



Copyright Amendment Act 2006

No. 158, 2006

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Copyright Amendment Act 2006

No. 158, 2006

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

[Assented to 11 December 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Copyright Amendment Act 2006*.

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
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	11 December 2006
2. Schedule 1, Part 1	1 January 2007.	1 January 2007
3. Schedule 1, Part 2	The later of: (a) immediately after the commencement of Part 1 of Schedule 1 to this Act; and (b) the time the <i>Archives Amendment Act 2006</i> commences. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	Does not commence
4. Schedules 2 to 5	1 January 2007.	1 January 2007
5. Schedules 6 to 8	The day on which this Act receives the Royal Assent.	11 December 2006
6. Schedule 9	The 28th day after the day on which this Act receives the Royal Assent.	8 January 2007
7. Schedule 10	The day on which this Act receives the Royal Assent.	11 December 2006
8. Schedule 11	Immediately after the commencement of Schedule 10.	11 December 2006
9. Schedule 12, Part 1	Immediately after the commencement of the provisions covered by table item 2.	1 January 2007
10. Schedule 12, Part 2	The later of: (a) immediately after the commencement of Part 1 of Schedule 12 to this Act; and (b) immediately after the commencement of Schedule 1 to the <i>Archives Amendment Act 2006</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b)	Does not commence

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	does not occur.	

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

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—Criminal laws

Part 1—Main amendments

Copyright Act 1968

1 At the end of section 49

Add:

Note: Under section 203F, it is an offence to make a false or misleading declaration for the purposes of this section. Sections 203A, 203D and 203G create offences relating to the keeping of declarations made for the purposes of this section.

2 At the end of section 50

Add:

Note: Under section 203F, it is an offence to make a false or misleading declaration for the purposes of this section. Sections 203A, 203D and 203G create offences relating to the keeping of declarations made for the purposes of this section.

3 At the end of subsection 51A(4)

Add:

Note: Under section 203F, it is an offence to make a false or misleading declaration for the purposes of this section. Sections 203A, 203D and 203G create offences relating to the keeping of declarations made for the purposes of this section.

4 At the end of subsection 110B(3)

Add:

Note: Under section 203F, it is an offence to make a false or misleading declaration for the purposes of this section. Sections 203A, 203D and 203G create offences relating to the keeping of declarations made for the purposes of this section.

5 Subsection 126B(8)

Repeal the subsection.

6 Section 132

Repeal the section, substitute:

Subdivision A—Preliminary

132AA Definitions

In this Division:

article includes a reproduction or copy of a work or other subject-matter, being a reproduction or copy in electronic form.

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.

distribute, except in Subdivision E, includes distribute by way of communication.

place of public entertainment includes premises that are occupied principally for purposes other than public entertainment but are from time to time made available for hire for purposes of public entertainment.

profit does not include any advantage, benefit, or gain, that:

- (a) is received by a person; and
- (b) results from, or is associated with, the person's private or domestic use of any copyright material.

132AB Geographical application

- (1) Subdivisions B, C, D, E and F apply only to acts done in Australia.
- (2) This section has effect despite section 14.1 (Standard geographical jurisdiction) of the *Criminal Code*.

Subdivision B—Substantial infringement on a commercial scale

132AC Commercial-scale infringement prejudicing copyright owner

Indictable offence

- (1) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct results in one or more infringements of the copyright in a work or other subject-matter; and
 - (c) the infringement or infringements have a substantial prejudicial impact on the owner of the copyright; and
 - (d) the infringement or infringements occur on a commercial scale.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct results in one or more infringements of the copyright in a work or other subject-matter; and
 - (c) the infringement or infringements have a substantial prejudicial impact on the owner of the copyright and the person is negligent as to that fact; and
 - (d) the infringement or infringements occur on a commercial scale and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Determining whether infringements occur on commercial scale

- (5) In determining whether one or more infringements occur on a commercial scale for the purposes of paragraph (1)(d) or (3)(d), the following matters are to be taken into account:
- (a) the volume and value of any articles that are infringing copies that constitute the infringement or infringements;
 - (b) any other relevant matter.

Defence relating to law enforcement and national security

- (6) This section does not apply in respect of anything lawfully done for the purposes of law enforcement or national security by or on behalf of:
- (a) the Commonwealth or a State or Territory; or
 - (b) an authority of the Commonwealth or of a State or Territory.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

Defence for certain public institutions etc.

- (7) This section does not apply in respect of anything lawfully done by the following in performing their functions:
- (a) a library (other than a library that is conducted for the profit, direct or indirect, of an individual or individuals);
 - (b) a body mentioned in:
 - (i) paragraph (a) of the definition of *archives* in subsection 10(1); or
 - (ii) subsection 10(4);
 - (c) an educational institution;
 - (d) a public non-commercial broadcaster, including:
 - (i) a body that provides a national broadcasting service within the meaning of the *Broadcasting Services Act 1992*; and
 - (ii) a body that holds a community broadcasting licence within the meaning of that Act.

Note 1: A library that is owned by a person conducting a business for profit might not itself be conducted for profit (see section 18).

Note 2: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

Subdivision C—Infringing copies

132AD Making infringing copy commercially

Indictable offence

- (1) A person commits an offence if:
 - (a) the person makes an article, with the intention of:
 - (i) selling it; or
 - (ii) letting it for hire; or
 - (iii) obtaining a commercial advantage or profit; and
 - (b) the article is an infringing copy of a work or other subject-matter; and
 - (c) copyright subsists in the work or other subject-matter when the article is made.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note 1: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Note 2: If the infringing copy was made by converting the work or other subject-matter from a hard copy or analog form into a digital or other electronic machine-readable form, there is an aggravated offence with a higher maximum penalty under section 132AK.

Summary offence

- (3) A person commits an offence if:
 - (a) the person makes an article, with the intention of:
 - (i) selling it; or
 - (ii) letting it for hire; or
 - (iii) obtaining a commercial advantage or profit; and
 - (b) the article is an infringing copy of a work or other subject-matter and the person is negligent as to that fact; and
 - (c) copyright subsists in the work or other subject-matter when the article is made and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (5) A person commits an offence if:
- (a) the person makes an article in preparation for, or in the course of:
 - (i) selling it; or
 - (ii) letting it for hire; or
 - (iii) obtaining a commercial advantage or profit; and
 - (b) the article is an infringing copy of a work or other subject-matter; and
 - (c) copyright subsists in the work or other subject-matter when the article is made.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

132AE Selling or hiring out infringing copy

Indictable offence

- (1) A person commits an offence if:
- (a) the person sells an article or lets an article for hire; and
 - (b) the article is an infringing copy of a work or other subject-matter; and
 - (c) copyright subsists in the work or other subject-matter at the time of the sale or letting.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note 1: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Note 2: If the infringing copy was made by converting the work or other subject-matter from a hard copy or analog form into a digital or other electronic machine-readable form, there is an aggravated offence with a higher maximum penalty under section 132AK.

Summary offence

- (3) A person commits an offence if:
- (a) the person sells an article or lets an article for hire; and
 - (b) the article is an infringing copy of a work or other subject-matter and the person is negligent as to that fact; and
 - (c) copyright subsists in the work or other subject-matter at the time of the sale or letting and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (5) A person commits an offence if:
- (a) the person sells an article or lets an article for hire; and
 - (b) the article is an infringing copy of a work or other subject-matter; and
 - (c) copyright subsists in the work or other subject-matter at the time of the sale or letting.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

132AF Offering infringing copy for sale or hire

Indictable offences

- (1) A person commits an offence if:
- (a) the person by way of trade offers or exposes an article for sale or hire; and
 - (b) the article is an infringing copy of a work or other subject-matter; and
 - (c) copyright subsists in the work or other subject-matter at the time of the offer or exposure.
- (2) A person commits an offence if:

- (a) the person offers or exposes an article for sale or hire, with the intention of obtaining a commercial advantage or profit; and
 - (b) the article is an infringing copy of a work or other subject-matter; and
 - (c) copyright subsists in the work or other subject-matter at the time of the offer or exposure.
- (3) An offence against subsection (1) or (2) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note 1: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Note 2: If the infringing copy was made by converting the work or other subject-matter from a hard copy or analog form into a digital or other electronic machine-readable form, there is an aggravated offence with a higher maximum penalty under section 132AK.

Summary offences

- (4) A person commits an offence if:
- (a) the person by way of trade offers or exposes an article for sale or hire; and
 - (b) the article is an infringing copy of a work or other subject-matter and the person is negligent as to that fact; and
 - (c) copyright subsists in the work or other subject-matter at the time of the offer or exposure and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (5) A person commits an offence if:
- (a) the person offers or exposes an article for sale or hire, with the intention of obtaining a commercial advantage or profit; and
 - (b) the article is an infringing copy of a work or other subject-matter and the person is negligent as to that fact; and
 - (c) copyright subsists in the work or other subject-matter at the time of the offer or exposure and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (6) An offence against subsection (4) or (5) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offences

- (7) A person commits an offence if:
- (a) the person by way of trade offers or exposes an article for sale or hire; and
 - (b) the article is an infringing copy of a work or other subject-matter; and
 - (c) copyright subsists in the work or other subject-matter at the time of the offer or exposure.

Penalty: 60 penalty units.

- (8) A person commits an offence if:
- (a) the person offers or exposes an article for sale or hire, in preparation for, or in the course of, obtaining a commercial advantage or profit; and
 - (b) the article is an infringing copy of a work or other subject-matter; and
 - (c) copyright subsists in the work or other subject-matter at the time of the offer or exposure.

Penalty: 60 penalty units.

- (9) Subsections (7) and (8) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

132AG Exhibiting infringing copy in public commercially

Indictable offences

- (1) A person commits an offence if:
- (a) the person by way of trade exhibits an article in public; and
 - (b) the article is an infringing copy of a work or other subject-matter; and
 - (c) copyright subsists in the work or other subject-matter at the time of the exhibition.
- (2) A person commits an offence if:

- (a) the person exhibits an article in public, with the intention of obtaining a commercial advantage or profit; and
 - (b) the article is an infringing copy of a work or other subject-matter; and
 - (c) copyright subsists in the work or other subject-matter at the time of the exhibition.
- (3) An offence against subsection (1) or (2) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note 1: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Note 2: If the infringing copy was made by converting the work or other subject-matter from a hard copy or analog form into a digital or other electronic machine-readable form, there is an aggravated offence with a higher maximum penalty under section 132AK.

Summary offences

- (4) A person commits an offence if:
- (a) the person by way of trade exhibits an article in public; and
 - (b) the article is an infringing copy of a work or other subject-matter and the person is negligent as to that fact; and
 - (c) copyright subsists in the work or other subject-matter at the time of the exhibition and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (5) A person commits an offence if:
- (a) the person exhibits an article in public, with the intention of obtaining a commercial advantage or profit; and
 - (b) the article is an infringing copy of a work or other subject-matter and the person is negligent as to that fact; and
 - (c) copyright subsists in the work or other subject-matter at the time of the exhibition and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (6) An offence against subsection (4) or (5) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offences

- (7) A person commits an offence if:
- (a) the person by way of trade exhibits an article in public; and
 - (b) the article is an infringing copy of a work or other subject-matter; and
 - (c) copyright subsists in the work or other subject-matter at the time of the exhibition.

Penalty: 60 penalty units.

- (8) A person commits an offence if:
- (a) the person exhibits an article in public in preparation for, or in the course of, obtaining a commercial advantage or profit; and
 - (b) the article is an infringing copy of a work or other subject-matter; and
 - (c) copyright subsists in the work or other subject-matter at the time of the exhibition.

Penalty: 60 penalty units.

- (9) Subsections (7) and (8) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

132AH Importing infringing copy commercially

Indictable offence

- (1) A person commits an offence if:
- (a) the person imports an article into Australia, with the intention of doing any of the following with the article:
 - (i) selling it;
 - (ii) letting it for hire;
 - (iii) by way of trade offering or exposing it for sale or hire;
 - (iv) offering or exposing it for sale or hire to obtain a commercial advantage or profit;
 - (v) distributing it for trade;
 - (vi) distributing it to obtain a commercial advantage or profit;

- (vii) distributing it to an extent that will affect prejudicially the owner of the copyright in the work or other subject-matter of which the article is an infringing copy;
 - (viii) by way of trade exhibiting it in public;
 - (ix) exhibiting it in public to obtain a commercial advantage or profit; and
- (b) the article is an infringing copy of a work or other subject-matter; and
- (c) copyright subsists in the work or other subject-matter at the time of the import.
- (2) An offence against this section is punishable on conviction by a fine of not more than 650 penalty units or imprisonment for not more than 5 years, or both.

Note 1: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Note 2: If the infringing copy was made by converting the work or other subject-matter from a hard copy or analog form into a digital or other electronic machine-readable form, there is an aggravated offence with a higher maximum penalty under section 132AK.

Summary offence

- (3) A person commits an offence if:
- (a) the person imports an article into Australia, with the intention of doing any of the following with the article:
 - (i) selling it;
 - (ii) letting it for hire;
 - (iii) by way of trade offering or exposing it for sale or hire;
 - (iv) offering or exposing it for sale or hire to obtain a commercial advantage or profit;
 - (v) distributing it for trade;
 - (vi) distributing it to obtain a commercial advantage or profit;
 - (vii) distributing it to an extent that will affect prejudicially the owner of the copyright in the work or other subject-matter of which the article is an infringing copy;
 - (viii) by way of trade exhibiting it in public;
 - (ix) exhibiting it in public to obtain a commercial advantage or profit; and

- (b) the article is an infringing copy of a work or other subject-matter and the person is negligent as to that fact; and
- (c) copyright subsists in the work or other subject-matter at the time of the import and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (5) A person commits an offence if:
 - (a) the person imports an article into Australia in preparation for, or in the course of, doing any of the following with the article:
 - (i) selling it;
 - (ii) letting it for hire;
 - (iii) by way of trade offering or exposing it for sale or hire;
 - (iv) offering or exposing it for sale or hire to obtain a commercial advantage or profit;
 - (v) distributing it for trade;
 - (vi) distributing it to obtain a commercial advantage or profit;
 - (vii) distributing it to an extent that will affect prejudicially the owner of the copyright in the work or other subject-matter of which the article is an infringing copy;
 - (viii) by way of trade exhibiting it in public;
 - (ix) exhibiting it in public to obtain a commercial advantage or profit; and
 - (b) the article is an infringing copy of a work or other subject-matter; and
 - (c) copyright subsists in the work or other subject-matter at the time of the import.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

132AI Distributing infringing copy

Indictable offences

- (1) A person commits an offence if:
 - (a) the person distributes an article, with the intention of:
 - (i) trading; or
 - (ii) obtaining a commercial advantage or profit; and
 - (b) the article is an infringing copy of a work or other subject-matter; and
 - (c) copyright subsists in the work or other subject-matter at the time of the distribution.
- (2) A person commits an offence if:
 - (a) the person distributes an article; and
 - (b) the article is an infringing copy of a work or other subject-matter; and
 - (c) copyright subsists in the work or other subject-matter at the time of the distribution; and
 - (d) the extent of the distribution affects prejudicially the owner of the copyright.
- (3) An offence against subsection (1) or (2) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note 1: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Note 2: If the infringing copy was made by converting the work or other subject-matter from a hard copy or analog form into a digital or other electronic machine-readable form, there is an aggravated offence with a higher maximum penalty under section 132AK.

Summary offences

- (4) A person commits an offence if:
 - (a) the person distributes an article, with the intention of:
 - (i) trading; or
 - (ii) obtaining a commercial advantage or profit; and
 - (b) the article is an infringing copy of a work or other subject-matter and the person is negligent as to that fact; and

- (c) copyright subsists in the work or other subject-matter at the time of the distribution and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (5) A person commits an offence if:
 - (a) the person distributes an article; and
 - (b) the article is an infringing copy of a work or other subject-matter and the person is negligent as to that fact; and
 - (c) copyright subsists in the work or other subject-matter at the time of the distribution and the person is negligent as to that fact; and
 - (d) the extent of the distribution affects prejudicially the owner of the copyright and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (6) An offence against subsection (4) or (5) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (7) A person commits an offence if:
 - (a) the person distributes an article in preparation for, or in the course of:
 - (i) trading; or
 - (ii) obtaining a commercial advantage or profit; and
 - (b) the article is an infringing copy of a work or other subject-matter; and
 - (c) copyright subsists in the work or other subject-matter at the time of the distribution.

Penalty: 60 penalty units.

- (9) Subsection (7) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

132AJ Possessing infringing copy for commerce

Indictable offence

- (1) A person commits an offence if:
- (a) the person possesses an article, with the intention of doing any of the following with the article:
 - (i) selling it;
 - (ii) letting it for hire;
 - (iii) by way of trade offering or exposing it for sale or hire;
 - (iv) offering or exposing it for sale or hire to obtain a commercial advantage or profit;
 - (v) distributing it for trade;
 - (vi) distributing it to obtain a commercial advantage or profit;
 - (vii) distributing it to an extent that will affect prejudicially the owner of the copyright in the work or other subject-matter of which the article is an infringing copy;
 - (viii) by way of trade exhibiting it in public;
 - (ix) exhibiting it in public to obtain a commercial advantage or profit; and
 - (b) the article is an infringing copy of a work or other subject-matter; and
 - (c) copyright subsists in the work or other subject-matter at the time of the possession.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note 1: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Note 2: If the infringing copy was made by converting the work or other subject-matter from a hard copy or analog form into a digital or other electronic machine-readable form, there is an aggravated offence with a higher maximum penalty under section 132AK.

Summary offence

- (3) A person commits an offence if:
- (a) the person possesses an article, with the intention of doing any of the following with the article:

- (i) selling it;
 - (ii) letting it for hire;
 - (iii) by way of trade offering or exposing it for sale or hire;
 - (iv) offering or exposing it for sale or hire to obtain a commercial advantage or profit;
 - (v) distributing it for trade;
 - (vi) distributing it to obtain a commercial advantage or profit;
 - (vii) distributing it to an extent that will affect prejudicially the owner of the copyright in the work or other subject-matter of which the article is an infringing copy;
 - (viii) by way of trade exhibiting it in public;
 - (ix) exhibiting it in public to obtain a commercial advantage or profit; and
- (b) the article is an infringing copy of a work or other subject-matter and the person is negligent as to that fact; and
- (c) copyright subsists in the work or other subject-matter at the time of the possession and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (5) A person commits an offence if:
- (a) the person possesses an article in preparation for, or in the course of, doing any of the following with the article:
 - (i) selling it;
 - (ii) letting it for hire;
 - (iii) by way of trade offering or exposing it for sale or hire;
 - (iv) offering or exposing it for sale or hire to obtain a commercial advantage or profit;
 - (v) distributing it for trade;
 - (vi) distributing it to obtain a commercial advantage or profit;

- (vii) distributing it to an extent that will affect prejudicially the owner of the copyright in the work or other subject-matter of which the article is an infringing copy;
 - (viii) by way of trade exhibiting it in public;
 - (ix) exhibiting it in public to obtain a commercial advantage or profit; and
- (b) the article is an infringing copy of a work or other subject-matter; and
 - (c) copyright subsists in the work or other subject-matter at the time of the possession.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

132AK Aggravated offence—work etc. converted to digital form

- (1) An indictable offence against a provision (the *basic offence provision*) of this Subdivision (except sections 132AL and 132AM) relating to an infringing copy is an *aggravated offence* if the infringing copy was made by converting a work or other subject-matter from a hard copy or analog form into a digital or other electronic machine-readable form.

- (2) An aggravated offence is punishable on conviction by a fine of not more than 850 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

- (3) To prove an aggravated offence, the prosecution must prove that the defendant was reckless with respect to the circumstance that the infringing copy was made by converting a work or other subject-matter from a hard copy or analog form into a digital or other electronic machine-readable form.

Note: The prosecution must also prove all the physical and fault elements of the offence against the basic offence provision.

- (4) If the prosecution intends to prove an aggravated offence, the charge must allege that the infringing copy was made by converting a work or other subject-matter from a hard copy or

analog form into a digital or other electronic machine-readable form.

132AL Making or possessing device for making infringing copy

Indictable offences

- (1) A person commits an offence if:
 - (a) the person makes a device, intending it to be used for making an infringing copy of a work or other subject-matter; and
 - (b) copyright subsists in the work or other subject-matter at the time of the making of the device.
- (2) A person commits an offence if:
 - (a) the person possesses a device, intending it to be used for making an infringing copy of a work or other subject-matter; and
 - (b) copyright subsists in the work or other subject-matter at the time of the possession.
- (3) An offence against subsection (1) or (2) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offences

- (4) A person commits an offence if:
 - (a) the person makes a device; and
 - (b) the device is to be used for copying a work or other subject-matter; and
 - (c) the copy will be an infringing copy and the person is negligent as to that fact; and
 - (d) copyright subsists in the work or other subject-matter at the time of the making of the device and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (5) A person commits an offence if:
 - (a) the person possesses a device; and

- (b) the device is to be used for copying a work or other subject-matter; and
- (c) the copy will be an infringing copy and the person is negligent as to that fact; and
- (d) copyright subsists in the work or other subject-matter at the time of the possession and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (6) To avoid doubt, recklessness is the fault element for the circumstance in paragraphs (4)(b) and (5)(b) that the device is to be used for copying a work or other subject-matter.
- (7) An offence against subsection (4) or (5) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (8) A person commits an offence if:
 - (a) the person makes a device; and
 - (b) the device is to be used for copying a work or other subject-matter; and
 - (c) the copy will be an infringing copy; and
 - (d) copyright subsists in the work or other subject-matter at the time of the making of the device.

Penalty: 60 penalty units.

- (10) Subsection (8) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

No need to prove which work etc. is to be copied

- (11) In a prosecution for an offence against this section, it is not necessary to prove which particular work or other subject-matter is intended to be, or will be, copied using the device.

132AM Advertising supply of infringing copy

Summary offence

- (1) A person commits an offence if:

- (a) the person, by any means, publishes, or causes to be published, an advertisement for the supply in Australia of a copy (whether from within or outside Australia) of a work or other subject-matter; and
- (b) the copy is, or will be, an infringing copy.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

Location of supply of copy by communication resulting in creation of copy

- (2) For the purposes of this section, a communication of a work or other subject-matter that, when received and recorded, will result in the creation of a copy of the work or other subject-matter is taken to constitute the supply of a copy of the work or other subject-matter at the place where the copy will be created.

Subdivision D—Airing of works, sound recordings and films

132AN Causing work to be performed publicly

Indictable offence

- (1) A person commits an offence if:
 - (a) the person causes a literary, dramatic or musical work to be performed; and
 - (b) the performance is in public at a place of public entertainment; and
 - (c) the performance infringes copyright in the work.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
 - (a) the person causes a literary, dramatic or musical work to be performed; and

- (b) the performance is in public at a place of public entertainment; and
- (c) the performance infringes copyright in the work and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

132AO Causing recording or film to be heard or seen in public

Indictable offence

- (1) A person commits an offence if:
 - (a) the person causes:
 - (i) a sound recording to be heard; or
 - (ii) images from a cinematograph film to be seen; or
 - (iii) sound from a cinematograph film to be heard; and
 - (b) the hearing or seeing occurs in public at a place of public entertainment; and
 - (c) causing the hearing or seeing infringes copyright in the recording or film.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
 - (a) the person causes:
 - (i) a sound recording to be heard; or
 - (ii) images from a cinematograph film to be seen; or
 - (iii) sound from a cinematograph film to be heard; and
 - (b) the hearing or seeing occurs in public at a place of public entertainment; and
 - (c) causing the hearing or seeing infringes copyright in the recording or film and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (5) A person commits an offence if:
- (a) the person causes:
 - (ii) images from a cinematograph film to be seen; or
 - (iii) sound from a cinematograph film to be heard; and
 - (b) the hearing or seeing occurs in public at a place of public entertainment; and
 - (c) causing the hearing or seeing infringes copyright in the recording or film.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Subdivision F—Electronic rights management information

132AQ Removing or altering electronic rights management information

Indictable offence

- (1) A person commits an offence if:
- (a) copyright subsists in a work or other subject-matter; and
 - (b) either:
 - (i) the person removes, from a copy of the work or subject-matter, any electronic rights management information that relates to the work or subject-matter; or
 - (ii) the person alters any electronic rights management information that relates to the work or subject-matter; and
 - (c) the person does so without the permission of the owner or exclusive licensee of the copyright; and
 - (d) the removal or alteration will induce, enable, facilitate or conceal an infringement of the copyright.

- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
- (a) copyright subsists in a work or other subject-matter; and
 - (b) either:
 - (i) the person removes, from a copy of the work or subject-matter, any electronic rights management information that relates to the work or subject-matter; or
 - (ii) the person alters any electronic rights management information that relates to the work or subject-matter; and
 - (c) the person does so without the permission of the owner or exclusive licensee of the copyright; and
 - (d) the removal or alteration will induce, enable, facilitate or conceal an infringement of the copyright and the person is negligent as to that result.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (5) A person commits an offence if:
- (a) copyright subsists in a work or other subject-matter; and
 - (b) either:
 - (i) the person removes, from a copy of the work or subject-matter, any electronic rights management information that relates to the work or subject-matter; or
 - (ii) the person alters any electronic rights management information that relates to the work or subject-matter; and
 - (c) the person does so without the permission of the owner or exclusive licensee of the copyright; and

- (d) the removal or alteration will induce, enable, facilitate or conceal an infringement of the copyright.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

132AR Distributing, importing or communicating copies after removal or alteration of electronic rights management information

Indictable offence

- (1) A person commits an offence if:
 - (a) copyright subsists in a work or other subject-matter; and
 - (b) the person does any of the following acts in relation to the work or subject-matter:
 - (i) distributes a copy of the work or subject-matter with the intention of trading or obtaining a commercial advantage or profit;
 - (ii) imports a copy of the work or subject-matter into Australia with the intention of trading or obtaining a commercial advantage or profit;
 - (iii) communicates a copy of the work or subject-matter to the public; and
 - (c) the person does so without the permission of the owner or exclusive licensee of the copyright; and
 - (d) either:
 - (i) any electronic rights management information that relates to the work or subject-matter has been removed from the copy of the work or subject-matter; or
 - (ii) any electronic rights management information that relates to the work or subject-matter has been altered; without the permission of the owner or exclusive licensee of the copyright; and
 - (e) the person knows that the information has been removed or altered without that permission; and
 - (f) the act referred to in paragraph (b) will induce, enable, facilitate or conceal an infringement of the copyright.

- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
- (a) copyright subsists in a work or other subject-matter; and
 - (b) the person does any of the following acts in relation to the work or subject-matter:
 - (i) distributes a copy of the work or subject-matter with the intention of trading or obtaining a commercial advantage or profit;
 - (ii) imports a copy of the work or subject-matter into Australia with the intention of trading or obtaining a commercial advantage or profit;
 - (iii) communicates a copy of the work or subject-matter to the public; and
 - (c) the person does so without the permission of the owner or exclusive licensee of the copyright; and
 - (d) either:
 - (i) any electronic rights management information that relates to the work or subject-matter has been removed from the copy of the work or subject-matter; or
 - (ii) any electronic rights management information that relates to the work or subject-matter has been altered; without the permission of the owner or exclusive licensee of the copyright; and
 - (e) the act referred to in paragraph (b) will induce, enable, facilitate or conceal an infringement of the copyright and the person is negligent as to that result.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (5) A person commits an offence if:
- (a) copyright subsists in a work or other subject-matter; and
 - (b) the person does any of the following acts in relation to the work or subject-matter:
 - (i) distributes a copy of the work or subject-matter in preparation for, or in the course of, trading or for obtaining a commercial advantage or profit;
 - (ii) imports a copy of the work or subject-matter into Australia in preparation for, or in the course of, trading or in preparation for, or in the course of, obtaining a commercial advantage or profit;
 - (iii) communicates a copy of the work or subject-matter to the public; and
 - (c) the person does so without the permission of the owner or exclusive licensee of the copyright; and
 - (d) either:
 - (i) any electronic rights management information that relates to the work or subject-matter has been removed from the copy of the work or subject-matter; or
 - (ii) any electronic rights management information that relates to the work or subject-matter has been altered; without the permission of the owner or exclusive licensee of the copyright; and
 - (e) the act referred to in paragraph (b) will induce, enable, facilitate or conceal an infringement of the copyright.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

132AS Distributing or importing electronic rights management information

Indictable offence

- (1) A person commits an offence if:
- (a) copyright subsists in a work or other subject-matter; and

- (b) the person does either of the following acts in relation to electronic rights management information that relates to the work or subject-matter:
 - (i) distributes the electronic rights management information with the intention of trading or obtaining a commercial advantage or profit;
 - (ii) imports the electronic rights management information into Australia with the intention of trading or obtaining a commercial advantage or profit; and
 - (c) the person does so without the permission of the owner or exclusive licensee of the copyright; and
 - (d) either:
 - (i) the information has been removed from a copy of the work or subject-matter without the permission of the owner or exclusive licensee of the copyright; or
 - (ii) the information has been removed from a copy of the work or subject-matter with the permission of the owner or exclusive licensee of the copyright but the information has been altered without that permission; and
 - (e) the person knows that the information has been removed or altered without that permission; and
 - (f) the act referred to in paragraph (b) will induce, enable, facilitate or conceal an infringement of the copyright.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
- (a) copyright subsists in a work or other subject-matter; and
 - (b) the person does either of the following acts in relation to electronic rights management information that relates to the work or subject-matter:
 - (i) distributes the electronic rights management information with the intention of trading or obtaining a commercial advantage or profit;

- (ii) imports the electronic rights management information into Australia with the intention of trading or obtaining a commercial advantage or profit; and
- (c) the person does so without the permission of the owner or exclusive licensee of the copyright; and
- (d) either:
 - (i) the information has been removed from a copy of the work or subject-matter without the permission of the owner or exclusive licensee of the copyright; or
 - (ii) the information has been removed from a copy of the work or subject-matter with the permission of the owner or exclusive licensee of the copyright but the information has been altered without that permission; and
- (e) the act referred to in paragraph (b) will induce, enable, facilitate or conceal an infringement of the copyright and the person is negligent as to that result.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (5) A person commits an offence if:
 - (a) copyright subsists in a work or other subject-matter; and
 - (b) the person does either of the following acts in relation to electronic rights management information that relates to the work or subject-matter:
 - (i) distributes the electronic rights management information in preparation for, or in the course of, trading or in preparation for, or in the course of, obtaining a commercial advantage or profit;
 - (ii) imports the electronic rights management information into Australia in preparation for, or in the course of, trading or in preparation for, or in the course of, obtaining a commercial advantage or profit; and
 - (c) the person does so without the permission of the owner or exclusive licensee of the copyright; and
 - (d) either:

- (i) the information has been removed from a copy of the work or subject-matter without the permission of the owner or exclusive licensee of the copyright; or
 - (ii) the information has been removed from a copy of the work or subject-matter with the permission of the owner or exclusive licensee of the copyright but the information has been altered without that permission; and
- (e) the act referred to in paragraph (b) will induce, enable, facilitate or conceal an infringement of the copyright.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

132AT Defences

Law enforcement and national security

- (1) This Subdivision does not apply in respect of anything lawfully done for the purposes of law enforcement or national security by or on behalf of:
- (a) the Commonwealth or a State or Territory; or
 - (b) an authority of the Commonwealth or of a State or Territory.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3) of the *Criminal Code*).

Certain public institutions etc.

- (2) This Subdivision does not apply in respect of anything lawfully done by the following in performing their functions:
- (a) a library (other than a library that is conducted for the profit, direct or indirect, of an individual or individuals);
 - (b) a body mentioned in:
 - (i) paragraph (a) of the definition of *archives* in subsection 10(1); or
 - (ii) subsection 10(4);
 - (c) an educational institution;
 - (d) a public non-commercial broadcaster, including:

- (i) a body that provides a national broadcasting service within the meaning of the *Broadcasting Services Act 1992*; and
- (ii) a body that holds a community broadcasting licence within the meaning of that Act.

Note 1: A library that is owned by a person conducting a business for profit might not itself be conducted for profit (see section 18).

Note 2: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Subdivision G—Evidence

132AU Prosecution to prove profit

- (1) This section applies if, in the prosecution of an offence against this Division, either of the following questions is relevant:
 - (a) whether the defendant intended to obtain a profit;
 - (b) whether the defendant did something for, in preparation for, or in the course of, obtaining a profit.
- (2) The burden of proving that any advantage, benefit or gain does not result from, or is not associated with, any private or domestic use of any copyright material is on the prosecution.

Note: For the purposes of this Division, section 132AA defines *profit* as not including any advantage, benefit, or gain, that:

- (a) is received by a person; and
- (b) results from, or is associated with, the person's private or domestic use of any copyright material.

7 Subsection 132A(1)

Omit “section 132”, substitute “this Division, except section 132AM,”.

8 Sections 133 and 133A

Repeal the sections, substitute:

Subdivision H—Extra court orders

133 Destruction or delivery up of infringing copies etc.

- (1) This section applies if:
-

- (a) a person is charged before a court with an offence against this Division, except section 132AM, whether or not the person is convicted of the offence; and
 - (b) the person possesses an article that appears to the court to be any of the following:
 - (i) a circumvention device used or intended to be used in conduct constituting an offence against Subdivision E;
 - (ii) an infringing copy;
 - (iii) a device or equipment used or intended to be used for making infringing copies.
- (2) The court may order that the article be destroyed, delivered up to the owner of the copyright concerned or dealt with as the court thinks fit.

Subdivision I—Procedure and jurisdiction

133A Courts in which offences may be prosecuted

- (1) Prosecutions for offences against this Division may be brought in the Federal Court of Australia or in any other court of competent jurisdiction.
- (2) However, the Federal Court of Australia does not have jurisdiction to hear or determine prosecutions for indictable offences, despite section 15C of the *Acts Interpretation Act 1901*.
- (3) The Federal Court of Australia has jurisdiction to hear and determine prosecutions of the following offences against this Division:
 - (a) summary offences;
 - (b) offences of strict liability.

133B Infringement notices

- (1) The regulations may make provision enabling a person who is alleged to have committed an offence of strict liability against this Division to do both of the following as an alternative to prosecution:
 - (a) pay a penalty to the Commonwealth;
 - (b) forfeit to the Commonwealth:

- (i) each article (if any) that is alleged to be an infringing copy of a work or other subject-matter and that is alleged to have been involved in the commission of the offence; and
- (ii) each device (if any) that is alleged to have been made to be used for making an infringing copy of a work or other subject-matter and that is alleged to have been involved in the commission of the offence.

Note: Regulations made for this purpose will make provision to the effect that a prosecution of an alleged offender will be avoided if the alleged offender both pays a penalty to the Commonwealth and forfeits to the Commonwealth all relevant articles and devices (if any).

- (2) The penalty must equal one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

9 Application of amendments of Division 5 of Part V

The amendments of Division 5 of Part V of the *Copyright Act 1968* by this Part apply to things occurring after the commencement of this Part.

10 Subsections 135L(4) and 135ZY(4)

Omit "\$500", substitute "5 penalty units".

11 Paragraph 136(2)(d)

Omit "proceedings brought in respect of an alleged contravention of subsection 132(5) or (5AA)", substitute "a prosecution of an offence against Subdivision D of Division 5 of Part V".

12 Saving

- (1) Despite the amendment of paragraph 136(2)(d) of the *Copyright Act 1968* by this Part, that paragraph, as in force before the amendment, applies after that amendment to proceedings brought in respect of an alleged contravention of subsection 132(5) or (5AA) of that Act as in force before that amendment.
- (2) That paragraph applies in that way whether the proceedings were started before or after that amendment.

13 Sections 172 and 173

Repeal the sections, substitute:

172 Offences by witnesses

Failing to appear

- (1) A person commits an offence if:
- (a) the person has been summoned to appear as a witness before the Tribunal; and
 - (b) there has been tendered to the person an amount of money at least equal to the expenses the person could reasonably be expected to incur in connection with appearing as a witness; and
 - (c) the person fails to appear in obedience to the summons.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

Failing to produce document or article summoned

- (2) A person commits an offence if:
- (a) the person has been summoned to produce a document or article to the Tribunal; and
 - (b) there has been tendered to the person an amount of money at least equal to the expenses the person could reasonably be expected to incur in connection with producing the document or article; and
 - (c) the person fails to produce the document or article.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

Refusal to swear or affirm

- (3) A person commits an offence if:
- (a) the person appears before the Tribunal; and
 - (b) the person refuses to be sworn or to make an affirmation.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

Refusal to answer questions or produce documents as required

- (4) A person commits an offence if:
- (a) the person appears before the Tribunal; and
 - (b) the Tribunal requires the person to answer a question or produce a document or article; and

(c) the person refuses to answer the question or produce the document or article.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

General defence of reasonable excuse

(5) Subsection (1), (2), (3) or (4) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

173 Offences relating to the Tribunal

Insulting a member

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct insults or disturbs a member in the exercise of his or her powers or functions as a member.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

Interrupting proceedings of the Tribunal

- (2) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct interrupts the proceedings of the Tribunal.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

Using insulting language

- (3) A person commits an offence if:
- (a) the person uses insulting language towards another person; and
 - (b) the other person is a member.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

Creating a disturbance

- (4) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the person's conduct creates a disturbance in or near a place where the Tribunal is sitting.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

Taking part in creating or continuing a disturbance

- (5) A person commits an offence if:
 - (a) the person takes part in creating or continuing a disturbance; and
 - (b) the disturbance is in or near a place where the Tribunal is sitting.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

Contravention of direction limiting publication of evidence

- (6) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct contravenes a direction of the Tribunal under paragraph 163(2)(b).

Penalty: 30 penalty units or imprisonment for 6 months, or both.

Contempt of Tribunal

- (7) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the person's conduct would, if the Tribunal were a court of record, constitute a contempt of that court.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

Definition of engage in conduct

- (8) In this section:
 - engage in conduct* means:
 - (a) do an act; or
 - (b) omit to perform an act.

14 Application of new sections 172 and 173

Sections 172 and 173 of the *Copyright Act 1968*, as amended by this Part, apply to acts (including refusals) occurring after the commencement of this Part and failures first occurring after the commencement of this Part.

15 Subsection 195A(2)

Repeal the subsection.

16 Transitional provision—regulations for subsection 195A(2)

- (1) This item applies to a regulation that:
 - (a) was made for the purposes of subsection 195A(2) of the *Copyright Act 1968*; and
 - (b) was in force immediately before the repeal of that subsection.
- (2) On and after the commencement of this Part, the regulation has effect for the purposes of subsection 203A(1) and section 203G (so far as they relate to a declaration made for the purposes of section 49, 50, 51A or 110B) of the *Copyright Act 1968*, as amended by this Part, as if the period prescribed by the regulation were prescribed for those purposes.
- (3) This item does not prevent the amendment or repeal of the regulation.
- (4) This item has effect despite the repeal of subsection 195A(2) of the *Copyright Act 1968* by this Part.

17 Sections 203A and 203D

Repeal the sections, substitute:

203A Offence—failing to keep declarations relating to copying in library or archives

- (1) A person commits an offence if:
 - (a) at a time, the person is:
 - (i) ultimately responsible for administering a library or archives; or
 - (ii) the officer in charge of a library or archives; and
 - (b) that time is:

- (i) after an authorized officer of a library or archives reproduced or copied all or part of a work or other subject-matter under section 49, 50, 51A or 110B; and
 - (ii) after a written declaration was made for the purpose of that section in relation to the reproduction or copying; and
 - (iii) before the end of the period prescribed by the regulations for the keeping of the declaration; and
- (c) at that time, the declaration is not kept in the records of the library or archives.

Penalty: 5 penalty units.

- (2) Subsection (1) does not apply if:
- (a) the person is the officer in charge of a library or archives and proves that:
 - (i) the reproduction or copying took place before the day the person became the officer in charge; and
 - (ii) on that day the declaration was not in the possession of the person administering the library or archives; or
 - (b) the person proves that the person took all reasonable precautions, and exercised due diligence, to ensure the declaration was kept in the records of the library or archives.

Note: The person bears a legal burden in relation to a matter in subsection (2) (see section 13.4 of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) The person cannot be convicted of more than one offence under this section in relation to the one declaration.

Note: Section 203G makes early destruction or disposal of the declaration an offence.

203D Offence—not arranging declarations chronologically

- (1) A person commits an offence if:
- (a) the person is:
 - (i) ultimately responsible for administering a library or archives; or
 - (ii) the officer in charge of a library or archives; and

- (b) the person's records include 2 or more declarations made for the purposes of one or more of sections 49, 50, 51A or 110B in relation to reproduction or copying by an authorized officer of the library or archives; and
- (c) the declarations are not arranged in the records in the order reflecting the dates on which the declarations were made.

Penalty: 5 penalty units.

- (2) Subsection (1) does not apply if the person proves that the person took all reasonable precautions, and exercised due diligence, to ensure that the declarations were arranged in the records in the order reflecting the dates on which the declarations were made.
- (3) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

18 Application of new sections 203A and 203D

Sections 203A and 203D of the *Copyright Act 1968*, as amended by this Part, apply to persons who are:

- (a) ultimately responsible for administering libraries or archives;
or
- (b) officers in charge of libraries or archives;

on or after the commencement of this Part.

19 Subsection 203E(6)

Repeal the subsection, substitute:

- (6) A person commits an offence if:
 - (a) the person is:
 - (i) ultimately responsible for administering a library or archives; or
 - (ii) the officer in charge of a library or archives; and
 - (b) another person (the *inspector*) attends at the premises of the library or archives for the purpose of exercising his or her powers under subsection (4); and
 - (c) the inspector is not provided with all reasonable facilities and assistance for the effective exercise of those powers.

Penalty: 5 penalty units.

20 Subsection 203E(10)

Repeal the subsection, substitute:

- (10) A person (the *defendant*) commits an offence if:
- (a) the defendant makes a record of information, or divulges or communicates information; and
 - (b) the information was acquired by the defendant either in the course of an inspection the defendant made under subsection (4) or because it was divulged or communicated to the defendant either:
 - (i) by another person who acquired the information in the course of an inspection he or she made under subsection (4); or
 - (ii) in one of a series of divulgements or communications by different persons that started with a divulgement or communication of the information by a person who acquired it the course of an inspection he or she made under subsection (4).

Penalty: 5 penalty units.

21 Subsection 203E(11)

Repeal the subsection, substitute:

- (11) Subsection (10) does not apply if the defendant makes the record, divulgement or communication with the intention of:
- (a) informing the owner of the copyright in a work or other subject-matter that a copy has been made of the work or other subject-matter; or
 - (b) enforcing a right that a person has under this Act in connection with a work or other subject-matter in which copyright subsists; or
 - (c) ensuring compliance with a provision of Division 5 of Part III or with a provision of this Part.

Note: The defendant bears an evidential burden in relation to the matter in subsection (11) (see subsection 13.3(3) of the *Criminal Code*).

22 Application of new subsections 203E(10) and (11)

The repeal and substitution of subsections 203E(10) and (11) of the *Copyright Act 1968* by this Part apply to the recording, divulgement or communication of information by the defendant after the commencement of this Part (whether the information was acquired by the defendant before, on or after the commencement of this Part).

23 Sections 203F and 203G

Repeal the sections, substitute:

203F False and misleading declarations

A person commits an offence if:

- (a) the person makes a declaration for the purposes of section 49, 50, 51A or 110B; and
- (b) the declaration is false or misleading in a material particular.

Penalty: 5 penalty units.

203G Offence—disposing of or destroying certain declarations

A person commits an offence if:

- (a) the person disposes of, destroys, or causes the disposal or destruction of, a declaration made for the purposes of section 49, 50, 51A or 110B; and
- (b) the period prescribed by the regulations for the keeping of the declaration has not ended.

Penalty: 5 penalty units.

24 Application of new sections 203F and 203G

Sections 203F and 203G of the *Copyright Act 1968*, as amended by this Part, apply to acts done after the commencement of this Part.

25 Subsection 203H(4)

Repeal the subsection, substitute:

- (4) A person commits an offence if:
 - (a) the person:
 - (i) makes a notation described in subsection (1) on a reproduction of a work or part of a work; or

- (ii) makes a notation described in subsection (2) on a copy of a sound recording or cinematograph film; or
 - (iii) attaches a notation described in subsection (2) to a copy of a sound recording or cinematograph film; and
- (b) a statement in the notation is false or misleading in a material particular.

Penalty: 5 penalty units.

26 Application of new subsection 203H(4)

The repeal and substitution of subsection 203H(4) of the *Copyright Act 1968* by this Part apply to acts done after the commencement of this Part.

27 Subsection 248A(1)

Insert:

20-year protection period of a performance means the period:

- (a) beginning on the day when the performance was given; and
- (b) ending at the end of 20 calendar years after the calendar year in which the performance was given.

28 Subsection 248A(1)

Insert:

50-year protection period of a performance means the period:

- (a) beginning on the day when the performance was given; and
- (b) ending at the end of 50 calendar years after the calendar year in which the performance was given.

29 Subsection 248CA(1)

Omit “subsections (2) and”, substitute “subsection”.

30 Subsection 248CA(2)

Repeal the subsection.

31 Paragraphs 248CA(4)(b) to (h)

Repeal the paragraphs, substitute:

- (b) section 248PA;
- (c) section 248PB;

- (d) section 248PE;
- (e) section 248PF;
- (f) section 248PG;
- (g) section 248PI;
- (h) section 248PJ;
- (i) section 248PK;
- (j) section 248PL;
- (k) section 248PM.

32 Subsection 248F(1)

Repeal the subsection, substitute:

- (1) This Part, except Subdivisions A, B and C of Division 3, applies to acts done on or after 1 October 1989 in relation to a performance given on or after that day.

Note 1: That day was the day this Part commenced.

Note 2: Sections 248P and 248QA apply Subdivisions A and B of Division 3 to acts done at or after the time those Subdivisions commence as a result of Part 1 of Schedule 1 to the *Copyright Amendment Act 2006*. Subdivision C of that Division is merely ancillary to those Subdivisions.

33 Sections 248P, 248Q, 248QA, 248QB and 248S

Repeal the sections, substitute:

Subdivision A—General offences

248P Scope of this Subdivision

- (1) This Subdivision applies to acts done in Australia on or after the commencement of this Subdivision.

Note: This Subdivision commenced when it was included in this Act by Part 1 of Schedule 1 to the *Copyright Amendment Act 2006*.

- (2) This section has effect despite section 14.1 (Standard geographical jurisdiction) of the *Criminal Code*.

248PA Unauthorised direct recording during protection period

Indictable offence

- (1) A person commits an offence if:
- (a) the person makes a direct recording of a performance; and
 - (b) the recording is made during the protection period of the performance; and
 - (c) the recording is made without the authority of the performer.

Note: Under section 248CA, the protection period of a performance is:

- (a) a 20-year protection period so far as this section relates to a cinematograph film of the performance; and
 - (b) a 50-year protection period so far as this section relates to a sound recording of the performance.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
- (a) the person makes a direct recording of a performance; and
 - (b) the recording is made during the protection period of the performance; and
 - (c) the recording is made without the authority of the performer and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

248PB Unauthorised indirect recording during protection period

Indictable offence

- (1) A person commits an offence if:
- (a) the person makes an indirect recording of a performance; and

- (b) the recording is made during the protection period of the performance; and
- (c) the recording is made without the authority of the performer.

Note: Under section 248CA, the protection period of a performance is:

- (a) a 20-year protection period so far as this section relates to a cinematograph film of the performance; and
- (b) a 50-year protection period so far as this section relates to a sound recording of the performance.

- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
 - (a) the person makes an indirect recording of a performance; and
 - (b) the recording is made during the protection period of the performance; and
 - (c) the recording is made without the authority of the performer and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (5) A person commits an offence if:
 - (a) the person makes an indirect recording of a performance; and
 - (b) the recording is made during the protection period of the performance; and
 - (c) the recording is made without the authority of the performer.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Defence

- (7) Subsection (1), (3) or (5) does not apply if the recording was made solely for the person's private and domestic use.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

248PC Unauthorised communication to public during 20-year protection period

Indictable offence

- (1) A person commits an offence if:
- (a) the person communicates a performance to the public; and
 - (b) the communication is made during the 20-year protection period of the performance; and
 - (c) the communication is made without the authority of the performer; and
 - (d) the communication is made either directly from the live performance or from an unauthorised recording of the performance.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
- (a) the person communicates a performance to the public; and
 - (b) the communication is made during the 20-year protection period of the performance; and
 - (c) the communication is made without the authority of the performer and the person is negligent as to that fact; and
 - (d) the communication is made either directly from the live performance or from an unauthorised recording of the performance.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Defence

- (7) To avoid doubt, subsections (1) and (3) do not apply to the communication to the public of an authorised recording of the performance.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: An educational or other institution can also copy and communicate a broadcast of a performance without contravening this section in some circumstances (see sections 135E and 135F).

248PD Playing unauthorised recording publicly during 20-year protection period

Indictable offence

- (1) A person commits an offence if:
- (a) the person causes a recording of a performance to be heard or seen in public; and
 - (b) the recording is heard or seen in public during the 20-year protection period of the performance; and
 - (c) the recording is unauthorised.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
- (a) the person causes a recording of a performance to be heard or seen in public; and
 - (b) the recording is heard or seen in public during the 20-year protection period of the performance; and
 - (c) the recording is unauthorised and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

248PE Possessing equipment to make or copy unauthorised recording

Indictable offence

- (1) A person commits an offence if:
- (a) the person possesses a plate or recording equipment, intending it to be used for making:
 - (i) an unauthorised recording of a performance; or
 - (ii) a copy of an unauthorised recording of a performance;and
 - (b) the possession occurs during the protection period of the performance.

Note: Under section 248CA, the protection period of a performance is:

- (a) a 20-year protection period so far as this section relates to a cinematograph film of the performance; and
- (b) a 50-year protection period so far as this section relates to a sound recording of the performance.

- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
- (a) the person possesses a plate or recording equipment; and
 - (b) the plate or equipment is to be used for making:
 - (i) a recording of a performance; or
 - (ii) a copy of an unauthorised recording of a performance;and
 - (c) either:
 - (i) the recording to be made using the plate or equipment will be an unauthorised recording of the performance; or

- (ii) the recording to be copied using the plate or equipment is an unauthorised recording of the performance;
and the person is negligent as to that fact; and
- (d) the possession occurs during the protection period of the performance.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) To avoid doubt, recklessness is the fault element for the circumstance that the plate or equipment is to be used for making:
 - (a) a recording of a performance; or
 - (b) a copy of an unauthorised recording of a performance.
- (5) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

No need to prove which performance or recording is to be involved

- (8) In a prosecution for an offence against this section, it is not necessary to prove:
 - (a) which particular performance is intended to be, or will be, recorded using the device; or
 - (b) which particular recording is intended to be, or will be, copied using the device.

248PF Copying unauthorised recording

Indictable offence

- (1) A person commits an offence if:
 - (a) the person makes a copy of a recording of a performance; and
 - (b) the copy is made during the protection period of the performance; and
 - (c) the recording is an unauthorised recording.

Note: Under section 248CA, the protection period of a performance is:

- (a) a 20-year protection period so far as this section relates to a cinematograph film of the performance; and
- (b) a 50-year protection period so far as this section relates to a sound recording of the performance.

- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
- (a) the person makes a copy of a recording of a performance; and
 - (b) the copy is made during the protection period of the performance; and
 - (c) the recording is an unauthorised recording and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (5) A person commits an offence if:
- (a) the person makes a copy of a recording of a performance; and
 - (b) the copy is made during the protection period of the performance; and
 - (c) the recording is an unauthorised recording.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

248PG Unauthorised copying of exempt recording

Indictable offence

- (1) A person commits an offence if:
- (a) the person makes a copy of a recording of a performance; and
 - (b) the copy is made during the protection period of the performance; and
 - (c) the copy is made without the authority of the performer; and

- (d) the recording is an exempt recording; and
- (e) the copy is not an exempt recording.

Note: Under section 248CA, the protection period of a performance is:

- (a) a 20-year protection period so far as this section relates to a cinematograph film of the performance; and
- (b) a 50-year protection period so far as this section relates to a sound recording of the performance.

- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
 - (a) the person makes a copy of a recording of a performance; and
 - (b) the copy is made during the protection period of the performance; and
 - (c) the copy is made without the authority of the performer and the person is negligent as to that fact; and
 - (d) the recording is an exempt recording; and
 - (e) the copy is not an exempt recording and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (5) A person commits an offence if:
 - (a) the person makes a copy of a recording of a performance; and
 - (b) the copy is made during the protection period of the performance; and
 - (c) the copy is made without the authority of the performer; and
 - (d) the recording is an exempt recording; and
 - (e) the copy is not an exempt recording.

Penalty: 60 penalty units.

(6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

248PH Unauthorised copying of authorised sound recording

Indictable offence

- (1) A person commits an offence if:
- (a) the person makes a copy of a sound recording of a performance, intending that the copy be used in a sound-track; and
 - (b) the copy is made during the 20-year protection period of the performance; and
 - (c) the copy is made without the authority of the performer; and
 - (d) the sound recording is an authorised sound recording; and
 - (e) the making of the sound recording was not authorised for the purpose of use in that or any other sound-track.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
- (a) the person makes a copy of a sound recording of a performance, intending that the copy be used in a sound-track; and
 - (b) the copy is made during the 20-year protection period of the performance; and
 - (c) the copy is made without the authority of the performer and the person is negligent as to that fact; and
 - (d) the sound recording is an authorised sound recording; and
 - (e) the making of the sound recording was not authorised for the purpose of use in that or any other sound-track and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (5) A person commits an offence if:
- (a) the person makes a copy of a sound recording of a performance in preparation for use in a sound-track; and
 - (b) the copy is made during the 20-year protection period of the performance; and
 - (c) the copy is made without the authority of the performer; and
 - (d) the sound recording is an authorised sound recording; and
 - (e) the making of the sound recording was not authorised for the purpose of use in that or any other sound-track.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

248PI Selling etc. unauthorised recording

Indictable offence

- (1) A person commits an offence if:
- (a) the person does any of the following acts:
 - (i) sells a recording of a performance;
 - (ii) lets for hire a recording of a performance;
 - (iii) by way of trade offers or exposes for sale or hire a recording of a performance; and
 - (b) the act is done during the protection period of the performance; and
 - (c) the recording is an unauthorised recording.

Note: Under section 248CA, the protection period of a performance is:

- (a) a 20-year protection period so far as this section relates to a cinematograph film of the performance; and
- (b) a 50-year protection period so far as this section relates to a sound recording of the performance.

- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
- (a) the person does any of the following acts:
 - (i) sells a recording of a performance;
 - (ii) lets for hire a recording of a performance;
 - (iii) by way of trade offers or exposes for sale or hire a recording of a performance; and
 - (b) the act is done during the protection period of the performance; and
 - (c) the recording is an unauthorised recording and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (5) A person commits an offence if:
- (a) the person does any of the following acts:
 - (i) sells a recording of a performance;
 - (ii) lets for hire a recording of a performance;
 - (iii) by way of trade offers or exposes for sale or hire a recording of a performance; and
 - (b) the act is done during the protection period of the performance; and
 - (c) the recording is an unauthorised recording.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

248PJ Distributing unauthorised recording

Indictable offences

- (1) A person commits an offence if:
- (a) the person distributes a recording of a performance, with the intention of trading; and
 - (b) the distribution occurs during the protection period of the performance; and
 - (c) the recording is an unauthorised recording.

