

Explanatory Statement

Copyright Act 1968

Copyright Regulations 2017

Issued by the Authority of the Minister for Communications

Purpose

The *Copyright Act 1968* (the Act) regulates and determines the scope of copyright in Australia.

Subsection 249(1) of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted by the Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Copyright Regulations 2017* (2017 Regulations) is to remake the *Copyright Regulations 1969* (1969 Regulations) and the *Copyright Tribunal (Procedure) Regulations 1969* (Tribunal Regulations) in a single consolidated instrument and to modernise and update certain provisions in the 1969 Regulations and the Tribunal Regulations.

The 1969 Regulations prescribe a range of matters that the Act requires or permits to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to the Act. This includes provisions relating to copyright in original works and other subject-matter, remedies for infringement of copyright, and the copying and communication of copyright material by educational and other institutions.

Section 166 of the Act authorises the Regulations to make provision for or in relation to the procedure in connection with the making of references and applications to the Copyright Tribunal (the Tribunal) and the regulation of proceedings before the Tribunal. The Tribunal is a specialist body that principally arbitrates disputes between copyright collecting societies and their licensees.

The Tribunal Regulations include general provisions related to the operation of the Tribunal such as the content and form of applications and references to the Tribunal, the filing with the Tribunal of documents, the form and service of summons and the recording and notification of Tribunal orders.

The 1969 Regulations and Tribunal Regulations are due to sunset on 1 April 2018 by operation of Part 4 of Chapter 3 of the *Legislation Act 2003*. These Regulations were originally due to sunset on 1 April 2017, but this was deferred to 1 April 2018 by the *Legislation (Deferral of Sunsetting—Copyright Instruments) Certificate 2017*.

The 2017 Regulations also contain changes compared to the previous 1969 Regulations and Tribunal Regulations reflecting amendments to the Act made by the *Copyright Amendment (Disability Access and Other Measures) Act 2017* (Disability Access Act). The majority of the provisions of the 2017 Regulations commence at the same time as Schedule 1 to the Disability Access Act commences.

The *Copyright Legislation Amendment (Technological Protection Measures) Regulations 2017* (TPM Regulations) are related to the 2017 Regulations. The TPM Regulations repeal Tribunal Regulations in their entirety, and all of the provisions of the 1969 Regulations except those

relating to technological protection measures. Those provisions relating to technological protection measures will not be repealed prior to sunset on 1 April 2018 due to restrictions on varying or revoking such regulations in section 249 of the Act. Accordingly, the provisions in the 2017 Regulations relating to TPMs commence later on 1 April 2018. The TPM Regulations also rename the 1969 Regulations to the *Copyright (Technological Protection Measures) Regulations 1969*.

The 2017 Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the 2017 Regulations are set out at Attachment 1.

Consultation

An exposure draft of the 2017 Regulations was released for public consultation on 11 September 2017.

The following stakeholders made submissions on the exposure draft:

Australian Copyright Council
Australian Film & TV Bodies
Australian Home Entertainment Distributors Association (AHEDA)
Australian Libraries Copyright Committee (ALCC) and Australian Digital Alliance (ADA)
Joint Submission
Australasian Music Publishers Association Limited (AMPAL)
APRA AMCOS
Australian Publishers Association (various committees)
Copyright Advisory Group COAG Education Council
Copyright Agency
Communications Alliance
Commercial Radio Australia
Foxtel
Free TV
Interactive Games & Entertainment Association (IGEA)
Music Rights Australia
National Association for the Visual Arts (NAVA)
News Corp Australia
Pirate Party Australia
PPCA
Screenrights
Universities Australia
Nicolas Suzor, Associate Professor, Queensland University of Technology (QUT), Faculty of Law

A number of stakeholders raised concerns with the operation of Part 6 of the Regulations. These concerns went to matters of policy that are better addressed in the Government's broader consideration of the safe harbour scheme in the Copyright Act.

Some stakeholders raised practical concerns about changes to Copyright Tribunal procedures in Part 11 of the 2017 Regulations. A number of amendments were made to Division 2 and 5 of Part 11 to address those concerns.

Educational and collecting societies raised practical concerns with new requirements in Division 3 of Part 11 of the 2017 Regulations. Amendments were developed in consultation with those stakeholders to address those concerns.

There was significant disagreement between stakeholders as to whether new technological protection measure exceptions in Part 7 of the Regulations met the requirements in subsection 249(4) of the Act. Some amendments were made to address creator and rights holder concerns, particularly in relation to whether the exceptions in section 40 met the requirements in subsection 249(4) of the Act that the doing of the act that is the subject of the exception, be in relation to a particular class of work or other subject matter; before the Minister can make a recommendation to the Governor-General for additional TPM exceptions to be prescribed by regulations.

Regulation Impact Statement

The Office of Best Practice Regulation has assessed that remaking these instruments without substantial changes is not likely to have more than a minor and/or machinery regulatory impact on business, community organisations and individuals. As such, a RIS is not required.

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment 2.

Attachment 1: Notes on Sections

Part 1—Preliminary

Part 1 contains general provisions relating to the commencement and operation of the 2017 Regulations.

Section ^1—Name

Section ^1 provides for the 2017 Regulations to be cited as the *Copyright Regulations 2017*.

Section ^2—Commencement

Section ^2 provides for the commencement of the 2017 Regulations.

Sections ^1 to ^3 of the 2017 Regulations commence on the day after they are registered.

Section ^4, Parts 2 to 6 and 8 to 16, and Schedules 1 to 3 commence at the same time as Schedule 1 to the Disability Access Act. The majority of the provisions in the 2017 Regulations commence at this time as they have been updated to take into account amendments to the Act made by the Disability Access Act.

Part 7 of the 2017 Regulations commences on 1 April 2018. Part 7 commences on this date as the provisions contained in that Part are equivalent to the provisions in Part 3B of, and Schedule 10A to, the 1969 Regulations (which is also being renamed to the *Copyright (Technological Protection Measures) Regulations 1969*), as amended by the TPM Regulations.

Section ^3—Authority

Section ^3 provides that the 2017 Regulations are made under the authority of the Act. Section 249 of the Act contains a general regulation making power. The particular sections, in reliance on which each provision of the 2017 Regulations are made, vary. The source of each power to prescribe a matter is, where relevant, identified in the note for the relevant section of the 2017 Regulations.

Section ^4—Definitions

Section ^4 provides definitions of key expressions used in the 2017 Regulations. Additionally, due to the operation of paragraph 13(1)(b) of the *Legislation Act 2003*, any expression used in the 2017 Regulations has the same meaning as in the Act (noting, in particular, the interpretation provisions in Part II of the Act).

The definitions, which were previously located throughout various parts of the 1969 Regulations and the Tribunal Regulations, have been consolidated into the one section of the 2017 Regulations. The definitions remain in substantively the same form as the definitions in the original 1969 Regulations and Tribunal Regulations.

Some of the definitions have been modernised. For example, an “address for service” specifies an additional technological method, being an electronic address through which documents may be served on the person or body (email), in addition to service of documents to an actual physical address.

The definition of “reference” has been added for clarification and for the avoidance of doubt that this term would otherwise have a different meaning to, or be inconsistent with, the use of the term “refer” and “referral” in the Act.

Part 2—Copyright in original works

Part 2 is made in relation to Part III of the Act.

Part III of the Act makes provision for copyright in works, being original literary, dramatic, musical or artistic works.

Part 2 of the 2017 Regulations replaces Part 2 of the 1969 Regulations.

Section 5—Notices to be displayed near library or archive machines used to make infringing copies—paragraph 39A(b) of the Act

Section 5 prescribes the required dimensions and form of notices under paragraph 39A(b) of the Act, which relates to infringing copies made on machines installed in libraries and archives.

Section 39A of the Act provides that a body administering a library or archives, or the officer in charge of the library or archive, is not taken, in certain circumstances, to have authorised the making of an infringing copy of a work (or part thereof), merely because the copy is made using a machine (including a computer) provided by, or with the approval of, the body for the convenience of persons using the library or archives.

For the section to apply, paragraph 39A(b) requires a notice be affixed to, or in close proximity to, the machine, in a place readily visible to persons using the machine. The notice must be of prescribed dimensions and in accordance with the prescribed form.

The dimensions of the notice are prescribed by paragraph 5(a) of the 2017 Regulations as at least 297 millimetres (mm) long and 210 mm wide, which provides for A4 paper size as a minimum size but allows for larger sized notices to be provided.

Paragraph 5(b) prescribes the form of notice by reference to the text in either Part 1 or Part 2 of Schedule 1 to the 2017 Regulations. The form in Schedule 1 provides alternative text if the relevant machine could be used to make infringing copies of works or published editions (Part 1 of Schedule 1), or infringing copies of works, published editions or audio-visual items (Part 2 of Schedule 1).

Section 6—Notice requirements for communication of electronic reproduction by library or archives—subparagraph 49(7A)(c)(ii) of the Act

Section 6 prescribes the notice requirements for the purposes of subparagraph 49(7A)(c)(ii) of the Act.

Paragraph 49(7A)(c) relates to material provided to a person for the purposes of research or study. It provides that in making an electronic reproduction of an article or published work under subsections 49(2) or (2C) of the Act, before or when the reproduction is communicated to the person, the person must be notified in accordance with the regulations that the reproduction has been made under section 49 and that the article or work might be subject to copyright protection under the Act (subparagraph 49(7A)(c)(i)). The person must also be notified, in accordance with the regulations, about other such matters (if any) as are prescribed in the regulations (subparagraph 49(7A)(c)(ii)). These notification requirements are necessary in order for the person making the reproduction to avoid copyright infringement under subsections 49(6) and (7) of the Act.

Section 6 prescribes that for the purposes of subparagraph 49(7A)(c)(ii) of the Act, that the notice also include information that further dealings with the reproduction may infringe

copyright and that Division 3 of Part III of the Act affects whether further dealings would infringe copyright.

Section ^6 replaces regulation 4D of the 1969 Regulations in substantively the same form.

Section ^7—Notice of intended publication of unpublished work kept in public library— paragraphs 52(1)(b) and (2)(b) of the Act

Section ^7 prescribes the required form of notices under paragraphs 52(1)(b) and 52(2)(b) of the Act.

Section 52 of the Act relates to the publication of unpublished works kept in libraries or archives. Subsection 52(1) provides that first and subsequent publications of new works incorporating the whole or a part of an old work, will not be an infringement of copyright in the old work or an unauthorised publication of the old work where certain requirements are met. These requirements include that before the new work is published, the prescribed notice of intended publication of the work is given (paragraph 52(1)(b)).

Subsection ^7(3) prescribes the notice of intended publication which must be given prior to the publication of a new work (which includes an unpublished work), which include Gazettal requirements and other requirements such as the name of the intending publisher, the intending publisher's intention to publish the new work and the title and author of the old work.

Subsection 52(2) of the Act provides that subsection 52(1) does not apply to a subsequent publication of the new work incorporating a part of the old work that was not included in the first publication of the new work unless certain requirements, including that before subsequent publication, the prescribed notice of the intended publication (paragraph 52(2)(b)), are met. Subsection ^7(3) prescribes the same notice of intended publication requirements in this situation.

Section ^7 replaces regulation 5 of the 1969 Regulations in substantively the same form, however, it removes the three month upper limit on the publication of the prescribed notice of intended publication of a new work incorporating an old, unpublished work, kept in a library or archive under paragraphs 52(1)(b) and 52(2)(b) of the Act. The requirement is now that a relevant notice be published at least two months before the publication of a new work.

Section ^8—Countries in relation to which Division 6 of Part III of the Act applies— subparagraphs 55(1)(a)(iii) and (iv) and 59(1)(d)(iii) and (iv) of the Act

Section ^8 prescribes the countries in relation to which Division 6 of Part III of the Act applies.

Division 6 of Part III of the Act relates to the recording of musical works. Section 55 of the Act provides for the conditions upon which a manufacturer may make records of musical work. Section 59 of the Act provides for the conditions upon which a manufacturer may include part of a literary or dramatic work in a record of musical work. These two paragraphs, include provisions with references to countries. Countries, and their territories, are defined in regulation 6, and listed in Schedule 8, to the 1969 Regulations.

Section ^8 of the 2017 Regulations uses a different mechanism to identify countries to which Division 6 of Part III of the Act applies than the 1969 Regulations. Instead of a list of countries that have been assessed as being parties to the relevant international conventions, or members of the World Trade Organization (WTO), Division 6 of Part III of the Act will apply directly to a country that is a member of the WTO, party to the *Berne Convention for the Protection of Literary and Artistic Works*, party to the *WIPO Copyright Treaty*, or party to the *Universal Copyright Convention*. Schedule 8 to the 1969 Regulations is not included as part of

the 2017 Regulations. Notes are included at section ^8 with website addresses to find specific information regarding the relevant lists of countries.

The intention is that the territories of a treaty party or WTO member would also be covered by references to countries in section ^8.

This approach of specifying countries by reference to the countries being party to certain international agreements is consistent with the approach adopted in the Copyright (International Protection) Regulations 1969 to specifying countries. The Copyright (International Protection) Regulations were amended in 2004 to use a similar mechanism, and since that time copyright stakeholders have reportedly found it a simple and streamlined process for identifying the countries to which protection under the Act extends. This mechanism is effective as the relevant question to be answered by the 2017 Regulations is not whether a country has particular laws in place, but rather their status as a party to a treaty. Since the amendments in 2004, the World Intellectual Property Organization website and the WTO website have consistently provided an up-to-date and an authoritative statement of the parties to the relevant treaties and members of the WTO. During consultation, stakeholders did not express any concern with specifying countries by reference.

Section ^9—Notice of intended making of record of musical work

Section ^9 prescribes the required notice for a person intending to make a record of a musical work under paragraph 55(1)(b) of the Act.

Section 55 of the Act provides conditions upon which a manufacturer may make records of musical work. Paragraph 55(1)(b) prescribes that the copyright in a musical work is not infringed by a person who makes a record of the work in Australia, if, amongst other things, before making the record, the prescribed notice of the intended making of the record was given to the owner of the copyright.

Section ^9 prescribes the required notice is a written notice given in accordance with section ^9. Subsection ^9(3) prescribes the content of such a written notice, and includes requirements such as how the intending maker may be contacted (paragraph ^9(3)(b)) and the name of the author of the work, if it is known to the intending maker (paragraph ^9(3)(c)).

Section ^9 replaces regulation 7 of the 1969 Regulations in substantively the same form.

Section ^10—Prescribed period relating to making of records of musical works—subsection 55(3) of the Act

Section ^10 prescribes the period after the date of making records of musical works, for the purposes of subsection 55(3) of the Act.

Section 55 of the Act provides conditions upon which manufacturer may make records of musical work. Subsection 55(1) exempts the manufacturer from infringement when, among other requirements, the sale or supply is made with the licence of the owner of the copyright (subparagraph 55(1)(d)(i)). Subparagraph 55(1)(d)(i) does not apply to a record of a work where sale or supply is made after the expiration of the prescribed period (subsection 55(3)).

The period prescribed by section ^10 is one month. This time period remains unchanged from the 1969 Regulations. The one month period provides an exclusive opportunity to a local manufacturer to make, market and distribute records locally.

Section ^10 replaces regulation 15 of the 1969 Regulations in substantively the same form.

Section ^11—Inquiries relating to previous records of musical works—section 61 of the Act

Section ^11 prescribes how inquiries relating to the previous making or import of a record of a musical work are to be made and the period for receiving an answer to inquiries under section 61 of the Act. Section 61 of the Act relates to the making of inquiries in relation to previous records to enable a person to ascertain whether a manufacturer may make records of musical works under section 55 of the Act.

Subsection ^11(2) prescribes who is to be asked, subsections ^11(3) to (5) prescribe how inquiries are to be made, subsection ^11(6) prescribes the content of the inquiries and subsection ^11(7) prescribes the period for answering inquiries.

Section ^11 replaces regulation 16 of the 1969 Regulations in substantively the same form.

Section ^12—Circumstances in which design is taken to be applied industrially—section 77 of the Act

Section ^12 prescribes the circumstances in which a design is taken to be applied industrially for the purposes of subsection 77(4) of the Act.

Section 77 of the Act relates to the application of artistic works as industrial designs without registration of the designs.

Subsection ^12(1) prescribes that a design is taken to be applied industrially where it is applied to more than 50 articles, or alternatively, to one or more articles (other than handmade articles) manufactured in lengths or pieces.

Subsection ^12(2) prescribes the circumstances when any 2 or more articles are taken to constitute a single article.

Subsection ^12(3) prescribes the circumstances when a design is taken to be applied to an article.

Section ^12 replaces regulation 17 of the 1969 Regulations in substantively the same form.

Part 3—Copyright in subject matter other than works

Part 3 is made in relation to Part IV of the Act. Part IV of the Act makes provision for matters relating to copyright that subsists in subject matter other than works. This includes sound recordings, cinematograph films, television broadcasts, sound broadcasts and published editions of works.

Part 3 of the 2017 Regulations replaces Part 3 of the 1969 Regulations.

Section ^13—Notices to be displayed near library or archive machines used to make infringing copies—paragraph 104B(b) of the Act

Section ^13 prescribes the required dimensions and form of notices under paragraph 104B(b) of the Act.

Section 104B of the Act provides that a body administering a library or archive, or the officer in charge of the library or archive, is not taken in certain circumstances to have authorised the making of an infringing copy of published editions of a work or audio-visual items (or part thereof), merely because the copy is made using a machine (including a computer) provided by or with the approval of the body for the convenience of persons using the library or archive. An audio-visual item is, as defined in section 100A of the Act, to mean a sound recording, a cinematograph film, a sound broadcast or a television broadcast.

