and other institutions**

15 Section 135A (definition of *broadcast*)

Repeal the definition.

16 Section 135A (definition of *preview copy*)

Omit “broadcast”, substitute “transmission”.

17 Section 135A

Insert:

transmission means:

- (a) a sound broadcast or a television broadcast including (to avoid doubt) a sound broadcast, or a television broadcast, transmitted for a fee; and
- (b) a television transmission to subscribers to a diffusion service.

18 Section 135B

Omit “broadcast” (wherever occurring), substitute “transmission”.

Note: The heading to section 135B is altered by omitting “**broadcasts**” and substituting “**transmissions**”.

19 Division 2 of Part VA (heading)

Repeal the heading, substitute:

Division 2—Copying of transmissions

20 Section 135E

Omit “broadcast” (wherever occurring), substitute “transmission”.

Note: The heading to section 135E is altered by omitting “**broadcasts**” and substituting “**transmissions**”.

21 Section 135F

Omit “broadcast” (wherever occurring), substitute “transmission”.

22 Subsection 135G(1)

Omit “broadcasts”, substitute “transmissions”.

23 Subsection 135H(1)

Omit “broadcast”, substitute “transmission”.

24 Paragraph 135H(2)(a)

Omit “broadcasts”, substitute “transmissions”.

25 Section 135J

Omit “broadcasts” (wherever occurring), substitute “transmissions”.

26 Subsection 135J(5)

Omit “broadcast”, substitute “transmission”.

27 Section 135K

Omit “broadcast” (wherever occurring), substitute “transmission”.

28 Subsection 135L(1)

Omit “broadcasts” (wherever occurring), substitute “transmissions”.

29 Subsection 135N(1)

Omit “broadcasts”, substitute “transmissions”.

30 Subparagraph 135P(3)(d)(i)

Omit “administrative”, substitute “administering”.

31 Section 135U

Omit “broadcast” (wherever occurring), substitute “transmission”.

32 Section 135V

Omit “broadcasts”, substitute “transmissions”.

33 Subsection 135W(1)

Omit “broadcasts”, substitute “transmissions”.

34 Section 135Z

Omit “broadcast” (wherever occurring), substitute “transmission”.

35 Section 135ZA

Omit “broadcast”, substitute “transmission”.

36 Subsection 135ZZB(3)

Omit “a collecting society” (wherever occurring), substitute “the collecting society”.

37 Subsection 146(3)

Repeal the subsection, substitute:

- (3) If a party to an application or reference requests that the Tribunal be constituted by more than one member for the purposes of the application or reference, the Tribunal must, for the purposes of the application or reference, be constituted by not less than 2 members of whom one must be the President or a Deputy President.
- (3A) Nothing in subsection (3) prevents a single member from exercising the powers of the Tribunal in relation to matters of procedure.

38 Division 3 of Part VI (heading)

Repeal the heading, substitute:

Division 3—Applications and references to the Tribunal

39 Subsection 152(1) (at the end of paragraphs (a) and (aa) of the definition of *broadcaster*)

Add “or”.

40 Subsection 152(1) (paragraph (b) of the definition of *broadcaster*)

Repeal the paragraph, substitute:

- (b) the holder of a licence allocated by the Australian Broadcasting Authority under the *Broadcasting Services Act 1992*; or
- (c) a person making a broadcast under the authority of a class licence determined by the Australian Broadcasting Authority under the *Broadcasting Services Act 1992*; or

41 Subsection 152(1)

Insert:

broadcasting does not include broadcasting by a transmission for a fee payable to the person who made the broadcast.

42 Subsections 152(8) and (9)

Repeal the subsections, substitute:

- (8) The Tribunal must not make an order that would require a broadcaster who is:
 - (a) the holder of a licence allocated by the Australian Broadcasting Authority under the *Broadcasting Services Act 1992* that authorises the holder to broadcast radio programs; or
 - (b) a person authorised by a class licence determined by that Authority under that Act to broadcast radio programs;to pay, in respect of the broadcasting of published sound recordings during the period covered by the order, an amount exceeding 1% of the amount determined by the Tribunal to be the gross earnings of the broadcaster during the period equal to the period covered by the order that ended on the last 30 June that occurred before the period covered by the order.
- (9) If a broadcaster that is:
 - (a) the holder of a licence allocated by the Australian Broadcasting Authority under the *Broadcasting Services Act 1992* that authorises the holder to broadcast radio programs; or
 - (b) a person authorised by a class licence determined by that Authority under that Act to broadcast radio programs;has, with the permission of that Authority, adopted an accounting period ending on a day other than 30 June, the reference in

subsection (8) to 30 June is, in relation to that broadcaster, a reference to that other day.

43 Subsection 161(9)

Repeal the subsection.

44 Paragraph 166(2)(a)

Omit “an intended inquiry by the Tribunal under section 148 or”.

45 Subsection 174(3)

Repeal the subsection.

46 Paragraph 184(1)(f)

Omit “by a holder of a licence or permit granted under the *Broadcasting Act 1942*”, substitute “by a holder of a licence allocated by the Australian Broadcasting Authority under the *Broadcasting Services Act 1992*, by a person authorised to make the broadcasts by a class licence determined by that Authority under that Act”.

47 Subsection 195A(5)

Repeal the subsection.

48 Paragraphs 199(7)(a) and (b)

Omit “by the holder of a licence or permit granted under the *Broadcasting Act 1942*”, substitute “by a holder of a licence allocated by the Australian Broadcasting Authority under the *Broadcasting Services Act 1992*, by a person authorised to make the broadcasts by a class licence determined by that Authority under that Act”.

49 Subsection 202(5)

Omit “plate”, substitute “device”.

50 Subsection 248A(1) (definition of *performance*)

After “Australia or”, insert “given”.

51 Saving

Copyright that subsisted in a television broadcast or a sound broadcast made before the commencement of this Schedule continues to subsist for the period for which that copyright would have subsisted if the amendments made by this Schedule had not been made, and the person who was the owner of that copyright immediately before that commencement continues to be the owner for that period.

*[Minister's second reading speech made in—
House of Representatives on 18 June 1997
Senate on 27 June 1997]*

(83/97)