Note: Under section 248CA, the protection period of a performance is:

- (a) a 20-year protection period so far as this section relates to a cinematograph film of the performance; and
- (b) a 50-year protection period so far as this section relates to a sound recording of the performance.

- (2) A person commits an offence if:
- (a) the person distributes a recording of a performance; and
 - (b) the distribution occurs during the protection period of the performance; and
 - (c) the distribution will affect prejudicially the financial interests of the performer in the performance; and
 - (d) the recording is an unauthorised recording.

- (3) An offence against subsection (1) or (2) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offences

- (4) A person commits an offence if:
- (a) the person distributes a recording of a performance, with the intention of trading; and
 - (b) the distribution occurs during the protection period of the performance; and
 - (c) the recording is an unauthorised recording and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (5) A person commits an offence if:
- (a) the person distributes a recording of a performance; and
 - (b) the distribution occurs during the protection period of the performance; and
 - (c) the distribution will affect prejudicially the financial interests of the performer in the performance; and
 - (d) the recording is an unauthorised recording and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (6) An offence against subsection (4) or (5) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (7) A person commits an offence if:
- (a) the person distributes a recording of a performance in preparation for, or in the course of, trade; and
 - (b) the distribution occurs during the protection period of the performance; and
 - (c) the recording is an unauthorised recording.

Penalty: 60 penalty units.

- (9) Subsection (7) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

248PK Commercial possession or import of unauthorised recording

Indictable offence

- (1) A person commits an offence if:
- (a) the person possesses, or imports into Australia, a recording of a performance, with the intention of doing any of the following:
 - (i) selling the recording;
 - (ii) letting the recording for hire;
 - (iii) by way of trade offering or exposing the recording for sale or hire;

- (iv) distributing the recording either for the purpose of trade or to an extent that will affect prejudicially the financial interests of the performer in the performance; and
- (b) the possession or import occurs during the protection period of the performance; and
- (c) the recording is an unauthorised recording.

Note: Under section 248CA, the protection period of a performance is:

- (a) a 20-year protection period so far as this section relates to a cinematograph film of the performance; and
- (b) a 50-year protection period so far as this section relates to a sound recording of the performance.

- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
 - (a) the person possesses, or imports into Australia, a recording of a performance, with the intention of doing any of the following:
 - (i) selling the recording;
 - (ii) letting the recording for hire;
 - (iii) by way of trade offering or exposing the recording for sale or hire;
 - (iv) distributing the recording either for the purpose of trade or to an extent that will affect prejudicially the financial interests of the performer in the performance; and
 - (b) the possession or import occurs during the protection period of the performance; and
 - (c) the recording is an unauthorised recording and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (5) A person commits an offence if:
- (a) the person possesses, or imports into Australia, a recording of a performance in preparation for, or in the course of, doing any of the following:
 - (i) selling the recording;
 - (ii) letting the recording for hire;
 - (iii) by way of trade offering or exposing the recording for sale or hire;
 - (iv) distributing the recording for trade; and
 - (b) the possession or import occurs during the protection period of the performance; and
 - (c) the recording is an unauthorised recording.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

248PL Exhibiting unauthorised recording in public by way of trade

Indictable offence

- (1) A person commits an offence if:
- (a) the person by way of trade exhibits in public a recording of a performance; and
 - (b) the exhibition occurs during the protection period of the performance; and
 - (c) the recording is an unauthorised recording.

Note: Under section 248CA, the protection period of a performance is:

- (a) a 20-year protection period so far as this section relates to a cinematograph film of the performance; and
- (b) a 50-year protection period so far as this section relates to a sound recording of the performance.

- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
- (a) the person by way of trade exhibits in public a recording of a performance; and
 - (b) the exhibition occurs during the protection period of the performance; and
 - (c) the recording is an unauthorised recording and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (5) A person commits an offence if:
- (a) the person by way of trade exhibits in public a recording of a performance; and
 - (b) the exhibition occurs during the protection period of the performance; and
 - (c) the recording is an unauthorised recording.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

248PM Importing unauthorised recording for exhibition by way of trade

Indictable offence

- (1) A person commits an offence if:
- (a) the person imports into Australia a recording of a performance, with the intention of exhibiting the recording in public by way of trade; and
 - (b) the import occurs during the protection period of the performance; and
 - (c) the recording is an unauthorised recording.

Note: Under section 248CA, the protection period of a performance is:

- (a) a 20-year protection period so far as this section relates to a cinematograph film of the performance; and
 - (b) a 50-year protection period so far as this section relates to a sound recording of the performance.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
- (a) the person imports into Australia a recording of a performance, with the intention of exhibiting the recording in public by way of trade; and
 - (b) the import occurs during the protection period of the performance; and
 - (c) the recording is an unauthorised recording and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (5) A person commits an offence if:
- (a) the person imports into Australia a recording of a performance, in preparation for exhibiting the recording in public by way of trade; and
 - (b) the import occurs during the protection period of the performance; and
 - (c) the recording is an unauthorised recording.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Subdivision B—Acts relating to sound recordings of performances given before 1 July 1995

248QA Scope of this Subdivision

- (1) This Subdivision applies to an act done in Australia on or after the commencement of this Subdivision, in relation to a performance given at any time before 1 July 1995.

Note 1: That day was the day on which Part 4 of the *Copyright (World Trade Organization Amendments) Act 1994* commenced.

Note 2: This Subdivision commenced when it was included in this Act by Part 1 of Schedule 1 to the *Copyright Amendment Act 2006*.

- (2) This Subdivision has effect despite section 14.1 (Standard geographical jurisdiction) of the *Criminal Code*.

248QB Possessing equipment for copying unauthorised sound recording

Indictable offence

- (1) A person commits an offence if:
- (a) the person possesses a plate or recording equipment, intending it to be used for making a copy of an unauthorised sound recording of a performance; and
 - (b) the possession occurs during the 50-year protection period of the performance.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
- (a) the person possesses a plate or recording equipment; and
 - (b) the plate or recording equipment is to be used for making a copy of a sound recording of a performance; and
 - (c) the recording is an unauthorised recording of the performance and the person is negligent as to that fact; and

(d) the possession occurs during the 50-year protection period of the performance.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) To avoid doubt, recklessness is the fault element for the circumstance that the plate or recording equipment is to be used for making a copy of a sound recording of a performance.
- (5) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

No need to prove which recording is to be copied

- (8) In a prosecution for an offence against this section, it is not necessary to prove which particular recording is intended to be, or will be, copied using the device.

248QC Copying unauthorised sound recording

Indictable offence

- (1) A person commits an offence if:
- (a) the person makes a copy of a sound recording of a performance; and
 - (b) the copy is made during the 50-year protection period of the performance; and
 - (c) the recording is an unauthorised recording.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
- (a) the person makes a copy of a sound recording of a performance; and
 - (b) the copy is made during the 50-year protection period of the performance; and

(c) the recording is an unauthorised recording and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

(4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

(5) A person commits an offence if:

- (a) the person makes a copy of a sound recording of a performance; and
- (b) the copy is made during the 50-year protection period of the performance; and
- (c) the recording is an unauthorised recording.

Penalty: 60 penalty units.

(6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

248QD Selling etc. unauthorised sound recording

Indictable offence

(1) A person commits an offence if:

- (a) the person does any of the following acts:
 - (i) sells a sound recording of a performance;
 - (ii) lets for hire a sound recording of a performance;
 - (iii) by way of trade offers or exposes for sale or hire a sound recording of a performance; and
- (b) the act is done during the 50-year protection period of the performance; and
- (c) the recording is an unauthorised recording.

(2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
- (a) the person does any of the following acts:
 - (i) sells a sound recording of a performance;
 - (ii) lets for hire a sound recording of a performance;
 - (iii) by way of trade offers or exposes for sale or hire a sound recording of a performance; and
 - (b) the act is done during the 50-year protection period of the performance; and
 - (c) the recording is an unauthorised recording and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (5) A person commits an offence if:
- (a) the person does any of the following acts:
 - (i) sells a sound recording of a performance;
 - (ii) lets for hire a sound recording of a performance;
 - (iii) by way of trade offers or exposes for sale or hire a sound recording of a performance; and
 - (b) the act is done during the 50-year protection period of the performance; and
 - (c) the recording is an unauthorised recording.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

248QE Distributing unauthorised sound recording

Indictable offences

- (1) A person commits an offence if:

- (a) the person distributes a sound recording of a performance, with the intention of trade; and
 - (b) the distribution occurs during the 50-year protection period of the performance; and
 - (c) the recording is an unauthorised recording.
- (2) A person commits an offence if:
- (a) the person distributes a sound recording of a performance; and
 - (b) the distribution occurs during the 50-year protection period of the performance; and
 - (c) the distribution will affect prejudicially the financial interests of the performer in the performance; and
 - (d) the recording is an unauthorised recording.
- (3) An offence against subsection (1) or (2) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offences

- (4) A person commits an offence if:
- (a) the person distributes a sound recording of a performance, with the intention of trade; and
 - (b) the distribution occurs during the 50-year protection period of the performance; and
 - (c) the recording is an unauthorised recording and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (5) A person commits an offence if:
- (a) the person distributes a sound recording of a performance; and
 - (b) the distribution occurs during the 50-year protection period of the performance; and
 - (c) the distribution will affect prejudicially the financial interests of the performer in the performance; and

(d) the recording is an unauthorised recording and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

(6) An offence against subsection (4) or (5) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

(7) A person commits an offence if:

- (a) the person distributes a sound recording of a performance in preparation for, or in the course of, trade; and
- (b) the distribution occurs during the 50-year protection period of the performance; and
- (c) the recording is an unauthorised recording.

Penalty: 60 penalty units.

(9) Subsection (7) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

248QF Commercial possession or import of unauthorised sound recording

Indictable offence

(1) A person commits an offence if:

- (a) the person possesses, or imports into Australia, a sound recording of a performance, with the intention of doing any of the following:
 - (i) selling the recording;
 - (ii) letting the recording for hire;
 - (iii) by way of trade offering or exposing the recording for sale or hire;
 - (iv) distributing the recording either for the purpose of trade or to an extent that will affect prejudicially the financial interests of the performer in the performance; and
- (b) the possession or import occurs during the 50-year protection period of the performance; and
- (c) the recording is an unauthorised recording.

- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
- (a) the person possesses, or imports into Australia, a sound recording of a performance, with the intention of doing any of the following:
 - (i) selling the recording;
 - (ii) letting the recording for hire;
 - (iii) by way of trade offering or exposing the recording for sale or hire;
 - (iv) distributing the recording either for the purpose of trade or to an extent that will affect prejudicially the financial interests of the performer in the performance; and
 - (b) the possession or import occurs during the 50-year protection period of the performance; and
 - (c) the recording is an unauthorised recording and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (5) A person commits an offence if:
- (a) the person possesses, or imports into Australia, a sound recording of a performance in preparation for, or in the course of, doing any of the following:
 - (i) selling the recording;
 - (ii) letting the recording for hire;
 - (iii) by way of trade offering or exposing the recording for sale or hire;
 - (iv) distributing the recording for trade; and

- (b) the possession or import occurs during the 50-year protection period of the performance; and
- (c) the recording is an unauthorised recording.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

248QG Exhibiting unauthorised sound recording in public by way of trade

Indictable offence

- (1) A person commits an offence if:
- (a) the person by way of trade exhibits in public a sound recording of a performance; and
 - (b) the exhibition occurs during the 50-year protection period of the performance; and
 - (c) the recording is an unauthorised recording.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
- (a) the person by way of trade exhibits in public a sound recording of a performance; and
 - (b) the exhibition occurs during the 50-year protection period of the performance; and
 - (c) the recording is an unauthorised recording and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (5) A person commits an offence if:
- (a) the person by way of trade exhibits in public a sound recording of a performance; and
 - (b) the exhibition occurs during the 50-year protection period of the performance; and
 - (c) the recording is an unauthorised recording.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

248QH Importing unauthorised sound recording for exhibition by way of trade

Indictable offence

- (1) A person commits an offence if:
- (a) the person imports into Australia a sound recording of a performance, with the intention of exhibiting the recording in public by way of trade; and
 - (b) the import occurs during the 50-year protection period of the performance; and
 - (c) the recording is an unauthorised recording.

- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
- (a) the person imports into Australia a sound recording of a performance, with the intention of exhibiting the recording in public by way of trade; and
 - (b) the import occurs during the 50-year protection period of the performance; and

- (c) the recording is an unauthorised recording and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Strict liability offence

- (5) A person commits an offence if:
 - (a) the person imports into Australia a sound recording of a performance in preparation for exhibiting the recording in public by way of trade; and
 - (b) the import occurs during the 50-year protection period of the performance; and
 - (c) the recording is an unauthorised recording.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Subdivision C—Prosecution and infringement notices

248R Courts in which offences may be prosecuted

- (1) Prosecutions for offences against Subdivision A or B may be brought in the Federal Court of Australia or in any other court of competent jurisdiction.
- (2) However, the Federal Court of Australia does not have jurisdiction to hear or determine prosecutions for indictable offences, despite section 15C of the *Acts Interpretation Act 1901*.
- (3) The Federal Court of Australia has jurisdiction to hear and determine prosecutions of the following offences against Subdivision A or B:
 - (a) summary offences;
 - (b) offences of strict liability.

248S Protection against multiple proceedings for same act

If a single act done in relation to a performance is an offence against Subdivision A and an offence against Subdivision B, only one of the offences may be prosecuted.

248SA Infringement notices

- (1) The regulations may make provision enabling a person who is alleged to have committed an offence of strict liability against Subdivision A or B to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must equal one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

Subdivision D—Destruction or delivery up of unauthorised recordings

Part 2—Amendment contingent on the Archives Amendment Act 2006

Copyright Act 1968

34 Paragraphs 132AC(7)(b) and 132AT(2)(b)

Repeal the paragraphs, substitute:

- (b) a body or person mentioned in:
 - (i) paragraph (a) or (aa) of the definition of *archives* in subsection 10(1); or
 - (ii) subsection 10(4);

Schedule 2—Presumptions

Copyright Act 1968

1 Subsection 126A(2)

Omit “the label or mark is admissible as prima facie evidence of the facts so stated”, substitute “that year and place are presumed to be as stated on the label or mark, unless the contrary is established”.

Note: The heading to section 126A is altered by omitting “**Evidence in relation**” and substituting “**Presumptions relating**”.

2 Subsection 126A(3)

Omit “the certificate or other document is admissible as prima facie evidence of the facts so stated”, substitute “that year and place are presumed to be as stated in the certificate or document, unless the contrary is established”.

3 Subsection 126B(2)

Omit “the label or mark is admissible as prima facie evidence of the facts so stated”, substitute “the person is presumed to have been the owner of the copyright at the time, unless the contrary is established”.

Note: The heading to section 126B is altered by omitting “**Evidence in relation**” and substituting “**Presumptions relating**”.

4 Subsection 126B(3)

Omit “the certificate or other document is admissible as prima facie evidence of the facts so stated”, substitute “the person is presumed to have been the owner of the copyright at the time, unless the contrary is established”.

5 Subsection 126B(5)

Omit “the document is admissible as prima facie evidence of the facts so stated”, substitute “the matters described in subparagraphs (b)(i), (ii) and (iii) are presumed to be as stated in the document, unless the contrary is established”.

6 Subsection 126B(6)

Omit “the document is admissible as prima facie evidence of the facts so stated”, substitute “the matters described in subparagraphs (b)(i), (ii), (iii) and (iv) are presumed to be as stated in the document, unless the contrary is established”.

7 Section 130

Repeal the section, substitute:

129A Presumptions relating to computer programs

- (1) This section applies to an action under this Part relating to copyright in a literary work that is a computer program if:
 - (a) articles or things embodying all or part of the program have been supplied (by sale or otherwise) to the public; and
 - (b) at the time of the supply, the articles or things, or their containers, bore a label or other mark consisting of the letter “C” in a circle accompanied by a specified year and the name of a person.
- (2) It is presumed that:
 - (a) the computer program is an original literary work; and
 - (b) the computer program was first published in the year; and
 - (c) the person was the owner of copyright in the program when and where the articles, things or containers were labelled or marked;unless the contrary is established.
- (3) A presumption about a person under subsection (2) does not imply that the person was the only owner of copyright in the program when and where the articles, things or containers were labelled or marked.

130 Presumptions relating to sound recordings

- (1) This section applies to an action under this Part relating to copyright in a sound recording if:
 - (a) records embodying all or part of the recording have been supplied (by sale or otherwise) to the public; and
 - (b) at the time of the supply, the records or their containers bore a label or other mark.

- (2) If the label or mark contained a statement described in an item of the table, the matter described in the item is presumed, unless the contrary is established.

Statements and matters presumed unless the contrary is established		
Item	Statement	Matter presumed
1	A specified person was the maker of the recording	The person was the maker of the recording
2	The recording was first published in a specified year	The recording was first published in the year
3	The recording was first published in a specified country	The recording was first published in the country

- (3) If the label or mark consisted of the letter “P” in a circle accompanied by a specified year and the name of a person, it is presumed that:
- (a) the recording was first published in the year; and
 - (b) the person was the owner of copyright in the recording when and where the records or containers were labelled or marked;
- unless the contrary is established.
- (4) A presumption about a person under this section does not imply that the person was:
- (a) the only maker of the recording; or
 - (b) the only owner of copyright in the recording when and where the records or containers were labelled or marked.

8 Section 131

Before “Where”, insert “(1)”.

Note: The heading to section 131 is replaced by the heading “**Presumptions relating to films**”.

9 At the end of section 131

Add:

- (2) Subsection (3) applies to an action under this Part relating to copyright in a cinematograph film, if:
- (a) articles or things embodying the film have been supplied commercially; and

- (b) at the time of the supply, the articles or things, or their containers, bore a label or other mark consisting of the letter “C” in a circle accompanied by a specified year and the name of a person.
- (3) It is presumed that:
 - (a) the film was first made in the year; and
 - (b) the person was the owner of copyright in the film when and where the articles, things or containers were labelled or marked;unless the contrary is established.
- (4) A presumption about a person under subsection (3) does not imply that the person was the only owner of copyright in the film when and where the articles, things or containers were labelled or marked.

10 Subsection 132A(2)

Omit “the label or mark is admissible as prima facie evidence of the facts so stated”, substitute “that year and place are presumed to be as stated on the label or mark, unless the contrary is established”.

11 Subsection 132A(3)

Omit “the label or mark is admissible as prima facie evidence of the facts so stated”, substitute “the person is presumed to have been the owner of the copyright at the time, unless the contrary is established”.

12 Subsection 132A(4)

Omit “the certificate or other document is admissible as prima facie evidence of the facts so stated”, substitute “that year and place are presumed to be as stated in the certificate or document, unless the contrary is established”.

13 Subsections 132A(5)

Omit “the certificate or other document is admissible as prima facie evidence of the facts so stated”, substitute “the person is presumed to have been the owner of the copyright at the time, unless the contrary is established”.

14 Section 132B

Repeal the section, substitute:

132AAA Presumptions relating to computer programs

- (1) This section applies to a prosecution for an offence against this Division, except section 132AM, relating to copyright in a literary work that is a computer program if:
 - (a) articles or things embodying all or part of the program have been supplied (by sale or otherwise) to the public; and
 - (b) at the time of the supply, the articles or things, or their containers, bore a label or other mark consisting of the letter “C” in a circle accompanied by a specified year and the name of a person.
- (2) It is presumed that:
 - (a) the computer program is an original literary work; and
 - (b) the computer program was first published in the year; and
 - (c) the person was the owner of copyright in the program when and where the articles, things or containers were labelled or marked;unless the contrary is established.
- (3) A presumption about a person under subsection (2) does not imply that the person was the only owner of copyright in the program when and where the articles, things or containers were labelled or marked.

132B Presumptions relating to sound recordings

- (1) This section applies to a prosecution for an offence against this Division, except section 132AM, relating to copyright in a sound recording if:
 - (a) records embodying all or part of the recording have been supplied (by sale or otherwise) to the public; and
 - (b) at the time of the supply, the records or their containers bore a label or other mark.
- (2) If the label or other mark contained a statement described in an item of the table, the matter described in the item is presumed, unless the contrary is established.

Statements and matters to be presumed unless the contrary is established

Item	Statement	Matter presumed
1	A specified person was the maker of the recording	The person was the maker of the recording
2	The recording was first published in a specified year	The recording was first published in the year
3	The recording was first published in a specified country	The recording was first published in the country

- (3) If the label or mark consisted of the letter “P” in a circle accompanied by a specified year and the name of a person, it is presumed that:
- (a) the recording was first published in the year; and
 - (b) the person was the owner of copyright in the recording when and where the records or containers were labelled or marked;
- unless the contrary is established.
- (4) A presumption about a person under this section does not imply that the person was:
- (a) the only maker of the recording; or
 - (b) the only owner of copyright in the recording when and where the records or containers were labelled or marked.

132C Presumptions relating to films

Presumption about film maker

- (1) Subsection (2) applies to a prosecution for an offence against this Division, except section 132AM, relating to copyright in a cinematograph film if:
- (a) copies of the film were made available to the public; and
 - (b) a person’s name appeared on the copies in such a way as to imply that the person was the maker of the film; and
 - (c) if the person is not a body corporate—the name is his or her true name or a name by which he or she is commonly known.
- (2) It is presumed that:
- (a) the person is the maker of the film; and
 - (b) the person made the film in circumstances to which subsection 98(3) does not apply;

unless the contrary is established.

Presumption about time of making and owner of copyright

- (3) Subsection (4) applies to a prosecution for an offence against this Division, except section 132AM, relating to copyright in a cinematograph film, if:
- (a) articles or things embodying the film have been supplied commercially; and
 - (b) at the time of the supply, the articles or things, or their containers, bore a label or other mark consisting of the letter “C” in a circle accompanied by a specified year and the name of a person.
- (4) It is presumed that:
- (a) the film was first made in the year; and
 - (b) the person was the owner of copyright in the film when and where the articles, things or containers were labelled or marked;
- unless the contrary is established.
- (5) A presumption about a person under subsection (4) does not imply that the person was the only owner of copyright in the film when and where the articles, things or containers were labelled or marked.

15 Application

The amendments made by this Schedule apply in relation to legal proceedings (whether civil or criminal) started after the commencement of this Schedule.

Schedule 3—Technologically neutral definitions

Copyright Act 1968

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

After “being an article”, insert “(which may be an electronic reproduction or copy of the work, recording, film, broadcast or edition)”.

2 Subsection 10(1) (definition of *record*)

Repeal the definition, substitute:

record includes a disc, tape, paper, electronic file or other device in which sounds are embodied.

3 At the end of section 38

Add:

(3) In this section:

article includes a reproduction or copy of a work or other subject-matter, being a reproduction or copy in electronic form.

4 At the end of section 44D

Add:

(4) The definition of *article* in section 38 does not affect this section.

5 Section 44E

Before “The copyright”, insert “(1)”.

6 At the end of section 44E

Add:

(2) The definition of *article* in section 38 does not affect this section.

7 Section 44F

Before “The copyright”, insert “(1)”.

8 At the end of section 44F

Add:

- (2) The definition of *article* in section 38 does not affect this section.

8A Before subsection 54(1)

Insert:

- (1A) In this Division:

record means a disc, tape, paper or other device in which sounds are embodied.

9 At the end of section 103

Add:

- (3) In this section:

article includes a reproduction or copy of a work or other subject-matter, being a reproduction or copy in electronic form.

10 At the end of section 112C

Add:

- (3) The definition of *article* in section 103 does not affect this section.

11 At the end of section 112D

Add:

- (4) The definition of *article* in section 103 does not affect this section.

12 Section 112DA

Before “If”, insert “(1)”.

13 At the end of section 112DA

Add:

- (2) The definition of *article* in section 103 does not affect this section.

14 Section 130A

Before “In an action”, insert “(1)”.

15 At the end of section 130A

Add:

- (2) The definition of *article* in sections 38 and 103 does not affect this section.

16 Section 130B

Before “In an action”, insert “(1)”.

17 At the end of section 130B

Add:

- (2) The definition of *article* in section 38 does not affect this section.

18 Section 130C

Before “In an action”, insert “(1)”.

19 At the end of section 130C

Add:

- (2) The definition of *article* in sections 38 and 103 does not affect this section.

20 Application

The amendments made by this Schedule apply to acts done after the commencement of this Schedule.

Schedule 4—Civil remedies and commercial-scale infringement online

Copyright Act 1968

1 At the end of section 115

Add:

Consideration for relief for electronic commercial infringement

- (5) Subsection (6) applies to a court hearing an action for infringement of copyright if the court is satisfied that:
- (a) the infringement (the *proved infringement*) occurred (whether as a result of the doing of an act comprised in the copyright, the authorising of the doing of such an act or the doing of another act); and
 - (b) the proved infringement involved a communication of a work or other subject-matter to the public; and
 - (c) because the work or other subject-matter was communicated to the public, it is likely that there were other infringements (the *likely infringements*) of the copyright by the defendant that the plaintiff did not prove in the action; and
 - (d) taken together, the proved infringement and likely infringements were on a commercial scale.
- (6) The court may have regard to the likelihood of the likely infringements (as well as the proved infringement) in deciding what relief to grant in the action.
- (7) In determining for the purposes of paragraph (5)(d) whether, taken together, the proved infringement and the likely infringements were on a commercial scale, the following matters are to be taken into account:
- (a) the volume and value of any articles that:
 - (i) are infringing copies that constitute the proved infringement; or
 - (ii) assuming the likely infringements actually occurred, would be infringing copies constituting those infringements;

(b) any other relevant matter.

(8) In subsection (7):

article includes a reproduction or copy of a work or other subject-matter, being a reproduction or copy in electronic form.

2 Application

The amendment made by this Schedule applies to actions started after the commencement of this Schedule.

Schedule 5—Customs seizure of imported infringing copies

Copyright Act 1968

1 Paragraph 135(5)(a)

Omit “2”, substitute “4”.

2 Application

The amendment of section 135 of the *Copyright Act 1968* by this Schedule applies in relation to notices given under that section after the commencement of this Schedule.

3 Section 135AA

Repeal the section, substitute:

135AA Decision not to seize unless expenses are covered

- (1) Subject to subsection (2), the CEO may decide not to seize the copies under subsection 135(7) unless he or she has been given by the objector (or by one or more of the objectors) a written undertaking acceptable to the CEO to repay to the Commonwealth the expenses of seizing the copies.
- (2) The CEO may decide not to seize the copies under subsection 135(7) unless he or she has been given by the objector (or one or more of the objectors), instead of an undertaking, security in an amount that the CEO considers sufficient to repay to the Commonwealth the expenses of seizing the copies if:
 - (a) an amount payable under an undertaking given by the objector (or one or more of the objectors) in relation to other copies has not been paid in accordance with the undertaking; and
 - (b) the CEO considers it reasonable in all the circumstances to require the security.
- (3) An undertaking may be withdrawn or varied if the CEO consents in writing to a written request from the objector or objectors to do so.

(4) In this section:

expenses of seizing the copies means the expenses that may be incurred by the Commonwealth if the copies were seized.