For the section to apply, paragraph 104B(b) requires a notice be affixed to, or in close proximity to, the machine in a place readily visible to persons using the machine. The notice must be of prescribed dimensions and in accordance with the prescribed form.

The dimensions of the notice are prescribed by paragraph ^13(a) of the 2017 Regulations as at least 297 mm long and at least 210 mm wide, which provides for A4 paper size as a minimum size but allows for larger sized notices to be provided.

The form of the notice is prescribed by paragraph ^13(b). The form in Schedule 1 provides alternative text if the relevant machine could be used to make infringing copies of works or published editions (Part 1 of Schedule 1), infringing copies of works, published editions or audio-visual items (Part 2 of Schedule 1) or audio-visual items (Part 3 of Schedule 1).

Section ^14—Prescribed period relating to public performance of recordings first published outside Australia—paragraph 108(1)(b) of the Act

Section ^14 prescribes the period after the date of first publication of a sound recording, where that occurred outside Australia, for paragraph 108(1)(b) of the Act.

Section 108 of the Act provides that the copyright in a published sound recording is not infringed by public performance of the recording in certain circumstances. This includes that in the case of a recording that was first published outside Australia, either the recording must also have been published in Australia, or the period prescribed for paragraph 108(1)(b) after the date of the first publication of the recording has expired.

The period prescribed by section ^14 is seven weeks. This time period remains unchanged from the 1969 Regulations. The seven week waiting period provides an exclusive opportunity to a local manufacturer to make, market and distribute records locally.

Section ^14 replaces regulation 18 of the 1969 Regulations in substantively the same form.

Section ^15—Prescribed period relating to broadcasts of recordings not published in Australia—subsection 109(3) of the Act

Section ^15 prescribes the period after the date of first publication of a published sound recording, where the recording has not been published in Australia, for subsection 109(3) of the Act.

Section 109 of the Act provides that the copyright in a published sound recording is not infringed by broadcast of the recording in certain circumstances by a free-to-air broadcaster. This includes that in the case of a recording that was first published outside Australia, the recording is not broadcast before the expiration of the period prescribed for subsection 109(3) after the date of first publication of the recording.

The period prescribed by section ^15 is seven weeks. This time period remains unchanged from the 1969 Regulations. The object of this seven week period is the same as that under section ^14, namely to give an exclusive opportunity to a local manufacturer to make, market and distribute records locally.

Section ^15 replaces regulation 19 of the 1969 Regulations in substantively the same form.

Part 4—Uses that do not infringe copyright

Part 4 is made in relation to Part IVA of the Act. Part IVA of the Act was inserted into the Act by the Disability Access Act. As a result there was no equivalent of Part 4 in the 1969 Regulations.

Section 113L—Bodies administering key cultural institutions—paragraph 113L(b) of the Act

Section 113L of the Act provides that a library or archive is a ‘key cultural institution’ if the body administering it: (a) has, under a law of the Commonwealth or a state or territory, the function of developing and maintaining the collection comprising the library or archives; or (b) it is prescribed by the regulations for the purposes of paragraph 113L(b).

The definition of ‘key cultural institution’ is relevant to the preservation exception for key cultural institutions in section 113M of the Act.

Section 113L provides that the Australian Broadcasting Corporation, the Australian National University and the Special Broadcasting Service Corporation are all prescribed as key cultural institutions for the purposes of paragraph 113L(b) of the Act.

The Australian Broadcasting Corporation, the Special Broadcasting Service Corporation and the Australian National University Archive Program were also prescribed for the purposes of subparagraphs 51B(1)(a)(ii), 110BA(1)(a)(ii) and 112AA(1)(a)(ii) of the Act (which were repealed by the Disability Access Act). The reference to the Australian National University Archive Program has been amended in the 2017 Regulations to refer to the Australian National University as the appropriate body administering the Archives Program. Section 113M of the Act requires that an authorised officer of the key cultural institution be satisfied that the material to be preserved is of historical or cultural significance to Australia.

Part 5—Collecting societies

Section 17—Rules of a collecting society—paragraphs 113W(d), 135ZZT(3)(d), 135ZZO(7)(d) and 153F(6)(f) of the Act

This part is substantively similar to regulations 23J, 23JM and 23JL of the 1969 Regulations, except that a single section now applies to paragraphs 113W(d), 135ZZO(7)(d) and 153F(6)(f) of the Act.

Section 17 outlines 11 provisions that a body must include in their rules before the Minister or the Copyright Tribunal can declare that body to be a collecting society. These rules are as follows:

- That the accounting period must be determined, in accordance with the rules, by the collecting society for accounting purposes and that no accounting period may extend beyond 30 June each year.
- That consistent practice must be followed for attributing the recipient and expenditure of the collecting society in each accounting period.
- That the collecting society must exercise reasonable diligence in the collection of equitable remuneration.
- That the amount spent on gifts for cultural or benevolent purposes in each accounting period must not exceed the percentage of equitable remuneration specified in the rules.
- That the administrative costs and other outgoings of the collecting society paid out of equitable remuneration is reasonable.
- That the distributable amount relating to each accounting period must be allocated in accordance with a scheme of allocation that is determined in accordance with the rules. Includes criteria for allocation and provides for the allocation of potential shares in the distributable amount to entitled persons.
- That, in relation to each potential share in the distributable amount allocated in accordance with the scheme, an entitled person, who is a member of the society at the time of allocation, be paid as soon as is reasonably possible after the allocation.
- That, in relation to each potential share in the distributable amount allocated in accordance with the scheme, to an entitled person, who is not a member of the society at the time of allocation, an amount representing the share must be paid into a trust fund operated for the purpose outlined in paragraph 17(1)(i) and must be held in that fund in accordance with the rules. If the entitled person becomes a member whilst the amount is being held on trust, the amount must be distributed to the person as soon as reasonably possible after he or she becomes a member.
- That a trust fund must be operated by the collecting society for the purposes that include holding funds for any entitled person who is not a member of the society (or whose agent is not a member).
- That if any part of a distributable amount in relation to an accounting period cannot be distributed it must be held on trust (in the trust referred to in paragraph 17(1)(i) until

distribution becomes possible or until the end of the specified period (which must not be less than four years).

The section also details a number of key definitions relevant to the prescribed rules.

Section ^17 replaces regulation 23J, 23JM and 23L of the 1969 Regulations in substantively the same form but also applies the same rules to a collecting society to be declared under the Part VD statutory licence for re-broadcasts by satellite *Broadcasting Services Act 1992* (BSA) licensees.

Part 6—Limitation on remedies available against carriage service providers

Part 6 is made in relation to Division 2AA of Part V of the Act. Division 2AA of Part V of the Act is a ‘safe harbour scheme’ that limits the remedies available against carriage service providers for infringements of copyright that relate to the carrying out of certain online activities by carriage service providers, subject to certain conditions. Carriage service providers benefit from the resulting increased certainty in the industry about liability for copyright infringements on their facilities or network infrastructure. The concept of a carriage service provider is defined in section 87 of the *Telecommunications Act 1997* (Tel Act).

Part 6 prescribes matters relating to industry codes, conditions of the application of the safe harbour scheme, and civil remedies relating to actions taken in accordance with Division 2AA of Part V of the Act. Part 6 of the 2017 Regulations replaces Part 3A of the 1969 Regulations.

Division 1—Preliminary

Division 1 makes provision in relation to the definition of “industry code” for Division 2AA of Part V of the Act, and prescribes requirements in relation to notices and notifications given under Part 6 of the 2017 Regulations. Division 1 replaces Division 3A.1 of Part 3A of the 1969 Regulations.

Section ^18—Industry code—section 116AB of the Act

Paragraph (a) of the definition of “industry code” in section 116AB of the Act provides that the term means an industry code that: (i) meets any prescribed requirements; and (ii) is registered under Part 6 of the Tel Act.

Section ^18 prescribes certain requirements for the purposes of subparagraph 116AB(a)(i) of the Act, in relation to industry codes that do not deal solely with caching. The requirements are that the provisions must be developed through an open voluntary process by a broad consensus of copyright owners, exclusive licensees and carriage service providers. The section also provides that the relevant provisions of an industry code must include a provision to the effect that standard technical measures are technical measures that meet a number of requirements. The technical measures must be used to protect and identify copyright material; be accepted under the industry code or developed in accordance with a process set out in the industry code; be available on non-discriminatory terms; and not impose substantial costs on carriage service providers or substantial burdens on their systems or networks.

Section ^18 of the 2017 Regulations replaces regulation 20B of the 1969 Regulations in substantively the same form, but for the avoidance of doubt, clarifies that an industry code that deals solely with caching need not meet any prescribed requirements under subparagraph (b)(i) of the definition of “industry code” in section 116AB of the Act.

Section ^19—Designated representative

Section ^20—Requirements for notifications and notices

As noted above, a carriage service provider must satisfy certain conditions to take advantage of the safe harbour scheme limiting remedies available for infringements of copyright relating to certain online activities. Section 116AH of the Act sets out such conditions for each of the categories of relevant activities, including various conditions relating to compliance by carriage service providers with prescribed forms and procedures (subsection 116AH(1)).

Sections ^19 and ^20 set out general requirements that apply to notifications, notices and counter-notices given for the purposes of a condition in subsection 116AH(1) of the Act.

Section 116AH of the Act, with the regulations made for that section (under Part 6 of the 2017 Regulations), imposes conditions on the application of the safe harbour scheme.

Section ^19 requires carriage service providers to designate a person to be the representative of the provider to receive notifications and notices given for the purposes of a condition in subsection 116AH(1) of the Act. The title and contact details of the designated person must be published in a reasonably prominent location on the provider's website. This enables persons giving notifications etc. in accordance with this Part to comply with the requirement of paragraph ^20(b).

Paragraph ^20(a) requires notifications, notices or counter-notices given for the purposes of a condition in subsection 116AH(1) of the Act to be in accordance with the form prescribed by the relevant provisions of Part 6 of the 2017 Regulations. These forms are described below at the notes for the relevant sections. Paragraph ^20(b) requires notifications etc. to be issued to the designated representative of the carriage service provider, either by post or electronic communication (such as email).

Sections ^19 and ^20 replace regulations 20C and 20D of the 1969 Regulations respectively in substantively the same form, removing prescription as to the forms of contact details required, and relying on the *Electronic Transactions Act 1999* in relation to signatures on electronic communications.

Division 2—Conditions—cached copyright material

Section ^21—Notification relating to Category B activity

Section ^21 prescribes the form required for notices given in accordance with condition 3 of item 3 of the table in subsection 116AH(1) of the Act.

Item 3 of the table in subsection 116AH(1) of the Act sets out conditions before the limitation on remedies apply for category B activities. Category B activities are defined in section 116AD of the Act as those that cache copyright material through an automatic process (not where the carriage service provider manually selects the copyright material for caching). In particular, condition 3 requires service providers to remove or disable access to cached copyright material upon notification in the prescribed form, that the material has been removed, or that access to it has been disabled at the originating site.

Section ^21 prescribes the form for the purposes of that condition, being the form in Part 1 of Schedule 2 to the 2017 Regulations.

Section ^21 replaces regulation 20E of the 1969 Regulations, with some amendments that do not alter the substantive elements of the prescribed form.

Division 3—Conditions—copyright material found to be infringing by an Australian court

Section ^22—Notice in relation to Category C and D activities

Section ^22 prescribes the form required for notices given in accordance with condition 2 of each of items 4 and 5 of the table in subsection 116AH(1) of the Act.

Items 4 and 5 of the table in subsection 116AH(1) of the Act set out conditions that must be met for the limitations on remedies to apply to category C and D activities respectively. Category C activities are defined in section 116AE of the Act as those that store, at the direction of a user, copyright material on a system or network controlled or operated by or for the carriage service provider. Category D activities are defined in section 116AF of the Act as those that refer users to an online location using information location tools or technology. In particular, condition 2 (in each case) requires the carriage service provider to expeditiously remove or disable access to the copyright material, or the reference to the location of the material, residing on its system or network upon receipt of a notice in the prescribed form that the copyright material has been found to be infringing by a court.

Section ^22 prescribes the form for the purposes of each of those conditions, being the form in Part 2 of Schedule 2 to the 2017 Regulations.

Section ^22 replaces regulation 20F of the 1969 Regulations, with some amendments [that do not alter the substantive elements of the prescribed form].

Division 4—Conditions—takedown of copyright material following notice

Section ^23—Application of this Division

Section ^23 provides that Division 4 of Part 6 of the 2017 Regulations prescribes the procedure to be followed by carriage service providers to comply with condition 3 of item 4 (Category C activities) of the table in subsection 116AH(1) of the Act, in certain circumstances in which the owner or exclusive licensee of the copyright (or their agent) wishes the carriage service provider to remove or disable access to material that they reasonably believe is infringing.

In particular, condition 3 requires carriage service providers to comply with the prescribed procedure relating to removing or disabling access to copyright material residing on its system or network in certain circumstances.

The procedure prescribed in this Division applies in circumstances where the owner or exclusive licensee of the copyright in the material (or an agent) reasonably believes the material is infringing, and wishes the carriage service provider to remove or disable access to the material. Division 5 of Part 6 of the 2017 Regulations prescribes another procedure, which applies in different circumstances (broadly, where the carriage service provider becomes aware that the material is, or is likely to be, infringing other than in circumstances covered by Division 4).

At a high level, the procedure in this Division:

1. allows the owner or exclusive licensee of copyright material, or an agent of either of these persons, to issue a notice of claimed infringement in relation to the material to the carriage service provider (section ^24);
2. where such a notice is received, requires the carriage service provider to:
 - a. expeditiously remove, or disable access to, the copyright material specified in the notice (subsection ^25(1)); and
 - b. send to the user that directed the provider to store the material a copy of the notice, information about the action taken to disable or remove, and information about the ability for the user to issue a counter-notice (subsection ^25(2)) to the carriage service provider's designated representative disputing the claims in the notice of claimed infringement.

If the carriage service provider has taken reasonable steps to identify the user but has been unable to do so, or has sent the documents to the user but they are not received by the user, then they will be taken to have complied with this requirement to send these documents and information to the user (subsection ^25(3));

3. allows the user to send a counter-notice to the carriage service provider disputing the claims set out in the notice (section ^26);
4. where such a counter-notice is received, requires the carriage service provider to send to the person who issued the original notice a copy of the counter-notice, and a further notice that the copyright material will be restored to the system or network unless an action to restrain the activity is brought against the user within ten business days (section ^27); and
5. where the person who sent the original notice does not, in response to the further notice at 4. above, notify the carriage service provider within ten business days that an action has been brought against the user, or an action is brought and is unsuccessful, requires the provider to restore, or enable access to, the copyright material on the system or network (section ^28).

Section ^23 and Division 4 of Part 6 of the 2017 Regulations replace regulation 20G and Division 3A.4 of Part 3A of the 1969 Regulations, with amendments that do not alter the substantive elements of the prescribed procedure.

Section ^24—Notice of claimed infringement

Section ^24 allows the owner or exclusive licensee of copyright material, or an agent of either of those persons, to issue a notice of claimed infringement in relation to the material to a carriage service provider.

This is the first step in the procedure prescribed by this Division for condition 3 of item 4 of the table in subsection 116AH(1) of the Act.

Subsection ^24(1) requires the notice to be issued to the designated representative of the carriage service provider, which is the person designated by the service provider under section ^19 of the 2017 Regulations with contact details to be available on the service provider's website.

Subsection ^24(2) requires the notice to be issued in accordance with the form set out in Part 3 of Schedule 2 to the 2017 Regulations.

Section ^24 replaces regulation 20I of the 1969 Regulations in substantively the same form.

Section ^25—Takedown procedure

Section ^25 requires a carriage service provider to take particular actions after receiving a notice of claimed infringement issued under section ^24, in order for the service provider to be compliant with the procedure prescribed by this Division.

This is the second step in the procedure prescribed by this Division for condition 3 of item 4 of the table in subsection 116AH(1) of the Act.

Subsection ^25(1) requires a carriage service provider, upon receipt of a notice under section ^24, to expeditiously remove, or disable access to, the copyright material specified in the notice and residing on its system or network.

Subsection ^25(2) then requires the service provider to send a copy of the section ^24 notice to the user that directed the service provider to store the copyright material on its system or network, as well as a notice stating certain matters. The service provider's notice must state that the copyright material has been removed, or access to it has been disabled. This notice must also state that the user may give a counter-notice to the service provider in accordance with section ^26 disputing the claims in the section ^24 notice. In complying with these requirements (as per subsection ^25(3)) a carriage service provider will be taken to have complied with the requirements in subsection ^25(2) if it has either sent the documents to the user, but they have not been received by the user, or it has taken reasonable steps to identify the user, but has been unable to do so.

The note to subsection ^25(2) explains that if the carriage service provider does not receive a counter-notice under section ^26 (within three months) in relation to the copyright material, then they are not required to take any further action in relation to the material under this procedure.

Section ^25 replaces regulation 20J of the 1969 Regulations in substantively the same form.

Section ^26—Counter-notice

Section ^26 allows the user to send a counter-notice to the carriage service provider disputing the claims set out in a section ^24 notice.

This is the third step in the procedure prescribed by this Division for condition 3 of item 4 of the table in subsection 116AH(1) of the Act.

Subsection ^26(1) requires the counter-notice to be issued to the designated representative of the carriage service provider, which is the person designated by the service provider under section ^19 of the 2017 Regulations with contact details to be available on the service provider's website.

Subsection ^26(2) requires the notice to be issued within three months of receiving the copy of the section ^24 notice from the carriage service provider, and to be issued in accordance with the form set out in Part 4 of Schedule 2 to the 2017 Regulations.

Section ^26 replaces regulation 20K of the 1969 Regulations in substantively the same form.

