



# Copyright Tribunal (Procedure) Amendment Regulations 2010 (No. 1)<sup>1</sup>

## Select Legislative Instrument 2010 No. 250

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I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Copyright Act 1968*.

Dated 27 October 2010

QUENTIN BRYCE  
Governor-General

By Her Excellency's Command

ROBERT McCLELLAND  
Attorney-General

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**1 Name of Regulations**

These Regulations are the *Copyright Tribunal (Procedure) Amendment Regulations 2010 (No. 1)*.

**2 Commencement**

These Regulations commence on the day after they are registered.

**3 Amendment of *Copyright Tribunal (Procedure) Regulations 1969***

Schedule 1 amends the *Copyright Tribunal (Procedure) Regulations 1969*.

**Schedule 1 Amendments**

(regulation 3)

**[1] Subregulation 4 (1), after definition of *proceeding***

*insert*

*Registrar* means the Registrar of the Tribunal.

**[2] Subregulation 4 (1), definition of *the Secretary***

*omit*

**[3] Subregulation 4 (3)**

*omit*

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**[4] Paragraph 5 (1) (b)**

*omit*

“Copyright Tribunal”.

*insert*

“Copyright Tribunal of Australia”.

**[5] Regulation 6, heading**

*substitute*

**6 Office or offices of Registrar**

**[6] After regulation 18**

*insert*

**18A Matters to be included in application under subsection 10A (5A) of the Act**

An application to the Tribunal under subsection 10A (5A) of the Act must:

- (a) state that the institution is included in a notice published under subsection 10A (4) of the Act for paragraph (g), (h) or (i) of the definition of *educational institution* in subsection 10 (1) of the Act; and
- (b) attach a copy of the notice, published in the *Gazette* under subsection 10A (4) of the Act, that includes the declaration that is to be reviewed; and
- (c) state the grounds for review of the declaration, included in the notice, that are to be relied upon in the case; and
- (d) ask the Tribunal to determine the question of whether the notice should be set aside or the declaration confirmed.

**[7] Paragraph 23B (f)**

*omit*

per student of the institution concerned

**[8] After regulation 23CB***insert***23CC Matters to be included in applications under subsection 135JAA (2) or 135ZWAA (2) of the Act**

An application to the Tribunal under subsection 135JAA (2) or 135ZWAA (2) of the Act must:

- (a) state if the applicant is an administering body or a collecting society; and
- (b) if the applicant is an administering body — state the name of the collecting society; and
- (c) if the applicant is a collecting society:
  - (i) for an application under subsection 135JAA (2) of the Act — give particulars of the notice about the society published in the *Gazette* under paragraph 135P (1A) (a) or subsection 153BAB (5) of the Act; and
  - (ii) for an application under subsection 135ZWAA (2) of the Act — give particulars of the notice about the society published in the *Gazette* under paragraph 135ZZB (1A) (a) or subsection 153DC (5) of the Act; and
  - (iii) state the name of the administering body; and
- (d) explain the circumstances or events giving rise to the application and, in particular:
  - (i) state that the criteria in subsection 135JAA (1) or 135ZWAA (1) of the Act are met and detail how the criteria are met; and
  - (ii) for an application under subsection 135ZWAA (2) of the Act — state if the application is made to determine a question to assist future compliance with subparagraph 135ZWAA (1) (a) (i), (ii), or (iii) of the Act; and
  - (iii) give details of the failed attempt to determine the question by agreement between the administering body and the collecting society; and
- (e) ask the Tribunal to determine the question.

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**23CD Matters to be included in applications under subsection 135K (2A) or 135ZX (2A) of the Act**

An application to the Tribunal under subsection 135K (2A) or 135ZX (2A) of the Act must:

- (a) state if the applicant is an administering body or a collecting society; and
- (b) if the applicant is an administering body — state the name of the collecting society; and
- (c) if the applicant is a collecting society:
  - (i) for an application under subsection 135K (2A) of the Act — give particulars of the notice about the society published in the *Gazette* under paragraph 135P (1A) (a) or subsection 153BAB (5) of the Act; and
  - (ii) for an application under subsection 135ZX (2A) of the Act — give particulars of the notice about the society published in the *Gazette* under paragraph 135ZZB (1A) (a) or subsection 153DC (5) of the Act; and
  - (iii) state the name of the administering body; and
- (d) explain the circumstances or events giving rise to the application and, in particular:
  - (i) state the day on which the relevant records notice started; and
  - (ii) state the activity required under subsection 135K (1) or 135ZX (1) of the Act and the matter that needs to be determined; and
  - (iii) give details of the failed attempt to determine the matter by agreement between the administering body and the collecting society; and
- (e) ask the Tribunal to determine the matter.