4 Section 135AJ

Repeal the section, substitute:

135AJ Failure to meet Commonwealth's expenses of seizure

- (1) If an amount payable under an undertaking in relation to copies covered by a notice given under section 135 is not paid in accordance with the undertaking, the CEO may decide not to seize copies covered by the notice until the amount owing is paid.
 - (2) An amount not paid under an undertaking:
 - (a) is a debt due by the objector, or by the objectors jointly or each of them separately, to the Commonwealth; and
 - (b) may be recovered by an action taken in a court of competent jurisdiction.
 - (3) If the amount paid under an undertaking in relation to copies covered by a notice given under section 135 is in accordance with the undertaking but is not sufficient to meet the expenses incurred by the Commonwealth as a result of the action taken by the CEO under this Division because of the notice, the amount of the difference between those expenses and the amount paid:
 - (a) is a debt due by the objector, or by the objectors jointly or each of them separately, to the Commonwealth; and
 - (b) may be recovered by an action taken in a court of competent jurisdiction.
 - (4) If security given under subsection 135AA(2) by the objector or objectors who gave notice under section 135 is not sufficient to meet the expenses incurred by the Commonwealth as a result of the action taken by the CEO under this Division because of the notice, the amount of the difference between those expenses and the amount of security:
 - (a) is a debt due by the objector, or by the objectors jointly or each of them separately, to the Commonwealth; and
 - (b) may be recovered by an action taken in a court of competent jurisdiction.
-

5 Paragraph 195B(1)(c)

After “135AA”, insert “or 135AJ”.

6 Transitional provision

- (1) This item applies if:
- (a) before the commencement of this item, a notice under section 135 of the unamended Copyright Act was in force in relation to goods; and
 - (b) before the commencement of this item, a deposit or security described in section 135AA of that Act was made or given to be applied towards the expenses of the Commonwealth incurred in relation to the goods under Division 7 of Part V of that Act; and
 - (c) after the commencement of this item, the CEO has been given a written undertaking described in subsection 135AA(1) of the amended Copyright Act to repay those expenses to the Commonwealth; and
 - (d) the undertaking is in force.
- (2) On application in writing to the CEO by the objector or objectors concerned, the CEO must:
- (a) if none of the deposit or security has been applied towards the expenses mentioned in paragraph (1)(b)—return the sum deposited or security to the person who gave it; or
 - (b) otherwise—refund the amount of the balance of the deposit or security to the person who gave it.
- (3) In this item:
- amended Copyright Act*** means the *Copyright Act 1968* as in force immediately after the commencement of this item.
- CEO*** means the Chief Executive Officer of Customs.
- unamended Copyright Act*** means the *Copyright Act 1968* as in force immediately before the commencement of this item.

Schedule 6—Exceptions to infringement of copyright

Part 1—Recording broadcasts for replaying at more convenient time

Copyright Act 1968

1A Subsection 10(1)

Insert:

private and domestic use means private and domestic use on or off domestic premises.

1 Section 111

Repeal the section, substitute:

111 Recording broadcasts for replaying at more convenient time

- (1) This section applies if a person makes a cinematograph film or sound recording of a broadcast solely for private and domestic use by watching or listening to the material broadcast at a time more convenient than the time when the broadcast is made.

Note: Subsection 10(1) defines *broadcast* as a communication to the public delivered by a broadcasting service within the meaning of the *Broadcasting Services Act 1992*.

Making the film or recording does not infringe copyright

- (2) The making of the film or recording does not infringe copyright in the broadcast or in any work or other subject-matter included in the broadcast.

Note: Even though the making of the film or recording does not infringe that copyright, that copyright may be infringed if a copy of the film or recording is made.

Dealing with embodiment of film or recording

- (3) Subsection (2) is taken never to have applied if an article or thing embodying the film or recording is:

Schedule 6 Exceptions to infringement of copyright

Part 1 Recording broadcasts for replaying at more convenient time

- (a) sold; or
- (b) let for hire; or
- (c) by way of trade offered or exposed for sale or hire; or
- (d) distributed for the purpose of trade or otherwise; or
- (e) used for causing the film or recording to be seen or heard in public; or
- (f) used for broadcasting the film or recording.

Note: If the article or thing embodying the film or recording is dealt with as described in subsection (3), then copyright may be infringed not only by the making of the article or thing but also by the dealing with the article or thing.

- (4) To avoid doubt, paragraph (3)(d) does not apply to a loan of the article or thing by the lender to a member of the lender's family or household for the member's private and domestic use.

2 Subsection 248A(1) (after paragraph (a) of the definition of exempt recording)

Insert:

- or (aaa) an indirect cinematograph film or sound recording of a performance, being a film or recording that:
 - (i) is made from a communication that is a broadcast of the performance; and
 - (ii) is made in domestic premises; and
 - (iii) is made solely for private and domestic use by watching or listening to the performance at a time more convenient than the time when the broadcast is made; or

3 Subsection 248A(1) (at the end of paragraphs (aa) to (m) of the definition of exempt recording)

Add "or".

4 Subsection 248C(1A)

After "paragraph", insert "(aaa)".

5 Subsection 248C(2)

After "(a)", insert "(aaa)".

Part 2—Reproducing copyright material in different format for private use

Copyright Act 1968

6 After section 43B

Insert:

43C Reproducing works in books, newspapers and periodical publications in different form for private use

- (1) This section applies if:
- (a) the owner of a book, newspaper or periodical publication makes from it a reproduction (the *main copy*) of a work contained in the book, newspaper or periodical publication; and
 - (b) the main copy is made for his or her private and domestic use instead of the work as contained in the book, newspaper or periodical publication; and
 - (c) the main copy embodies the work in a form different from the form in which the work is embodied in the book, newspaper or periodical publication; and
 - (d) the book, newspaper or periodical publication itself is not an infringing copy of either the work or a published edition of the work; and
 - (e) at the time the owner makes the main copy, he or she has not made, and is not making, another copy that embodies the work in a form substantially identical to the form of the main copy.

For this purpose, disregard a temporary reproduction of the work incidentally made as a necessary part of the technical process of making the main copy.

- (2) The making of the main copy is not an infringement of copyright in the work or a published edition of the work.

Dealing with main copy may make it an infringing copy

- (3) Subsection (2) is taken never to have applied if the main copy is:

Schedule 6 Exceptions to infringement of copyright

Part 2 Reproducing copyright material in different format for private use

- (a) sold; or
- (b) let for hire; or
- (c) by way of trade offered or exposed for sale or hire; or
- (d) distributed for the purpose of trade or otherwise.

Note: If the main copy is dealt with as described in subsection (3), then copyright may be infringed not only by the making of the main copy but also by the dealing with the main copy.

- (4) To avoid doubt, paragraph (3)(d) does not apply to a loan of the main copy by the lender to a member of the lender's family or household for the member's private and domestic use.

Reproducing work from main copy may infringe copyright

- (5) Subsection (2) does not prevent the main copy from being an infringing copy for the purpose of working out whether this section applies again in relation to the making of another reproduction of the work from the main copy.

Disposal of book etc. may make the main copy an infringing copy

- (6) Subsection (2) is taken never to have applied if the owner of the book, newspaper or periodical publication disposes of it (in the form from which the main copy was made) to another person.

Status of temporary reproduction

- (7) If subsection (2) applies to the making of the main copy only as a result of disregarding the incidental making of a temporary reproduction of the work as a necessary part of the technical process of making the main copy, then:
 - (a) if the temporary reproduction is destroyed at the first practicable time during or after the making of the main copy—the making of the temporary reproduction does not infringe copyright in the work or a published edition of the work; or
 - (b) if the temporary reproduction is not destroyed at that time—the making of the temporary reproduction is taken always to have infringed copyright (if any) subsisting in the work and the published edition of the work from which the main copy was made.

7 After Division 4A of Part III

Insert:

Division 4B—Acts not constituting infringements of copyright in artistic works

47J Reproducing photograph in different format for private use

- (1) This section applies if:
- (a) the owner of a photograph (the *original photograph*) makes a reproduction (the *main copy*) of it for his or her private and domestic use instead of the original photograph; and
 - (b) the original photograph itself is not an infringing copy of a work or published edition of a work; and
 - (c) either:
 - (i) the original photograph is in hardcopy form and the main copy is in electronic form; or
 - (ii) the original photograph is in electronic form and the main copy is in hardcopy form; and
 - (d) at the time the owner makes the main copy, he or she has not made, and is not making, another reproduction of the original photograph that embodies the original photograph in a form substantially identical to the form of the main copy.

For this purpose, disregard a temporary reproduction of the original photograph incidentally made as a necessary part of the technical process of making the main copy.

- (2) The making of the main copy is not an infringement of copyright:
- (a) in the original photograph; or
 - (b) in a work, or published edition of a work, included in the original photograph.

Dealing with main copy may make it an infringing copy

- (3) Subsection (2) is taken never to have applied if the main copy is:
- (a) sold; or
 - (b) let for hire; or
 - (c) by way of trade offered or exposed for sale or hire; or
 - (d) distributed for the purpose of trade or otherwise.

Schedule 6 Exceptions to infringement of copyright

Part 2 Reproducing copyright material in different format for private use

Note: If the main copy is dealt with as described in subsection (3), then copyright may be infringed not only by the making of the main copy but also by the dealing with the main copy.

- (4) To avoid doubt, paragraph (3)(d) does not apply to a loan of the main copy by the lender to a member of the lender's family or household for the member's private and domestic use.

Reproducing main copy may infringe copyright

- (5) Subsection (2) does not prevent the main copy from being an infringing copy for the purpose of working out whether this section applies again in relation to the making of a reproduction of the main copy.

Disposal of original may make the main copy an infringing copy

- (6) Subsection (2) is taken never to have applied if the owner of the original photograph disposes of it to another person.

Status of temporary reproduction

- (7) If subsection (2) applies to the making of the main copy only as a result of disregarding the incidental making of a temporary reproduction of the original photograph as a necessary part of the technical process of making the main copy, then:
- (a) if the temporary reproduction is destroyed at the first practicable time during or after the making of the main copy—the making of the temporary reproduction does not infringe copyright in the original photograph or a work, or published edition of a work, included in the original photograph; or
 - (b) if the temporary reproduction is not destroyed at that time—the making of the temporary reproduction is taken always to have infringed copyright (if any) subsisting in the original photograph or a work, or published edition of a work, included in the original photograph.

8 After section 109

Insert:

109A Copying sound recordings for private and domestic use

- (1) This section applies if:
 - (a) the owner of a copy (the *earlier copy*) of a sound recording makes another copy (the *later copy*) of the sound recording using the earlier copy; and
 - (b) the sole purpose of making the later copy is the owner's private and domestic use of the later copy with a device that:
 - (i) is a device that can be used to cause sound recordings to be heard; and
 - (ii) he or she owns; and
 - (c) the earlier copy was not made by downloading over the Internet a digital recording of a radio broadcast or similar program; and
 - (d) the earlier copy is not an infringing copy of the sound recording, a broadcast or a literary, dramatic or musical work included in the sound recording.
- (2) The making of the later copy does not infringe copyright in the sound recording, or in a literary, dramatic or musical work or other subject-matter included in the sound recording.
- (3) Subsection (2) is taken never to have applied if the earlier copy or the later copy is:
 - (a) sold; or
 - (b) let for hire; or
 - (c) by way of trade offered or exposed for sale or hire; or
 - (d) distributed for the purpose of trade or otherwise; or
 - (e) used for causing the sound recording to be heard in public; or
 - (f) used for broadcasting the sound recording.

Note: If the earlier or later copy is dealt with as described in subsection (3), then copyright may be infringed not only by the making of the later copy but also by a dealing with the later copy.
- (4) To avoid doubt, paragraph (3)(d) does not apply to a loan of the earlier copy or the later copy by the lender to a member of the lender's family or household for the member's private and domestic use.

9 After section 110

Insert:

110AA Copying cinematograph film in different format for private use

- (1) This section applies if:
- (a) the owner of videotape embodying a cinematograph film in analog form makes a copy (the *main copy*) of the film in electronic form for his or her private and domestic use instead of the videotape; and
 - (b) the videotape itself is not an infringing copy of the film or of a broadcast, sound recording, work or published edition of a work; and
 - (c) at the time the owner makes the main copy, he or she has not made, and is not making, another copy that embodies the film in an electronic form substantially identical to the electronic form in which the film is embodied in the main copy.

For this purpose, disregard a temporary copy of the film incidentally made as a necessary part of the technical process of making the main copy.

- (2) The making of the main copy is not an infringement of copyright in the cinematograph film or in a work or other subject-matter included in the film.

Dealing with main copy may make it an infringing copy

- (3) Subsection (2) is taken never to have applied if the main copy is:
- (a) sold; or
 - (b) let for hire; or
 - (c) by way of trade offered or exposed for sale or hire; or
 - (d) distributed for the purpose of trade or otherwise.

Note: If the main copy is dealt with as described in subsection (3), then copyright may be infringed not only by the making of the main copy but also by the dealing with the main copy.

- (4) To avoid doubt, paragraph (3)(d) does not apply to a loan of the main copy by the lender to a member of the lender's family or household for the member's private and domestic use.

Disposal of videotape may make the main copy an infringing copy

- (5) Subsection (2) is taken never to have applied if the owner of the videotape disposes of it to another person.

Status of temporary copy

- (6) If subsection (2) applies to the making of the main copy only as a result of disregarding the incidental making of a temporary copy of the film as a necessary part of the technical process of making the main copy, then:
- (a) if the temporary copy is destroyed at the first practicable time during or after the making of the main copy—the making of the temporary copy does not infringe copyright in the film or in any work or other subject-matter included in the film; or
 - (b) if the temporary copy is not destroyed at that time—the making of the temporary copy is taken always to have infringed copyright (if any) subsisting in the film and in any work or other subject-matter included in the film.

9AA Review of new sections 47J and 110AA

- (1) The Minister must cause to be carried out by the end of 31 March 2008 a review of the operation of sections 47J and 110AA of the *Copyright Act 1968*.

Note: Those sections are inserted in that Act by this Part.

- (2) The Minister must cause a copy of the report of the review to be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.

Part 3—Use of copyright material for certain purposes

Copyright Act 1968

9A After section 41

Insert:

41A Fair dealing for purpose of parody or satire

A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not constitute an infringement of the copyright in the work if it is for the purpose of parody or satire.

9B After section 103A

Insert:

103AA Fair dealing for purpose of parody or satire

A fair dealing with an audio-visual item does not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if it is for the purpose of parody or satire.

10 After section 200AA

Insert:

200AB Use of works and other subject-matter for certain purposes

- (1) The copyright in a work or other subject-matter is not infringed by a use of the work or other subject-matter if all the following conditions exist:
 - (a) the circumstances of the use (including those described in paragraphs (b), (c) and (d)) amount to a special case;
 - (b) the use is covered by subsection (2), (3) or (4);
 - (c) the use does not conflict with a normal exploitation of the work or other subject-matter;

- (d) the use does not unreasonably prejudice the legitimate interests of the owner of the copyright.

Use by body administering library or archives

- (2) This subsection covers a use that:
 - (a) is made by or on behalf of the body administering a library or archives; and
 - (b) is made for the purpose of maintaining or operating the library or archives (including operating the library or archives to provide services of a kind usually provided by a library or archives); and
 - (c) is not made partly for the purpose of the body obtaining a commercial advantage or profit.

Use by body administering educational institution

- (3) This subsection covers a use that:
 - (a) is made by or on behalf of a body administering an educational institution; and
 - (b) is made for the purpose of giving educational instruction; and
 - (c) is not made partly for the purpose of the body obtaining a commercial advantage or profit.

Use by or for person with a disability

- (4) This subsection covers a use that meets all the following conditions:
 - (a) the use is made by:
 - (i) a person with a disability that causes difficulty in reading, viewing or hearing the work or other subject-matter in a particular form; or
 - (ii) someone else;
 - (b) the use is made for the purpose of the person obtaining a reproduction or copy of the work or other subject-matter in another form, or with a feature, that reduces the difficulty;
 - (c) the use is not made partly for the purpose of obtaining a commercial advantage or profit.

This section does not apply if under another provision the use does not, or might not, infringe copyright

- (6) Subsection (1) does not apply if, because of another provision of this Act:
- (a) the use is not an infringement of copyright; or
 - (b) the use would not be an infringement of copyright assuming the conditions or requirements of that other provision were met.

Example 1: Paragraph (a)—Without using an appliance adapted for producing multiple copies or an appliance that can produce copies by reprographic reproduction, a school teacher reproduces a literary work in the course of educational instruction. Under subsection 200(1), the reproduction is not an infringement of copyright in the work, so this section does not apply.

Example 2: Paragraph (b)—A body administering an institution assisting persons with a print disability makes a Braille version of a published literary work. Under subsection 135ZP(2), making such a version does not infringe copyright in the work if certain conditions (relating to remuneration etc.) are met, so this section does not apply.

Cost recovery not commercial advantage or profit

- (6A) The use does not fail to meet the condition in paragraph (2)(c), (3)(c) or (4)(c) merely because of the charging of a fee that:
- (a) is connected with the use; and
 - (b) does not exceed the costs of the use to the charger of the fee.

Definitions

- (7) In this section:

conflict with a normal exploitation has the same meaning as in Article 13 of the TRIPS Agreement.

special case has the same meaning as in Article 13 of the TRIPS Agreement.

unreasonably prejudice the legitimate interests has the same meaning as in Article 13 of the TRIPS Agreement.

use includes any act that would infringe copyright apart from this section.

Part 4—Fair dealing for research or study

Copyright Act 1968

11 Subsections 40(3) and (4)

Repeal the subsections, substitute:

- (3) Despite subsection (2), a reproduction, for the purpose of research or study, of all or part of a literary, dramatic or musical work, or of an adaptation of such a work, contained in an article in a periodical publication is taken to be a fair dealing with the work or adaptation for the purpose of research or study.
- (4) Subsection (3) does not apply if another article in the publication is also reproduced for the purpose of different research or a different course of study.
- (5) Despite subsection (2), a reproduction, for the purpose of research or study, of not more than a reasonable portion of a work or adaptation that is described in an item of the table and is not contained in an article in a periodical publication is taken to be a fair dealing with the work or adaptation for the purpose of research or study. For this purpose, *reasonable portion* means the amount described in the item.

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, that is contained in a published edition of at least 10 pages	(a) 10% of the number of pages in the edition; or (b) if the work or adaptation is divided into chapters—a single chapter
2	A published literary work in electronic form (except a computer program or an electronic compilation, such as a database), a published dramatic work in electronic form or an adaptation published in electronic form of such a literary or dramatic	(a) 10% of the number of words in the work or adaptation; or (b) if the work or adaptation is divided into chapters—a single chapter

Schedule 6 Exceptions to infringement of copyright
Part 4 Fair dealing for research or study

Works, adaptations and reasonable portions

Item	Work or adaptation	Amount that is reasonable portion
-------------	---------------------------	--

- | | | |
|--|------|--|
| | work | |
|--|------|--|
- (6) Subsection (5) applies to a reproduction of a work or adaptation described in both items of the table in that subsection even if the amount of the work or adaptation reproduced is not more than a reasonable portion (as defined in that subsection) on the basis of only one of those items.
- (7) If:
- (a) a person makes a reproduction of a part of a published literary or dramatic work or published adaptation of a literary or dramatic work; and
 - (b) the reproduction is of not more than a reasonable portion (as defined in subsection (5)) of the work or adaptation;
- subsection (5) does not apply in relation to any subsequent reproduction made by the person of any other part of the same work or adaptation.
- (8) Subsections 10(2), (2A), (2B) and (2C) do not affect subsection (5), (6) or (7) of this section.

Part 5—Official copying of library and archive material

Copyright Act 1968

12 At the end of subsections 49(2) and (2C)

Add:

Note: The reproduction could be made from another reproduction of the article or published work in the collection of the library or archives that was made without infringing copyright because of subsection 51A(1), to replace the article or published work because it was damaged, had deteriorated or had been lost or stolen.

13 Subsection 49(4)

Omit “relate to the same subject matter”, substitute “are requested for the same research or course of study”.

14 After subsection 49(5)

Insert:

- (5AA) For the purposes of subsection (5), if the characteristics of the work are such that subsection 10(2) or (2A) is relevant to the question whether the reproduction contains only a reasonable portion of the work, then that question is to be determined solely by reference to subsection 10(2) or (2A) and not by reference to the ordinary meaning of *reasonable portion*.
- (5AB) For the purposes of paragraph (5)(b), in determining whether a reproduction (not being a second-hand reproduction) of the work cannot be obtained within a reasonable time at an ordinary commercial price, the authorized officer must take into account:
- (a) the time by which the person requesting the reproduction requires it; and
 - (b) the time within which a reproduction (not being a second-hand reproduction) of the work at an ordinary commercial price could be delivered to the person; and
 - (c) whether an electronic reproduction of the work can be obtained within a reasonable time at an ordinary commercial price.

15 Subsection 49(9) (definition of *library*)

Repeal the definition, substitute:

library means a library all or part of whose collection is accessible to members of the public directly or through interlibrary loans.

16 Subsection 49(9)

Insert:

archives means an archives all or part of whose collection is accessible to members of the public.

17 At the end of subsection 50(2)

Add:

Note: The reproduction could be made from another reproduction of the article or published work in the collection of the other library that was made without infringing copyright because of subsection 51A(1), to replace the article or published work because it was damaged, had deteriorated or had been lost or stolen.

18 Subsection 50(6)

Omit “subsection (4)”, substitute “subsection (3)”.

19 After subsection 50(7B)

Insert:

(7BA) For the purposes of subsections (7A) and (7B), if the characteristics of the work are such that subsection 10(2) or (2A) is relevant to the question whether the reproduction contains only a reasonable portion of the work, then that question is to be determined solely by reference to subsection 10(2) or (2A) and not by reference to the ordinary meaning of *reasonable portion*.

(7BB) For the purposes of subparagraphs (7A)(e)(ii) and (7B)(e)(ii), (iii) and (iv), in determining whether a copy of the work, the work, the portion of the work or the article (as appropriate) cannot be obtained within a reasonable time at an ordinary commercial price, the authorized officer must take into account:

(a) the time by which the person requesting the reproduction under section 49 requires the reproduction; and

- (b) the time within which a reproduction (not being a second-hand reproduction) of the work at an ordinary commercial price could be delivered to the person; and
- (c) whether the copy, work, portion or article can be obtained in electronic form within a reasonable time at an ordinary commercial price.

20 Subsection 50(7C)

Omit “subsection (4)”, substitute “subsection (3)”.

21 Subsections 50(8) and (9)

Repeal the subsections, substitute:

- (8) Subsection (4) does not apply to a reproduction or communication of all or part of 2 or more articles that are contained in the same periodical publication and that have been requested for the same purpose unless:
 - (a) the purpose is the one described in paragraph (1)(aa) (assisting a member of a Parliament perform his or her duties); or
 - (b) the purpose is the one described in paragraph (1)(b) (supplying a reproduction to a person requesting it under section 49 for research or study) and the reproduction of the articles was requested under section 49 for the same research or course of study.

22 Subsection 50(10)

Insert:

library means:

- (a) a library all or part of whose collection is accessible to members of the public directly or through interlibrary loans; or
- (b) a library whose principal purpose is to provide library services for members of a Parliament; or
- (c) an archives all or part of whose collection is accessible to members of the public.

23 Subsection 51A(4)

Repeal the subsection, substitute:

- (4) Subsection (1) does not apply in relation to a work held in published form in the collection of a library or archives unless an authorized officer of the library or archives has, after reasonable investigation, made a declaration:
- (a) stating that he or she is satisfied that a copy (not being a second-hand copy) of the work, or of the edition in which the work is held in the collection, cannot be obtained within a reasonable time at an ordinary commercial price; and
 - (b) if he or she is satisfied that a copy (not being a second-hand copy) of another edition of the work can be obtained within a reasonable time at an ordinary commercial price—stating why the reproduction should be made from the copy of the work held in the collection.

24 Subsection 51A(6)

Insert:

administrative purposes means purposes directly related to the care or control of the collection.

25 Subsection 51A(6)

Insert:

officers of the library or archives includes volunteers assisting with the care or control of the collection.

26 After section 51A

Insert:

51B Making preservation copies of significant works in key cultural institutions' collections

- (1) This section applies in relation to a work held in the collection of a library or archives if:
- (a) the body administering the library or archives:
 - (i) has, under a law of the Commonwealth or a State or Territory, the function of developing and maintaining the collection; or
 - (ii) is prescribed by the regulations for the purposes of this subparagraph; and

- (b) an authorized officer of the library or archives is satisfied that the work is of historical or cultural significance to Australia.

Manuscript

- (2) If the work is held in the form of a manuscript, the copyright in the work is not infringed by an authorized officer of the library or archives making up to 3 reproductions of the work from the manuscript for the purpose of preserving it against loss or deterioration.

Original artistic work

- (3) If the work is held in the form of an original artistic work, the copyright in the work is not infringed by an authorized officer of the library or archives making up to 3 comprehensive photographic reproductions of the work from the original artistic work for the purpose of preserving it against loss or deterioration if the officer is satisfied that a photographic reproduction (not being a second-hand reproduction) of the work cannot be obtained within a reasonable time at an ordinary commercial price.

Published work

- (4) If the work is held in published form, the copyright in the work is not infringed by an authorized officer of the library or archives making up to 3 reproductions of the work from the copy held in the collection, for the purpose of preserving the work against loss or deterioration, if the officer is satisfied that:
 - (a) a copy (not being a second-hand copy) of the work, or of the edition in which the work is held in the collection, cannot be obtained within a reasonable time at an ordinary commercial price; and
 - (b) if the officer is satisfied that a copy (not being a second-hand copy) of another edition of the work can be obtained within a reasonable time at an ordinary commercial price—it is appropriate that the reproduction should be made from the copy of the work held in the collection.

Electronic copies and commercial availability

- (5) In determining for the purposes of subsection (3) or (4) whether a reproduction or copy (not being a second-hand reproduction or

copy) of the work, or of a particular edition of the work, cannot be obtained within a reasonable time at an ordinary commercial price, the authorized officer must take into account whether an electronic copy of the work or edition can be obtained within a reasonable time at an ordinary commercial price.

Relationship with the rest of this Division

- (6) This section does not limit the rest of this Division. The rest of this Division does not limit this section.

27 After section 110B

Insert:

110BA Making preservation copies of significant recordings and films in key cultural institutions' collections

- (1) This section applies in relation to a sound recording or cinematograph film held in the collection of a library or archives if:
- (a) the body administering the library or archives:
 - (i) has, under a law of the Commonwealth or a State or Territory, the function of developing and maintaining the collection; or
 - (ii) is prescribed by the regulations for the purposes of this subparagraph; and
 - (b) an authorized officer of the library or archives is satisfied that the recording or film is of historical or cultural significance to Australia.

First record, or unpublished record, embodying sound recording

- (2) If the sound recording is held in the form of the first record, or an unpublished record, embodying the recording, copyright in the recording is not infringed by an authorized officer of the library or archives making up to 3 copies of the recording from the record for the purpose of preserving the recording against loss or deterioration.

Published sound recording

- (3) If the sound recording is held in published form, the copyright in the recording is not infringed by an authorized officer of the library

or archives making up to 3 copies of the recording from the published record for the purpose of preserving the recording against loss or deterioration if the officer is satisfied that a copy of the recording (not being a second-hand copy) cannot be obtained within a reasonable time at an ordinary commercial price.

First copy, or unpublished copy, of film

- (4) If the cinematograph film is held in the form of the first copy, or an unpublished copy, of the film, copyright in the film is not infringed by an authorized officer of the library or archives making up to 3 copies of the film from the first copy or unpublished copy for the purpose of preserving the film against loss or deterioration.

Published film

- (5) If the cinematograph film is held in a published form, copyright in the film is not infringed by an authorized officer of the library or archives making up to 3 copies of the film from the published copy held in the collection, for the purpose of preserving the film against loss or deterioration, if the officer is satisfied that a copy of the film (not being a second-hand copy) cannot be obtained within a reasonable time at an ordinary commercial price.

Commercial availability of copy of recording or film

- (6) For the purposes of subsections (3) and (5), in determining whether a copy (not being a second-hand copy) cannot be obtained within a reasonable time at an ordinary commercial price, the authorized officer must take into account whether an electronic copy can be obtained within a reasonable time at an ordinary commercial price.