Section ^27—Copy of counter notice to be sent to copyright owner

Section ^27 requires a carriage service provider to send a copy of a counter-notice issued under section ^26 to the person who issued the section ^24 notice, and a further notice to that person about the next steps in the procedure, in order for the service provider to be compliant with the procedure prescribed by this Division.

This is the fourth step in the procedure prescribed by this Division for condition 3 of item 4 of the table in subsection 116AH(1) of the Act.

Subsection ^27(1) requires the copy of the counter-notice to be sent to the person that issued the section ^24 notice as soon as practicable after receiving the counter-notice. The subsection also requires the service provider to send a notice stating that the person has ten business days to bring an action seeking a court order to restrain the activity that is claimed to be infringing, or

the carriage service provider will restore, or enable access to, the copyright material on its system or network.

Subsection ^27(2) provides that information that could identify a user that is an individual may only be disclosed if it is consistent with the Tel Act (see, in particular, Part 13 of that Act), and the *Privacy Act 1988*.

Section ^28—Restoring copyright material

Section ^28 sets out the circumstances in which a carriage service provider must restore or enable access to the copyright material that had been removed or to which access had been disabled under section ^27.

Subsections ^28(1) and ^28(2) essentially provide that if the carriage service provider sends a copy of a counter-notice given by a user and a notice to the copyright owner, licensee or agent under section ^27 and either the copyright owner, licensee or agent does not notify the carriage service provider within ten working days after the documents were sent that they have brought an action seeking a court order to restrain the activity that is claimed to be infringing; or the carriage service provider is notified that an action for infringement of the copyright in the copyright material has been discontinued or was unsuccessful; then the carriage service provider must, as soon as practicable, restore or enable access to the copyright material on its system or network.

The note to section ^28 states that the carriage service provider is not required to have regard to a notification from the copyright owner, licensee or agent that they have brought an action seeking a court order to restrain the activity that is claimed to be infringing if the notification is received more than ten working days after the documents were sent to the copyright owner, licensee or agent under section ^27.

Section ^28 replaces regulation 20M of the 1969 Regulations in substantively the same form.

Division 5—Conditions—procedure following takedown of copyright material without notice from copyright owner, licensee or agent

Division 5 prescribes procedures that a carriage service provider must follow in relation to condition 3 of item 4 (Category C activities) of the table in subsection 116AH(1) of the Act in circumstances where the carriage service provider becomes aware that the material is infringing, or of facts or circumstances that make it apparent that the material is infringing, however the carriage service provider has not received notice from the copyright owner, exclusive licensee or an agent of the owner of this.

Division 5 replaces Division 3A.5 of the 1969 Regulations in substantively the same form.

Section ^29—Application of this Division

Subsection ^29(1) provides that the Division prescribes the procedure to be followed after the carriage service provider expeditiously removes or disables access to copyright material residing on its system or network in accordance with condition 2A of item 4 of the table in subsection 116AH(1) of the Act.

Subsection ^29(2) provides that Division 5 of the 2017 Regulations does not apply if the carriage service provider becomes aware of a matter under paragraph ^29(1)(a) or (b) as a result of receiving a notice of claimed infringement under Division 4.

Section ^29 replaces regulation 20N of the 1969 Regulations in substantively the same form.

Section ^30—Notice to user

Section ^30 sets out a procedure, and requirements that must be included in a notice to users after a carriage service provider has removed or disabled access to copyright material under condition 2A of item 4 of the table in subsection 116AH(1) of the Act.

Subsection ^30(1) provides that as soon as practicable after removing or disabling access to the copyright material, the carriage service provider must send to the user who directed the carriage service provider to store the copyright material on its system or network, a notice stating certain matters. These are that the copyright material has been removed or access to it has been disabled; the grounds for doing so; and that the user may, within three months after receiving the notice, issue a counter-notice in accordance with section ^31 to the carriage service provider's designated representative disputing the grounds for removing or disabling access to the copyright material and requesting that the carriage service provider restore or enable access to it on the carriage service provider's system or network.

Subsection ^30(2) sets out circumstances in which a carriage service provider is taken to have complied with subsection ^30(1). It will be sufficient for the carriage service provider to have complied with subsection ^30(1) if they have taken reasonable steps to identify the user but have been unable to do so, or, if the carriage service provider sends the documents to the user as required by subsection ^30(1) but it is not received by the user.

Section ^30 replaces regulation 20P of the 1969 Regulations in substantively the same form.

Section ^31—Counter notice

Section ^31 sets out a counter-notice procedure where a user receives a notice from a carriage service provider under section ^30.

Subsection ^31(1) provides that if a user receives a notice from a carriage service provider under section ^30, the user may give a counter-notice to the carriage service provider's designated representative disputing the grounds for removing or disabling access to the copyright material and requesting the carriage service provider to restore, or enable access to, the copyright material on the carriage service provider's system or network.

The note to subsection ^31(1) states that if the user does not issue a counter-notice to the carriage service provider's designated representative, the carriage service provider is not required to take any further action in relation to the copyright material.

Paragraph ^31(2)(a) provides that a counter-notice must be in accordance with the form set out in Part 5 of Schedule 2, and paragraph ^31(2)(b) requires that the counter-notice must be issued within three months after the user receives the notice from the carriage service provider under section ^30. The period of three months is specified as it acknowledges that the user may need time to seek legal advice regarding their options. A carriage service provider is under no obligation to retain the material that has been removed if a counter-notice is not received within three months.

Section ^31 replaces regulation 20Q of the 1969 Regulations in substantively the same form.

Section ^32—Restoring copyright material

Section ^32 provides that if the carriage service provider receives a counter-notice in relation to copyright material under section ^31, and on the basis of the information and statements in the counter-notice, is satisfied that the copyright material is not, or is not likely to be infringing, the

carriage service provider must, as soon as practicable after receiving the counter-notice, restore, or enable access to, the copyright material on its system or network.

Section ^32 replaces regulation 20R of the 1969 Regulations in substantively the same form.

Division 6—Conditions—takedown of reference to copyright material following notice from copyright owner, licensee or agent

Division 6 sets out the procedures that copyright owners, exclusive licensees or their agents and carriage service providers must follow in relation to condition 3 of item 5 (Category D activities) of the table in subsection 116AH(1) in the circumstances where a copyright owner, or agent, reasonably believes that material that a carriage service provider provides a reference to on its system or network is infringing and wishes the carriage service provider to remove or disable access to the reference to the material. Condition 3 of item 5 of the table in subsection 116AH(1) requires a carriage service provider to comply with the prescribed procedure in relation to removing or disabling a reference residing on its system or network.

Division 6 replaces Division 3A.6 of the 1969 Regulations in substantively the same form.

Section ^33—Application of this Division

Section ^33 provides that the Division prescribes the procedure to be followed in relation to a reference to copyright material that is provided by a carriage service provider on its system if the owner or exclusive licensee of the copyright material or their agent reasonably believes that the material is infringing and wishes the carriage service provider to remove or disable access to the reference to the material.

Section ^33 replaces regulation 20S of the 1969 Regulations in substantively the same form.

Section ^34—Notice of claimed infringement

Subsection ^34(1) provides that the copyright owner, exclusive licensee or their agent may give a notice of claimed infringement to the carriage service provider's designated representative.

Subsection ^34(2) provides that the notice of claimed infringement must be in accordance with the form set out in Part 6 of Schedule 2.

Section ^34 replaces regulation 20T of the 1969 Regulations in substantively the same form.

Section ^35—Takedown procedure

Section ^35 sets out the action required by a carriage service provider who receives a notice of claimed infringement from a copyright owner, an exclusive licensee or their agent under section ^34.

Section ^35 replaces regulation 20U of the 1969 Regulations in substantively the same form.

Division 7—Civil remedies

Division 7 sets out matters concerning civil remedies in relation to actions taken under the Act and the 2017 Regulations.

Division 7 replaces Division 3A.7 of the 1969 Regulations in substantively the same form.

Section ^36 – Authority

Section ^36 provides that this Division has effect for the purposes of section 116AJ of the Act. That section provides that the regulations may:

- provide that a carriage service provider is not liable for damages or any other civil remedy as a result of action taken in good faith to comply with a condition (subsection 116AJ(1));
- provide civil remedies for conduct by relevant parties in relation to conditions (subsection 116AJ(2)); and
- prescribe offences for conduct by persons issuing notices under the regulations, and prescribe penalties for offences against those regulations (with limited penalties) (subsection 116AJ(3)).

Section ^36 is a new section that has no equivalent in the 1969 Regulations.

Section ^37—Action taken to comply with a condition

Section ^37 provides immunity to carriage service providers for damages or any other civil remedy as a result of action taken in good faith by the carriage service provider to comply with certain conditions in the table in subsection 116AH(1). The actions covered by this immunity are:

- removing or disabling access to cached copyright material upon notification in the prescribed form that the material has been removed or that access to it has been disabled at the originating site (condition 3 of item 3 of the table);
- removing or disabling access to copyright material residing on its system or network upon receipt of a notice in the prescribed form that the material has been found to be infringing by a court (condition 2 of item 4 of the table);
- removing or disabling access to copyright material residing on its system or network if the carriage service provider becomes aware that the material is infringing or becomes aware of facts or circumstances that make it apparent that the material is likely to be infringing (condition 2A of item 4 of the table);
- complying with the prescribed procedure in relation to removing or disabling access to copyright material residing on its system or network as established in Division 3 (condition 3 of item 4 of the table);
- removing or disabling access to a reference to copyright material that is provided by a carriage service provider on its system or network upon receipt of a notice in the prescribed form that the copyright material to which it refers has been found to be infringing by a court (condition 2 of item 5 of the table);
- removing or disabling access to a reference to copyright material that is provided by a carriage service provider on its system or network if the carriage service provider becomes aware that copyright material to which it refers is infringing or becomes aware of facts or circumstances that make it apparent that the material to which it refers is likely to be infringing (condition 2A of item 5 of the table); and

- complying with the prescribed procedure in relation to removing or disabling a reference residing on a carriage service provider's network (condition 3 of item 5 of the table).

The note to section ^37 indicates that Divisions 2, 3, 4, and 6 of Part 6 to the 2017 Regulations ('Limitation on remedies available against carriage service providers') are relevant to those conditions. Section ^37 replaces regulation 20V of the 1969 Regulations in substantively the same form.

Section ^38—Failure to restore or enable access to copyright material

Subsection ^38(1) provides that where the carriage service provider has removed or disabled access to copyright material but fails to comply with the requirements to restore the material in accordance with section ^28 or ^32, the carriage service provider may be liable for damages or any other civil remedy in an action taken by a user or third party affected by the failure to restore the material.

Subsection ^38(2) provides that the carriage service provider is not liable for damages or any other civil remedy in an action taken by the owner of the copyright in the copyright material because of the carriage service provider's failure to restore, or enable access to, the relevant copyright material in accordance with section ^28 or ^32.

The effect of section ^38 is that a carriage service provider may be liable to a user or third party affected by the failure to restore the material, but is protected from liability to an owner or exclusive licensee.

Section ^38 replaces regulation 20W of the 1969 Regulations with minor amendments.

Section ^39—Misrepresentations in notifications and notices

Subsection ^39(1) provides that a person who gives a notification, a notice of, or a counter-notice for, the purpose of a condition in subsection 116AH(1) of the Act, must not knowingly make a material misrepresentation in that notification, notice, or counter-notice.

Subsection ^39(2) provides that for subsection ^39(1), a person knowingly makes a material misrepresentation in a notification, notice or counter-notice if the person does not take reasonable steps to ensure the accuracy of the information included in the notification or notice. This does not limit the circumstances in which a person knowingly makes a material misrepresentation for the purposes of subsection ^39(1).

Subsection ^39(3) provides that a person who suffers loss or damage because of a material misrepresentation made knowingly in a notification, notice or counter-notice may bring an action for a civil remedy against the person who issued the notification, notice or counter-notice. This subsection is intended to deter knowingly false allegations, or allegations that are made without taking reasonable steps to ensure accuracy, in recognition of the detriment of such misrepresentations to copyright owners, carriage service providers and internet users.

Subsection ^39(4) provides that if an action is brought in a court and that court is satisfied that the person bringing the action suffered loss or damage because of the representation, the court may grant the person whatever civil remedies for the loss or damage the court thinks fit.

Section ^39 replaces regulation 20X of the 1969 Regulations in substantively the same form with additions to subsection ^39(2) and the inclusion of subsection ^39(4).

Part 7—Technological protection measures

Part 7 is made in relation to Subdivision A of Division 2A and Subdivision A of Division 5, of Part V of the Act, and related provisions. Subdivision A of Division 2A deals with actions in relation to technical protection measures, which are technical controls that copyright owners use to stop their material being accessed or copied, while Subdivision A of Division 5 provides criminal offence provisions and exceptions in relation to circumventing an access control technological protection measure. Part 7 replaces Part 3B of the 1969 Regulations.

Section ^40—Non infringing acts enabled by circumvention of access control technological protection measures that are not actionable—paragraphs 116AN(9)(c) and 132APC(9)(c) of the Act

Section 116AN of the Act provides for an owner or exclusive licensee of copyright in a work or other subject matter to bring an action in certain circumstances relating to the knowing circumvention of an access control technological protection measure. Section 132APC provides a corresponding offence provision in relation to circumventing such a protection measure with the intention of gaining a commercial advantage or profit. The civil and criminal remedies set out are both subject to a series of exceptions/defences relating to: circumvention with permission; interoperability; encryption research; computer security testing; online privacy; law enforcement and national security; and libraries. Subsections 116AN(9) and 132APC(9) provide for additional exceptions (to the prohibition) and defences (to the offence provision) to be prescribed by regulations.

Section ^40 therefore lists the acts for the purposes of paragraphs 116AN(9)(c) and 132APC(9)(c) that do not infringe copyright. The purpose of this section is to stipulate that certain prescribed acts allow for the lawful circumvention of access control TPMs. These derive from stakeholder consultations and submissions made as part of the 2015 *Review of Technological Protection Measure* exceptions made under the Copyright Act 1968 and stakeholder submissions made in response to the release of the exposure draft of the 2017 Regulations. Some of the prescribed acts derive from changes made to the Act by the Disability Access Act.

Section ^40 replaces Schedule 10A in the 1969 Regulations with substantive amendments.

Part 8—Infringement notices and forfeiture of infringing articles and devices

Part 8 is made in relation to Division 5 of Part V and Division 3 of Part XIA of the Act. It establishes an infringement notice regime that would apply to a person who is alleged to have committed certain offences of strict liability in those Divisions of the Act. Part 8 of this instrument replaces Part 6A of the 1969 Regulations.

As part of the sunset review of the 1969 Regulations, the scheme in Part 8 of the 1969 Regulations has been standardised with the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act) to the extent possible.

While the infringement notice scheme is included in regulations, it is supported by an express regulation-making power providing for this in sections 133B and 248SA of the Act. To better align the scheme with the Regulatory Powers Act, consideration will be given to moving the infringement notice scheme into the Act in future.

Part 8 of the 2017 Regulations requires that an infringement notice can only be issued if the person has agreed to forfeit, and has forfeited, to the Commonwealth all infringing articles and devices relating to the alleged offence in the person's possession at the time the person was informed. This ensures consistency with articles that can be destroyed or delivered up under section 133 of the Act and encourages an infringement notice recipient to divest themselves of material that they could use for further criminal activity.

Division 1—Preliminary

Division 1 deals with various preliminary matters, including the purpose of the Part and the provisions it applies to.

Division 1 replaces Division 6A.1 of the 1969 Regulations in substantively the same form.

Section ^41—Object of this Part

Section ^41 outlines the purpose of Part 8 of the 2017 Regulations. The section explains that the object of this Part is to set up a scheme to enable a person who is alleged to have committed an offence of strict liability against Division 5 of Part V or Subdivision A or B of Division 3 of Part XIA to pursue alternative options to being prosecuted.

The options include paying the Commonwealth an amount specified in an infringement notice for the alleged offence.

For certain offences the alleged offender can forfeit to the Commonwealth each article or device in their possession that is alleged to be an infringing copy of work or used for making an infringing copy of a work other any other subject matter.

Section ^41 replaces regulation 23M of the 1969 Regulations in substantively the same form.

Section ^42—Provisions subject to an infringement notice

Section ^42 lists the provisions of the Act which are subject to an infringement notice under this Part.

Section ^41 replaces regulation 23M of the 1969 Regulations in substantively the same form.

Division 2—Infringement notices

Division 2 deals with the administrative matters relating to infringement notices.

Division 2 replaces Division 6A.3 of the 1969 Regulations in substantively the same form.

Section ^43—When an infringement notice may be given

Subsection ^43(1) provides that if an infringement officer believes, on reasonable grounds, that a person has committed an offence against a provision subject to an infringement notice the infringement officer may give to the person an infringement notice for the alleged offence.

Subsection ^43(2) provides that an infringement officer may only give the person an infringement notice for the alleged offence against a provision of Division 5 of Part V of the Act (except subsections 132AQ(5), 132AR(5) and 132AS(5) which relate to certain dealings with electronic rights management information) if the infringement officer has informed the person as described in subsection ^49(2) of the 2017 Regulations and the person has agreed to forfeit and has forfeited to the Commonwealth the infringing articles and devices.

The notes to subsection ^43(2) inform the reader that: subsection ^49(2) is about an infringement officer informing a person of the circumstances in which they may avoid prosecution for an alleged offence against that Division if an infringement notice is issued; and that Division 3 of Part 8 of the 2017 Regulations deals with forfeiture of infringing articles and devices relating to alleged offences against provisions of Division 5 of Part V of the Act.

The term infringement officer is defined in section 4 to mean a member of the Australian Federal Police; or the police force of a state or territory.