**23CE Matters to be included in reference under paragraph 135P (1A) (c) of the Act**

A reference to the Tribunal under paragraph 135P (1A) (c) of the Act must:

- (a) state the name of the body; and

- (b) state that the body has applied to be declared as the collecting society under section 135P of the Act; and
- (c) attach a copy of the application by the body seeking the declaration; and
- (d) explain the circumstances or events giving rise to the reference; and
- (e) ask the Tribunal to determine the application by declaring the body to be the collecting society under section 135P of the Act or by rejecting the application.

**23CF Matters to be included in reference under paragraph 135Q (2) (b) of the Act**

A reference to the Tribunal under paragraph 135Q (2) (b) of the Act must:

- (a) state the name of the collecting society included in the reference; and
- (b) state the provisions of the Act under which it is declared to be the collecting society; and
- (c) give particulars of the notice about the declaration of the collecting society published in the *Gazette* by the Minister or the Tribunal; and
- (d) state the matters by which the Minister is satisfied under subsection 135Q (1) of the Act; and
- (e) ask the Tribunal to determine the question of whether the declaration of the body as the collecting society should be revoked.

**23CG Matters to be included in applications under subsection 135SA (1), 135ZZEA (1), 135ZZWA (1) or 183F (1) of the Act**

An application to the Tribunal under subsection 135SA (1), 135ZZEA (1), 135ZZWA (1) or 183F (1) of the Act must:

- (a) state if the applicant is a collecting society or a member of a collecting society; and
- (b) state if the application is for review of the arrangement adopted, or an arrangement proposed to be adopted, by the collecting society for distributing amounts it collects in a period; and

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- (c) explain the circumstances or events giving rise to the application; and
  - (d) give particulars of the arrangement; and
  - (e) give particulars of:
    - (i) the variation sought to the arrangement; or
    - (ii) the arrangement sought to be substituted for the arrangement; and
  - (f) ask the Tribunal to determine the application by making an order confirming the arrangement, varying the arrangement or substituting for the arrangement another arrangement.

**[9] Paragraph 23E (f)**

*omit*

per student of the institution concerned

**[10] After regulation 23J**

*insert*

**23JA Matters to be included in references under paragraph 135ZZB (1A) (c) or 135ZZT (1A) (c) of the Act**

A reference to the Tribunal under paragraph 135ZZB (1A) (c) or 135ZZT (1A) (c) of the Act must:

- (a) state the name of the body included in the reference; and
- (b) explain the circumstances or events giving rise to the reference; and
- (c) state that the body has applied to be declared as a collecting society under section 135ZZB or 135ZZT of the Act; and
- (d) state whether the declaration sought is as a collecting society for all relevant copyright owners or for classes of relevant copyright owners; and
- (e) if there is another body at present declared in relation to those copyright owners as a collecting society under section 135ZZB or 135ZZT of the Act — state the name of the other body; and

- (f) ask the Tribunal to determine the application by declaring the body to be a collecting society under section 135ZZB or 135ZZT of the Act or by rejecting the application.

**23JB Matters to be included in references under paragraph 135ZZC (2) (b) or 135ZZU (2) (b) of the Act**

A reference to the Tribunal under paragraph 135ZZC (2) (b) or 135ZZU (2) (b) of the Act must:

- (a) state the name of the collecting society; and
- (b) state the provisions of the Act under which it is declared to be a collecting society; and
- (c) state the relevant copyright owners or the classes of relevant copyright owners for which the collecting society is declared; and
- (d) give particulars of the notice about the declaration of the collecting society published in the *Gazette* by the Minister or the Tribunal; and
- (e) state the matters by which the Minister is satisfied under subsection 135ZZC (1) or 135ZZU (1) of the Act; and
- (f) ask the Tribunal to determine the question of whether the declaration of the body as the collecting society should be revoked.