Work or other subject-matter included in recording or film

- (7) If under this section, copyright in the sound recording or cinematograph film is not infringed by the making of a copy of the recording or film, the making of that copy does not infringe copyright in any work or other subject-matter included in the recording or film.

Relationship with the rest of this Division

- (8) This section does not limit any of the other provisions of this Division that provide that an act (however described) does not infringe copyright. Those other provisions do not limit this section.

28 Subparagraphs 112(a)(ii) and (b)(ii)

After “51A,” insert “51B,”.

29 After section 112A

Insert:

112AA Making preservation copies of significant published editions in key cultural institutions’ collections

- (1) This section applies in relation to a published edition of one or more works held in the collection of a library or archives if:
- (a) the body administering the library or archives:
 - (i) has, under a law of the Commonwealth or a State or Territory, the function of developing and maintaining the collection; or
 - (ii) is prescribed by the regulations for the purposes of this subparagraph; and
 - (b) an authorized officer of the library or archives is satisfied that the edition is of historical or cultural significance to Australia.

Published editions

- (2) The copyright in the published edition is not infringed by an authorized officer of the library or archives making up to 3 facsimile copies of the edition from the copy held in the collection, for the purpose of preserving the edition against loss or deterioration, if the officer is satisfied that a copy or facsimile copy of the edition (not being a second-hand copy) cannot be obtained within a reasonable time at an ordinary commercial price.
- (3) In determining whether a copy (not being a second-hand copy) cannot be obtained within a reasonable time at an ordinary commercial price, the authorized officer must take into account whether an electronic copy of the edition can be obtained within a reasonable time at an ordinary commercial price.

Works in published editions

- (4) If, under this section, copyright in the published edition is not infringed by the making of a facsimile copy of the edition, the making of that copy does not infringe copyright in any of the works in the published edition.

Relationship with the rest of this Division

- (5) This section does not limit any of the other provisions of this Division that provide that an act (however described) does not infringe copyright. Those other provisions do not limit this section.

Schedule 7—Maker of communication

Copyright Act 1968

1 After subsection 22(6)

Insert:

- (6A) To avoid doubt, for the purposes of subsection (6), a person is not responsible for determining the content of a communication merely because the person takes one or more steps for the purpose of:
- (a) gaining access to what is made available online by someone else in the communication; or
 - (b) receiving the electronic transmission of which the communication consists.

Example: A person is not responsible for determining the content of the communication to the person of a web page merely because the person clicks on a link to gain access to the page.

Schedule 8—Responses to Digital Agenda review

Part 1—Communication in the course of educational instruction

Copyright Act 1968

1 Subsection 28(2)

Omit “the last preceding subsection”, substitute “this section”.

1A Subsection 28(3)

Omit “subsection (1)”, substitute “this section”.

1B At the end of section 28

Add:

- (5) A communication of a literary, dramatic or musical work, a sound recording or a cinematograph film is taken for the purposes of this Act not to be a communication to the public if the communication is made merely to facilitate:
 - (a) a performance of the work that, because of this section, is not a performance in public; or
 - (b) an act of causing sounds forming part of the recording to be heard that, because of this section, is not an act of causing the sound recording to be heard in public; or
 - (c) an act of causing visual images or sounds forming part of the cinematograph film to be seen or heard that, because of this section, is not an act of causing the film to be seen or heard in public.
- (6) A communication of a television broadcast or sound broadcast is taken for the purposes of this Act not to be a communication of the broadcast, or of a work or other subject-matter included in the broadcast, to the public if:
 - (a) the communication is made merely to facilitate the television broadcast being seen and heard, or the sound broadcast being heard, in class or otherwise in the presence of an audience, in the course of educational instruction that:

Schedule 8 Responses to Digital Agenda review

Part 1 Communication in the course of educational instruction

- (i) is given by a teacher; and
 - (ii) is not given for profit; and
 - (b) the audience is limited to persons who are taking part in the instruction or are otherwise directly connected with the place where the instruction is given.
- (7) A communication of an artistic work is taken for the purposes of this Act not to be a communication of the work to the public if:
- (a) the communication is made merely to facilitate the work being seen in class or otherwise in the presence of an audience, in the course of educational instruction that:
 - (i) is given by a teacher; and
 - (ii) is not given for profit; and
 - (b) the audience is limited to persons who are taking part in the instruction or are otherwise directly connected with the place where the instruction is given.

Note: The heading to section 28 is altered by inserting “**and communication**” after “**Performance**”.

Part 2—Educational copying of communications of free-to-air broadcasts

Division 1—Main amendments

Copyright Act 1968

2 Subsection 10(1)

Insert:

free-to-air broadcast means a broadcast delivered by a national broadcasting service, commercial broadcasting service or community broadcasting service within the meaning of the *Broadcasting Services Act 1992*.

3 After section 135B

Insert:

135C Extended operation of this Part

This Part, and the rest of this Act so far as it relates to this Part or to a provision of this Part, apply in relation to a communication of the content of a free-to-air broadcast, by the broadcaster making the content available online at or after the time of the broadcast, in the same way as they apply in relation to the broadcast.

Division 2—Consequential amendments

Copyright Act 1968

4 Subsection 98(7) (definition of *free-to-air broadcast*)

Repeal the definition.

5 Section 135ZZI (definition of *free-to-air broadcast*)

Repeal the definition.

6 Subsection 153M(5)

Omit “, *free-to-air broadcast*”.

Part 3—Insubstantial parts of works in electronic form

Copyright Act 1968

7 Subsection 135ZMB(2)

Repeal the subsection, substitute:

No exception for more than 2 pages or 1% of the number of pages

- (1A) Subsection (1) does not apply to the reproduction or communication if all the following circumstances exist:
- (a) the published electronic form of the literary or dramatic work from which the reproduction or communication is made contains pages whose content is unlikely to change regardless of the system used to view, reproduce or communicate them;
 - (b) the reproduction or communication is of more than 2 of those pages without altering any of their content (in terms of the work);
 - (c) there are more than 200 pages in that form of the work;
 - (d) the number of pages reproduced or communicated exceeds 1% of the number of pages in that form of the work.

No exception for more than 1% of words if work is not paginated

- (2) Subsection (1) does not apply to the reproduction or communication if both the following circumstances exist:
- (a) the circumstance in paragraph (1A)(a) does not exist;
 - (b) the reproduction or communication is of more than 1% of the number of words in the work.

Note 1: The following heading to subsection 135ZMB(1) is inserted "*Exception from infringement*".

Note 2: The following heading to subsection 135ZMB(3) is inserted "*No exception for dealing with another part within 14 days*".

Note 3: The following heading to subsection 135ZMB(4) is inserted "*No exception for putting another part online at same time*".

8 At the end of section 135ZMB

Add:

Non-continuous passages are different parts

- (5) For the purposes of this section, passages from the work that are not continuous are all different parts of the work.
- (6) Subsection (5) does not affect by implication the meaning of a reference outside this section to a part of a work.

Part 4—Electronic anthologies

Copyright Act 1968

9 After section 135ZMD

Insert:

135ZMDA Reproduction and communication of works from electronic anthologies by educational institutions

Reproduction or communication of all or part of a literary or dramatic work does not infringe copyright in the work if:

- (a) the work is contained in an anthology published in electronic form; and
- (b) the published electronic form of the anthology from which the reproduction or communication is made contains pages whose content is unlikely to change regardless of the system used to view, reproduce or communicate them; and
- (c) the work occupies not more than 15 of those pages; and
- (d) the reproduction or communication is made by or on behalf of a body administering an educational institution; and
- (e) a remuneration notice given by or on behalf of the body to the relevant collecting society is in force; and
- (f) the reproduction or communication is made solely for the educational purposes of the institution or of another educational institution; and
- (g) the body complies with subsection 135ZX(1) or (3) or section 135ZXA in relation to each reproduction or communication.

Part 5—Active caching for educational purposes

Copyright Act 1968

10 After section 200

Insert:

200AAA Proxy web caching by educational institutions

- (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.
- (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 28, 43A, 43B, 111A or 111B.
- (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).
- (5) In this section:
- system* includes network.

Schedule 9—Unauthorised access to encoded broadcasts

Copyright Act 1968

1 Part VAA

Repeal the Part, substitute:

Part VAA—Unauthorised access to encoded broadcasts

Division 1—Preliminary

135AL Definitions

In this Part:

action means a proceeding of a civil nature between parties, including a counterclaim.

broadcaster means a person licensed under the *Broadcasting Services Act 1992* to provide a broadcasting service (as defined in that Act) by which an encoded broadcast is delivered.

channel provider means a person who:

- (a) packages a channel (which might include programs produced by the person); and
 - (b) supplies a broadcaster with the channel; and
 - (c) carries on a business that involves the supply of the channel;
- where, apart from any breaks for the purposes of the transmission of incidental matter, the channel is broadcast as part of an encoded broadcast service.

decoder means a device (including a computer program) designed or adapted to decrypt, or facilitate the decryption of, an encoded broadcast.

encoded broadcast means:

- (a) a subscription broadcast; or

- (b) a broadcast (except a radio broadcast or subscription broadcast) that is encrypted and is delivered by a commercial broadcasting service, or a national broadcasting service, within the meaning of the *Broadcasting Services Act 1992*.

subscription broadcast means a broadcast that is encrypted and is made available by the broadcaster only to persons authorised by the broadcaster to access the broadcast in intelligible form.

unauthorised decoder means a device (including a computer program) designed or adapted to decrypt, or facilitate the decryption of, an encoded broadcast without the authorisation of the broadcaster.

135AM Counterclaim

In the application of this Part in relation to a counterclaim, references to the defendant are to be read as references to the plaintiff.

135AN This Part does not apply to law enforcement activity etc.

This Part does not apply in relation to anything lawfully done for the purposes of law enforcement or national security by or on behalf of:

- (a) the Commonwealth or a State or Territory; or
- (b) an authority of the Commonwealth or of a State or Territory.

Note: A defendant in proceedings for an offence against this Part bears an evidential burden in relation to the matter in this section (see subsection 13.3(3) of the *Criminal Code*).

Division 2—Actions

Subdivision A—Actions relating to unauthorised decoders

135AOA Making or dealing with unauthorised decoder

- (1) A channel provider, or anyone with an interest in the copyright in either an encoded broadcast or the content of an encoded broadcast, may bring an action against a person if:
 - (a) the person does any of the acts described in subsection (2) with an unauthorised decoder; and

- (b) the person knows, or ought reasonably to know, that the unauthorised decoder will be used to enable someone to gain access to an encoded broadcast without the authorisation of the broadcaster.
- (2) The acts with the unauthorised decoder are as follows:
- (a) making the unauthorised decoder;
 - (b) selling the unauthorised decoder or letting it for hire;
 - (c) by way of trade, or with the intention of obtaining a commercial advantage or profit, offering or exposing the unauthorised decoder for sale or hire;
 - (d) exhibiting the unauthorised decoder in public by way of trade or with the intention of obtaining a commercial advantage or profit;
 - (e) distributing the unauthorised decoder (including by exporting it from Australia) for the purpose of trade, or for a purpose that will prejudicially affect a channel provider or anyone with an interest in the copyright in either an encoded broadcast or the content of an encoded broadcast;
 - (f) importing the unauthorised decoder into Australia for the purpose of:
 - (i) selling the unauthorised decoder or letting it for hire; or
 - (ii) by way of trade, or with the intention of obtaining a commercial advantage or profit, offering or exposing the unauthorised decoder for sale or hire; or
 - (iii) exhibiting the unauthorised decoder in public by way of trade or with the intention of obtaining a commercial advantage or profit; or
 - (iv) distributing the unauthorised decoder for the purpose of trade, or for a purpose that will prejudicially affect a channel provider or anyone with an interest in the copyright in either an encoded broadcast or the content of an encoded broadcast;
 - (g) making the unauthorised decoder available online to an extent that will prejudicially affect a channel provider or anyone with an interest in the copyright in either an encoded broadcast or the content of an encoded broadcast.
- (3) The action may be brought only within 6 years of the act.

- (4) In an action under this section it must be presumed that the defendant knew, or ought reasonably to have known, that the unauthorised decoder would be used as described in paragraph (1)(b), unless the defendant proves otherwise.

Subdivision B—Actions relating to decoders for subscription broadcasts

135AOB Making decoder available online

- (1) This section permits an action to be brought against a person if:
- (a) a decoder was supplied (to the person or someone else) by, or with the authorisation of, the broadcaster (the *supplying broadcaster*) of a subscription broadcast; and
 - (b) the person makes the decoder available online to an extent that will prejudicially affect any of the following persons (the *affected parties*):
 - (i) anyone with an interest in the copyright in a subscription broadcast by the supplying broadcaster;
 - (ii) anyone with an interest in the copyright in the content of a subscription broadcast by the supplying broadcaster;
 - (iii) a channel provider who supplies the supplying broadcaster with a channel for a subscription broadcast; and
 - (c) the person knows, or ought reasonably to know, that the decoder will be used to enable someone to gain access to a subscription broadcast without the authorisation of the broadcaster.
- (2) The action may be brought by any of the affected parties but only within 6 years of the person first making the decoder available online as described in paragraph (1)(b).
- (3) In an action under this section it must be presumed that the defendant knew, or ought reasonably to have known, that the decoder would be used as described in paragraph (1)(c), unless the defendant proves otherwise.

Subdivision C—Actions for unauthorised access to encoded broadcasts

135AOC Causing unauthorised access

- (1) This section permits an action to be brought against a person if:
- (a) without the authorisation of the broadcaster of an encoded broadcast, the person does an act causing the person or anyone else to gain access in intelligible form to the broadcast or sounds or images from the broadcast; and
 - (b) the access will prejudicially affect any of the following persons (the *affected parties*):
 - (i) anyone with an interest in the copyright in an encoded broadcast by the broadcaster;
 - (ii) anyone with an interest in the copyright in the content of an encoded broadcast by the broadcaster;
 - (iii) a channel provider who supplies the broadcaster with a channel for an encoded broadcast; and
 - (c) the person knows, or ought reasonably to know, that the access is not authorised by the broadcaster.

Note: Paragraph (a)—examples of causing a person to gain access to the broadcast or sounds or images from the broadcast include:

- (a) using, or authorising the use of, a decoder so the person gains access to the broadcast, sounds or images; and
 - (b) distributing, or authorising the distribution of, the sounds or images to the person after they are obtained from the broadcast using a decoder.
- (2) The action may be brought by any of the affected parties but only within 6 years of the act.
- (3) Subsection (1) does not apply to:
- (a) an act consisting merely of one or more of the following:
 - (i) starting the playing of sounds or images in or from the broadcast on a device (for example by switching the device on);
 - (ii) listening to sounds in or from the broadcast and/or seeing images in or from the broadcast;
 - (iii) distributing the sounds or images within a single dwelling that is occupied by a single household and is the subject of an arrangement involving a member of

the household and the broadcaster about authorisation of private access to the broadcast; or

- (b) access to the sounds or images gained from:
 - (i) a cinematograph film, or sound recording, made of the encoded broadcast; or
 - (ii) a copy of such a film or recording.

Note: Paragraph (b)—the making of such a film, recording or copy may be an infringement of copyright: see paragraphs 87(a) and (b) and section 101.

135AOD Unauthorised commercial use of subscription broadcast

- (1) This section permits an action to be brought against a person if:
 - (a) without the authorisation of the broadcaster of a subscription broadcast, the person uses the broadcast, or sounds or images from the broadcast, by way of trade or with the intention of obtaining a commercial advantage or profit; and
 - (b) the use prejudicially affects any of the following persons (the *affected parties*):
 - (i) anyone with an interest in the copyright in the broadcast;
 - (ii) anyone with an interest in the copyright in any content of the broadcast;
 - (iii) the channel provider who supplied the broadcaster with the channel for the broadcast; and
 - (c) the person knows, or ought reasonably to know, that the use is not authorised by the broadcaster.
- (2) The action may be brought by any of the affected parties but only within 6 years of the use.

Subdivision D—Court orders

135AOE Relief

- (1) The relief that a court may grant in an action under this Division includes an injunction (subject to the terms, if any, the court thinks fit) and either damages or an account of profits.
- (2) In assessing damages, the court may award such additional damages as it considers appropriate, having regard to:

- (a) the flagrancy with which the defendant did any of the relevant acts; and
- (b) the need to deter acts similar to the relevant acts; and
- (c) any benefit shown in an action under Subdivision A or B to have accrued to the defendant as a result of making or dealing with the decoder; and
- (d) any benefit shown in an action under Subdivision C to have accrued to the defendant or any trade or business carried on by, or in association with, the defendant; and
- (e) all other relevant matters.

135AOF Destruction of decoder

In an action under this Division, the court may order that the relevant decoder (if any) be destroyed or dealt with as specified in the order.

Subdivision E—Jurisdiction and appeals

135AP Exercise of jurisdiction

The jurisdiction of the Supreme Court of a State or Territory in an action under the Part is to be exercised by a single Judge of the Court.

135AQ Appeals

- (1) Subject to subsection (2), a decision of a court of a State or Territory (however constituted) under this Part is final and conclusive.
- (2) An appeal lies from a decision of a court of a State or Territory under this Part:
 - (a) to the Federal Court of Australia; or
 - (b) by special leave of the High Court, to the High Court.

135AR Jurisdiction of Federal Court of Australia

Jurisdiction is conferred on the Federal Court of Australia with respect to actions under this Part.

135AS Jurisdiction of Federal Magistrates Court

Jurisdiction is conferred on the Federal Magistrates Court with respect to actions under this Part.

Division 3—Offences

Subdivision A—Offences

135ASA Making unauthorised decoder

- (1) A person commits an offence if:
 - (a) the person makes an unauthorised decoder; and
 - (b) the unauthorised decoder will be used to enable a person to gain access to an encoded broadcast without the authorisation of the broadcaster.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

135ASB Selling or hiring unauthorised decoder

- (1) A person commits an offence if:
 - (a) the person sells or lets for hire an unauthorised decoder; and
 - (b) the unauthorised decoder will be used to enable a person to gain access to an encoded broadcast without the authorisation of the broadcaster.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

135ASC Offering unauthorised decoder for sale or hire

- (1) A person commits an offence if:

- (a) with the intention of obtaining a commercial advantage or profit, the person offers or exposes an unauthorised decoder for sale or hire; and
 - (b) the unauthorised decoder will be used to enable a person to gain access to an encoded broadcast without the authorisation of the broadcaster.
- (2) A person commits an offence if:
- (a) the person offers or exposes an unauthorised decoder for sale or hire; and
 - (b) the offer or exposure is by way of trade; and
 - (c) the unauthorised decoder will be used to enable a person to gain access to an encoded broadcast without the authorisation of the broadcaster.
- (3) An offence against subsection (1) or (2) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

135ASD Commercially exhibiting unauthorised decoder in public

- (1) A person commits an offence if:
- (a) the person exhibits an unauthorised decoder in public with the intention of obtaining a commercial advantage or profit; and
 - (b) the unauthorised decoder will be used to enable a person to gain access to an encoded broadcast without the authorisation of the broadcaster.
- (2) A person commits an offence if:
- (a) the person exhibits an unauthorised decoder in public; and
 - (b) the exhibition is by way of trade; and
 - (c) the unauthorised decoder will be used to enable a person to gain access to an encoded broadcast without the authorisation of the broadcaster.
- (3) An offence against subsection (1) or (2) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

135ASE Importing unauthorised decoder commercially

- (1) A person commits an offence if:
- (a) the person imports an unauthorised decoder into Australia with the intention of doing any of the following with the unauthorised decoder:
 - (i) selling the unauthorised decoder;
 - (ii) letting the unauthorised decoder for hire;
 - (iii) offering or exposing the unauthorised decoder for sale or hire, by way of trade or to obtain a commercial advantage or profit;
 - (iv) exhibiting the unauthorised decoder in public by way of trade or to obtain a commercial advantage or profit;
 - (v) distributing the unauthorised decoder for trade;
 - (vi) distributing the unauthorised decoder to obtain a commercial advantage or profit;
 - (vii) distributing the unauthorised decoder in preparation for, or in the course of, engaging in an activity that will prejudicially affect a channel provider or anyone with an interest in the copyright in either an encoded broadcast or the content of an encoded broadcast; and
 - (b) the unauthorised decoder will be used to enable a person to gain access to an encoded broadcast without the authorisation of the broadcaster.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

135ASF Distributing unauthorised decoder

- (1) A person commits an offence if:
- (a) the person distributes (including by exporting from Australia) an unauthorised decoder with the intention of:
 - (i) trading; or
 - (ii) obtaining a commercial advantage or profit; or

- (iii) engaging in any other activity that will prejudicially affect a channel provider or anyone with an interest in the copyright in either an encoded broadcast or the content of an encoded broadcast; and
 - (b) the unauthorised decoder will be used to enable a person to gain access to an encoded broadcast without the authorisation of the broadcaster.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

135ASG Making unauthorised decoder available online

- (1) A person commits an offence if:
- (a) the person makes an unauthorised decoder available online; and
 - (b) the unauthorised decoder is made available online to an extent that will prejudicially affect a channel provider or anyone with an interest in the copyright in either an encoded broadcast or the content of an encoded broadcast; and
 - (c) the unauthorised decoder will be used to enable a person to gain access to an encoded broadcast without the authorisation of the broadcaster.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

135ASH Making decoder available online for subscription broadcast

- (1) A person commits an offence if:
- (a) a decoder was supplied (to the person or anyone else) by, or with the authorisation of, the broadcaster of a subscription broadcast; and
 - (b) the person makes the decoder available online; and

- (c) the decoder is made available online without the authorisation of the broadcaster; and
 - (d) the decoder will be used to enable a person to gain access to a subscription broadcast without the authorisation of the broadcaster; and
 - (e) the decoder is made available online to an extent that will prejudicially affect any of the following:
 - (i) anyone with an interest in the copyright in a subscription broadcast by the broadcaster;
 - (ii) anyone with an interest in the copyright in the content of a subscription broadcast by the broadcaster;
 - (iii) a channel provider who supplies the broadcaster with a channel for a subscription broadcast.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

135ASI Unauthorised access to subscription broadcast etc.

A person commits an offence if:

- (a) the person does an act; and
- (b) the act (either alone or in conjunction with other acts) results in the person gaining access in intelligible form to a subscription broadcast or sounds or images from a subscription broadcast; and
- (c) the access is not authorised by the broadcaster and the person knows that; and
- (d) the act does not consist merely of one or more of the following:
 - (i) starting the playing of sounds or images in or from the broadcast on a device (for example by switching the device on);
 - (ii) listening to sounds in or from the broadcast and/or seeing images in or from the broadcast;
 - (iii) distributing the sounds or images within a single dwelling that is occupied by a single household and is the subject of an arrangement involving a member of

the household and the broadcaster about authorisation of private access to the broadcast; and

- (e) the access to the sounds or images is not gained from:
 - (i) a cinematograph film, or sound recording, made of the encoded broadcast; or
 - (ii) a copy of such a film or recording.

Note: The making of such a film, recording or copy may be an infringement of copyright: see paragraphs 87(a) and (b) and section 101.

Penalty: 60 penalty units.

135ASJ Causing unauthorised access to encoded broadcast etc.

- (1) A person commits an offence if:
 - (a) the person does an act; and
 - (b) the act is done by way of trade; and
 - (c) the act results in the person or anyone else gaining access in intelligible form to an encoded broadcast or sounds or images from an encoded broadcast; and
 - (d) the access is not authorised by the broadcaster; and
 - (e) the access to the sounds or images is not gained from:
 - (i) a cinematograph film, or sound recording, made of the encoded broadcast; or
 - (ii) a copy of such a film or recording.

Note: Paragraph (e)—the making of such a film, recording or copy may be an infringement of copyright: see paragraphs 87(a) and (b) and section 101.

- (2) A person commits an offence if:
 - (a) the person does an act with the intention of obtaining a commercial advantage or profit; and
 - (b) the act results in the person or anyone else gaining access in intelligible form to an encoded broadcast or sounds or images from an encoded broadcast; and
 - (c) the access is not authorised by the broadcaster; and
 - (d) the access to the sounds or images is not gained from:
 - (i) a cinematograph film, or sound recording, made of the encoded broadcast; or
 - (ii) a copy of such a film or recording.

Note: Paragraph (e)—the making of such a film, recording or copy may be an infringement of copyright: see paragraphs 87(a) and (b) and section 101.

- (3) A person commits an offence if:
- (a) the person does an act; and
 - (b) the act results in anyone else gaining access in intelligible form to an encoded broadcast or sounds or images from an encoded broadcast; and
 - (c) the access is not authorised by the broadcaster and the person knows that; and
 - (d) the act does not consist merely of one or more of the following:
 - (i) starting the playing of sounds or images in or from the broadcast on a device (for example by switching the device on);
 - (ii) distributing the sounds or images within a single dwelling that is occupied by a single household and is the subject of an arrangement involving a member of the household and the broadcaster about authorisation of private access to the broadcast; and
 - (e) the access to the sounds or images is not gained from:
 - (i) a cinematograph film, or sound recording, made of the encoded broadcast; or
 - (ii) a copy of such a film or recording.

Note: Paragraph (e)—the making of such a film, recording or copy may be an infringement of copyright: see paragraphs 87(a) and (b) and section 101.

- (4) An offence against subsection (1), (2) or (3) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Subdivision B—Prosecutions

135ATA Courts in which offences may be prosecuted

- (1) Prosecutions for offences against this Division may be brought in the Federal Court of Australia or in any other court of competent jurisdiction.

- (2) However, the Federal Court of Australia does not have jurisdiction to hear or determine prosecutions for indictable offences, despite section 15C of the *Acts Interpretation Act 1901*.
- (3) The Federal Court of Australia has jurisdiction to hear and determine prosecutions of summary offences against this Division.
- (4) Also, section 4J (except subsection 4J(2)) of the *Crimes Act 1914* applies in relation to the Federal Court of Australia and an indictable offence against this Division in the way in which that section would apply if that court were a court of summary jurisdiction.

Note: Section 4J of the *Crimes Act 1914* lets a court of summary jurisdiction try indictable offences in certain circumstances and subject to limits on the penalties the court can impose.

Subdivision C—Further orders by court

135AU Destruction etc. of unauthorised decoders

- (1) The court trying a person for an offence against this Division may order that any article in the person's possession that appears to the court to be an unauthorised decoder be destroyed or otherwise dealt with as specified in the order.
- (2) The court may make the order whether the person is convicted of the offence or not.

2 Application

Part VAA of the *Copyright Act 1968* as amended by this Schedule applies to acts done on or after the commencement of this Schedule.

Schedule 10—Copyright Tribunal: amendments commencing first

Part 1—Remuneration required by Parts VA and VB

Copyright Act 1968

1 After subsection 135J(4)

Insert:

- (4A) To avoid doubt, an annual amount (whether for one or more institutions administered by the administering body) may be determined for the purposes of subsection (1) by reference to amounts for copies and communications that differ on one or both of the following bases:
- (a) different classes of works, performances, sound recordings or cinematograph films included in broadcasts;
 - (b) different classes of students of an institution administered by the administering body.

2 Subsection 135ZV(2)

Repeal the subsection, substitute:

- (2) For the purposes of subsection (1), different amounts may be determined (whether by agreement or by the Copyright Tribunal) in relation to:
- (a) different classes of works or eligible items; or
 - (b) different institutions administered by the administering body;
- or
- (c) different classes of students of an institution administered by the administering body.

3 After subsection 135ZW(4)

Insert:

- (4A) To avoid doubt, an annual amount (whether for one or more institutions administered by the administering body) may be determined for the purposes of subsection (1) by reference to

amounts for licensed copies that differ on one or both of the following bases:

- (a) different classes of works or eligible items;
- (b) different classes of students of an institution administered by the administering body.