Subsection ^43(3) provides that an infringement notice ^43 be issued within 12 months of the alleged offence occurring.

Subsection ^43(4) provides that an infringement notice ^43 can only relate to a single offence against a single provision.

Section ^43 replaces regulation 23P of the 1969 Regulations in substantively the same form.

Section ^44—Matters to be included in an infringement notice

Section ^44 lists the information that must be included on an infringement notice.

Section ^44 replaces regulation 23P of the 1969 Regulations and covers information previously specified in Schedule 11C.

Section ^45—Extension of time to pay amount

Section ^45 allows a person to whom an infringement notice has been issued to apply to the relevant chief executive, being the Commissioner of the Australian Federal Police or the police force of a state/territory, for an extension of the period listed in the infringement notice. If the application is made before the end of the listed period the chief executive can, in writing, extend that period (either before or after the end of that period). The section also sets out some of the practical matters regarding the period, to ensure that a decision to extend the period (or not) is reflected in references to the period in notices and relevant instruments under Part 8. The section also allows the relevant chief executive to extend the period more than once.

Section ^45 replaces regulation 23S of the 1969 Regulations in substantively the same form.

Section ^46—Withdrawal of an infringement notice

Subsection ^46(1) provides for a person to whom an infringement notice has been given to make written representations to the relevant chief executive seeking the withdrawal of the notice.

Subsections ^46(2) and (3) deal with the withdrawal of notice. The relevant chief executive may withdraw an infringement notice given to a person whether or not the person has sought the withdrawal. When deciding whether to withdraw a notice the chief executive must take any written representations made into account and may take into account a number of other things including the circumstances of the alleged offence.

Subsection ^46(4) deals with the notice of withdrawal. Upon withdrawal of an infringement notice, a notice must be given to the person detailing certain information including the person's name and address and that the person may be prosecuted in court for the alleged offence.

Subsection ^46(5) deals with the refund of the amount paid if an infringement notice is withdrawn. If the person has paid the amount stated on the infringement notice and the relevant chief executive subsequently withdraws the notice, the Commonwealth must refund the person.

Section ^46 replaces regulations 23W – 23Z of the 1969 Regulations with some amendments as to the process.

Section ^47—Effect of payment of amount

Section ^47 provides that if a person who receives an infringement notice pays the amount stated before the end to the period any liability of the person for the alleged offence is discharged, the person may not be prosecuted in court for the alleged offence, the person is not regarded to have admitted guilt of liability for the alleged offence, and the person is not regarded as having been convicted of the alleged offence. Subsection ^47(1) does not apply if the notice has been withdrawn.

Section ^47 replaces regulation 23V of the 1969 Regulations.

Section ^48—Effect of this Part

Section ^48 provides that this Part does not:

- require an infringement notice to be given for an alleged offence against a provision subject to an infringement notice under this Part;
- affect the liability of a person for an alleged offence against a provision subject to an infringement notice if a notice is not given, is given but later withdrawn, or if the person does not comply with the notice;
- prevent the giving of two or more infringement notices to a person for an alleged offence; or
- limit a court's discretion to determine the penalty amount imposed on someone who is found to have committed an offence.

Section ^48 replaces regulation 23M of the 1969 Regulations.

Division 3—Forfeiture of infringing articles and devices

Division 3 deals with the forfeiture of infringing articles and devices.

Division 3 replaces Division 6A2 of the 1969 Regulations in substantively the same form.

Section ^49—Forfeiture of infringing articles and devices

Subsections ^49(1) and (2) provide that a person who an infringement officer believes on reasonable grounds to have committed an offence of strict liability against Division 5 of Part V of the Act (except for strict liability offences in relation to electronic rights management information in subsections 132AQ(5), 132AR(5) and 132 AS(5)), and who possesses infringing copies and/or other devices, may avoid prosecution by forfeiting those items to the Commonwealth and paying the penalty in the infringement notice.

Subsection ^49(3) provides that if the person forfeits all the infringing articles and devices that the person possesses, the authorised officer may take them and is required to issue a receipt for those items.

Subsection ^49(4) provides that if the person pays the penalty in the infringement notice, the relevant chief executive must cause all the infringing articles and devices forfeited to the Commonwealth to be destroyed.

The section provides that articles and devices are only destroyed if the infringement notice is paid. This is to ensure that such material will not be destroyed where there is a likelihood that the matter will go to court and the articles and devices will be required as evidence, or in the circumstances where a recipient seeks withdrawal of a notice and the notice is withdrawn.

Section ^49 replaces regulation 23O of the 1969 Regulations in substantively the same form.

Part 9—Seizure of imported copies of copyright material

Part 9 is made in relation to Division 7 of Part V of the Act. It replaces Part 4 of the 1969 Regulations.

Section ^50—Definition of *action period* in section 134B of the Act

Section 134AB of the Act defines “action period”, in relation to particular seized copies, to mean the period prescribed by the regulations after notice of a claim for release of the copies is given to the objector (under section 135AED). Section ^50 prescribes a period of ten working days.

Section ^50 replaces regulation 22 of the 1969 Regulations in substantively the same form.

Section ^51—Definition of *claim period* in section 134B of the Act

Section 134AB of the Act defines “claim period”, in relation to particular seized copies, to mean the period prescribed by the regulations after notice of seizure of the copies is given to the importer (under section 135AC). Section ^51 prescribes a period of ten working days.

Section ^51 replaces regulation 22A of the 1969 Regulations in substantively the same form.

Section ^52—Information to be given to Comptroller-General of Customs about objection to importation of copies of works etc.—paragraph 135(8)(c) of the Act

Section 135 of the Act provides a framework for a copyright owner to give the Comptroller-General of Customs a written notice objecting to the importation into Australia of copies of copyright material to which the section applies. Such a notice under subsection 135(2) must be given together with any prescribed document and be accompanied by any prescribed fee. Subsection 135(8) provides that the regulations may make provision for or in relation to: (a) the forms of notices under the section; (b) the times at which, and the manner in which, notices are to be given; and (c) the giving of information and evidence to the Comptroller-General of Customs.

Section ^52 of the 2017 Regulations provides that for the purposes of paragraph 135(8)(c) of the Act, the Comptroller-General of Customs may direct a person who notifies them under subsection 135(2) of the Act to provide evidence about the subsistence of copyright in the material, the ownership of copyright, and if an agent is used, the authority under which the agent is acting. The person must comply with such a direction.

Section ^52 replaces regulation 21 of the 1969 Regulations in substantively the same form.

Section ^53—Seizure of copies of works etc. imported into certain external Territories—subsection 135(9) of the Act

Subsection 135(9) of the Act further provides for the regulations to contain provisions similar to the provisions of Division 7 of Part V of the Act, in relation to the importation into external Territories (other than importation from Australia or from another external Territory) of copies of copyright material. Section ^53 of the 2017 Regulations sets out certain laws which apply (with modifications) in relation to the importation of copies of copyright material into Norfolk Island; the Territory of Christmas Island; and the Territory of Cocos (Keeling) Islands.

Subsection ^53(1) of the 2017 Regulations provides for the application and states that this section applies to the importation of copyrighted material from a place other than Australia to

Norfolk Island, the Territory of Christmas Island or the Territory of the Cocos (Keeling) Islands.

Subsection ⁵³(2) outlines the laws that apply in relation to such importation. This subsection extends the application of Division 7 of Part 5 of the Act, subsections 135(1), (2), (3), (6), (6A), (8) and (9) of the Act and sections ⁵⁰, ⁵¹, and ⁵⁴ of the 2017 Regulations with certain minor administrative amendments.

Subsection ⁵³(3) outlines the required modifications to the provisions as they apply to the Territory. These modifications are as follows:

- a reference in the applied provisions to Australia is a reference to the Territory;
- a reference in the applied provisions to a notice under subsection 135(2) (however described) or a notice given under section 135 is a reference to a notice given under subsection 135(2) of the Act;
- a reference in the applied provisions to the Comptroller-General of Customs has the same meaning as it has in the *Customs Act 1901* as it applies in the Territory because of an Ordinance of the Territory;
- a reference in subsection 135(5) or paragraph 135(7)(b) of the Act to revocation or declaration of ineffectiveness of a notice under subsection 135(2) of the Act is a reference to such a revocation or declaration under subsection 135(6) or (6A) of the Act applying apart from this section;
- a reference in paragraph 135(7)(d) of the Act to the *Customs Act 1901* is a reference to the *Customs Act 1901* as it applies in the Territory because of an Ordinance of the Territory; and
- a reference in subsection 135AJ(1) or (3) to copies covered by a notice under section 135 is a reference to copies of copyright material that were imported into the Territory and could be or were seized on the basis of the notice. Even though the notice under subsection 135(2) of the Act objects only to importation into parts of Australia other than the Territories to which this section relates (because of subsection 135(1) of the Act affecting paragraph 135(2)(b)), it will provide a basis for seizing copies imported into any of those Territories (or into any other part of Australia).

The effect of these modifications is that only one notice objecting to importation need be given as a basis for seizing copies imported into any of the Territories or any other part of Australia. Likewise, a single revocation or declaration of ineffectiveness of the notice stops seizure of imports of copies to which the notice related into any of the Territories or any other part of Australia.

Section ⁵³ replaces regulation 23 of the 1969 Regulations.

Section ⁵⁴—Claim for release of seized copies—section 135AEA of the Act

Section ⁵⁴ provides the list of information that must be included in a claim, given by the importer of seized copies to the Comptroller-General of Customs, for the release of seized copies.

Section ⁵⁴ replaces regulation 22B of the 1969 Regulations in substantively the same form.

Part 10—Retransmission of free to air broadcasts

Part 10 is made in relation to Part VC of the Act. It replaces Part 6 of the 1969 Regulations. Part VC of the Act sets out a statutory licence for the retransmission of free-to-air broadcasts. The Act provides that the copyright in a work, sound recording or cinematograph film included in a free-to-air broadcast is not infringed by retransmission of the broadcast, if equitable remuneration is paid. Retransmission of a free-to-air broadcast that takes place over the internet is excluded from this remunerated exception (see section 135ZZJA). Essentially, the retransmission scheme in Part VC allows the retransmission of free-to-air broadcasts, without the permission or remuneration of the broadcaster, and for equitable remuneration to be paid to the underlying rights holders.

Section 55—Identity cards—subsection 135ZZQ(1) of the Act

Section 135ZZQ of the Act requires the chief executive officer of a collecting society to issue an identity card in the prescribed form to each person authorised by the society to enter the premises of a retransmitter to assess the retransmission or inspect records, for the purposes of subsection 135ZZP(2). The identity card must contain a recent photograph of the authorised person.

Section 55 of the 2017 Regulations prescribes the form of identity card for the purposes of subsection 135ZZQ(1) of the Act, which must include the following information to be valid:

- the name of the collecting society;
- the name and title of the person to whom the identity card is issued;
- the name and title of the person who issued the identity card;
- the date on which the identity card is issued;
- the date on which the identity card will expire (no later than three years after the day on which the identity card is issued);
- a statement that the identity card has been issued under section 135ZZQ of the Act; and
- the signature of the person to whom the identity card is issued.

Section 55 replaces regulation 23K of the 1969 Regulations in substantively the same form.

Part 11—Copyright Tribunal

Part 11 is made in relation to the Tribunal’s role in and under the Act, including Part VI of the Act. It replaces the Tribunal Regulations.

Division 1—Preliminary

Section ^56—Authority

Section ^56 provides that Part 11 has effect for the purposes of section 166 of the Act.

Section 166 of the Act provides for regulations to be made in connexion with making references and applications to the Tribunal, the regulation of proceedings before the Tribunal, the fees payable in respect of those references and applications, and the fees or expenses for witnesses at the Tribunal.

There was no equivalent of section ^56 in the Tribunal Regulations.

Section ^57—Organizations treated like persons

Section ^57 provides that Part 11, and other provisions of the 2017 Regulations so far as they relate to the Part, apply to an organization (as defined under subsection 136(1) of the Act) in the same way they apply to a person.

The term “organization” is defined in subsection 136(1) to mean an organization or association of persons whether corporate or unincorporate.

Section ^57 is substantively similar to the definition of “person” in regulation 4 of the Tribunal Regulations.

Division 2—General Provisions

Division 2 of Part 11 of the 2017 Regulations sets out general provisions for the business of the Tribunal.

Section ^58—Seal of Tribunal

Section ^58 prescribes general provisions relating to the design of the seal and process of affixing the seal of the Tribunal.

Section ^58 provides that:

- the Tribunal is to have a seal;
- the President is to determine the design of the seal;
- the seal is to be attached a document of a kind directed by the President;
- the seal is to be attached to any other documents as ordered by the Tribunal; and
- the seal may be attached by hand, by electronic means or any other way.

Section ^58 replaces regulation 5 of the Tribunal Regulations.

Section ^59—Filing of documents

Section ^59 prescribes the process for filing documents under the Act.

Section 59 applies to the regulations in their entirety and prescribes when documents must not be accepted, and when they may not be accepted.

At subsection 59(1) it is prescribed that the Registrar must not accept a document for filing where it is not substantially complete; does not substantially comply with this instrument; is not properly signed; if the Tribunal has directed that the document not be accepted; or if the Tribunal has directed that the document not be accepted without the leave of the Tribunal and leave has not been obtained.

Section 60—Address for service

Section 60 provides that a person who files a document with the Registrar that relates to a Tribunal proceeding must specify an address for service and may notify the Tribunal and other parties to a proceeding of an updated notice for service.

Section 61—Tribunal may direct alternative means of service or dispense with service

Default rules for service of documents are set out in Part 6 of the *Acts Interpretation Act 1901* or section 9 of the *Electronic Transactions Act 1999*. Section 61 provides that the Tribunal can dispense with service or direct that a document be served in another way.

Section 62—Notification of orders of Tribunal and of reasons

Section 62 prescribes notification of orders of the Tribunal and of reasons.

Section 62 provides that:

- when making an order, the Tribunal must state in writing its reasons for making the order (subsection 62(1));
- the Registrar must cause a copy of the document recording the order and of the reasons of the Tribunal to be given to all parties the order relates to, as well as to make it available at each office of the Registrar for public inspection at times the office is open for business (subsection 62(2));
- ancillary and interim orders are excepted from subsections 62(1) - *Written reasons for orders*, and 62(2) - *Giving and inspection of orders* (subsection 62(3));
- the President may also direct the Registrar to publish details of any order on the Tribunal's website (subsection 62(4)); and
- subsection 62(2) - *Giving and inspection of orders* and subsection 62(4) - *President may direct Registrar to publish order*, do not apply to an order whose operation is suspended pending a reference of a question of law to the Federal Court of Australia.

Section 62 replaces regulation 15 of the Tribunal Regulations in substantively the same form, and updates references to publication in newsprint to the Tribunal's website.

Division 3—Applications and references to the Tribunal

Subdivision A—General provisions about applications and references to the Tribunal

Subdivision A of Division 3 of Part 11 of the 2017 Regulations sets out general provisions for the business of the Tribunal relating to applications and references to the Tribunal.

Section ^63—Form, content and filing of application or reference to the Tribunal

Section ^63 prescribes general provisions for the form, content and filing of an application or reference to the Tribunal.

Subsection ^63(1) requires an application or reference to the Tribunal to be in writing; state the name of the person making the application or reference; state the general nature of the application or reference as well as the specific provision of the Act or instrument under which the application is being made; subject to subsection ^63(2) include such other matters required by this instrument; be signed on behalf of the person making the application or reference, and be filed with the Registrar.

Subsection ^63(2) provides that matters required by this instrument to be included in the application or reference may be omitted if the President gives leave for the omission. Subsection ^63(3) further provides that while granting leave, the President may direct other matters to be included in the application or reference instead of the omitted matters. Where that occurs, the matters must be included in the application or reference.

Section ^63 replaces sub-regulations 17(1) and (2) of the Tribunal Regulations in substantively the same form.

Section ^64—Giving application or reference to other parties

Section ^64 prescribes general provisions for giving applications or references to other parties under section 147 of the Act.

Subsection ^64(1) requires a person making an application or reference to the Tribunal to, within seven days after filing, give each other party to the application or reference a sealed copy of the application or reference, and written notice that the other party is a party to the application or reference.

Subsection ^64(2) excludes the section from applying to parties who become a party to the application or reference after the time it is filed.

Section ^64 replaces sub-regulations 17(3) and (4) of the Tribunal Regulations in substantively the same form.

Section ^65—Advertising of applications and references

Section ^65 prescribes general provisions for advertising of applications or references.

Subsection ^65(1) requires a person making an application or reference to the Tribunal to advertise it in a national newspaper of Australia or the Gazette within ten days of filing the application with the Registrar.

Subsection ^65(2) requires that the advertisement must: specify the date on which the application or reference was made and the relevant file number; state the name and address for service of the person; provide a statement of the general nature of the application or reference; and specify the provision of the Act or the 2017 Regulations under which the application or reference is made.

Subsection ^65(3) prescribes that the President may direct that a particular application or reference need not be advertised, or be advertised in a different way to that required by subsection ^65(1).

A schedule of applications or references made under particular provisions of the Act and the 2017 Regulations that do not require advertising is prescribed by subsection ^65(5). The subject of those provisions are determining equitable remuneration, apportioning royalty, determining a question relating to copying or communicating by educational institution, determining question relating to entry onto premises of educational institution, determining re-transmitter's record system, being made party to Tribunal proceeding, and an order relating to Tribunal proceeding. These provisions relate to applications that are likely to relate to specific parties, rather than being of application or interest to the general public.

Section ^65 replaces regulation 18 of the Tribunal Regulations in substantively the same form.

Section ^66—Hearing of application or reference

Section ^66 prescribes general provisions for the hearing of an application or reference to the Tribunal.