**[11] After regulation 25B**

*insert*

**25C Matters to be included in application under subsection 153F (1) of the Act**

An application to the Tribunal under subsection 153F (1) of the Act must:

- (a) state that the criteria in subsection 153F (6) of the Act are met and detail how they are met; and
- (b) state if the applicant seeks a declaration for all government copies or a class of government copies; and



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- (c) if there is another body at present declared as a collecting society under section 153F of the Act for the government copies for which a declaration is now sought — state the name of that body; and
  - (d) ask the Tribunal to determine the application by declaring the applicant to be a collecting society for Division 2 of Part VII of the Act or by rejecting the application.

**25D Matters to be included in application under subsection 153G (1) of the Act**

An application to the Tribunal under subsection 153G (1) of the Act must:

- (a) if the applicant is not the collecting society — state the name of the collecting society; and
- (b) state the provisions of the Act under which the collecting society is declared to be a collecting society; and
- (c) give particulars of the notice published in the *Gazette* about the declaration of the collecting society; and
- (d) state the grounds in subsection 153G (5) of the Act that will be relied on in the case; and
- (e) ask the Tribunal to determine the question of whether the declaration of the collecting society should be revoked.

**25E Matters to be included in application under subsection 153K (1) of the Act**

An application to the Tribunal under subsection 153K (1) of the Act must:

- (a) explain the circumstances or events giving rise to the application and, in particular:
  - (i) identify the copyright material relating to the application; and
  - (ii) state a period for which an order is sought; and
  - (iii) state whether the government copies made in the period were made by the Commonwealth or by a State, and, if a State, name the State; and

- (iv) state that subsection 183 (5) of the Act does not apply to the government copies made in the period because the relevant collecting society is declared for Division 2 of Part VII of the Act for the copies, and the society has not finished operating as that collecting society; and
  - (v) if a government copy is to be omitted from the Tribunal's order determining the method — state the reason for the omission; and
- (b) ask the Tribunal to make an order determining the method for working out remuneration payable under subsection 183A (2) of the Act for government copies made for the services of the government in the particular period.

**[12] Paragraph 26 (1) (d)**

*omit*

the scheme,

*insert*

the scheme or substituting for the scheme another scheme proposed by one of the parties,

**[13] Paragraph 27 (1) (e)**

*omit*

the scheme,

*insert*

the scheme or substituting for the scheme another scheme proposed by one of the parties,

**[14] Paragraph 28 (2) (a)**

*omit*

confirmed or varied

*insert*

confirmed, varied or substituted

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**[15] Paragraph 29 (1) (g)**

*substitute*

- (g) for cases included in the class of cases to which the reference relates — request the Tribunal to make an order about the scheme as previously confirmed, varied or substituted, by confirming or varying the scheme or substituting for the scheme another scheme proposed by one of the parties, as the Tribunal considers reasonable in the circumstances.

**[16] Paragraph 30 (1) (b)**

*substitute*

- (b) must ask the Tribunal to make an order stating:
- (i) the charges and the conditions that the Tribunal considers apply under the scheme for the applicant; or
  - (ii) that the applicant be granted a licence in the terms proposed by the applicant, the licensor or another party to the application.

**[17] Paragraph 31 (1) (b)**

*substitute*

- (b) must ask the Tribunal to make an order stating:
- (i) the charges and the conditions that the Tribunal considers reasonable in the circumstances for the applicant; or
  - (ii) that the applicant be granted a licence in the terms proposed by the applicant, the licensor or another party to the application.

**[18] Paragraph 32 (1) (b)**

*substitute*

- (b) must ask the Tribunal to make an order stating:
- (i) the charges and the conditions that the Tribunal considers reasonable in the circumstances for the applicant; or

- (ii) that the applicant be granted a licence in the terms proposed by the applicant, the licensor or another party to the application.

**[19] Paragraph 33 (1) (b)**

*substitute*

- (b) must ask the Tribunal to make an order stating:
  - (i) the charges and the conditions that the Tribunal considers reasonable in the circumstances for the persons represented by the applicant; or
  - (ii) that a licence be granted, in the terms proposed by the applicant, the licensor or another party to the application, to each person who is specified in the order (whether by reference to a class or otherwise) and who was represented by the applicant or was a party to the application.