Part 2—Declarations of collecting societies

Copyright Act 1968

4 Subsections 135P(1) and (2)

Repeal the subsections, substitute:

- (1) A body may apply to the Minister to be declared as the collecting society.
- (1A) After receiving the application, the Minister must do one of the following:
 - (a) declare the body to be the collecting society, by notice in the *Gazette*;
 - (b) refuse to declare the body to be the collecting society;
 - (c) refer the application to the Copyright Tribunal in the way prescribed by the regulations and notify the body of the referral.
- (1B) A declaration made under paragraph (1A)(a) is not a legislative instrument.
- (1C) If the Minister refers the application to the Copyright Tribunal, the Tribunal may declare the body to be the collecting society.

Note: Section 153BAB sets out the procedure of the Copyright Tribunal in dealing with the reference.
- (2) Only one body can be declared to be the collecting society at a time. The body cannot be declared to be the collecting society while another body is declared to be the collecting society.

Note: The heading to section 135P is altered by omitting “**The**” and substituting “**Declaration of the**”.

5 Saving

- (1) The declaration of the collecting society for Part VA of the *Copyright Act 1968* in force just before the commencement of this Part continues to have effect on and after that commencement despite the repeal of subsection 135P(1) of that Act by this Part.

- (2) Subitem (1) does not prevent revocation of the declaration after that commencement.

6 Subsection 135P(3)

Omit “Attorney-General shall”, substitute “Minister and the Copyright Tribunal must”.

7 At the end of paragraphs 135P(3)(a) and (b)

Add “and”.

8 At the end of subparagraphs 135P(3)(d)(i), (ii) and (iii)

Add “and”.

9 Section 135Q

Omit “The Attorney-General may, by notice in the *Gazette*, revoke the declaration of a body as the collecting society if satisfied that the body:”, substitute “(1) This section applies if the Minister is satisfied that the body declared as the collecting society:”.

10 At the end of paragraphs 135Q(a) and (b)

Add “or”.

11 At the end of section 135Q

Add:

- (2) The Minister may:
- (a) by notice in the *Gazette*, revoke the declaration; or
 - (b) refer the question whether the declaration should be revoked to the Copyright Tribunal in the way prescribed by the regulations.
- (3) If the Minister refers the question to the Copyright Tribunal, the Tribunal may revoke the declaration if it is satisfied that any of paragraphs (1)(a), (b), (c) and (d) applies to the body.

Note: Section 153BAC sets out the procedure of the Copyright Tribunal in dealing with the reference.

12 Sections 135R and 135S

Omit “Attorney-General” (wherever occurring), substitute “Minister”.

13 Subsection 135ZZB(1)

Repeal the subsection, substitute:

- (1) A body may apply to the Minister to be declared as a collecting society for all relevant copyright owners or for specified classes of relevant copyright owners.
- (1A) After receiving the application, the Minister must do one of the following:
 - (a) declare the body to be a collecting society, by notice in the *Gazette*;
 - (b) refuse to declare the body to be a collecting society;
 - (c) refer the application to the Copyright Tribunal in the way prescribed by the regulations and notify the body of the referral.
- (1B) A declaration made under paragraph (1A)(a) is not a legislative instrument.
- (1C) If the Minister refers the application to the Copyright Tribunal, the Tribunal may declare the body to be a collecting society.

Note: Section 153DC sets out the procedure of the Copyright Tribunal in dealing with the reference.
- (1D) A declaration of the body as a collecting society must declare the body to be:
 - (a) the collecting society for all relevant copyright owners; or
 - (b) the collecting society for classes of relevant copyright owners specified in the declaration.

14 Subsection 135ZZB(2)

Omit “Where the Attorney-General declares a body to be the collecting society for a specified class of copyright owners and subsequently declares another body”, substitute “If a body is declared to be the collecting society for a specified class of copyright owners and another body is subsequently declared”.

15 Subsection 135ZZB(3)

Omit “Attorney-General shall”, substitute “Minister and the Copyright Tribunal must”.

16 At the end of paragraphs 135ZZB(3)(a) and (b)

Add “and”.

17 At the end of subparagraphs 135ZZB(3)(d)(i), (ii) and (iii)

Add “and”.

18 Subsection 135ZZB(4)

Omit “Where the Attorney-General”, substitute “If the Minister or the Copyright Tribunal”.

19 Subsection 135ZZB(4)

Omit “Attorney-General” (second occurring), substitute “Minister and the Copyright Tribunal”.

20 Saving

- (1) The declaration of a collecting society for Part VB of the *Copyright Act 1968* in force just before the commencement of this Part continues to have effect on and after that commencement despite the repeal of subsection 135ZZB(1) of that Act by this Part.
- (2) Subitem (1) does not prevent revocation of the declaration after that commencement.

21 Section 135ZZC

Omit “The Attorney-General may, by notice in the *Gazette*, revoke the declaration of a body as a collecting society if satisfied that the body:”, substitute “(1) This section applies if the Minister is satisfied that a body declared as a collecting society:”.

22 At the end of paragraphs 135ZZC(a) and (b)

Add “or”.

23 At the end of section 135ZZC

Add:

- (2) The Minister may:
 - (a) by notice in the *Gazette*, revoke the declaration; or
 - (b) refer the question whether the declaration should be revoked to the Copyright Tribunal in the way prescribed by the regulations.

- (3) If the Minister refers the question to the Copyright Tribunal, the Tribunal may revoke the declaration if it is satisfied that any of paragraphs (1)(a), (b), (c) and (d) applies to the body.

Note: Section 153DD sets out the procedure of the Copyright Tribunal in dealing with the reference.

24 Sections 135ZZD and 135ZZE

Omit “Attorney-General” (wherever occurring), substitute “Minister”.

25 Subsection 135ZZT(1)

Repeal the subsection, substitute:

- (1) A body may apply to the Minister to be declared as a collecting society for all relevant copyright owners or for specified classes of relevant copyright owners.
- (1A) After receiving the application, the Minister must do one of the following:
- (a) declare the body to be a collecting society, by notice in the *Gazette*;
 - (b) refuse to declare the body to be a collecting society;
 - (c) refer the application to the Copyright Tribunal in the way prescribed by the regulations and notify the body of the referral.
- (1B) A declaration made under paragraph (1A)(a) is not a legislative instrument.
- (1C) If the Minister refers the application to the Copyright Tribunal, the Tribunal may declare the body to be a collecting society.
- Note: Section 153P sets out the procedure of the Copyright Tribunal in dealing with the reference.
- (1D) A declaration of the body as a collecting society must declare the body to be:
- (a) the collecting society for all relevant copyright owners; or
 - (b) the collecting society for classes of relevant copyright owners specified in the declaration.

26 Subsection 135ZZT(2)

Omit “Where the Attorney-General declares a body to be the collecting society for a specified class of copyright owners and subsequently declares another body”, substitute “If a body is declared to be the collecting society for a specified class of copyright owners and another body is subsequently declared”.

27 Subsection 135ZZT(3)

Omit “Attorney-General”, substitute “Minister and the Copyright Tribunal”.

28 Subsection 135ZZT(4)

Omit “Attorney-General” (first occurring), substitute “Minister or the Copyright Tribunal”.

29 Subsection 135ZZT(4)

Omit “Attorney-General” (second occurring), substitute “Minister and the Copyright Tribunal”.

30 Saving

- (1) A declaration of a collecting society for Part VC of the *Copyright Act 1968* in force just before the commencement of this Part continues to have effect on and after that commencement despite the repeal of subsection 135ZZT(1) of that Act by this Part.
- (2) Subitem (1) does not prevent revocation of the declaration after that commencement.

31 Section 135ZZU

Omit “The Attorney-General may, by notice in the *Gazette*, revoke the declaration of a body as a collecting society if satisfied that the body:”, substitute “(1) This section applies if the Minister is satisfied that a body declared as a collecting society:”.

32 At the end of section 135ZZU

Add:

- (2) The Minister may:
 - (a) by notice in the *Gazette*, revoke the declaration; or

(b) refer the question whether the declaration should be revoked to the Copyright Tribunal in the way prescribed by the regulations.

(3) If the Minister refers the question to the Copyright Tribunal, the Tribunal may revoke the declaration if it is satisfied that any of paragraphs (1)(a), (b), (c) and (d) applies to the body.

Note: Section 153Q sets out the procedure of the Copyright Tribunal in dealing with the reference.

33 Sections 135ZZV and 135ZZW

Omit “Attorney-General” (wherever occurring), substitute “Minister”.

34 Before section 148

Insert:

Subdivision A—Preliminary

35 Before section 149

Insert:

Subdivision B—Applications relating to Parts III and IV

36 Before section 153A

Insert:

Subdivision C—Applications and references relating to Part VA

37 After section 153BA

Insert:

153BAB References relating to declaration of collecting society

- (1) This section has effect if the Minister refers to the Copyright Tribunal under section 135P an application of a body to be declared the collecting society.
- (2) The parties to the reference 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 the question whether the applicant should be declared to be the collecting society (including whether subsection 135P(2) prevents the applicant from being declared to be the collecting society because another body is declared to be the collecting society).
- (4) After giving each party an opportunity of presenting its case, the Tribunal must:
 - (a) declare the applicant to be the collecting society under section 135P; or
 - (b) reject the application.
- (5) If the Tribunal declares the applicant to be the collecting society under section 135P, the Registrar must publish notice of the declaration in the *Gazette*.

153BAC References relating to revocation of declaration of collecting society

- (1) This section has effect if the Minister refers to the Copyright Tribunal under section 135Q the question whether the declaration of a body as the collecting society should be revoked.
- (2) The parties to the reference are:
 - (a) the Minister; and
 - (b) 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 under section 135Q; or
 - (b) refuse to revoke the declaration.

- (5) If the Tribunal revokes the declaration of the collecting society:
 - (a) the revocation must specify the day on which it takes effect; and
 - (b) the Registrar must publish notice of the revocation in the *Gazette*.

Subdivision D—Applications and references relating to Part VB

38 After section 153DA

Insert:

153DC References relating to declaration of collecting society

- (1) This section has effect if the Minister refers to the Copyright Tribunal under section 135ZZB an application of a body to be declared a collecting society.
- (2) The parties to the reference 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 for all relevant copyright owners (as defined in Part VB) or a particular class of relevant copyright owners;
 - (ii) whether another body should cease to be the collecting society for any of the relevant copyright owners (as defined in Part VB) if the applicant is declared to be a collecting society.
- (4) After giving each party an opportunity of presenting its case, the Tribunal must:
 - (a) declare the applicant to be a collecting society under section 135ZZB; or
 - (b) reject the application.

- (5) If the Tribunal declares the applicant to be the collecting society under section 135ZZB, the Registrar must publish notice of the declaration in the *Gazette*.

153DD References relating to revocation of declaration of collecting society

- (1) This section has effect if the Minister refers to the Copyright Tribunal under section 135ZZC the question whether the declaration of a body as a collecting society should be revoked.
- (2) The parties to the reference are:
- (a) the Minister; and
 - (b) 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 under section 135ZZC; or
 - (b) refuse to revoke the declaration.
- (5) If the Tribunal revokes the declaration of the collecting society:
- (a) the revocation must specify the day on which it takes effect; and
 - (b) the Registrar must publish notice of the revocation in the *Gazette*.

39 Before section 153E

Insert:

Subdivision E—Applications relating to Part VII

40 Before section 153L

Insert:

Subdivision F—Applications relating to declarations of institutions

41 Before section 153M

Insert:

Subdivision G—Applications and references relating to Part VC

42 After section 153N

Insert:

153P References relating to declaration of collecting society

- (1) This section has effect if the Minister refers to the Copyright Tribunal under section 135ZZT an application of a body to be declared a collecting society.
- (2) The parties to the reference 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 for all relevant copyright owners (as defined in Part VC) or a particular class of relevant copyright owners;
 - (ii) whether another body should cease to be the collecting society for any of the relevant copyright owners (as defined in Part VC) if the applicant is declared to be a collecting society.
- (4) After giving each party an opportunity of presenting its case, the Tribunal must:
 - (a) declare the applicant to be a collecting society under section 135ZZT; or
 - (b) reject the application.

- (5) If the Tribunal declares the applicant to be the collecting society under section 135ZZT, the Registrar must publish notice of the declaration in the *Gazette*.

153Q References relating to revocation of declaration of collecting society

- (1) This section has effect if the Minister refers to the Copyright Tribunal under section 135ZZU the question whether the declaration of a body as a collecting society should be revoked.
- (2) The parties to the reference are:
- (a) the Minister; and
 - (b) 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 under section 135ZZU; or
 - (b) refuse to revoke the declaration.
- (5) If the Tribunal revokes the declaration of the collecting society:
- (a) the revocation must specify the day on which it takes effect; and
 - (b) the Registrar must publish notice of the revocation in the *Gazette*.

43 Before section 154

Insert:

Subdivision H—References and applications relating to licences and licence schemes

44 Before section 160

Insert:

Subdivision I—General provisions

45 Paragraphs 195B(1)(a) and (b)

Omit “a body or institution under subsection 10A(1), 135P(1) or 135ZZB(1);”, substitute “an institution under subsection 10A(1);”.

46 At the end of subsection 195B(1)

Add:

- ; (e) a decision of the Minister under paragraph 135P(1A)(b), 135ZZB(1A)(b) or 135ZZT(1A)(b) refusing to declare a body as a collecting society;
- (f) a decision of the Minister under paragraph 135Q(2)(a), 135ZZC(2)(a) or 135ZZU(2)(a) revoking a declaration of a body as a collecting society.

47 Subsection 195B(2)

Omit “body or”.

48 Paragraph 195B(2)(c)

Omit “body or”.

Part 3—Tribunal name

Copyright Act 1968

49 Subsection 10(1) (definition of *the Copyright Tribunal*)

Omit “Copyright Tribunal established”, substitute “Copyright Tribunal of Australia provided for”.

50 Part VI (heading)

Repeal the heading, substitute:

Part VI—Copyright Tribunal of Australia

51 Section 138

After “existence”, insert “as the Copyright Tribunal of Australia”.

Part 4—Registrar

Copyright Act 1968

52 Subsection 10(1)

Insert:

Registrar means the Registrar of the Tribunal provided for by section 170.

53 Subsections 153F(8), 153G(7) and 153J(5)

Omit “Secretary to the Tribunal”, substitute “Registrar”.

54 Subsection 167(2)

Repeal the subsection, substitute:

- (2) A member or the Registrar may summon a person to appear before the Tribunal to give evidence.
- (3) A member or the Registrar may summon a person to produce specified documents or articles to the Tribunal by producing the documents or articles to a specified person at a specified time at a specified place.

55 Saving

The repeal and substitution of subsection 167(2) of the *Copyright Act 1968* by this Part does not affect a summons issued under that subsection before the commencement of this Part.

56 Section 168

Omit “Secretary to the Tribunal.”, substitute “Registrar.”.

57 Section 170

Repeal the section, substitute:

170 Registrar

- (1) There is to be a Registrar of the Tribunal.

- (2) The Registrar is to be a person engaged under the *Public Service Act 1999*, or a person whose services are made available under an arrangement made under that Act, who is appointed as the Registrar by the Minister by written instrument.

Remuneration as public servant

- (3) The office of Registrar is not a public office for the purposes of the *Remuneration Tribunal Act 1973*.

Resignation

- (4) The Registrar may resign his or her appointment by giving the Minister a written resignation.

Termination of appointment

- (5) The Minister may terminate, by writing signed by him or her, the appointment of the Registrar.
- (6) The appointment of the Registrar is terminated if the Registrar ceases to be engaged under the *Public Service Act 1999* or to be a person whose services are made available under an arrangement made under that Act.

Acting appointment

- (7) The President may appoint a person engaged under the *Public Service Act 1999*, or a person whose services are made available under an arrangement made under that Act, to act as the Registrar:
- (a) during a vacancy in the office of Registrar (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Registrar is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.
- (8) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

170A Other staff of the Tribunal

Any staff needed to assist the Tribunal must be persons engaged under the *Public Service Act 1999* or persons whose services are made available under arrangements made under that Act.

58 Transitional provision

The person who was the Secretary to the Tribunal immediately before the commencement of this Part, is taken to have been appointed on that commencement as the Registrar under section 170 of the *Copyright Act 1968* as amended by this Part.

59 Before subsection 171(2)

Insert:

(1B) The Registrar has in the performance of his or her duty as Registrar under section 167, 174 or 175, the same protection and immunity as a Justice of the High Court.

Note: The heading to section 171 is replaced by the heading “**Protecting persons connected with Tribunal proceedings**”.

60 Subsection 174(2A)

Omit “Secretary to the Tribunal”, substitute “Registrar”.

61 Saving

The amendment of subsection 174(2A) of the *Copyright Act 1968* by this Part does not affect the evidentiary value, in proceedings after the commencement of the amendment, of a certificate described in that subsection that was signed before the commencement of the amendment.

62 Section 175

Omit “Secretary to the Tribunal”, substitute “Registrar”.

63 Saving

The amendment of section 175 of the *Copyright Act 1968* by this Part does not affect the evidentiary value, in proceedings after that commencement, of a document described in that section that was certified before the commencement of the amendment.

Schedule 11—Copyright Tribunal: amendments commencing second

Part 1—Licences and licence schemes

Division 1—Voluntary licences

Copyright Act 1968

1 Subsection 136(1) (definition of *licence*)

Repeal the definition, substitute:

licence means a licence granted by or on behalf of the owner or prospective owner of the copyright in a work or other subject-matter to do an act comprised in the copyright.

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

Repeal the definition, substitute:

licensor means a body corporate for which both the following conditions are met:

- (a) the body is incorporated under a law in force in a State or Territory relating to companies;
- (b) the body's constitution:
 - (i) entitles any owner of copyright, or any owner of copyright of a specified kind, to become a member of the body; and
 - (ii) requires the body to protect the interests of its members connected with copyright; and
 - (iii) provides that the main business of the body is granting licences; and
 - (iv) requires the body to distribute to its members the proceeds (after deduction of the body's administrative expenses) from payments to the body for licences; and
 - (v) prevents the body from paying dividends.

3 Application and transitional provisions

- (1) The amendments made by this Division apply in relation to licences granted before, on or after the commencement of the amendments and in relation to licence schemes formulated before, on or after that commencement.
- (2) However, if proceedings in the Tribunal under section 154, 155, 156 or 157 of the *Copyright Act 1968* had been started but not completed before the commencement of the amendments made by this Division, the proceedings may be continued after that commencement as if the amendments had not been made.

Division 2—Substituting licence schemes

Copyright Act 1968

4 Subsection 154(4)

Omit “, either confirming or varying the scheme,”, substitute “, confirming or varying the scheme or substituting for the scheme another scheme proposed by one of the parties,”.

5 Subsections 154(7) and (8)

Repeal the subsections, substitute:

- (7) The scheme reflecting the Tribunal’s order:
 - (a) comes into operation when the order is made, if the scheme referred to the Tribunal had not already come into operation; and
 - (b) operates as long as the order remains in force.

This subsection has effect despite anything in the scheme referred to the Tribunal.

Note: Depending on the Tribunal’s order, the scheme reflecting the order will be the scheme confirmed by the order, the scheme as varied by the order or the scheme substituted by the order for the scheme referred to the Tribunal.

6 Subsection 155(5)

Repeal the subsection, substitute:

- (5) The Tribunal must consider the matter in dispute, give the parties an opportunity of presenting their cases then make an order that the

Tribunal considers reasonable in the circumstances doing one of the following to the scheme so far as it relates to the relevant class:

- (a) confirming it;
- (b) varying it;
- (c) substituting for it another scheme proposed by one of the parties.

This subsection has effect to subsection (4).

7 Subsection 155(10)

Repeal the subsection, substitute:

- (10) The scheme reflecting the Tribunal's order operates as long as the order remains in force, despite anything in the scheme referred to the Tribunal.

Note: Depending on the Tribunal's order, the scheme reflecting the order will be the scheme confirmed by the order, the scheme as varied by the order or the scheme substituted by the order for the scheme referred to the Tribunal.

8 Subsection 156(1)

Omit "again", substitute "reflecting the order".

9 Subsection 156(2)

Omit "licence".

10 Subsection 156(2)

Omit "again".

11 Subsection 156(4)

Repeal the subsection, substitute:

- (4) The Tribunal must consider the matter in dispute, give the parties an opportunity of presenting their cases then make an order that the Tribunal considers reasonable in the circumstances doing one of the following to the scheme so far as it is referred to the Tribunal under subsection (1):
 - (a) confirming it;
 - (b) varying it;
 - (c) substituting for it another scheme proposed by one of the parties.

This subsection has effect to subsection (5).

12 Subsection 157(6)

Repeal the subsection, substitute:

Letting parties present their cases

- (6) The Tribunal must give the applicant, the licensor concerned and each other party (if any) to the application an opportunity of presenting their cases.

Order dealing with application under subsection (1)

- (6A) If the Tribunal is satisfied that the claim of an applicant under subsection (1) is well-founded, the Tribunal must either:
- (a) make an order specifying, in respect of the matters specified in the order, the charges, if any, and the conditions, that the Tribunal considers to be applicable in accordance with the licence scheme in relation to the applicant; or
 - (b) order that the applicant be granted a licence in the terms proposed by the applicant, the licensor concerned or another party to the application.

Order dealing with application under subsection (2) or (3)

- (6B) If the Tribunal is satisfied that the claim of an applicant under subsection (2) or (3) is well-founded, the Tribunal must either:
- (a) make an order specifying, in respect of the matters specified in the order, the charges, if any, and the conditions, that the Tribunal considers reasonable in the circumstances in relation to the applicant; or
 - (b) order that the applicant be granted a licence in the terms proposed by the applicant, the licensor concerned or another party to the application.

Order dealing with application under subsection (4)

- (6C) If the Tribunal is satisfied that the claim of an applicant under subsection (4) is well-founded, the Tribunal must either:
- (a) make an order specifying, in respect of the matters specified in the order, the charges, if any, and the conditions, that the

Tribunal considers reasonable in the circumstances in relation to persons who:

- (i) are specified in the order (whether by reference to a class or otherwise); and
 - (ii) were represented by the applicant or were parties to the application; or
- (b) order that a licence be granted, in the terms proposed by the applicant, the licensor concerned or another party to the application, to each person who:
- (i) is specified in the order (whether by reference to a class or otherwise); and
 - (ii) was represented by the applicant or was a party to the application.

Note 1: The following heading to subsection 157(1) is inserted “*Refusal or failure to grant licence under licence scheme*”.

Note 2: The following heading to subsection 157(2) is inserted “*Licence scheme sets unreasonable charges or conditions for case*”.

Note 3: The following heading to subsection 157(3) is inserted “*No licence scheme and licensor refuses or fails to grant reasonable licence*”.

Note 4: The following heading to subsection 157(5) is inserted “*Other parties to application*”.

Note 5: The following heading to subsection 157(7) is inserted “*Definition of refusal or failure to grant a licence*”.

13 Subsection 159(1)

Omit “as confirmed or varied by” (first occurring), substitute “reflecting”.

14 Subsection 159(1)

Omit “the scheme, as confirmed or varied by the order”, substitute “that scheme”.

15 Paragraph 159(2)(a)

Omit “licence scheme as confirmed or varied by”, substitute “scheme reflecting”.

16 Paragraph 159(2)(b)

Omit “as so confirmed or varied”.

17 Subsection 159(3)

Omit “licence” (first occurring).

18 Subsection 159(3)

Omit “, as confirmed or varied by”, substitute “reflecting”.

19 Subsection 159(3)

Omit “thing”, substitute “thing,”.

20 At the end of section 159

Add:

- (7) To avoid doubt, subsections (4) and (5) do not apply to an order that a person be granted a licence.

Order under section 157 that person be granted licence

- (8) A person whom the Tribunal has ordered under section 157 be granted a licence in the terms proposed by the applicant, the licensor concerned or another party to the application under that section:

(a) is taken, for the purpose of proceedings for infringement of copyright, to have been granted the licence in those terms; and

(b) is liable to pay the owner of the copyright concerned the amount of any charges that would be payable if the person had been granted the licence in those terms.

Note: Paragraph (a)—if those terms made the licence subject to conditions and the person did not comply with the conditions, the licence will not give the person a defence in the proceedings.

- (9) The owner of the copyright may recover the amount described in paragraph (8)(b) from the person in a court of competent jurisdiction as a debt due to the owner.

Note 1: The following heading to subsection 159(1) is inserted “*Order under section 154. 155 or 156*”.

Note 2: The following heading to subsection 159(4) is inserted “*Order under section 157 specifying conditions and charges*”.

Division 3—Involvement of Australian Competition and Consumer Commission

Copyright Act 1968

21 At the end of subsection 154(2)

Add:

; and (c) the Australian Competition and Consumer Commission, if the Tribunal makes the Commission a party to the reference under section 157B.

22 At the end of paragraph 155(2)(a)

Add “and”.

23 At the end of subsection 155(2)

Add:

; and (d) the Australian Competition and Consumer Commission, if the Tribunal makes the Commission a party to the reference under section 157B.

24 At the end of paragraph 156(3)(a)

Add “and”.

25 At the end of subsection 156(3)

Add:

; and (d) the Australian Competition and Consumer Commission, if the Tribunal makes the Commission a party to the reference under section 157B.

26 At the end of subsection 157(5)

Add:

Note: Under section 157B, the Tribunal may also make the Australian Competition and Consumer Commission a party to the application.

27 After section 157

Insert:

157A Tribunal must have regard to ACCC guidelines on request

- (1) In making a decision on a reference or application under this Subdivision, the Tribunal must, if requested by a party to the reference or application, have regard to relevant guidelines (if any) made by the Australian Competition and Consumer Commission.
- (2) To avoid doubt, subsection (1) does not prevent the Tribunal from having regard to other relevant matters in making a decision on a reference or application under this Subdivision.

157B Tribunal may make ACCC party to reference or application

The Tribunal may make the Australian Competition and Consumer Commission a party to a reference or application made under this Subdivision if:

- (a) the Commission asks to be made a party to the reference or application; and
- (b) the Tribunal is satisfied that it is appropriate that the Commission be a party to the reference or application.

Part 2—Distribution of amounts collected by declared collecting societies

Copyright Act 1968

28 At the end of Division 3 of Part VA

Add:

135SA Applying to Tribunal for review of distribution arrangement

- (1) The collecting society or a member of the collecting society may apply to the Copyright Tribunal for review of the arrangement adopted, or proposed to be adopted, by the collecting society for distributing amounts it collects in a period.
- (2) If the Tribunal makes an order under section 153BAD varying the arrangement or substituting for it another arrangement, the arrangement reflecting the Tribunal's order has effect as if it had been adopted in accordance with the collecting society's rules, but does not affect a distribution started before the order was made.

29 At the end of Division 6 of Part VB

Add:

135ZZEA Applying to Tribunal for review of distribution arrangement

- (1) A collecting society or a member of a collecting society may apply to the Copyright Tribunal for review of the arrangement adopted, or proposed to be adopted, by the collecting society for distributing amounts it collects in a period.
- (2) If the Tribunal makes an order under section 153DE varying the arrangement or substituting for it another arrangement, the arrangement reflecting the Tribunal's order has effect as if it had been adopted in accordance with the collecting society's rules, but does not affect a distribution started before the order was made.

30 At the end of Division 3 of Part VC

Add:

135ZZWA Applying to Tribunal for review of distribution arrangement

- (1) A collecting society or a member of a collecting society may apply to the Copyright Tribunal for review of the arrangement adopted, or proposed to be adopted, by the collecting society for distributing amounts it collects in a period.
- (2) If the Tribunal makes an order under section 153R varying the arrangement or substituting for it another arrangement, the arrangement reflecting the Tribunal's order has effect as if it had been adopted in accordance with the collecting society's rules, but does not affect a distribution started before the order was made.