Subsection ^66(1) prescribes that the President must fix a time and place for the hearing except for an application covered by section ^99, or an application or reference where the Tribunal decides not to have a hearing. Section ^99 relates to applications ancillary to Tribunal proceedings where an application to be made a party to a Tribunal proceeding is made.

Subsection ^66(2) prescribes that the Registrar must give notice of the time and place fixed to the parties to the reference or application, and persons (if any) who have applied to the Tribunal to be made parties to the application or reference and whose applications to be made parties have not already been determined.

Section ^66 replaces sub-regulation 17(7) of the Tribunal Regulations in substantively the same form.

Subdivision B—Provisions about particular kinds of applications and references to the Tribunal

Section ^67—Matters to be included in application under subsection 47(3) of the Act

Section ^67 prescribes the matters to be included in an application to the Tribunal under subsection 47(3) of the Act to determine equitable remuneration for the making of a sound recording, or cinematograph film, used for broadcasting a literary, dramatic or musical work or an adaptation of such a work.

Section 47 provides a statutory licence for reproduction of literary, dramatic or musical works for broadcasting purposes. Subsection 47(3) of the Act provides that the statutory licence will only apply if the maker of the recording has paid the owner of the copyright equitable remuneration as agreed between the broadcaster and copyright owner or as determined by the Tribunal.

Section ^67 sets out the matters that are to be included in an application to the Tribunal to determine equitable remuneration under subsection 47(3) of the Act.

Section ^67 replaces regulation 19 of the Tribunal Regulations in substantively the same form.

Section ^68—Matters to be included in application under paragraph 59(3)(b) of the Act

Section ^68 prescribes matters to be included in an application to the Tribunal under paragraph 59(3)(b) of the Act for apportioning the royalty for making a record comprising the

performance of a musical work involving the singing or speaking of words from a literary or dramatic work.

Section 59 of the Act provides a statutory licence for reproduction of literary or dramatic works in a record of a musical work. Subsection 59(3) of the Act provides that in certain circumstances, the statutory exception will only apply if the maker of the recording has paid the owner of the copyright in the literary or dramatic work equitable remuneration.

Subsection 59(3) of the Act provides that where copyright subsists in the musical work as well as in the literary or dramatic work and the copyrights in those works are owned by different people or where there is no agreement, then as determined by the Tribunal.

Section ^68 sets out the matters that are to be included in an application to the Tribunal to apportion equitable remuneration under subsection 59(3) of the Act.

Section ^68 replaces regulation 20 of the Tribunal Regulations in substantively the same form.

Section ^69—Matters to be included in application under subsection 70(3) of the Act

Section ^69 prescribes matters to be included in an application to the Tribunal under subsection 70(3) of the Act to determine equitable remuneration for the making of a cinematograph film of an artistic work for including the work in a television broadcast.

Section 70 of the Act provides a statutory licence for inclusion of artistic works in films for the purposes of television broadcast. Subsection 70(3) of the Act provides that the statutory exception will only apply if the maker of the broadcast has paid the owner of the copyright in the artistic work equitable remuneration as agreed between the maker of the film and copyright owner or determined by the Tribunal.

Section ^69 sets out the matters that are to be included in an application to the Tribunal to determine equitable remuneration under subsection 70(3) of the Act.

Section ^69 replaces regulation 21 of the Tribunal Regulations in substantively the same form.

Section ^70—Matters to be included in application under subsection 107(3) of the Act

Section ^70 prescribes matters to be included in an application to the Tribunal under subsection 107(3) of the Act to determine equitable remuneration for making a copy of a sound recording for broadcasting.

Section 107 of the Act provides a statutory licence for making a copy of a sound recording for the purposes of broadcasting. Subsection 107(3) of the Act provides that the statutory licence will only apply if the maker of the copy has paid the owner of the copyright in the sound recording equitable remuneration as agreed between the maker of the copy and copyright owner or as determined by the Tribunal.

Section ^70 sets out the matters that are to be included in an application to the Tribunal to determine equitable remuneration under subsection 107(3) of the Act.

Section ^70 replaces regulation 22 of the Tribunal Regulations in substantively the same form.

Section ^71—Matters to be included in application under paragraph 108(1)(a) of the Act

Section ^71 prescribes matters to be included in an application to the Tribunal under paragraph 108(1)(a) of the Act to determine equitable remuneration for causing a published sound recording to be heard in public.

Section 108 of the Act provides a statutory licence for public performance of published sound recordings. Paragraph 108(1)(a) of the Act provides that the statutory licence will only apply if equitable remuneration is undertaken to be paid to the owner of copyright in the sound recording in the amount agreed between the person undertaking the public performance and the copyright owner or determined by the Tribunal.

Section ^71 sets out the matters that are to be included in an application to the Tribunal to determine equitable remuneration under paragraph 108(1)(a) of the Act.

Section ^71 replaces regulation 23 of the Tribunal Regulations in substantively the same form.

Section ^72—Matters to be included in application under paragraph 113P(4)(b) of the Act

Section ^72 prescribes matters to be included in an application to the Tribunal under paragraph 113P(4)(b) of the Act to determine a question relating to copying or communicating by a body administering an educational institution under the education statutory licence.

Division 4 of Part IVA of the Act provides a statutory licence for copying and communicating works and broadcasts for educational institutions. Paragraph 113P(4)(b) provides the Tribunal with the power to determine a question relating to the statutory licence, either before or after a relevant agreement in paragraph 113P(1)(e) is reached.

In determining a question, column 3 of item 1 of the table in subsection 153A(4) of the Act provides that the Tribunal must have regard to matters prescribed by the regulations. No matters are currently prescribed in the 2017 Regulations. This is not intended to preclude the Tribunal having regard to any other matter it deems relevant in determining a question.

Section ^73—Application under paragraph 113R(2)(b) of the Act

Division 4 of Part IVA of the Act provides a statutory licence for copying and communicating works and broadcasts for educational institutions. Under subsection 113P(2) of the Act, for the statutory licence to apply, a remuneration notice that applies to the relevant educational institution must be in place. Section 113Q of the Act defines a remuneration notice as a written notice that the body administering an educational institution gives to a collecting society by which the body undertakes to pay equitable remuneration to the collecting society. Section 113R provides that the amount of equitable remuneration under section 113Q of the Act is the amount agreed between the body administering the educational institution and the collecting society, or determined by the Tribunal. In determining equitable remuneration, column 3 of item 2 of the table in subsection 153A(4) of the Act provides that the Tribunal must have regard to matters prescribed by the regulations.

Subsection ^73(1) sets out the matters that are to be included in an application to the Tribunal to determine equitable remuneration under paragraph 113R(2)(b) of the Act.

Subsection ^73(2) sets out the matters that the Tribunal must have regard to in determining equitable remuneration under subsection 113R(2). This is not intended to preclude the Tribunal having regard to any other matter it deems relevant in determining equitable remuneration.

Section ^74—Matters to be included in application under paragraph 113S(4)(b) of the Act

Section ^74 prescribes matters to be included in an application to the Tribunal under paragraph 113S(4)(b) of the Act to determine a question relating to entry of a person authorised by a collecting society onto premises of an educational institution under the education statutory licence.

Division 4 of Part IVA of the Act provides a statutory licence for copying and communicating works and broadcasts for educational institutions. Paragraph 113S(4)(b) sets out how an educational institution must assist a collecting society by allowing the collecting society entry onto the premises of the educational institution to inspect records. Paragraph 113(4)(b) provides the Tribunal with the power to determine a question relating to entry onto premises of an educational institution.

In determining a question, column 3 of item 1 of the table in subsection 153A(4) of the Act provides that the Tribunal must have regard to matters prescribed by the regulations. No matters are currently prescribed in the Regulations. This is not intended to preclude the Tribunal having regard to any other matter it deems relevant in determining a question.

Section ^75—Matters to be included in references under paragraph 113V(2)(c) of the Act

Section ^75 prescribes matters to be included in an application to the Tribunal under paragraph 113V(2)(c) of the Act by a body to be declared as a collecting society under the education statutory licence.

Division 5 of Part IVA of the Act provides for declaration and revocation of declarations for collecting societies in relation to the statutory licence for copying and communicating works and broadcasts for educational institutions in Division 4 of Part IVA of the Act.

Section 113V of the Act allows for a body to apply to the Minister to be declared to be a works collecting society or the broadcasts collecting society. Paragraph 113V(2)(c) allows the Minister to declare the body, refuse to declare the body or refer the application from the body to the Tribunal.

Section ^76—Matters to be included in references under paragraph 113X(2)(b) of the Act

Section ^76 prescribes matters to be included in an application to the Tribunal under paragraph 113X(2)(b) of the Act to determine the question whether the declaration of a body as a collecting society should be revoked under the education statutory licence.

Subdivision A of Division 5 of Part IVA of the Act provides for declaration and revocation of declarations for collecting societies in relation to the statutory licence for copying and communicating works and broadcasts for educational institutions in Division 4 of Part IVA of the Act.

Section 113X of the Act allows for the Minister to revoke a declaration to be a works collecting society or the broadcasts collecting society in certain circumstances. Paragraph 113X(2)(b) allows the Minister to revoke the declaration of the body, or refer the question whether the declaration of the body should be revoked to the Tribunal.

Section ^77—Matters to be included in applications under subsection 113ZB(1) of the Act

Section ^77 prescribes matters that must be included in an application to the Tribunal under subsection 113ZB(1) of the Act to review a collecting society's actual or proposed arrangement for distributing amounts it collects under the education statutory licence.

Subdivision A of Division 5 of Part IVA of the Act sets out requirements for the operation of collecting societies in relation to the statutory licence for copying and communicating works and broadcasts for educational institutions in Division 4 of Part IVA of the Act.

Section 113ZB provides for Tribunal review of the distribution arrangement of a collecting society. Subsection 113ZB(1) provides that the collecting society or a member of the society may apply to the Tribunal for review of the arrangement adopted, or proposed to be adopted, by the society for distributing amounts it collects in a period.

Section ^78—Matters to be included in applications under subsection 135ZZM(1) of the Act

Section ^78 prescribes matters that must be included in an application to the Tribunal made under subsection 135ZZM(1) of the Act to determine equitable remuneration payable for retransmissions of free-to-air broadcasts.

Part VC of the Act provides a statutory licence for retransmission of free-to-air broadcasts. Under subsection 135ZZK(1) of the Act, for the statutory licence to apply, a remuneration notice must be given by a retransmitter to the relevant collecting society. Section 135ZZL of the Act defines a remuneration notice as a written notice that a retransmitter gives to a collecting society by which it undertakes to pay equitable remuneration to the collecting society. Section 135ZZM provides that the amount of equitable remuneration under section 135ZZL of the Act is the amount agreed between the retransmitter and the collecting society, or determined by the Tribunal.

Section ^78 replaces regulation 23K of the Tribunal Regulations in substantively the same form.

Section ^79—Matters to be included in application under subsection 135ZZN(3) of the Act

Section ^79 prescribes matters that must be included in an application to the Tribunal made under subsection 135ZZN(3) of the Act for determining a record system under the statutory licence for retransmission of free-to-air broadcasts.

Part VC of the Act provides a statutory licence for retransmission of free-to-air broadcasts. Under subsection 135ZZK(1) of the Act, for the statutory licence to apply, a remuneration notice must be given by a retransmitter to the relevant collecting society. Section 135ZZN of the Act requires that if a remuneration notice is in force, a retransmitter must establish and maintain a records system that details the programs that are included in each retransmission made. Subsection 135ZZN(3) provides that a record system must be determined by agreement, or failing agreement, by the Tribunal on application by the retransmitter or collecting society.

Section ^79 replaces regulation 23L of the Tribunal Regulations in substantively the same form.

Section ^80—Matters to be included in references under paragraph 135ZZT(1A)(c) of the Act

Section ^80 prescribes matters that must be included where references to the Tribunal are made by the Minister under paragraph 135ZZT(1A)(c) of the Act of an application by a body to be declared as a collecting society under the statutory licence for retransmission of free-to-air broadcasts.

Division 3 of Part VC of the Act provides for declaration and revocation of declarations for collecting societies in relation to the statutory licence for retransmission of free-to-air broadcasts under Part VC of the Act. Section 135ZZT of the Act allows for a body to apply to the Minister to be declared to be a collecting society. Subsection 135ZZT(1A) allows the Minister to declare the body, refuse to declare the body or refer the application from the body to the Tribunal.

Section ^80 replaces regulation 23JA of the Tribunal Regulations in substantively the same form, but does not refer to matters to be included in references under paragraph 135ZZB(1A)(c).

Section ^81—Matters to be included in references under paragraph 135ZZU(2)(b) of the Act

Section ^81 prescribes matters to be included in an application under paragraph 135ZZU(2)(b) of the Act to determine the question of whether the declaration of a body as a collecting society under the statutory licence for retransmission of free-to-air broadcasts should be revoked.

Division 3 of Part VC of the Act provides for declaration and revocation of declarations for collecting societies in relation to the statutory licence for retransmission of free-to-air broadcasts under Part VC of the Act.

Section 135ZZU of the Act allows for the Minister to revoke a declaration to be a works collecting society or the broadcasts collecting society in certain circumstances.

Paragraph 135ZZU(2)(b) allows the Minister to revoke the declaration of the body, or refer the question of whether the declaration of the body should be revoked to the Tribunal.

Section ^81 replaces regulation 23JB of the Tribunal Regulations in substantively the same form, but does not refer to matters to be included in references under paragraph 135ZZC(2)(b).

Section ^82—Matters to be included in application under subsection 135ZZWA(1) of the Act

Section ^82 prescribes matters to be included in an application to the Tribunal made under subsection 135ZZWA(1) of the Act under the statutory licence for retransmission of free-to-air broadcasts.

Division 3 of Part VC of the Act sets out requirements for the operation of collecting societies in relation to the statutory licence for retransmission of free-to-air broadcasts under Part VC of the Act.

Section 135ZZWA provides for Tribunal review of the distribution arrangement of a collecting society. Subsection 135ZZWA(1) provides that the collecting society or a member of the society may apply to the Tribunal for review of the arrangement adopted, or proposed to be adopted, by the society for distributing amounts it collects in a period.

Section ^82 replaces regulation 23CG of the Tribunal Regulations in substantively the same form, but does not refer to matters to be included in references under subsections 135SA(1), 135ZZEA(1) or section 183F of the Act. Section ^77 relates to matters to be included in references under subsections 135SA(1) and 135ZZEA(1) (now section 113ZB, because of amendments to the Act made by the DAOM Act).

Section ^83—Matters to be included in application under subsection 135ZZZS(1) of the Act

Section ^83 prescribes matters to be included in an application to the Tribunal made under subsection 135ZZZS(1) of the Act to review a collecting society's actual or proposed arrangement for distributing amounts it collects under the statutory licence for re-broadcasts by satellite BSA licences.

Part VD provides a statutory licence for re-broadcasts by satellite BSA licences.

Section 135ZZZS provides for Tribunal review of the distribution arrangement of a collecting society. Subsection 135ZZZS(1) provides that the collecting society or a member of the society may apply to the Tribunal for review of the arrangement adopted, or proposed to be adopted, by the society for distributing amounts it collects in a period.

Section ^83 does not appear in the Tribunal Regulations in substantively the same form.

Section ^84—Matters to be included in application under subsection 152(2) of the Act

Section ^84 prescribes matters to be included in an application to the Tribunal under subsection 152(2) of the Act for an order about determining the amount payable by a broadcaster to the owners of copyrights in published sound recordings for broadcasting those recordings in a period under the statutory licence for the free-to-air broadcast of published sound recordings.

Section 152 of the Act sets out a statutory licence for the free-to-air broadcast of published sound recordings. Subsection 152(2) provides that in relation to the statutory licence, an application may be made to the Tribunal for an order determining, or making provision for determining, the amount payable by a broadcaster to the owners of copyrights in published sound recordings in respect of the broadcasting, during a specific period specified in the application, of those recordings by that broadcaster.

Section ^84 replaces regulation 24 of the Tribunal Regulations in substantively the same form.

Section ^85—Matters to be included in application under subsection 152(12) of the Act

Section ^85 prescribes matters to be included in an application to the Tribunal under subsection 152(12) of the Act for amendment of an order to specify the applicant as one of the persons among whom the amount determined in accordance with the order is to be divided under the statutory licence for the free-to-air broadcast of published sound recordings.

Section 152 of the Act sets out a statutory licence for the free-to-air broadcast of published sound recordings. Subsection 152(12) provides that a person who is not specified in an order in force under subsection 152(6) as one of the persons among whom the amount specified in, or determined in accordance with, the order is to be divided may, before the expiration of the period to which the order applies, apply to the Tribunal for an amendment of the order so as to specify him or her as one of those persons.

Section ^85 replaces regulation 25 of the Tribunal Regulations in substantively the same form.

Section ^86—Matters to be included in application under subsection 153F(1) of the Act

Section ^86 prescribes matters to be included in an application to the Tribunal under subsection 153F(1) of the Act for a declaration that a company be a collecting society under the statutory licence for use of copyright material for the Crown.

Division 2 of Part VII of the Act sets out a statutory licence for use of copyright material for the Crown. Section 153F sets out the procedure for a body to be declared as a collecting society for the purposes of the statutory licence. Subsection 153F(1) provides that a company limited by guarantee may apply to the Tribunal for a declaration that the company be a collecting society for the purposes of Division 2 of Part VII.

Section ^86 replaces regulation 25C of the Tribunal Regulations in substantively the same form.

Section ^87—Matters to be included in application under subsection 153G(1) of the Act

Section ^87 prescribes matters to be included in an application to the Tribunal made under subsection 153G(1) of the Act for revocation of a declaration under section 153F that a company be a collecting society under the statutory licence for use of copyright material for the Crown.