**[20] Subregulation 34 (1)**

*substitute*

- (1) An application to the Tribunal by a person seeking to be made a party to a proceeding must:
  - (a) state the date when the proceeding was started and the relevant file number; and
  - (b) state the interest of the person:
    - (i) if the proceeding is a reference under section 135P, 135ZZB or 135ZZT, or an application under section 153F, of the Act — in the question of whether the applicant should be declared to be a collecting society; and
    - (ii) if the proceeding is a reference under section 135Q, 135ZZC or 135ZZU, or an application under section 153G, of the Act — in the question of whether the declaration of the collecting society should be revoked; and
    - (iii) if the proceeding is an application under section 135SA, 135ZZEA, 135ZZWA or 183F of the Act — in the arrangement; and

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- (iv) if the proceeding is an application under section 152 of the Act — in the matter applied for; and
  - (v) if the proceeding is a reference under section 154 of the Act — in the operation of the scheme that is referred; and
  - (vi) if the proceeding is a reference under section 155 or 156, or an application under section 157, of the Act — in the matter in dispute; and
  - (vii) if the proceeding is an application for leave of the Tribunal under subsection 156 (2) of the Act to refer a licence scheme to the Tribunal — in the operation of the scheme to the extent that it relates to the class of cases in the application; and
  - (viii) if the proceeding is a reference or application under Subdivision H of Division 3 of Part VI of the Act that is of interest to the Australian Competition and Consumer Commission — in the matter that is referred or applied for; and
- (c) ask the Tribunal to make the person a party to the proceeding.

**[21] Regulation 37A, heading**

*substitute*

**37A Registrar may request further copies of documents**

**[22] Regulation 44**

*substitute*

**44 Summons to witness or produce documents**

- (1) A summons to a witness under subsection 167 (2) of the Act must be substantially in accordance with Form 2 in Schedule 1.
- (2) A summons to produce specified documents or articles under subsection 167 (3) of the Act must be substantially in accordance with Form 3 in Schedule 1.

- (3) A summons under subsection 167 (2) or (3) of the Act must be served on a person by:
- (a) delivering a copy of the summons to the person personally; and
  - (b) showing the summons to the person at the time at which the copy is delivered to him or her.

**[23] Schedule 1, Form 1**

*after*

Copyright Tribunal

*insert*

of Australia

**[24] Schedule 1, Form 2**

*after*

before the Copyright Tribunal

*insert*

of Australia

**[25] Schedule 1, Form 2**

*omit*

Secretary] of the Copyright Tribunal

*insert*

Registrar] of the Copyright Tribunal of Australia

**[26] Schedule 1, after Form 2**

*insert*

**Form 3 Summons to produce documents**

*(Title)*

To: [*name and address of witness*]

1. You are summoned to produce to the Copyright Tribunal of Australia the following documents or articles or documents and articles:  
[*here set out the documents and articles required*]
2. You are required to produce the documents or articles or documents and articles to [*specified person*] at [*specified time and specified place*]

Dated .

President [*or Deputy President or Member  
or the Registrar*] of the Copyright Tribunal of Australia

**[27] Further amendments — Registrar**

The following provisions are amended by omitting each mention of ‘Secretary’ and inserting ‘Registrar’:

- subregulations 5 (2), (3) and (4)
- regulation 6
- regulation 7
- regulation 8
- regulation 9
- regulation 10

- subregulations 11 (1), (2), and (3)
- paragraph 12 (1) (a)
- regulation 14
- subregulations 15 (2) and (4)
- paragraph 17 (1) (f)
- subregulations 17 (3), (5), (6) and (7)
- subregulation 18 (1)
- subregulations 35 (4), (6), (7) and (8)
- regulation 37
- subregulation 37A (1)
- subregulation 38 (3)
- paragraph 39 (a)
- subregulations 40 (1), (2), (4) and (5)
- subregulation 40A (2)
- subregulation 41 (2)
- subregulations 42 (1) and (2)
- subregulations 43 (1) and (3)
- regulation 45.

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.