31 At the end of Subdivision C of Division 3 of Part VI

Add:

153BAD Review of collecting society's distribution arrangement

- (1) This section has effect if an application is made to the Tribunal under section 135SA for review of an arrangement adopted, or proposed to be adopted, by the collecting society for distributing amounts it collects in a period.
- (2) The parties to the application are:
 - (a) the applicant; and
 - (b) the collecting society (if it is not the applicant); and
 - (c) a member of the collecting society, or an organization claiming to be representative of members of the collecting society, that the Tribunal makes a party to the application.
- (3) The Tribunal may make a member of the collecting society, or an organization claiming to be representative of members of the collecting society, a party to the application if:
 - (a) the member or organization asks to be made a party; and
 - (b) the Tribunal is satisfied that the member or organization has a substantial interest in the arrangement.
- (4) The Tribunal must consider the application, give the parties an opportunity of presenting their cases then make an order:

- (a) confirming the arrangement; or
 - (b) varying the arrangement; or
 - (c) substituting for the arrangement another arrangement for distributing amounts the collecting society collects in the period.
- (5) In this section:

collecting society has the same meaning as in Part VA.

32 At the end of Subdivision D of Division 3 of Part VI

Add:

153DE Review of collecting society's distribution arrangement

- (1) This section has effect if an application is made to the Tribunal under section 135ZZEA for review of an arrangement adopted, or proposed to be adopted, by a collecting society for distributing amounts it collects in a period.
- (2) The parties to the application are:
 - (a) the applicant; and
 - (b) the collecting society (if it is not the applicant); and
 - (c) a member of the collecting society, or an organization claiming to be representative of members of the collecting society, that the Tribunal makes a party to the application.
- (3) The Tribunal may make a member of the collecting society, or an organization claiming to be representative of members of the collecting society, a party to the application if:
 - (a) the member or organization asks to be made a party; and
 - (b) the Tribunal is satisfied that the member or organization has a substantial interest in the arrangement.
- (4) The Tribunal must consider the application, give the parties an opportunity of presenting their cases then make an order:
 - (a) confirming the arrangement; or
 - (b) varying the arrangement; or
 - (c) substituting for the arrangement another arrangement for distributing amounts the collecting society collects in the period.

(5) In this section:

collecting society has the same meaning as in Part VB.

33 At the end of Subdivision E of Division 3 of Part VI

Add:

153KA Review of collecting society's distribution arrangement

- (1) This section has effect if an application is made to the Tribunal under section 183F for review of an arrangement adopted, or proposed to be adopted, by a collecting society for distributing amounts it collects in a period.
- (2) The parties to the application are:
 - (a) the applicant; and
 - (b) the collecting society (if it is not the applicant); and
 - (c) a member of the collecting society, or an organization claiming to be representative of members of the collecting society, that the Tribunal makes a party to the application.
- (3) The Tribunal may make a member of the collecting society, or an organization claiming to be representative of members of the collecting society, a party to the application if:
 - (a) the member or organization asks to be made a party; and
 - (b) the Tribunal is satisfied that the member or organization has a substantial interest in the arrangement.
- (4) The Tribunal must consider the application, give the parties an opportunity of presenting their cases then make an order:
 - (a) confirming the arrangement; or
 - (b) varying the arrangement; or
 - (c) substituting for the arrangement another arrangement for distributing amounts the collecting society collects in the period.
- (5) In this section:

collecting society has the same meaning as in Division 2 of Part VII.

34 At the end of Subdivision G of Division 3 of Part VI

Add:

153R Review of collecting society's distribution arrangement

- (1) This section has effect if an application is made to the Tribunal under section 135ZZWA for review of an arrangement adopted, or proposed to be adopted, by a collecting society for distributing amounts it collects in a period.
- (2) The parties to the application are:
 - (a) the applicant; and
 - (b) the collecting society (if it is not the applicant); and
 - (c) a member of the collecting society, or an organization claiming to be representative of members of the collecting society, that the Tribunal makes a party to the application.
- (3) The Tribunal may make a member of the collecting society, or an organization claiming to be representative of members of the collecting society, a party to the application if:
 - (a) the member or organization asks to be made a party; and
 - (b) the Tribunal is satisfied that the member or organization has a substantial interest in the arrangement.
- (4) The Tribunal must consider the application, give the parties an opportunity of presenting their cases then make an order:
 - (a) confirming the arrangement; or
 - (b) varying the arrangement; or
 - (c) substituting for the arrangement another arrangement for distributing amounts the collecting society collects in the period.
- (5) In this section:

collecting society has the same meaning as in Part VC.

35 At the end of Division 2 of Part VII

Add:

183F Applying to Tribunal for review of distribution arrangement

- (1) A collecting society or a member of a collecting society may apply to the Copyright Tribunal for review of the arrangement adopted,

or proposed to be adopted, by the collecting society for distributing amounts it collects in a period.

- (2) If the Tribunal makes an order under section 153KA varying the arrangement or substituting for it another arrangement, the arrangement reflecting the Tribunal's order has effect as if it had been adopted in accordance with the collecting society's rules, but does not affect a distribution started before the order was made.

Part 3—Manner of paying royalty for copying musical works

Copyright Act 1968

36 Subparagraph 55(1)(d)(ii)

Repeal the subparagraph, substitute:

- (ii) the prescribed royalty is paid to the owner of the copyright in the manner agreed between the manufacturer and the owner of the copyright or, failing such agreement, determined by the Copyright Tribunal under section 152B.

37 Application

Subparagraph 55(1)(d)(ii) of the *Copyright Act 1968* as amended by this Part applies to an agreement about the manner of payment of a prescribed royalty whether the agreement was made before, on or after the commencement of this Part.

38 Subsection 59(5)

Repeal the subsection.

Part 4—Records notices

Copyright Act 1968

39 After subsection 135K(2)

Insert:

- (2A) A matter that:
- (a) relates to an activity required by paragraph (1)(b), (c) or (d);
and
 - (b) needs, or is convenient, to be determined; and
 - (c) is not determined by subsection (1) or (2) or regulations
made for the purposes of paragraph (1)(b), (c) or (d) or (2)(a)
or (b);
- is to be determined by agreement between the administering body
and the collecting society or, failing such agreement, the Copyright
Tribunal on the application of either of them.
- (2B) Sections 135E and 135F do not apply to a copy of a broadcast, or a
communication of a copy of a broadcast, made by or on behalf of
the administering body during a period in which:
- (a) an agreement, or an order of the Copyright Tribunal,
determining a matter described in subsection (2A) is in force;
and
 - (b) the body does not comply with the agreement or order.

Note 1: The following heading to subsection 135K(1) is inserted "*If records notice is given*".

Note 2: The following heading to subsection 135K(3) is inserted "*If sampling notice is given*".

40 Application

- (1) The amendment of section 135K of the *Copyright Act 1968* made by
this Part applies in relation to a records notice given on or after the
commencement of the amendment.
- (2) The amendment also applies in relation to a records notice given by or
on behalf of an administering body before that commencement, if the
body and the collecting society make an agreement determining a
matter described in subsection 135K(2A) of the *Copyright Act 1968*. In

that case, the amendment applies at and after the time the agreement comes into force.

Note: While the amendment does not apply, section 135K of the *Copyright Act 1968*, as in force before the commencement of the amendment, applies.

(3) In this item:

administering body has the meaning given by section 135A of the *Copyright Act 1968*.

collecting society has the meaning given by section 135A of the *Copyright Act 1968*.

records notice has the meaning given by section 135A of the *Copyright Act 1968*.

41 After subsection 135ZX(2)

Insert:

(2A) A matter that:

- (a) relates to an activity required by paragraph (1)(b), (c) or (d);
and
- (b) needs, or is convenient, to be determined; and
- (c) is not determined by subsection (1) or (2) or regulations made for the purposes of paragraph (1)(b), (c) or (d) or (2)(a) or (b);

is to be determined by agreement between the administering body and the collecting society or, failing such agreement, the Copyright Tribunal on the application of either of them.

(2B) Sections 135ZJ, 135ZK, 135ZL, 135ZMC, 135ZMD, 135ZMDA, 135ZP and 135ZS do not apply to a reproduction or copy of a work or other subject-matter made in hardcopy form or analog form by or on behalf of the administering body during a period in which:

- (a) an agreement, or an order of the Copyright Tribunal, determining a matter described in subsection (2A) is in force;
and
- (b) the body does not comply with the agreement or order.

Note 1: The following heading to subsection 135ZX(1) is inserted "*If records notice is given*".

Note 2: The following heading to subsection 135ZX(3) is inserted "*If sampling notice is given*".

Note 3: The following heading to subsection 135ZX(4) is inserted "*Regulations relevant to records notices and sampling notices*".

42 Application

- (1) The amendment of section 135ZX of the *Copyright Act 1968* made by this Part applies in relation to a records notice given on or after the commencement of the amendment.
- (2) The amendment also applies in relation to a records notice given by or on behalf of an administering body before that commencement, if the body and the relevant collecting society make an agreement determining a matter described in subsection 135ZX(2A) of the *Copyright Act 1968*. In that case, the amendment applies at and after the time the agreement comes into force.

Note: While the amendment does not apply, section 135ZX of the *Copyright Act 1968*, as in force before the commencement of the amendment, applies.

- (3) In this item:
administering body has the meaning given by section 135ZB of the *Copyright Act 1968*.
records notice has the meaning given by section 135ZB of the *Copyright Act 1968*.
relevant collecting society has the meaning given by section 135ZB of the *Copyright Act 1968*.

43 After section 153BA

Insert:

153BAA Application to the Tribunal under subsection 135K(2A)

- (1) The parties to an application to the Tribunal under subsection 135K(2A) for the determination of a matter are the collecting society and the administering body concerned.
- (2) If an application is made to the Tribunal under subsection 135K(2A) for the determination of a matter, the Tribunal must consider the application and, after giving the parties to the application an opportunity of presenting their cases, must make an order determining the matter.
- (3) In determining a matter described in subsection 135K(2A), the Tribunal must have regard to such matters (if any) as are prescribed.

(4) In this section:

administering body has the same meaning as in Part VA.

collecting society has the same meaning as in Part VA.

44 After section 153DA

Insert:

153DB Application to the Tribunal under subsection 135ZX(2A)

- (1) The parties to an application to the Tribunal under subsection 135ZX(2A) for the determination of a matter are the relevant collecting society and the administering body concerned.
- (2) If an application is made to the Tribunal under subsection 135ZX(2A) for the determination of a matter, the Tribunal must consider the application and, after giving the parties to the application an opportunity of presenting their cases, must make an order determining the matter.
- (3) In determining a matter described in subsection 135ZX(2A), the Tribunal must have regard to such matters (if any) as are prescribed.

(4) In this section:

administering body has the same meaning as in Part VB.

relevant collecting society has the same meaning as in Part VB.

Part 5—Alternative dispute resolution

Copyright Act 1968

55 Subsection 10(1)

Insert:

alternative dispute resolution processes means procedures and services for the resolution of disputes, and includes:

- (a) conferencing; and
- (b) mediation; and
- (c) neutral evaluation; and
- (d) case appraisal; and
- (e) conciliation; and
- (f) procedures or services specified in the regulations;

but does not include:

- (g) arbitration; or
- (h) court procedures or services.

Paragraphs (b) to (f) of this definition do not limit paragraph (a) of this definition.

56 After Division 4 of Part VI

Insert:

Division 4A—Alternative dispute resolution processes

169A Referral of proceeding for alternative dispute resolution process

- (1) If an application or reference is made to the Tribunal, the President or a Deputy President may:
 - (a) direct the holding of a conference of the parties or their representatives in relation to the proceeding, or any part of the proceeding or any matter arising out of the proceeding; or
 - (b) direct that the proceeding, or any part of the proceeding or any matter arising out of the proceeding, be referred for a

particular alternative dispute resolution process (other than conferencing).

- (2) The President may also direct the holding of conferences of the parties or their representatives in the case of applications or references made to the Tribunal that are of a kind specified in the direction.
- (3) The President may also direct that proceedings be referred for a particular alternative dispute resolution process (other than conferencing) in the case of applications or references made to the Tribunal that are of a kind specified in the direction.
- (4) A direction may be given under a particular paragraph of subsection (1):
 - (a) whether or not a direction has previously been given under the same or the other paragraph of that subsection in relation to the proceeding; and
 - (b) whether or not a direction under subsection (2) or (3) has applied.
- (5) If a direction under this section is applicable to:
 - (a) a proceeding; or
 - (b) a part of a proceeding; or
 - (c) a matter arising out of a proceeding;each party must act in good faith in relation to the conduct of the alternative dispute resolution process concerned.

169B Directions by President or Deputy President

- (1) The President or a Deputy President may give directions about alternative dispute resolution processes.
- (2) Directions under subsection (1) may relate to:
 - (a) the procedure to be followed in the conduct of an alternative dispute resolution process; and
 - (b) the person who is to conduct an alternative dispute resolution process; and
 - (c) the procedure to be followed when an alternative dispute resolution process ends.
- (3) Subsection (2) does not limit subsection (1).

- (4) The President or a Deputy President may at any time vary or revoke a direction under subsection (1).
- (5) A person is not entitled to conduct an alternative dispute resolution process unless the person is:
 - (a) a member; or
 - (b) the Registrar; or
 - (c) a person whose services are made available, under an arrangement made by the Registrar and the Registrar of the Federal Court of Australia, to conduct the process; or
 - (d) a person engaged under section 169G.

169C Agreement about the terms of a decision etc.

- (1) If:
 - (a) in the course of an alternative dispute resolution process under this Division, agreement is reached between the parties or their representatives as to the terms of a decision of the Tribunal:
 - (i) in the proceeding; or
 - (ii) in relation to the part of the proceeding; or
 - (iii) in relation to the matter arising out of the proceeding; that would be acceptable to the parties; and
 - (b) the terms of the agreement are reduced to writing, signed by or on behalf of the parties and lodged with the Tribunal; and
 - (c) 7 days pass after lodgment, and none of the parties has notified the Tribunal in writing that he or she wishes to withdraw from the agreement; and
 - (d) the Tribunal is satisfied that a decision in the terms of the agreement or consistent with those terms would be within the powers of the Tribunal;the Tribunal may, if it appears to it to be appropriate to do so, act in accordance with whichever of subsection (2) or (3) is relevant in the particular case.
- (2) If the agreement reached is an agreement as to the terms of a decision of the Tribunal in the proceeding, the Tribunal may, without giving the parties an opportunity of presenting their cases, make a decision in accordance with those terms.
- (3) If the agreement relates to:

- (a) a part of the proceeding; or
 - (b) a matter arising out of the proceeding;
- the Tribunal may, in its decision in the proceeding, give effect to the terms of the agreement without giving the parties an opportunity of presenting their cases so far as they relate only to the part or matter to which the agreement relates.

169D Evidence not admissible

- (1) Evidence of anything said, or any act done, at an alternative dispute resolution process under this Division is not admissible:
 - (a) in any court; or
 - (b) in any proceedings before a person authorised by a law of the Commonwealth or of a State or Territory to hear evidence; or
 - (c) in any proceedings before a person authorised by the consent of the parties to hear evidence.

Exceptions

- (2) Subsection (1) does not apply so as to prevent the admission, at the hearing of a proceeding before the Tribunal, of particular evidence if the parties agree to the evidence being admissible at the hearing.
- (3) Subsection (1) does not apply so as to prevent the admission, at the hearing of a proceeding before the Tribunal, of:
 - (a) a case appraisal report prepared by a person conducting an alternative dispute resolution process under this Division; or
 - (b) a neutral evaluation report prepared by a person conducting an alternative dispute resolution process under this Division;unless a party to the proceeding notifies the Tribunal before the hearing that he or she objects to the report being admissible at the hearing.

169E Eligibility of person conducting alternative dispute resolution process to sit as a member of the Tribunal

If:

- (a) an alternative dispute resolution process under this Division in relation to a proceeding is conducted by a member of the Tribunal; and

- (b) a party (the *objector*) to the proceeding notifies the Tribunal, before any party to the proceeding is given an opportunity of presenting its case, that the objector objects to that member participating in the proceeding;
- that member is not entitled to be a member of the Tribunal as constituted for the purposes of the proceeding.

169F Participation by telephone etc.

The person conducting an alternative dispute resolution process under this Division may allow a person to participate by:

- (a) telephone; or
- (b) closed-circuit television; or
- (c) any other means of communication.

169G Engagement of persons to conduct alternative dispute resolution processes

- (1) The Registrar may, on behalf of the Commonwealth, engage persons as consultants to conduct one or more kinds of alternative dispute resolution processes under this Division.
- (2) The Registrar must not engage a person under subsection (1) unless the Registrar is satisfied, having regard to the person's qualifications and experience, that the person is a suitable person to conduct the relevant kind or kinds of alternative dispute resolution processes under this Division.

57 Application

Division 4A of Part VI of the *Copyright Act 1968* applies in relation to applications and references made to the Copyright Tribunal on or after the commencement of the Division.

58 After subsection 171(1)

Insert:

- (1A) An alternative dispute resolution practitioner has, in the performance of his or her duties as an alternative dispute resolution practitioner under this Act, the same protection and immunity as a Justice of the High Court.

59 At the end of section 171

Add:

(4) In this section:

alternative dispute resolution practitioner means a person who conducts an alternative dispute resolution process under Division 4A.

Part 6—Determination of questions relating to Parts VA and VB

Copyright Act 1968

60 After section 135J

Insert:

135JAA Determination of questions relating to this Division or the collecting society's rules

- (1) This section applies if:
 - (a) it is necessary or convenient to determine a question to facilitate future compliance by an administering body or the collecting society with this Division or the provisions of the collecting society's rules described in paragraph 135P(3)(d); and
 - (b) the question is not determined by another provision of this Part or regulations made for the purposes of this Part; and
 - (c) determination of the question affects both the administering body and the collecting society.

Note: An example of such a question might be whether there should be a particular sampling system to provide information to enable the collecting society to determine how to distribute amounts it collects.

- (2) The question must be determined by agreement between the collecting society and the administering body or, failing such agreement, by the Tribunal on the application of either of them.
- (3) If, during a period, the administering body does not comply with the agreement or order of the Tribunal determining the question, sections 135E and 135F do not apply to a copy of a broadcast, or communication of a copy of a broadcast, made by or on behalf of the administering body during the period.

61 After section 135ZW

Insert:

135ZWAA Determination of questions relating to this Part or a collecting society's rules

- (1) This section applies if:
- (a) it is necessary or convenient to determine a question to facilitate future compliance by an administering body or a collecting society with:
 - (i) section 135ZJ, 135ZK, 135ZL, 135ZMC, 135ZMD, 135ZMDA, 135ZP, 135ZQ, 135ZS or 135ZT; or
 - (ii) this Division; or
 - (iii) the provisions of a collecting society's rules described in paragraph 135ZZB(3)(d); and
 - (b) the question is not determined by another provision of this Part or regulations made for the purposes of this Part; and
 - (c) determination of the question affects both the administering body and the collecting society.

Note: An example of such a matter might be a sampling system to provide information to enable a collecting society to determine how to distribute amounts it collects.

- (2) The question must be determined by agreement between the collecting society and the administering body or, failing such agreement, by the Tribunal on the application of either of them.
- (3) If, during a period, the administering body does not comply with the agreement or order of the Tribunal determining the question, sections 135ZJ, 135ZK, 135ZL, 135ZMC, 135ZMD, 135ZMDA, 135ZP, 135ZQ, 135ZS and 135ZT do not apply to a reproduction, copy or communication of a work or other subject-matter made during that period by or on behalf of the administering body.

62 After section 153B

Insert:

153BAAA Application to the Tribunal under subsection 135JAA(2)

- (1) The parties to an application to the Tribunal under subsection 135JAA(2) for the determination of a question are the collecting society and the administering body concerned.
- (2) If an application is made to the Tribunal under subsection 135JAA(2), the Tribunal must consider the application and, after

giving the parties to the application an opportunity of presenting their cases, must make an order determining the question.

- (3) In determining the question, the Tribunal must have regard to such matters (if any) as are prescribed.
- (4) In this section:

administering body has the same meaning as in Part VA.

collecting society has the same meaning as in Part VA.

63 After section 153D

Insert:

153DAA Application to the Tribunal under subsection 135ZWAA(2)

- (1) The parties to an application to the Tribunal under subsection 135ZWAA(2) for the determination of a question are the collecting society and the administering body concerned.
- (2) If an application is made to the Tribunal under subsection 135ZWAA(2), the Tribunal must consider the application and, after giving the parties to the application an opportunity of presenting their cases, must make an order determining the question.
- (3) In determining the question, the Tribunal must have regard to such matters (if any) as are prescribed.
- (4) In this section:

administering body has the same meaning as in Part VB.

collecting society has the same meaning as in Part VB.

Schedule 12—Technological protection measures

Part 1—Main amendments

Copyright Act 1968

1 Subsection 10(1)

Insert:

access control technological protection measure means a device, product, technology or component (including a computer program) that:

- (a) is used in Australia or a qualifying country:
 - (i) by, with the permission of, or on behalf of, the owner or the exclusive licensee of the copyright in a work or other subject-matter; and
 - (ii) in connection with the exercise of the copyright; and
- (b) in the normal course of its operation, controls access to the work or other subject-matter;

but does not include such a device, product, technology or component to the extent that it:

- (c) if the work or other subject-matter is a cinematograph film or computer program (including a computer game)—controls geographic market segmentation by preventing the playback in Australia of a non-infringing copy of the work or other subject-matter acquired outside Australia; or
- (d) if the work is a computer program that is embodied in a machine or device—restricts the use of goods (other than the work) or services in relation to the machine or device.

For the purposes of this definition, *computer program* has the same meaning as in section 47AB.

2 Subsection 10(1) (definition of *circumvention device*)

Repeal the definition, substitute:

circumvention device for a technological protection measure means a device, component or product (including a computer program) that:

- (a) is promoted, advertised or marketed as having the purpose or use of circumventing the technological protection measure; or
- (b) has only a limited commercially significant purpose or use, or no such purpose or use, other than the circumvention of the technological protection measure; or
- (c) is primarily or solely designed or produced to enable or facilitate the circumvention of the technological protection measure.

For the purposes of this definition, *computer program* has the same meaning as in section 47AB.

3 Subsection 10(1) (definition of *circumvention service*)

Repeal the definition, substitute:

circumvention service for a technological protection measure means a service that:

- (a) is promoted, advertised or marketed as having the purpose or use of circumventing the technological protection measure; or
- (b) has only a limited commercially significant purpose or use, or no such purpose or use, other than the circumvention of the technological protection measure; or
- (c) is primarily or solely designed or produced to enable or facilitate the circumvention of the technological protection measure.

4 Subsection 10(1)

Insert:

controls access: a device, product, technology or component (including a computer program) *controls access* to a work or other subject-matter if it requires the application of information or a process, with the permission of the owner or exclusive licensee of the copyright in the work or other subject-matter, to gain access to the work or other subject-matter.

5 Subsection 10(1) (definition of *technological protection measure*)

Repeal the definition, substitute:

technological protection measure means:

- (a) an access control technological protection measure; or
- (b) a device, product, technology or component (including a computer program) that:
 - (i) is used in Australia or a qualifying country by, with the permission of, or on behalf of, the owner or the exclusive licensee of the copyright in a work or other subject-matter; and
 - (ii) in the normal course of its operation, prevents, inhibits or restricts the doing of an act comprised in the copyright;

but does not include such a device, product, technology or component to the extent that it:

- (iii) if the work or other subject-matter is a cinematograph film or computer program (including a computer game)—controls geographic market segmentation by preventing the playback in Australia of a non-infringing copy of the work or other subject-matter acquired outside Australia; or
- (iv) if the work is a computer program that is embodied in a machine or device—restricts the use of goods (other than the work) or services in relation to the machine or device.

For the purposes of this definition, *computer program* has the same meaning as in section 47AB.

6 Section 100AG (after table item 2)

Insert:

- | | | |
|----|---|--|
| 2A | the action is brought under section 116AN, 116AO or 116AP | (a) damages (other than additional damages); or
(b) an account of profits; or
(c) destruction or delivery up of a circumvention device |
|----|---|--|

7 Section 100AG (table item 3)

Omit “116A.”.

8 Division 2A of Part V (heading)

Repeal the heading, substitute:

Division 2A—Actions in relation to technological protection measures and electronic rights management information

9 Section 116A

Repeal the section, substitute:

Subdivision A—Technological protection measures

116AK Definitions

In this Subdivision, *computer program* has the same meaning as in section 47AB.

116AL Interaction of this Subdivision with Part VAA

This Subdivision does not apply to encoded broadcasts (within the meaning of Part VAA).

116AM Geographical application

- (1) This Subdivision applies to acts done in Australia.
- (2) This section does not, by implication, affect the interpretation of any other provision of this Act.

116AN Circumventing an access control technological protection measure

- (1) An owner or exclusive licensee of the copyright in a work or other subject-matter may bring an action against a person if:
 - (a) the work or other subject-matter is protected by an access control technological protection measure; and
 - (b) the person does an act that results in the circumvention of the access control technological protection measure; and

- (c) the person knows, or ought reasonably to know, that the act would have that result.

Exception—permission

- (2) Subsection (1) does not apply to the person if the person has the permission of the copyright owner or exclusive licensee to circumvent the access control technological protection measure.

Exception—interoperability

- (3) Subsection (1) does not apply to the person if:
- (a) the person circumvents the access control technological protection measure to enable the person to do an act; and
 - (b) the act:
 - (i) relates to a copy of a computer program (the ***original program***) that is not an infringing copy and that was lawfully obtained; and
 - (ii) will not infringe the copyright in the original program; and
 - (iia) relates to elements of the original program that will not be readily available to the person when the circumvention occurs; and
 - (iii) will be done for the sole purpose of achieving interoperability of an independently created computer program with the original program or any other program.

Exception—encryption research

- (4) Subsection (1) does not apply to the person if:
- (a) the person circumvents the access control technological protection measure to enable:
 - (i) the person; or
 - (ii) if the person is a body corporate—an employee of the person;to do an act; and
 - (b) the act:
 - (i) relates to a copy of a work or other subject-matter that is not an infringing copy and that was lawfully obtained; and

- (ii) will not infringe the copyright in the work or other subject-matter; and
- (iii) will be done for the sole purpose of identifying and analysing flaws and vulnerabilities of encryption technology; and
- (c) the person or employee is:
 - (i) engaged in a course of study at an educational institution in the field of encryption technology; or
 - (ii) employed, trained or experienced in the field of encryption technology; and
- (d) the person or employee:
 - (i) has obtained permission from the owner or exclusive licensee of the copyright to do the act; or
 - (ii) has made, or will make, a good faith effort to obtain such permission.

In this subsection, *encryption technology* means the scrambling and descrambling of information using mathematical formulas or algorithms.

Exception—computer security testing

- (5) Subsection (1) does not apply to the person if:
 - (a) the person circumvents the access control technological protection measure to enable the person to do an act; and
 - (b) the act:
 - (i) relates to a copy of a computer program that is not an infringing copy; and
 - (ii) will not infringe the copyright in the computer program; and
 - (iii) will be done for the sole purpose of testing, investigating or correcting the security of a computer, computer system or computer network; and
 - (iv) will be done with the permission of the owner of the computer, computer system or computer network.

Exception—online privacy

- (6) Subsection (1) does not apply to the person if:
 - (a) the person circumvents the access control technological protection measure to enable the person to do an act; and

- (b) the act:
 - (i) relates to a copy of a work or other subject-matter that is not an infringing copy; and
 - (ii) will not infringe the copyright in the work or other subject-matter; and
 - (iii) will be done for the sole purpose of identifying and disabling an undisclosed capability to collect or disseminate personally identifying information about the online activities of a natural person; and
 - (iv) will not affect the ability of the person or any other person to gain access to the work or other subject-matter or any other work or subject-matter.