Division 2 of Part VII of the Act sets out a statutory licence for use of copyright material for the Crown. Section 153G sets out the procedure for a declaration as a collecting society for the purposes of the statutory licence to be revoked. Subsection 153G(1) provides that the collecting society, a member of the collecting society or a government may apply to the Tribunal for the revocation of a collecting society under section 135F.

Section ^87 replaces regulation 25D of the Tribunal Regulations in substantively the same form.

Section ^88—Matters to be included in application under subsection 153K(1) of the Act

Section ^88 prescribes matters to be included in an application to the Tribunal made under subsection 153K(1) of the Act for an order determining the method for working out remuneration payable under the statutory licence for use of copyright material for the Crown.

Division 2 of Part VII of the Act sets out a statutory licence for use of copyright material for the Crown. Section 153K provides for a collecting society of Government to apply to the Tribunal for an order determining the method for working out remuneration payable under subsection 183A(2) for government copies made for the services of government in a particular period.

Section ^88 replaces regulation 25E of the Tribunal Regulations in substantively the same form.

Section ^89—Matters to be included in reference under section 154 of the Act

Section ^89 prescribes matters to be included in an application to the Tribunal under subsection 154 of the Act in relation to a proposed licence scheme.

Subdivision H of Division 3 of Part VI of the Act sets out the Tribunal's powers with respect to licences and licence schemes. Section 154 relates to the reference of proposed licence schemes to the Tribunal.

Subsection 154(1) provides that where a licensor proposes to bring a licence scheme into operation, he or she may refer the scheme to the Tribunal.

Section ^89 replaces regulation 26 of the Tribunal Regulations in substantively the same form.

Section ^90—Reference of existing licence scheme under section 155 of the Act

Subsection ^90(1) prescribes matters to be included when a reference of a licence scheme to the Tribunal is made under section 155 of the Act in relation to an existing licence scheme.

Subsection ^90(2) requires that if the reference is made by an organization claiming to be representative of persons requiring licences, the Tribunal must, before determining the question whether the organization is reasonably representative of the class of persons that it claims to represent, give each of the following an opportunity to present a case in relation to that question, every other party to the reference, every person who has applied to be made a party to the reference and whose application has not been determined.

Subdivision H of Division 3 of Part VI of the Act sets out the Tribunal's powers with respect to licences and licence schemes. Section 155 relates to the reference of existing licence schemes to the Tribunal.

Subsection 155(1) provides that while a licence scheme is in operation and a dispute arises with respect to the terms of the scheme, the licensor, organization claiming to be representative of persons requiring licences or a person who claims they require a licence, may refer the scheme to the Tribunal.

Section ^90 replaces regulation 27 of the Tribunal Regulations in substantively the same form.

Section ^91—Reference under section 156 of the Act

Section ^91 prescribes matters to be included when a reference of a licence scheme to the Tribunal is made under section 156 of the Act.

Subdivision H of Division 3 of Part VI of the Act sets out the Tribunal's powers with respect to licences and licence schemes. Section 156 relates to the reference of existing licence schemes to the Tribunal.

Subsection 156(1) provides that while the Tribunal has made a final order in relation to a licence scheme under sections 154 or 155 and a dispute arises with respect to the terms of the scheme while the order remains in force, the licensor, organization claiming to be representative of persons requiring licences or a person who claims they require a licence, may refer the scheme to the Tribunal.

Subsection ^91(2) also requires that if the reference is made by an organization claiming to be representative of persons requiring licences, the Tribunal must, before determining the question whether the organization is reasonably representative of the class of persons that it claims to represent, give each of the following an opportunity to present a case in relation to that question:

- every other party to the reference; and
- every person who has applied to be made a party to the reference and whose application has not been determined.

Section ^91 replaces regulation 29 of the Tribunal Regulations in substantively the same form.

Section ^92—Application for leave under subsection 156(2) of the Act to refer licence scheme to the Tribunal

Section ^92 prescribes matters to be included when an application for leave to refer a licence scheme to the Tribunal is made under subsection 156(2) of the Act and the Tribunal's leave is sought before the preliminary hearing or hearing of the reference.

Subdivision H of Division 3 of Part VI of the Act sets out the Tribunal's powers with respect to licences and licence schemes. Section 156 relates to the reference of existing licence schemes to the Tribunal. Subsection 156(1) provides that while the Tribunal has made a final order in relation to a licence scheme under sections 154 or 155 and a dispute arises with respect to the terms of the scheme while the order remains in force, the licensor, organization claiming to be representative of persons requiring licences or a person who claims they require a licence, may refer the scheme to the Tribunal. Subsection 156(2) provides that a scheme can't be referred to the Tribunal under subsection 156(1) without the Tribunal's leave if:

- the order was made to be in force for a period exceeding 15 months, and less than 12 months has elapsed; or
- the order was made to be in force for a period not exceeding 15 months— and less than three months ending on the date of expiration of the order.

Subsection ^92(1) applies if a person wants the leave of the Tribunal under subsection 156(2) of the Act to refer to the Tribunal under subsection 156(1) of the Act a licence scheme reflecting an order of the Tribunal under section 154 or 155 of the Act so far as it relates to cases in a class, and wants the leave granted before the preliminary hearing or the hearing of the reference.

Subsection ^92(2) prescribes that the person must make an application to the Tribunal and outlines what must be included in an application.

Subsection ^92(3) provides that the parties to the application are the applicant, and if the application is not made by the licensor operating the scheme – that licensor, and such other persons (if any) as apply to the Tribunal to be made parties to the application and are made parties to the application under subsection 156(4).

Subsection ^92(4) prescribes that the Tribunal may make a person party to the application if the person applies to the Tribunal to be made a party to the application, and appears to the Tribunal to have a substantial interest in the operation of the scheme so far as it relates to the class of cases specified in the application.

Subsection ^92(5) states that the Tribunal must consider the application, and give the parties to the application an opportunity to present their cases, and make such order, either granting or refusing the application, as the Tribunal thinks fit.

Section ^92 replaces regulation 28 of the Tribunal Regulations in substantively the same form.

Section ^93—Application under subsection 157(1) of the Act

Subsection ^93(1) prescribes matters to be included in an application to the Tribunal under subsection 157(1) of the Act relating to the refusal or failure of a licensor operating a licence scheme to grant, or procure the grant, to the applicant of a licence.

Subsection ^93(2) provides that the licensor is party to the application.

Subdivision H of Division 3 of Part VI of the Act sets out the Tribunal’s powers with respect to licences and licence schemes. Section 157 refers to applications to the Tribunal in relation to licences. Subsection 157(1) allows a person to apply to the Tribunal where there is a refusal or failure to grant a licence under a licence scheme.

Section ^93 replaces regulation 30 of the Tribunal Regulations in substantively the same form.

Section ^94—Application under subsection 157(2) of the Act

Subsection ^94(1) prescribes matters to be included in an application to the Tribunal under subsection 157(2) of the Act where the charges or conditions for the grant of a licence are not reasonable in the circumstances of the case.

Subsection ^94(2) prescribes that the licensor is a party to the application.

Section 157 of the Act refers to the application to the Tribunal in relation to licences. Subsection 157(2) allows a person to apply to the Tribunal where they claim that a licence scheme sets unreasonable charges or conditions.

Section ^94 replaces regulation 31 of the Tribunal Regulations in substantively the same form.

Section ^95—Application under subsection 157(3) of the Act

Section ^95 applies to applications made to the Tribunal under subsection 157(3) of the Act where a licence scheme does not apply and a person considers that a licensor has failed or refused to grant a reasonable licence.

Section 157 of the Act refers to the application to the Tribunal in relation to licences. Subsection 157(3) provides that a person who claims that he or she requires a licence in a case to which a licence scheme does not apply, including a case where a licence scheme has not been formulated or is not in operation, and that a licensor has refused or failed to grant the licence, or to procure the grant of the licence, and that in the circumstances it is unreasonable that the licence should not be granted, or that a licensor proposes that the licence should be granted subject to the payment of charges, or to conditions, that are unreasonable, may apply to the Tribunal under this section.

Subsection ^95(1) prescribes that this section applies to an application to the Tribunal under subsection 157(3) of the Act relating to a claim that the applicant requires a licence in a case to which a licensing scheme does not apply and that a licensor has unreasonably refused or failed to grant, or procure the grant, of the licence, or proposes that the licence should be granted subject to the payment of charges, or to conditions, that are unreasonable.

Subsection ^95(2) prescribes matters to be included in an application to the Tribunal under subsection 157(3) of the Act.

Subsection ^95(3) prescribes that the application must request the Tribunal to make an order that the applicant be granted a licence in the terms proposed by the applicant, the licensor or another party to the application, or an order stating the charges and the conditions that the Tribunal considers reasonable in the circumstances for the applicant.

Subsection ^95(4) prescribes that the licensor is a party to the application.

Section ^95 replaces regulation 32 of the Tribunal Regulations in substantively the same form.

Section ^96—Applications under subsection 157(4) of the Act

Section ^96 applies to applications made to the Tribunal under subsection 157(4) of the Act where a licence scheme does not apply and an organization that is representative of people requiring licences considers that a licensor has failed or refused to grant a reasonable licence, or proposes that a licence be granted subject to unfair charges or conditions.

Section 157 of the Act refers to the application to the Tribunal in relation to licences. Subsection 157(4) provides that an organization that claims that it is representative of persons requiring licences in cases to which a licence scheme does not apply, including cases where a licence scheme has not been formulated or is not in operation, and that a licensor has refused or failed to grant the licences, or to procure the grant of the licences, and that in the circumstances it is unreasonable that the licences should not be granted, or that a licensor proposes that the licences should be granted subject to the payment of charges, or to conditions, that are unreasonable, may apply to the Tribunal.

Subsection ^96(1) applies to an application to the Tribunal under subsection 157(4) of the Act by an organization that claims that it is representative of persons requiring licences in cases to which a licence scheme does not apply, and that a licensor has unreasonably refused or failed to grant, or procure the grant, of the licences, or proposes that the licences should be granted subject to the payment of charges, or to conditions, that are unreasonable.

Subsection ^96(2) prescribes matters to be included in an application to the Tribunal under subsection 157(4) of the Act.

Subsection ^96(3) prescribes that the application must request the Tribunal to make an order 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 was represented by the applicant or was a party to the application; or an order stating the charges (if any) and the conditions that the Tribunal considers reasonable in the circumstances for the persons represented by the applicant.

Subsection ^96(4) states that the licensor is a party to the application.

Section ^96 replaces regulation 33 of the Tribunal Regulations in substantively the same form.

Section ^97—Application under subsection 183(5) of the Act

Section ^97 applies to an application to the Tribunal under subsection 183(5) of the Act to fix terms for use of copyright material by the Crown under the statutory licence for use of copyright material for the Crown.

Part VII of the Act sets out provisions in relation to the Crown. Division 2 of Part VII of the Act relates to the use of copyright material for the Crown. Section 183 of the Act refers to the use of copyright material for the services of the Crown. Subsection 183(5) provides that where an act comprised in a copyright has been done under subsection 183(1), the terms for the doing of the act are such terms as are, whether before or after the act is done, agreed between the Commonwealth or the state or territory and the owner of the copyright or, in default of agreement, as are fixed by the Tribunal.

Subsection 183(1) provides that the copyright in a literary, dramatic, musical or artistic work or a published edition of such a work, or in a sound recording, cinematograph film, television broadcast or sound broadcast, is not infringed by the Commonwealth or a state or territory, or by a person authorized in writing by the Commonwealth or a state or territory, doing any acts comprised in the copyright if the acts are done for the services of the Commonwealth or state or territory.

Subsection ^97(1) applies to an application to the Tribunal to fix terms under subsection 183(5) of the Act for the doing, by the Commonwealth, a state or territory or a person authorised by the Commonwealth or a state or territory, of an act that is comprised in copyright, and does not infringe copyright because of subsection 183(1) of the Act.

Subsection ^97(2) prescribes matters to be included in an application to the Tribunal under subsection 183(5).

Subsection ^97(3) prescribes that the application must request the Tribunal to fix terms as between the owner or exclusive licensee of the copyright and the Commonwealth or the state or territory for the doing of any of the acts comprised in the copyright under subsection 183(1) of the Act.

Section ^97 replaces regulation 33C of the Tribunal Regulations in substantively the same form.

Section ^98—Matters to be included in applications under subsection 183F(1) of the Act

Section ^98 prescribes matters to be included in applications to the Tribunal under subsection 183F(1) of the Act to review an actual or proposed arrangement for distributing amounts collected by a collecting society for use of copyright material by the Crown.

Part VII of the Act sets out provisions in relation to the Crown. Division 2 relates to the use of copyright material for the Crown. Section 183F refers to the application to the Tribunal for review of the distribution arrangement. Subsection 183F(1) provides that a collecting society or a member of a collecting society may apply to the Tribunal for review of the arrangement adopted, or proposed to be adopted, by the collecting society for distributing amounts it collects in a period.

Section ^98 replaces regulation 23CG of the Tribunal Regulations in substantively the same form, but does not include references to applications made under subsection 135SA(1), subsection 135ZZEA(1) or section 135ZZWA of the Act. References to applications made under subsection 135SA(1) and subsection 135ZZEA(1) can be found in section ^77 (these references now refer to subsection 113ZB(1) because these earlier provisions in the Act have been amended in the Act by the DAOM Act). References to section 135ZZWA can be found in section ^82.

Subdivision C—Applications ancillary to Tribunal proceedings

Subdivision C of Division 3 of Part 11 of the 2017 Regulations sets out procedures for applications to the Tribunal that are ancillary to applications set out in Subdivision B of Division 3 of Part 11.

Section ^99—Application to be made a party to a Tribunal proceeding

Section ^99 applies to an application to the Tribunal by a person seeking to be made a party to a Tribunal proceeding under the Act.

Subsection ^99(1) prescribes matters to be included in an application to the Tribunal by a person seeking to be made a party.

Section ^99 replaces regulation 34 of the Tribunal Regulations in substantively the same form.

Section ^100—Application for order about matter related to Tribunal proceeding

Section ^100 applies to an application to the Tribunal to make an order about a matter related to a Tribunal proceeding.

Subsection ^100(1) allows a party to a Tribunal proceeding, except an application to be made a party to another Tribunal proceeding, to apply to the Tribunal requesting the Tribunal to make an order with respect to any matter relating to the proceeding.

Subsection ^100(2) prescribes matters to be included in the application.

Under subsection 136(1) of the Act, which applies to Part VI of the Act, an “order” includes an interim order, unless the contrary intention appears.

Section ^100 replaces subregulations 35(1) and 35(2) of the Tribunal Regulations in substantially the same form.

Section ^101—Consenting to order about matter related to Tribunal proceeding

Section ^101 relates to consent to an order about a matter related to a Tribunal proceeding.

Subsection ^101(1) allows that if an application is made under subsection ^100(1) for an order with respect to any matter relating to a Tribunal proceeding, a party to the proceeding may consent to the making of the order.

Subsection ^101(2) allows the consent to be endorsed on the application or set out in a separate document filed with the Registrar.

Subsection ^101(3) requires that if the consent is set out in a separate document that is not filed with the application, the party must give the applicant a copy of the document within seven days after the document is filed.

Section 10(1) of the Act sets out that “Registrar” means the Registrar of the Tribunal provided for by section 170.

Under subsection 136(1) of the Act, which applies to Part VI of the Act, an “order” includes an interim order, unless the contrary intention appears.

Section ^101 replaces subregulations 35(3) and 35(4) of the Tribunal Regulations in substantively the same form.

Section ^102—When notice or copy of application under section ^100 need not be given

Section ^102 sets out when a notice or a copy of an application to the Tribunal, under section ^100, need not be given.

Subsection ^102(1) prescribes that a party that has consented to the making of an order applied for under section ^100 need not be given notice of the application, or a copy of the application.

Subsection ^102(2) prescribes that if the President or the Tribunal gives leave, a person who has not consented to the making of an order applied for under section ^100 need not be given notice of the application, or a copy of the application.

Under subsection 136(1) of the Act, which applies to Part VI of the Act, “the President” means the President of the Tribunal and “order” includes an interim order, unless the contrary intention appears.

Section ^102 replaces subregulation 35(5) of the Tribunal Regulations in substantively the same form.

Section ^103—Dealing with application under section ^100

Section ^103 sets out how to deal with applications to the Tribunal under section ^100.

Subsection ^103(1) requires that the Tribunal must consider an application made under section ^100 and may make such order in relation to the application as the Tribunal considers reasonable in the circumstances.

However, subsection ^103(2) requires that the Tribunal must not refuse the application in whole or in part without giving the applicant an opportunity to present a case, and must not grant the application in whole or in part without giving each party that lodged an objection to the application an opportunity to present a case.

Under subsection 136(1) of the Act, which applies to Part VI of the Act, an “order” includes an interim order, unless the contrary intention appears.

Section ^103 replaces subregulation 35(10) of the Tribunal Regulations in substantively the same form.

Division 4—Ancillary matters

Subdivision A—General

Section ^104—Consolidating applications and references

Section ^104 relates to consolidating applications and references to the Tribunal.

Subsection ^104(1) prescribes that if two or more applications or references are pending before the Tribunal, the Tribunal may, on its own initiative or on the application of a party to any of them, direct that some or all of them be considered together, and give such consequential directions as the Tribunal considers necessary.

This allows consideration together of two or more applications, two or more references or a combination of one or more applications and one or more references.

Subsection ^104(2) prescribes that before giving a direction under this section, the Tribunal must give each party to each application or reference concerned an opportunity to present a case.

A “reference” of a matter to the Tribunal, under the Act, includes “referral” of the matter to the Tribunal under the Act.

Section ^104 replaces regulation 36 of the Tribunal Regulations in substantively the same form.

Section ^105—Directions as to procedure

Section ^105 sets out when the Tribunal can make directions as to procedure.

Section 166 of the Act provides that the regulations may make provision for or in relation to the procedure in connexion with the making of references and applications to the Tribunal and the regulation of proceedings before the Tribunal and may prescribe the fees payable in respect of those references and applications and the fees and expenses of witnesses in those proceedings.

Subsection ^105(1) allows, if the Tribunal has not started hearing a Tribunal proceeding, the President to give directions, or authorise a member of the Tribunal to give directions, as to the procedure to be followed in connection with the hearing before the Tribunal of the proceeding.

Subsection ^105(2) allows a direction or authorisation by the President under subsection ^105(1) to be of general application, or relate to the hearing of one or more particular proceedings, or proceedings included in a particular class of proceedings.

Subsection ^105(3) allows, if the Tribunal has started hearing a proceeding, the member of the Tribunal presiding, or any other member of the Tribunal authorised by the member presiding, to give directions as to the procedure to be followed in connection with the hearing before the Tribunal of the proceeding and of any related Tribunal proceeding, whether or not the Tribunal has started to hear the related proceeding.

Subsection ^105(4) allows a direction or authorisation given under this section to be varied or revoked at any time by a member of the Tribunal who may give the direction or authorisation under this section.

Under subsection 136(1) of the Act, which applies to Part VI, “member” means a member of the Tribunal, and includes the President and a Deputy President, “order” includes an interim order, and “the President” means the President of the Tribunal, unless the contrary intention appears.

Section ^105 replaces regulation 36A of the Tribunal Regulations in substantively the same form.

Section ^106—Request as to constitution of Tribunal

Section ^106 prescribes matters to be included in a request as to the constitution of the Tribunal.

Part VI of the Act sets out provisions in relation to the Tribunal. Division 2 of Part VI relates to the constitution of the Tribunal. Section 146 of the Act refers to sittings of the Tribunal. Subsection 146(3) of the Act provides that if a party to an application or reference requests that the Tribunal be constituted by more than one member for the purposes of the application or reference, the Tribunal must, for the purposes of the application or reference, be constituted by not less than two members of whom one must be the President or a Deputy President.

Subsection ^106(1) requires that a request under subsection 146(3) of the Act by a party to an application or reference that the Tribunal be constituted by more than one member for the purposes of that application or reference, be in writing addressed to the Registrar, and specify the day on which the application or reference was filed with the Registrar and the relevant file number, and state the name of the party making the request, and be signed by or on behalf of that party, and be filed with the Registrar before the Tribunal begins to consider the application or reference.

Subsection ^106(2) requires that the party making the request give every other party to the application or reference a sealed copy of the request within seven days after filing the request.

The term “Registrar” is described in section 170 of the Act. Under subsection 136(1) of the Act, which applies to Part VI, “member” means a member of the Tribunal, and includes the President and a Deputy President and “the President” means the President of the Tribunal, unless the contrary intention appears.

Section ^106 replaces regulation 37 of the Tribunal Regulations in substantively the same form.

Section ^107—Withdrawal of application or reference

Section ^107 prescribes the process for withdrawing an application or reference made to the Tribunal, including leave for withdrawal and method of withdrawal.

Subsection ^107(1) allows a person who has made an application or reference to the Tribunal to, with the leave of the Tribunal, withdraw the application or reference at any time before the Tribunal has determined it.

Subsections 154(6) and 155(7) of the Act allow withdrawal of certain references without the leave of the Tribunal.

Part VI of the Act sets out provisions in relation to the Tribunal. Division 3 relates to applications and references to the Tribunal. Subdivision H includes provisions on references and

applications relating to licences and licence schemes. Section 154 of the Act relates to reference of proposed licence schemes to the Tribunal. Subsection 154(6) of the Act provides that where a licence scheme has been referred to the Tribunal under this section, the licensor may do either or both of the following things:

- bring the scheme into operation before the Tribunal makes an order in pursuance of the reference; or
- withdraw the reference at any time before the Tribunal makes an order in pursuance of the reference, whether the scheme has been brought into operation or not.

Section 155 of the Act relates to reference of existing licence schemes to the Tribunal. Subsection 155(7) of the Act provides that nothing in this section prevents a licence scheme in respect of which an order has been made, under either of the last two preceding sections, from being again referred to the Tribunal under that section in so far as the scheme relates to cases included in a class of cases to which the order does not apply – at any time, and in so far as the scheme relates to cases included in the class of cases to which the order applied while it was in force – after the expiration of the order.

Subsection ^107(2) allows the Tribunal to grant leave unconditionally or subject to such conditions as the Tribunal thinks reasonable.

Subsection ^107(3) requires that withdrawal of an application or reference to the Tribunal be made by filing with the Registrar a notice in writing addressed to the Registrar, and specifying the day on which the application or reference was made and the relevant file number, and stating that the person who made the application or reference withdraws it, and signed by or on behalf of that person, and giving every other party to the application or reference a sealed copy of the notice. This applies whether the withdrawal is made with the leave of the Tribunal or under subsection 154(6) or 155(7) of the Act, applying of its own force or because of subsection 156(5) of the Act.

Section 156 of the Act relates to further reference of licence schemes to the Tribunal. Subsection 156(5) of the Act provides that subsections 155(3), 155(4), and 155(6) to (10) of the Act inclusive apply for the purposes of this section.

Section ^107 replaces regulations 38 and 39 of the Tribunal Regulations in substantively the same form.

Section ^108—Amendment of documents

Section ^108 applies to the amendment of documents previously filed with the Registrar in connection with a proceeding in the Tribunal.

Subsection ^108(1) allows the Tribunal to grant leave to a party to a Tribunal proceeding to amend a document the party previously filed with the Registrar in connection with the proceeding.

Subsection ^108(2) allows the leave to be granted unconditionally or subject to such conditions as the Tribunal thinks reasonable.

Subsection ^108(3) requires that if the leave is granted, the party must file with the Registrar a statement of the amendments.

Subsection ^108(4) provides that the amendments are taken to be made when the statement is filed.

Subsection ^108(5) requires that the party must give every other party to the Tribunal proceeding a sealed copy of the statement within seven days after filing the statement.

Section ^108 replaces regulation 43 of the Tribunal Regulations in substantively the same form.

Subdivision B—References of questions of law to Federal Court of Australia

Section ^109—Request for reference of question of law to Federal Court of Australia

Section ^109 refers to the request for reference of a question of law in a Tribunal proceeding to the Federal Court of Australia under subsection 161(1) of the Act.

Part VI of the Act sets out provisions in relation to the Tribunal. Division 3 relates to applications and references to the Tribunal. Subdivision I includes general provisions. Section 161 of the Act relates to the reference of questions of law to the Federal Court of Australia. Subsection 161(1) of the Act provides that the Tribunal may, of its own motion or at the request of a party, refer a question of law arising in proceedings before it for determination by the Federal Court of Australia.

Subsection ^109(1) prescribes the form and content of a request. A request to the Tribunal for the reference of a question of law in a Tribunal proceeding to the Federal Court of Australia under subsection 161(1) of the Act must be in writing addressed to the Registrar, and state the name of the party making the request, and specify the question of law, and be signed by or on behalf of the party making the request, and be filed with the Registrar.

Subsection ^109(2) prescribes the notice of request. The party making the request must give every other party to the Tribunal proceeding a sealed copy of the request, and a notice of the party's right under subsection ^109(3) in any case - within seven days after filing the request with the Registrar, and if the hearing of the proceeding to which the request relates has not commenced or has been adjourned – not later than the day fixed for the commencement of the hearing or to which the hearing has been adjourned.

Subsection ^109(3) allows a case to be presented in writing to the Tribunal relating to a request within 21 days after the party made the request by – filing the request with the Registrar, or if the party was given a sealed copy of the request – being given that copy. Subsection ^109(4) prescribes that the Tribunal may give to each party to the Tribunal proceeding an opportunity to present a case orally to the Tribunal in relation to the request.

Subsection ^109(5) prescribes the notice of decision on request. The Registrar must give notice of the Tribunal's decision on the request to the party that made the request, and each other party that presented a case to the Tribunal in relation to the request, or notified the Tribunal that the party wished to be informed of the decision.

Section ^109 replaces regulation 40 of the Tribunal Regulations in substantively the same form.

Section ^110—Fixing new date for hearing if party requests reference of question of law to Federal Court of Australia

Section ^110 applies to fixing a new date for hearing if a party requests a reference of a question of law in a Tribunal proceeding to the Federal Court of Australia under subsection 161(1) of the Act.

Part VI of the Act sets out provisions in relation to the Tribunal. Division 3 relates to applications and references to the Tribunal. Subdivision I includes general provisions. Section 161 relates to the reference of questions of law to the Federal Court of Australia.

Subsection 161(1) of the Act provides that the Tribunal may, of its own motion or at the request of a party, refer a question of law arising in proceedings before it for determination by the Federal Court of Australia.

Subsection 110(1) sets out that section 110 applies if a party to a Tribunal proceeding requests the Tribunal to refer a question of law to the Federal Court of Australia under subsection 161(1) of the Act, and a day has been fixed for a hearing, whether or not a further hearing, of the proceeding that is less than 28 days after the filing of the request.

Subsection 110(2) prescribes that the President must fix a new day for the hearing of that Tribunal proceeding that is more than 28 days after the filing of the request.

Subsection 110(3) prescribes that the Registrar must give the parties to the Tribunal proceeding notice of the new day.

Section 110 replaces regulation 40A of the Tribunal Regulations in substantively the same form.

Section 111—Adjournment of Tribunal proceeding pending decision of Federal Court of Australia

Section 111 applies to the adjournment of Tribunal proceedings pending a decision of the Federal Court of Australia.

Part VI of the Act sets out provisions in relation to the Tribunal. Division 3 relates to applications and references to the Tribunal. Subdivision I includes general provisions. Section 161 relates to the reference of questions of law to the Federal Court of Australia. Subsection 161(1) of the Act provides that the Tribunal may, of its own motion or at the request of a party, refer a question of law arising in proceedings before it for determination by the Federal Court of Australia.

Section 111 prescribes that if, under subsection 161(1) of the Act the Tribunal refers a question of law arising in a Tribunal proceeding for determination by the Federal Court of Australia, and the Tribunal has not given its decision in the proceeding, the Tribunal must adjourn its hearing of the proceeding until the question has been heard and determined by the Federal Court of Australia.

Section 111 replaces regulation 40D of the Tribunal Regulations in substantively the same form.

Section 112—Tribunal proceeding after determination of question of law by Federal Court of Australia

Section 112 applies to Tribunal proceedings after the determination of a question of law by the Federal Court of Australia has been made.

Part VI of the Act sets out provisions in relation to the Tribunal. Division 3 relates to applications and references to the Tribunal. Subdivision I includes general provisions. Section 161 of the Act relates to the reference of questions of law to the Federal Court of Australia. Subsection 161(1) of the Act provides that the Tribunal may, of its own motion or at the request of a party, refer a question of law arising in proceedings before it for determination by the Federal Court of Australia.

Subsection 112(1) prescribes that if a question of law arising in a Tribunal proceeding has been referred to the Federal Court of Australia under section 161 of the Act, and determined by the

Court, any party to the proceeding before the Court may file with the Registrar an office copy of the Court's order.

Subsection ^112(2) prescribes that when the copy has been filed, the President must fix a time and place for the resumption of the hearing of the Tribunal proceeding, unless the question of law was referred to the Federal Court of Australia after the Tribunal had given its decision in the Tribunal proceeding, and that decision is consistent with the determination of the Court.

Subsection ^112(3) prescribes that the Registrar must give the parties to the Tribunal proceeding notice of the time and place fixed.

Section ^112 replaces regulation 42 of the Tribunal Regulations in substantively the same form.

Section ^113—Prescribed period for purposes of subsection 161(2) of the Act

Section ^113 prescribes the period for the purposes of subsection 161(2) of the Act.

Part VI of the Act sets out provisions in relation to the Tribunal. Division 3 relates to applications and references to the Tribunal. Subdivision I includes general provisions. Section 161 of the Act relates to the reference of questions of law to the Federal Court of Australia. Subsection 161(2) of the Act provides that a question shall not be referred to the Federal Court of Australia by virtue of the last preceding subsection in pursuance of a request made after the date on which the Tribunal gave its decision in the proceedings unless the request is made before the expiration of such period as is prescribed.

Section ^113 provides that for the purposes of subsection 161(2) of the Act, the prescribed period, for requesting a reference of a question of law to the Federal Court of Australia after the Tribunal gave its decision in a Tribunal proceeding, is 28 days from the date on which the Tribunal gave its decision.

Section ^113 replaces regulation 40B of the Tribunal Regulations in substantively the same form.

Section ^114—Prescribed period for purposes of subsection 161(3) of the Act

Section ^114 prescribes the period for the purposes of subsection 161(3) of the Act.

Part VI of the Act sets out provisions in relation to the Tribunal. Division 3 relates to applications and references to the Tribunal. Subdivision I includes general provisions. Section 161 of the Act relates to the reference of questions of law to the Federal Court of Australia. Subsection 161(3) of the Act provides that if the Tribunal, after giving its decision in any proceedings, refuses a request to refer a question to the Federal Court of Australia, the party by whom the request was made may, within such period as is prescribed, apply to the Federal Court of Australia for an order directing the Tribunal to refer the question to the Federal Court of Australia.

Section ^114 provides that for the purposes of subsection 161(3) of the Act, the prescribed period (for applying to the Federal Court of Australia for an order that the Tribunal refer to the Court a question of law that the Tribunal has refused to refer after giving its decision in a Tribunal proceeding) is 28 days from the date on which the Tribunal refuses the request for a reference.

Section ^114 replaces regulation 40C of the Tribunal Regulations in substantively the same form.

Section ^115—Suspension of orders of Tribunal pending reference of question of law to Federal Court of Australia

Section ^115 prescribes the suspension of orders of the Tribunal pending reference of a question of law to the Federal Court of Australia.

Part VI of the Act sets out provisions in relation to the Tribunal. Division 3 relates to applications and references to the Tribunal. Subdivision I includes general provisions. Section 161 of the Act relates to the reference of questions of law to the Federal Court of Australia. Subsection 161(1) of the Act provides that the Tribunal may, of its own motion or at the request of a party, refer a question of law arising in proceedings before it for determination by the Federal Court of Australia.

Subsection ^115(1) requires that if, after the Tribunal has given its decision in a Tribunal proceeding, the Tribunal refers to the Federal Court of Australia a question of law that arose in the Tribunal proceeding, the Tribunal may suspend the operation of any order it made in the Tribunal proceeding.

Subsection ^115(2) requires that the Registrar must give every party to the Tribunal proceeding written notice of the suspension, and if details of the order have been published under subsection ^62(4) – publish details of the suspension in a manner specified by the President.

Section ^115 replaces regulation 41 of the Tribunal Regulations in substantively the same form.

Section ^116—Modified operation of Part VI of the Act in relation to suspended Tribunal orders

Section ^116 contains details about the modified operation of Part VI of the Act in relation to suspended Tribunal orders.

Part VI of the Act sets out provisions in relation to the Tribunal. Division 3 relates to applications and references to the Tribunal. Subdivision H includes provisions in relation to references and applications relating to licences and licence schemes. Section 154 of the Act relates to the reference of proposed licence schemes to the Tribunal. Subsection 154(6) of the Act provides that where a licence scheme has been referred to the Tribunal under this section, the licensor may do either or both of the following things:

- bring the scheme into operation before the Tribunal makes an order in pursuance of the reference; or
- withdraw the reference at any time before the Tribunal makes an order in pursuance of the reference, whether the scheme has been brought into operation or not.

Section 155 of the Act relates to the reference of existing licence schemes to the Tribunal. Subsection 155(8) of the Act sets out that where a licence scheme has been referred to the Tribunal under this section, the scheme remains in operation, notwithstanding anything contained in the scheme, until the Tribunal makes an order in pursuance of the reference. Subsection 155(10) of the Act sets out that 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. 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. Section 159 of the Act refers to the effect of an order of the Tribunal in relation to licences.

Section ^116 prescribes that while an order of the Tribunal is suspended, paragraph 154(6)(a), and subsections 155(8) and (10), of the Act operate as if the order had not been made, and paragraph 154(6)(b) of the Act operates as if the order had not been suspended, and section 159 of the Act does not operate in relation to the order.

Section ^116 replaces regulation 24 of the 1969 Regulations in substantively the same form.

Division 5—Miscellaneous

Division ^5 contains a list of miscellaneous powers of the Tribunal relating to procedural matters. Division ^5 replaces Part VI of the 1969 Regulations in substantively the same form.

Section ^117—Parties to Tribunal proceeding are also parties to ancillary application connected with Tribunal proceeding

Section ^117 provides that if, under a provision of the Act or regulations, a person is a party to a Tribunal proceeding, the person is, for the purposes of the regulations, also a party to any ancillary application that is made under the regulations and is connected with the Tribunal proceeding.

Section ^117 replaces subregulation 4(2) of the Tribunal Regulations in substantively the same form.

Section ^118—Extension of time

Section ^118 refers to the extension of time to do an act in relation to the Tribunal.

Subsection ^118(1) allows the Tribunal or the President to extend the time prescribed or allowed by or under this Part for doing any act by such period or periods as the Tribunal or the President thinks fit. Some examples of time prescribed for doing an act are time for filing a document with the Registrar and time for giving a person a document.

Subsection ^118(2) provides that the extension may be subject to such conditions as the Tribunal or the President thinks fit.

Subsection ^118(3) provides that the extension may be given before or after the end of the time concerned.