Exception—law enforcement and national security

- (7) Subsection (1) does not apply in relation to anything lawfully done for the purposes of:
 - (a) law enforcement; or
 - (b) national security; or
 - (c) performing a statutory function, power or duty;by or on behalf of the Commonwealth, a State or a Territory, or an authority of one of those bodies.

Exception—libraries etc.

- (8) Subsection (1) does not apply to the person if:
 - (a) the person circumvents the access control technological protection measure to enable the person to do an act; and
 - (b) the person is:
 - (i) a library (other than a library that is conducted for the profit, direct or indirect, of an individual or individuals); or
 - (ii) a body mentioned in paragraph (a) of the definition of **archives** in subsection 10(1), or in subsection 10(4); or
 - (iii) an educational institution; and
 - (c) the act will be done for the sole purpose of making an acquisition decision in relation to the work or other subject-matter; and
 - (d) the work or other subject-matter will not be otherwise available to the person when the act is done.

Note: A library that is owned by a person conducting a business for profit might not itself be conducted for profit (see section 18).

Exception—prescribed acts

- (9) Subsection (1) does not apply to the person if:
- (a) the person circumvents the access control technological protection measure to enable the person to do an act; and
 - (b) the act will not infringe the copyright in a work or other subject-matter; and
 - (c) the doing of the act by the person is prescribed by the regulations.

Note: For the making of regulations prescribing the doing of an act by a person, see section 249.

Burden of proof

- (10) The defendant bears the burden of establishing the matters referred to in subsections (2) to (9).

116AO Manufacturing etc. a circumvention device for a technological protection measure

- (1) An owner or exclusive licensee of the copyright in a work or other subject-matter may bring an action against a person if:
- (a) the person does any of the following acts with a device:
 - (i) manufactures it with the intention of providing it to another person;
 - (ii) imports it into Australia with the intention of providing it to another person;
 - (iii) distributes it to another person;
 - (iv) offers it to the public;
 - (v) provides it to another person;
 - (vi) communicates it to another person; and
 - (b) the person knows, or ought reasonably to know, that the device is a circumvention device for a technological protection measure; and
 - (c) the work or other subject-matter is protected by the technological protection measure.

Exception - no promotion, advertising etc.

- (2) Subsection (1) does not apply to the person if:
- (a) the device is a circumvention device for the technological protection measure only because it was promoted, advertised or marketed as having the purpose of circumventing the technological protection measure; and
 - (b) both of the following apply:
 - (i) the person did not do such promoting, advertising or marketing;
 - (ii) the person did not direct or request (expressly or impliedly) another person to do such promoting, advertising or marketing.

Exception—interoperability

- (3) Subsection (1) does not apply to the person if:
- (a) the circumvention device will be used to circumvent the technological protection measure to enable the doing of an act; and
 - (b) the act:
 - (i) relates to a copy of a computer program (the ***original program***) that is not an infringing copy and that was lawfully obtained; and
 - (ii) will not infringe the copyright in the original program; and
 - (iia) relates to elements of the original program that will not be readily available to the person doing the act when the circumvention occurs; and
 - (iii) will be done for the sole purpose of achieving interoperability of an independently created computer program with the original program or any other program.

Exception—encryption research

- (4) Subsection (1) does not apply to the person if:
- (a) the technological protection measure is an access control technological protection measure; and

- (b) the circumvention device will be used to circumvent the access control technological protection measure to enable a person (the *researcher*) to do an act; and
- (c) the act:
 - (i) relates to a copy of a work or other subject-matter that is not an infringing copy and that was lawfully obtained; and
 - (ii) will not infringe the copyright in the work or other subject-matter; and
 - (iii) will be done for the sole purpose of identifying and analysing flaws and vulnerabilities of encryption technology; and
- (d) the researcher is:
 - (i) engaged in a course of study at an educational institution in the field of encryption technology; or
 - (ii) employed, trained or experienced in the field of encryption technology; and
- (e) the researcher:
 - (i) has obtained permission from the owner or exclusive licensee of the copyright to do the act; or
 - (ii) has made, or will make, a good faith effort to obtain such permission.

In this subsection, *encryption technology* means the scrambling and descrambling of information using mathematical formulas or algorithms.

Exception—computer security testing

- (5) Subsection (1) does not apply to the person if:
 - (a) the technological protection measure is an access control technological protection measure; and
 - (b) the circumvention device will be used to circumvent the access control technological protection measure to enable the doing of an act; and
 - (c) the act:
 - (i) relates to a copy of a computer program that is not an infringing copy; and
 - (ii) will not infringe the copyright in the computer program; and

- (iii) will be done for the sole purpose of testing, investigating or correcting the security of a computer, computer system or computer network; and
- (iv) will be done with the permission of the owner of the computer, computer system or computer network.

Exception—law enforcement and national security

- (6) Subsection (1) does not apply in relation to anything lawfully done for the purposes of:
 - (a) law enforcement; or
 - (b) national security; or
 - (c) performing a statutory function, power or duty;by or on behalf of the Commonwealth, a State or a Territory, or an authority of one of those bodies.

Burden of proof

- (7) The defendant bears the burden of establishing the matters referred to in subsections (2) to (6).

116AP Providing etc. a circumvention service for a technological protection measure

- (1) An owner or exclusive licensee of the copyright in a work or other subject-matter may bring an action against a person if:
 - (a) the person:
 - (i) provides a service to another person; or
 - (ii) offers a service to the public; and
 - (b) the person knows, or ought reasonably to know, that the service is a circumvention service for a technological protection measure; and
 - (c) the work or other subject-matter is protected by the technological protection measure.

Exception - no promotion, advertising etc.

- (2) Subsection (1) does not apply to the person if:
 - (a) the service is a circumvention service for the technological protection measure only because it was promoted, advertised

or marketed as having the purpose of circumventing the technological protection measure; and

- (b) both of the following apply:
 - (i) the person did not do such promoting, advertising or marketing;
 - (ii) the person did not direct or request (expressly or impliedly) another person to do such promoting, advertising or marketing.

Exception—interoperability

- (3) Subsection (1) does not apply to the person if:
 - (a) the circumvention service will be used to circumvent a technological protection measure to enable the doing of an act; and
 - (b) the act:
 - (i) relates to a copy of a computer program (the **original program**) that is not an infringing copy and that was lawfully obtained; and
 - (ii) will not infringe the copyright in the original program; and
 - (ia) relates to elements of the original program that will not be readily available to the person doing the act when the circumvention occurs; and
 - (iii) will be done for the sole purpose of achieving interoperability of an independently created computer program with the original program or any other program.

Exception—encryption research

- (4) Subsection (1) does not apply to the person if:
 - (a) the technological protection measure is an access control technological protection measure; and
 - (b) the circumvention service will be used to circumvent the access control technological protection measure to enable a person (the **researcher**) to do an act; and
 - (c) the act:

- (i) relates to a copy of a work or other subject-matter that is not an infringing copy and that was lawfully obtained; and
 - (ii) will not infringe the copyright in the work or other subject-matter; and
 - (iii) will be done for the sole purpose of identifying and analysing flaws and vulnerabilities of encryption technology; and
- (d) the researcher is:
- (i) engaged in a course of study at an educational institution in the field of encryption technology; or
 - (ii) employed, trained or experienced in the field of encryption technology; and
- (e) the researcher:
- (i) has obtained permission from the owner or exclusive licensee of the copyright to do the act; or
 - (ii) has made, or will make, a good faith effort to obtain such permission.

In this subsection, *encryption technology* means the scrambling and descrambling of information using mathematical formulas or algorithms.

Exception—computer security testing

- (5) Subsection (1) does not apply to the person if:
- (a) the technological protection measure is an access control technological protection measure; and
 - (b) the circumvention service will be used to circumvent the access control technological protection measure to enable the doing of an act; and
 - (c) the act:
 - (i) relates to a copy of a computer program that is not an infringing copy; and
 - (ii) will not infringe the copyright in the computer program; and
 - (iii) will be done for the sole purpose of testing, investigating or correcting the security of a computer, computer system or computer network; and
 - (iv) will be done with the permission of the owner of the computer, computer system or computer network.

Exception—law enforcement and national security

- (6) Subsection (1) does not apply in relation to anything lawfully done for the purposes of:
- (a) law enforcement; or
 - (b) national security; or
 - (c) performing a statutory function, power or duty;
- by or on behalf of the Commonwealth, a State or a Territory, or an authority of one of those bodies.

Burden of proof

- (7) The defendant bears the burden of establishing the matters referred to in subsections (2) to (6).

116AQ Remedies in actions under this Subdivision

- (1) Without limiting the relief that a court may grant in an action under this Subdivision, the relief may include:
- (a) an injunction, subject to such terms, if any, as the court thinks fit; and
 - (b) damages or an account of profits; and
 - (c) if the doing of an act, which is the subject of the action, involved a circumvention device—an order that the circumvention device be destroyed or dealt with as specified in the order.
- (2) In assessing damages, the court may award such additional damages as it considers appropriate, having regard to:
- (a) the flagrancy of the defendant's acts that are the subject of the action; and
 - (b) the need to deter similar acts; and
 - (c) the conduct of the defendant after the acts or, if relevant, after the defendant was informed that the defendant had allegedly done an act that would be the subject of an action under this Subdivision; and
 - (d) any benefit shown to have accrued to the defendant as a result of those acts; and
 - (e) any other relevant matters.
- (3) If:

- (a) an action has been commenced against a person under this Subdivision; and
 - (b) the doing of an act by the person, which is the subject of the action, involved a device; and
 - (c) the device appears to the court to be a circumvention device; the court may order that the device be delivered up to the court upon such conditions as the court considers appropriate.
- (4) This section does not, by implication, affect the interpretation of any other provision of this Act.

Subdivision B—Electronic rights management information

10 Subsections 116D(1) and (2)

Omit “section 116A, 116B, 116C or 116CA”, substitute “this Subdivision”.

Note: The heading to section 116D is altered by omitting “sections 116A, 116B, 116C and 116CA” and substituting “this Subdivision”.

11 After Subdivision D of Division 5 of Part V

Insert:

Subdivision E—Technological protection measures

132APA Definitions

In this Subdivision, *computer program* has the same meaning as in section 47AB.

132APB Interaction of this Subdivision with Part VAA

This Subdivision does not apply to encoded broadcasts (within the meaning of Part VAA).

132APC Circumventing an access control technological protection measure

- (1) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct results in the circumvention of a technological protection measure; and

- (c) the technological protection measure is an access control technological protection measure; and
- (d) the person engages in the conduct with the intention of obtaining a commercial advantage or profit.

Penalty: 60 penalty units.

Defence—permission

- (2) Subsection (1) does not apply to the person if the person has the permission of the copyright owner or exclusive licensee to circumvent the access control technological protection measure.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Defence—interoperability

- (3) Subsection (1) does not apply to the person if:
 - (a) the person circumvents the access control technological protection measure to enable the person to do an act; and
 - (b) the act:
 - (i) relates to a copy of a computer program (the ***original program***) that is not an infringing copy and that was lawfully obtained; and
 - (ii) will not infringe the copyright in the original program; and
 - (ia) relates to elements of the original program that will not be readily available to the person when the circumvention occurs; and
 - (iii) will be done for the sole purpose of achieving interoperability of an independently created computer program with the original program or any other program.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

Defence—encryption research

- (4) Subsection (1) does not apply to the person if:
 - (a) the person circumvents the access control technological protection measure to enable:
 - (i) the person; or

- (ii) if the person is a body corporate—an employee of the person;
- to do an act; and
- (b) the act:
 - (i) relates to a copy of a work or other subject-matter that is not an infringing copy and that was lawfully obtained; and
 - (ii) will not infringe the copyright in the work or other subject-matter; and
 - (iii) will be done for the sole purpose of identifying and analysing flaws and vulnerabilities of encryption technology; and
 - (c) the person or employee is:
 - (i) engaged in a course of study at an educational institution in the field of encryption technology; or
 - (ii) employed, trained or experienced in the field of encryption technology; and
 - (d) the person or employee:
 - (i) has obtained permission from the owner or exclusive licensee of the copyright to do the act; or
 - (ii) has made, or will make, a good faith effort to obtain such permission.

In this subsection, **encryption technology** means the scrambling and descrambling of information using mathematical formulas or algorithms.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

Defence—computer security testing

- (5) Subsection (1) does not apply to the person if:
 - (a) the person circumvents the access control technological protection measure to enable the person to do an act; and
 - (b) the act:
 - (i) relates to a copy of a computer program that is not an infringing copy; and
 - (ii) will not infringe the copyright in the computer program; and

- (iii) will be done for the sole purpose of testing, investigating or correcting the security of a computer, computer system or computer network; and
- (iv) will be done with the permission of the owner of the computer, computer system or computer network.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Defence—online privacy

- (6) Subsection (1) does not apply to the person if:
- (a) the person circumvents the access control technological protection measure to enable the person to do an act; and
 - (b) the act:
 - (i) relates to a copy of a work or other subject-matter that is not an infringing copy; and
 - (ii) will not infringe the copyright in the work or other subject-matter; and
 - (iii) will be done for the sole purpose of identifying and disabling an undisclosed capability to collect or disseminate personally identifying information about the online activities of a natural person; and
 - (iv) will not affect the ability of the person or any other person to gain access to the work or other subject-matter or any other work or subject-matter.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

Defence—law enforcement and national security

- (7) Subsection (1) does not apply in relation to anything lawfully done for the purposes of:
- (a) law enforcement; or
 - (b) national security; or
 - (c) performing a statutory function, power or duty;
- by or on behalf of the Commonwealth, a State or a Territory, or an authority of one of those bodies.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

Defence—libraries etc.

- (8) Subsection (1) does not apply in respect of anything lawfully done by the following bodies in performing their functions:
- (a) a library (other than a library that is conducted for the profit, direct or indirect, of an individual or individuals);
 - (b) a body mentioned in:
 - (i) paragraph (a) of the definition of *archives* in subsection 10(1); or
 - (ii) subsection 10(4);
 - (c) an educational institution;
 - (d) a public non-commercial broadcaster (including a body that provides a national broadcasting service, within the meaning of the *Broadcasting Services Act 1992*, and a body that holds a community broadcasting licence within the meaning of that Act).

Note 1: A library that is owned by a person conducting a business for profit might not itself be conducted for profit (see section 18).

Note 2: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

Defence—prescribed acts

- (9) Subsection (1) does not apply to the person if:
- (a) the person circumvents the access control technological protection measure to enable the person to do an act; and
 - (b) the act will not infringe the copyright in a work or other subject-matter; and
 - (c) the doing of the act by the person is prescribed by the regulations.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: For the making of regulations prescribing the doing of an act by a person, see section 249.

132APD Manufacturing etc. a circumvention device for a technological protection measure

- (1) A person commits an offence if:
- (a) the person does any of the following acts with a device:

- (i) manufactures it with the intention of providing it to another person;
- (ii) imports it into Australia with the intention of providing it to another person;
- (iii) distributes it to another person;
- (iv) offers it to the public;
- (v) provides it to another person;
- (vi) communicates it to another person; and
- (b) the person does the act with the intention of obtaining a commercial advantage or profit; and
- (c) the device is a circumvention device for a technological protection measure.

Penalty: 550 penalty units or imprisonment for 5 years, or both.

Defence—no promotion, advertising etc.

- (2) Subsection (1) does not apply to the person if:
 - (a) the device is a circumvention device for the technological protection measure only because it was promoted, advertised or marketed as having the purpose of circumventing the technological protection measure; and
 - (b) both of the following apply:
 - (i) the person did not do such promoting, advertising or marketing;
 - (ii) the person did not direct or request (expressly or impliedly) another person to do such promoting, advertising or marketing.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Defence—interoperability

- (3) Subsection (1) does not apply to the person if:
 - (a) the circumvention device will be used to circumvent the technological protection measure to enable the doing of an act; and
 - (b) the act:
 - (i) relates to a copy of a computer program (the ***original program***) that is not an infringing copy and that was lawfully obtained; and

- (ii) will not infringe the copyright in the original program;
and
- (iia) relates to elements of the original program that will not be readily available to the person doing the act when the circumvention occurs; and
- (iii) will be done for the sole purpose of achieving interoperability of an independently created computer program with the original program or any other program.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

Defence—encryption research

- (4) Subsection (1) does not apply to the person if:
 - (a) the technological protection measure is an access control technological protection measure; and
 - (b) the circumvention device will be used to circumvent the access control technological protection measure to enable a person (the *researcher*) to do an act; and
 - (c) the act:
 - (i) relates to a copy of a work or other subject-matter that is not an infringing copy and that was lawfully obtained;
and
 - (ii) will not infringe the copyright in the work or other subject-matter; and
 - (iii) will be done for the sole purpose of identifying and analysing flaws and vulnerabilities of encryption technology; and
 - (d) the researcher is:
 - (i) engaged in a course of study at an educational institution in the field of encryption technology; or
 - (ii) employed, trained or experienced in the field of encryption technology; and
 - (e) the researcher:
 - (i) has obtained permission from the owner or exclusive licensee of the copyright to do the act; or
 - (ii) has made, or will make, a good faith effort to obtain such permission.

In this subsection, *encryption technology* means the scrambling and descrambling of information using mathematical formulas or algorithms.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

Defence—computer security testing

- (5) Subsection (1) does not apply to the person if:
- (a) the technological protection measure is an access control technological protection measure; and
 - (b) the circumvention device will be used to circumvent the access control technological protection measure to enable the doing of an act; and
 - (c) the act:
 - (i) relates to a copy of a computer program that is not an infringing copy; and
 - (ii) will not infringe the copyright in the computer program; and
 - (iii) will be done for the sole purpose of testing, investigating or correcting the security of a computer, computer system or computer network; and
 - (iv) will be done with the permission of the owner of the computer, computer system or computer network.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Defence—law enforcement and national security

- (6) Subsection (1) does not apply in relation to anything lawfully done for the purposes of:
- (a) law enforcement; or
 - (b) national security; or
 - (c) performing a statutory function, power or duty;
- by or on behalf of the Commonwealth, a State or a Territory, or an authority of one of those bodies.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

Defence—libraries etc.

- (7) Subsection (1) does not apply in respect of anything lawfully done by the following bodies in performing their functions:
- (a) a library (other than a library that is conducted for the profit, direct or indirect, of an individual or individuals);
 - (b) a body mentioned in:
 - (i) paragraph (a) of the definition of *archives* in subsection 10(1); or
 - (ii) subsection 10(4);
 - (c) an educational institution;
 - (d) a public non-commercial broadcaster (including a body that provides a national broadcasting service, within the meaning of the *Broadcasting Services Act 1992*, and a body that holds a community broadcasting licence within the meaning of that Act).

Note 1: A library that is owned by a person conducting a business for profit might not itself be conducted for profit (see section 18).

Note 2: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

132APE Providing etc. a circumvention service for a technological protection measure

- (1) A person commits an offence if:
- (a) the person:
 - (i) provides a service to another person; or
 - (ii) offers a service to the public; and
 - (b) the person does so with the intention of obtaining a commercial advantage or profit; and
 - (c) the service is a circumvention service for a technological protection measure.

Penalty: 550 penalty units or imprisonment for 5 years, or both.

Defence—no promotion, advertising etc.

- (2) Subsection (1) does not apply to the person if:
- (a) the service is a circumvention service for the technological protection measure only because it was promoted, advertised

or marketed as having the purpose of circumventing the technological protection measure; and

- (b) both of the following apply:
- (i) the person did not do such promoting, advertising or marketing;
 - (ii) the person did not direct or request (expressly or impliedly) another person to do such promoting, advertising or marketing.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Defence—interoperability

- (3) Subsection (1) does not apply to the person if:
- (a) the circumvention service will be used to circumvent a technological protection measure to enable the doing of an act; and
 - (b) the act:
 - (i) relates to a copy of a computer program (the ***original program***) that is not an infringing copy and that was lawfully obtained; and
 - (ii) will not infringe the copyright in the original program; and
 - (iia) relates to elements of the original program that will not be readily available to the person doing the act when the circumvention occurs; and
 - (iii) will be done for the sole purpose of achieving interoperability of an independently created computer program with the original program or any other program.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

Defence—encryption research

- (4) Subsection (1) does not apply to the person if:
- (a) the technological protection measure is an access control technological protection measure; and
 - (b) the circumvention service will be used to circumvent the access control technological protection measure to enable a person (the ***researcher***) to do an act; and

- (c) the act:
 - (i) relates to a copy of a work or other subject-matter that is not an infringing copy and that was lawfully obtained; and
 - (ii) will not infringe the copyright in the work or other subject-matter; and
 - (iii) will be done for the sole purpose of identifying and analysing flaws and vulnerabilities of encryption technology; and
- (d) the researcher is:
 - (i) engaged in a course of study at an educational institution in the field of encryption technology; or
 - (ii) employed, trained or experienced in the field of encryption technology; and
- (e) the researcher:
 - (i) has obtained permission from the owner or exclusive licensee of the copyright to do the act; or
 - (ii) has made, or will make, a good faith effort to obtain such permission.

In this subsection, **encryption technology** means the scrambling and descrambling of information using mathematical formulas or algorithms.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

Defence—computer security testing

- (5) Subsection (1) does not apply to the person if:
 - (a) the technological protection measure is an access control technological protection measure; and
 - (b) the circumvention service will be used to circumvent the access control technological protection measure to enable the doing of an act; and
 - (c) the act:
 - (i) relates to a copy of a computer program that is not an infringing copy; and
 - (ii) will not infringe the copyright in the computer program; and

- (iii) will be done for the sole purpose of testing, investigating or correcting the security of a computer, computer system or computer network; and
- (iv) will be done with the permission of the owner of the computer, computer system or computer network.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Defence—law enforcement and national security

- (6) Subsection (1) does not apply in relation to anything lawfully done for the purposes of:
- (a) law enforcement; or
 - (b) national security; or
 - (c) performing a statutory function, power or duty;
- by or on behalf of the Commonwealth, a State or a Territory, or an authority of one of those bodies.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

Defence—libraries etc.

- (7) Subsection (1) does not apply in respect of anything lawfully done by the following bodies in performing their functions:
- (a) a library (other than a library that is conducted for the profit, direct or indirect, of an individual or individuals);
 - (b) a body mentioned in:
 - (i) paragraph (a) of the definition of *archives* in subsection 10(1); or
 - (ii) subsection 10(4);
 - (c) an educational institution;
 - (d) a public non-commercial broadcaster (including a body that provides a national broadcasting service, within the meaning of the *Broadcasting Services Act 1992*, and a body that holds a community broadcasting licence within the meaning of that Act).

Note 1: A library that is owned by a person conducting a business for profit might not itself be conducted for profit (see section 18).

Note 2: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

12 Subsection 134(2)

Omit “116A”, substitute “116AN, 116AO, 116AP”.

13 After section 202

Insert:

202A Groundless threats of legal proceedings in relation to technological protection measures

- (1) If a person (the *first person*) threatens another person with an action under Subdivision A of Division 2A of Part V, a person aggrieved may bring an action against the first person.

Note: Subdivision A of Division 2A of Part V establishes causes of action that relate to circumventing an access control technological protection measure (section 116AN), manufacturing etc. a circumvention device for a technological protection measure (section 116AO) and providing etc. a circumvention service for a technological protection measure (section 116AP).

- (2) An action may be brought under this section whether or not the first person is the owner or exclusive licensee of the copyright in the work or other subject-matter to which the threatened action relates.
- (3) The mere notification that a work or other subject-matter is protected by a technological protection measure does not constitute a threat of an action within the meaning of this section.
- (4) In an action under this section, the orders a court may make include the following:
- (a) an order declaring that the threat is unjustifiable;
 - (b) an order granting an injunction restraining the first person from continuing to make the threat;
 - (c) an order awarding such damages (if any) for loss that the person aggrieved has suffered as a result of the making of the threat.
- (5) The court must not make an order under subsection (4) if the first person satisfies the court that an action under Subdivision A of Division 2A of Part V has reasonable prospects of success.
- (6) Nothing in this section renders a barrister or solicitor of the High Court, or of the Supreme Court of a State or Territory, liable to an

action under this section in respect of an act done in his or her professional capacity on behalf of a client.

- (7) If an action under this section is brought:
- (a) the first person may apply, by way of counterclaim, for relief to which he or she would be entitled in an action under Subdivision A of Division 2A of Part V; and
 - (b) the provisions of Part V apply as if the counterclaim were an action brought by the first person under that Subdivision.

Note: The heading to section 202 is altered by adding at the end “**in relation to copyright infringement**”.

14 Section 249

Before “The Governor-General”, insert “(1)”.

Note: The following heading to subsection 249(1) is inserted “*General regulation-making power*”.

15 At the end of section 249

Add:

Regulations in relation to technological protection measures

- (2) Without limiting subsection (1), the Governor-General may make regulations prescribing the doing of an act by a person for the purposes of subsections 116AN(9) and 132APC(9).

Note: For prescription of acts and persons by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (3) However, the Governor-General must not make a regulation prescribing the doing of an act by a person unless the Minister makes a recommendation to prescribe the doing of the act by the person.
- (4) The Minister may only make a recommendation to prescribe the doing of an act by a person if:
- (a) a submission has been made (whether before or after the commencement of this section) to prescribe the doing of the act by the person; and
 - (b) the doing of the act by the person will not infringe the copyright in a work or other subject-matter; and
 - (c) the doing of the act by the person is in relation to a particular class of works or other subject-matter; and

- (d) an actual or likely adverse impact on the doing of the act by the person has been credibly demonstrated; and
- (e) the adequacy of the protection and the effectiveness of the remedies provided by Subdivision A of Division 2A of Part V and Subdivision E of Division 5 of Part V would not be impaired if the doing of the act by the person were prescribed.

Note: For the purposes of paragraph (a), it is not necessary for the person who made the submission to be the person in relation to whom the act is prescribed.

- (5) If a submission has been made to prescribe the doing of an act by a person, the Minister must make a decision whether to recommend the prescription of the doing of the act by the person as soon as practicable after receiving the submission, but in any case, within 4 years of receiving it.
- (6) The Governor-General may make regulations varying or revoking regulations made under subsection (2).
- (7) However, the Governor-General must not make a regulation varying or revoking a regulation made under subsection (2) unless the Minister makes a recommendation to vary or revoke the regulation.
- (8) The Minister may make a recommendation to vary or revoke a regulation made under subsection (2) only if:
 - (a) a submission has been made to vary or revoke the regulation; and
 - (b) an actual or likely adverse impact on the doing of the act by the person that is the subject of the regulation can no longer be credibly demonstrated; and
 - (c) the adequacy of the protection and the effectiveness of the remedies provided by Subdivision A of Division 2A of Part V and Subdivision E of Division 5 of Part V would be impaired if the regulation were not varied or revoked.
- (9) If a submission has been made to vary or revoke a regulation made under subsection (2), the Minister must make a decision whether to recommend the variation or revocation of the regulation as soon as practicable after receiving the submission, but in any case, within 4 years of receiving it.

16 Application of amendments

The amendments made by this Part apply to acts done on or after the commencement of this Part.

Part 2—Amendments contingent on the Archives Amendment Act 2006

17 Subparagraph 116AN(8)(b)(ii)

Repeal the subparagraph, substitute:

- (ii) a body or person mentioned in paragraph (a) or (aa) of the definition of *archives* in subsection 10(1), or in subsection 10(4);

18 Paragraphs 132APC(8)(b), 132APD(7)(b) and 132APE(7)(b)

Repeal the paragraphs, substitute:

- (b) a body or person mentioned in:
 - (i) paragraph (a) or (aa) of the definition of *archives* in subsection 10(1); or
 - (ii) subsection 10(4);

*[Minister's second reading speech made in—
House of Representatives on 19 October 2006
Senate on 6 November 2006]*

(157/06)