Section ^118 replaces regulation 45 of the Tribunal Regulations in substantively the same form.

Section ^119—Fees for copies

Section ^119 contains the fees for copies made of documents that are filed or lodged with the Tribunal.

Subsection ^119(1) provides that this section applies if, at the request of a person, the Registrar, or a member of the staff assisting the Tribunal, makes a copy of all or part of a document that is filed or lodged with the Tribunal in connection with an application or reference to the Tribunal, or sets out the reasons for an order made by the Tribunal.

Subsection ^119(2) prescribes that a fee is payable by the person, consisting of \$0.80 for the first page of the document copied, and \$0.20 for each extra page of the document copied.

Subsection ^119(3) prescribes that subsection ^119(2) does not apply if the person made the request in the performance of his or her duties as a member of the Tribunal, the Registrar or a member of the staff assisting the Tribunal.

Section ^119 replaces regulation 46 of the Tribunal Regulations in substantively the same form.

Section ^120—Payment of witnesses' fees and expenses

Section ^120 relates to the payment of fees and expenses for a witness who attends a Tribunal proceeding.

Subsection ^120(1) provides that this section applies if a person (the *witness*) attends, in accordance with a summons, or at the request of a party to a Tribunal proceeding or of the Tribunal, for either or both of the following purposes:

- to give evidence in a Tribunal proceeding;
- to produce documents or articles in a Tribunal proceeding.

Subsection ^120(2) requires that the person on whose behalf the witness is summoned or at whose request the witness attends must pay the witness fees and expenses.

Subsection ^120(3) requires that if the witness is summoned or attends at the request of the Tribunal, the Commonwealth must pay the witness fees and expenses.

Section ^120 replaces regulation 47 of the Tribunal Regulations in substantively the same form.

Section ^121—Summons

Section ^121 sets out rules for the form and service of summons relating to the Tribunal.

Subsection ^121(1) requires that a summons to a witness be in the form in Part 1 of Schedule 3.

Subsection ^121(2) requires that a summons to produce documents or articles under subsection 167(3) of the Act be in the form in Part 2 of Schedule 3.

Subsection ^121(3) requires that a summons under subsection 167(2) or (3) of the Act be served in person by delivering a copy to the person personally.

Under the operation of section 25C of the *Acts Interpretation Act 1901*, strict compliance with the form is not required and substantial compliance is sufficient.

Section ^121 replaces regulation 44 of the Tribunal Regulations in substantively the same form.

Section ^122—Power to exempt from procedural requirements

Section ^122 provides that the Tribunal has the power to exempt a person from procedural requirements.

Subsection ^122(1) allows the Tribunal to, subject to the Act, and in special circumstances, exempt a person from compliance with any procedural requirements of this Part relating to a Tribunal proceeding.

Subsection ^122(2) prescribes that the exemption may be subject to conditions.

Section ^122 replaces regulation 48(1) of the Tribunal Regulations in substantively the same form.

This power provides the Tribunal flexibility in responding to non-compliance with procedural requirements. An example of where the power might be used is where the Tribunal may excuse a non-represented party's failure to comply with a procedural requirement. This power complements the requirements of paragraph 164(c) of the Act which require Tribunal proceedings to be conducted with as little formality, and as much expedition, as the requirements of the Act and a proper consideration of the matters before the Tribunal permit.

Section ^123—Effect of non-compliance with this Part

Section ^123 relates to the effect of non-compliance with this Part of the 2017 Regulations.

Subsection ^123(1) provides that, subject to the Act, non-compliance with this Part does not make void a Tribunal proceeding or an order of the Tribunal.

Subsection ^123(2) prescribes that the Tribunal may do any of the following to the Tribunal proceeding in such manner and upon such terms as the Tribunal thinks fit:

- set it aside wholly or in part as irregular;
- amend it;
- otherwise deal with it.

Section ^123 replaces regulation 48(2) of the Tribunal Regulations in substantively the same form.

Part 12—The Crown

Part 12 is made in relation to Part VII of the Act, which deals with Crown copyright and the use of copyright material for the Crown.

Section [^]124—Information on use of copyright material for services of the Crown—subsection 183(4) of the Act

Division II of Part 7 of the Act provides a statutory licence for the Commonwealth (or a state or territory) to perform an act comprised in copyright, where the act is done for the services of the Commonwealth or state or territory. Section 183 of the Act establishes the statutory licence, and subsection 183(4) of the Act requires the Commonwealth or state or territory in those circumstances, as soon as possible, unless it appears to the Commonwealth or State that it would be contrary to the public interest to do so, to inform the owner of the copyright, as prescribed, of the doing of the act and to provide such information as he or she reasonably requires.

Section [^]124 prescribes requirements about the giving and content of the notice provided to copyright owners under subsection 183(4) of the Act.

Subsection [^]124(1) provides that, for the purposes of subsection 183(4) of the Act, the Commonwealth must inform, by notice, the copyright owner upon the doing of any act comprised in the copyright.

Subsections [^]124(2) to (4) provide details regarding how the notice is to be given. The notice is to be given to the copyright owner or their agent, if possible the notice is to be given in Australia, or if the Commonwealth does not know a way of contacting the copyright owner or their agent the notice must be published in the Gazette.

Subsection [^]124(5) provides the details that must be included in the content of a notice and that a notice must be issued in the name of the Commonwealth or State as appropriate. The details a notice must include are:

- The International Standard Book number (if any) in relation to the copyrighted work, or if no such number exists or is not attainable, the title of the copyrighted work. If the title does not sufficiently enable the work to be identified a description of the work must also be provided.
- The act comprised in the copyright to which the notice relates.
- Whether the act was done by the Commonwealth or a State or a person authorised by either the Commonwealth or a State.
- The name of the person who did the act if that person was authorised by the Commonwealth or State.
- That the purpose of the notice is to inform the person under subsection 183(4) of the Act of the doing of the act.

Section [^]124 replaces regulation 25 of the 1969 Regulations in substantively the same form.

Part 13—Extension or restriction on operation of Act

Part 13 is made in relation to Part VIII of the Act, which extends or restricts the operation of the Act in certain circumstances. It replaces part of Part 7 of the 1969 Regulations.

Section [^]125—International organizations to which the Act applies—subsection 186(1) of the Act

Section [^]125 sets out the international organizations that are declared to be international organizations to which the Act applies for the purposes of subsection 186(1) of the Act. The list reflects the approach taken in similar countries like New Zealand and the United Kingdom by extending protection to the United Nations, the Specialised Agencies of the United Nations and the Organization of American States.

Section [^]125 replaces regulation 26 and Schedule 12 of the 1969 Regulations.

Part 14—Moral rights

Part 14 is made in relation to Part IX of the Act.

Section ^126—Other information and particulars for notices under section 195AT of the Act

Subsection ^126(1) provides for information and particulars to be included in notices relating to an artistic work affixed to or forming part of a building for the purposes of paragraph 195AT(2A)(c) of the Act. The matters prescribed by subsection ^126(1) include: the date of the notice; the name (if any) and address of the building; the description and location of the work; the building owner's contact details; the contact details of the person who can provide the author with access to the work; when such access may be had; and certain details of the change or relocation.

Subsection ^126(2) prescribes information and particulars to be included in a notice relating to a building or plans, or instructions for construction for the purposes of paragraph 195AT(3A)(c) of the Act. The matters prescribed by subsection ^126(2) include: the date of the notice; the name (if any) and address of the building; the building owner's contact details; the contact details of the person who can provide the author with access to the building; when such access may be had; and certain details of the change or relocation.

Subsection ^126(3) prescribes information and particulars to be included in a notice relating to moveable artistic work for the purpose of paragraph 195AT(4B)(c) of the Act. The matters prescribed by subsection ^126(3) include: the date of the notice; a brief description of the work and details of its location; the remover's contact details; the contact details of the person who can provide the author with access to the work; when such access may be had; details of the new location, if permanent, of the work; and the contact details of the new owner, if any, of the work.

Section ^126 replaces regulation 25AA of the 1969 Regulations in substantively the same form.

Part 15—Miscellaneous

Part 15 is made in relation to Part X of the Act.

Section ^127—Period for keeping declarations relating to copying in library or archives— subparagraph 203A(1)(b)(iii) and paragraph 203G(b) of the Act

Section ^127 provides that for the purposes of subparagraph 203A(1)(b)(iii) and paragraph 203G(b) of the Act, the period for keeping the declaration is four years after the making of the reproduction to which the declaration relates.

Section 203A of the Act provides an offence for a person who is responsible for administering, or the officer in charge of, a library or archive for failing to keep declarations relating to copying in the library or archives under sections 49 or 50 of the Act.

Section ^127 replaces regulation 25A of the 1969 Regulations in substantively the same form.

Part 16—Transitional matters

Part 16 makes provision for transitional matters relating to the repeal of the 1969 Regulations.

Section ^128—Directions about information relating to objection to import of copyright material

Section ^128 provides that a direction that is in force under subregulation 21(1) of the 1969 Regulation (relating to import into Australia of copyright material) immediately before the commencement of Part 9 of the 2017 Regulations has effect on and after that commencement as if it had been given under subsection 52(1) of the 2017 Regulations.

The effect of this section is to require a person to provide evidence on the matters listed in subsection 52(1) where the Comptroller-General of Customs had given a direction to provide under subregulation 21(1) of the 1969 Regulations before the commencement of the 2017 Regulations.

Section ^129—Objection to import of copyright material into Norfolk Island

Section ^129 provides that a notice in force under subregulation 23(2) of 1969 Regulations (relating to import into Norfolk Island of copyright material) immediately before the commencement of Part 9 of the 2017 Regulations has effect on and after that commencement, for the purposes of section ^53 of the 2017 Regulations, as if the notice had been given under subsection 135(2) of the Act under subregulation 23(2) of the 1969 Regulations and were subject to subsections 135(6) and (6A) of the Act.

Section ^130—Limitation on remedies available against carriage service providers

Section ^130 provides that a thing done under a provision of Part 3A of the 1969 Regulations before the commencement of Part 6 of the 2017 Regulations has effect on and after that commencement as if it has been done under the corresponding provision of Part 6 of the 2017 Regulations (subsection ^130(3) specifies what the corresponding provisions are).

The effect of this section is to ensure that a carriage service provider, who before the commencement of the 2017 Regulations, had complied with requirements in Part 3A of the 1969 Regulations, will continue to be exempted from liability under corresponding provisions in the 2017 Regulations.

Section ^131—Things done under the *Copyright Tribunal (Procedure) Regulations 1969*

Section ^131 provides that a thing done under the Tribunal Regulations as in force immediately before the Tribunal Regulations were repealed, and that can be done for the same purpose under the 2017 Regulations, has the effect as if it had been done under the 2017 Regulations (this includes but is not limited to a reference to a notice, an application, reference or other instrument being made or given).

Subsection ^131(3) provides that an approval of a design of a seal of the Tribunal that was in force for the purposes of the Tribunal Regulations immediately before they were repealed continues in force as if it were a determination of the design of the seal under subsection ^58(2) of the 2017 Regulations.

Schedule 1—Form of notice to be displayed near machine for copying works or published editions

Schedule 1 prescribes the form required for the purposes of paragraphs ⁵(b) and ¹³(b) of the 2017 Regulations. Schedule 1 replaces Schedule 3 to the 1969 Regulations.

Part 1—Text of notice near machine for copying works or published editions

Part 1 prescribes the form of text to be used in a notice for the purposes of paragraph ⁵(b) of the 2017 Regulations, and subparagraph ¹³(b)(i) of the 2017 Regulations (if the copy would be of a published edition of a work).

Part 2—Text of notice near machine for copying works, published editions or audio-visual items

Part 2 prescribes the form of text to be used in a notice for the purposes of paragraph ⁵(b) of the 2017 Regulations, and subparagraphs ¹³(b)(i) and (ii) of the 2017 Regulations.

Part 3—Text of notice near machine for copying audio-visual items

Part 3 prescribes the form of text to be used in a notice for the purposes of subparagraph ¹³(b)(ii) of the 2017 Regulations (if the copy would be of an audio-visual item).

Schedule 2—Forms for Part 6

Schedule 2 prescribes the forms required for certain provisions of Part 6 of the 2017 Regulations which relates to limitation on remedies available against carriage service providers. Schedule 2 replaces Schedule 10 to the 1969 Regulations.

Part 1—Form of notification relating to cached copyright material

Part 1 prescribes the form required for the purposes of section ²¹ of the 2017 Regulations. Part 1 of Schedule 2 replaces Part 1 of Schedule 10 to the 1969 Regulations.

Part 2—Form of notice relating to copyright material found to be infringing by an Australian court

Part 2 prescribes the form required for the purposes of section ²² of the 2017 Regulations. Part 2 of Schedule 2 replaces Part 2 of Schedule 10 to the 1969 Regulations.

Part 3—Form of notice by owner, licensee or agent of claimed infringement by storage of copyright material

Part 3 prescribes the form required for the purposes of section ²⁴ of the 2017 Regulations. Part 3 of Schedule 2 replaces Part 3 of Schedule 10 to the 1969 Regulations.

Part 4—Form of counter notice in response to notice by copyright owner, licensee or agent of claimed infringement

Part 4 prescribes the form required for the purposes of section ²⁶ of the 2017 Regulations. Part 4 of Schedule 2 replaces Part 4 of Schedule 10 to the 1969 Regulations.

Part 5—Form of counter notice in response to takedown of copyright material without notice from copyright owner, licensee or agent

Part 5 prescribes the form required for the purposes of section ^31 of the 2017 Regulations. Part 5 of Schedule 2 replaces Part 5 of Schedule 10 to the 1969 Regulations.

Part 6—Form of notice by owner, licensee or agent of claimed infringement by reference to infringing copyright material

Part 6 prescribes the form required for the purposes of section ^34 of the 2017 Regulations. Part 6 of Schedule 2 replaces Part 6 of Schedule 10 to the 1969 Regulation.

Schedule 3—Forms of summons

Schedule 3 prescribes the forms required for the purposes of section ^121 of the 2017 Regulations.

Part 1—Summons to witness

Part 1 prescribes the form to use when summoning a witness.

Part 2—Summons to produce documents or articles

Part 2 prescribes the form to use when issuing a summons to produce certain documents in relation to providing evidence to the Tribunal.

Attachment 2: Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Copyright Regulations 2017

This Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Instrument

The general purpose of this Instrument is to remake the *Copyright Regulations 1969* (1969 Regulations) and the *Copyright Tribunal (Procedure) Regulations 1969* (Tribunal Regulations) into a single consolidated instrument (the *Copyright Regulations 2017*) and to modernise and update certain provisions.

The Instrument prescribes a range of matters that the *Copyright Act 1968* (Act) requires or permits to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to the Act. This includes provisions relating to copyright in original works and other subject-matter, remedies for infringement of copyright, and the copying and communication of copyright material by educational and other institutions.

Human rights implications

The Instrument engages the following rights:

- the right to freedom of opinion and expression under Articles 19 and 20 of the *International Covenant on Civil and Political Rights* (ICCPR)
- the right to education under Article 13 of the ICESCR
- the rights of people with a disability under the *Convention on the Rights of Persons with Disabilities* (CRPD)

Right to freedom of expression

Article 19(2) of the ICCPR recognises the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds. This right, while not absolute, extends to any medium, including written communications and artistic works.

The amendments made by Divisions 4 and 5 of Part 6 of the Regulations engage this right. Sections ^25 and ^29 of the Instrument require carriage service providers to remove or disable access to content if they receive a notice that the content infringes copyright, or if they become aware that content is infringing (or likely to be infringing). This engages the right to freedom of opinion and expression in the sense that a person's content may be removed from a carriage service provider's system or network without their consent. Sections ^26, ^28, ^31, and ^32 of the Instrument provide certain safeguards with respect to the takedown of copyright material, however, which allow the user who directed the carriage service provider to store the copyright material on its network or system to dispute the claim of infringement, and provide for the restoration of copyright material in certain circumstances. This aims to balance the rights of the person posting the content and the legitimate rights of the copyright owner.

Right to education

Article 13 of ICESCR requires States parties to recognise the right of everyone to education. In particular, Article 13(2)(c) provides that education should be made accessible to all, by every appropriate means. Article 13(2)(d) provides that education shall be encouraged and intensified as far as possible.

Part 7 of this Instrument promotes the right to education by inserting prescribed acts into the Instrument, which broaden the exception under paragraph 116AN(9)(c) of the Act and the defence under paragraph 132APC(9)(c) of the Act and provides:

- that an act by an educational institution does not infringe copyright because of Division 4 of Part IVA of the Act which relates to use of copyright material by educational institutions; and
- that use of copyright material by a person as described in subsection 200AB(1) of the Act which relates to use of copyright material by educational institutions.

The rights of persons with a disability

The CRPD requires countries to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disability without discrimination of any kind on the basis of their disability. In particular, countries are required to take into account the protection and promotion of the human rights of persons with disability in policies and programs, and adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the Convention

Part 7 of this Instrument promotes the right to education and the rights of people with disability by inserting prescribed acts into the Instrument, which broaden the exception under paragraph 116AN(9)(c) of the Act and the defence under paragraph 132APC(9)(c) of the Act and provides

- that an act by a person does not infringe copyright because of Division 2 of Part IVA of the Act which relates to access by or for persons with a disability;
- that an act by an educational institution does not infringe copyright because of Division 4 of Part IVA of the Act which relates to use of copyright material by educational institutions; and
- That use of copyright material by a person as described in subsection 200AB(1) of the Act which relates to use of copyright material by educational institutions.

Conclusion

This Instrument is compatible with human rights as it broadly promotes the protection of human rights and to the extent that it limits any human rights, those impacts are reasonable, necessary and proportionate.