



# **Copyright Amendment (Disability Access and Other Measures) Act 2017**

**No. 49, 2017**

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

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# Copyright Amendment (Disability Access and Other Measures) Act 2017

No. 49, 2017

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

[Assented to 22 June 2017]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Copyright Amendment (Disability Access and Other  
Measures) Act 2017*.

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No. 49, 2017

*Copyright Amendment (Disability Access and Other Measures) Act  
2017*

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## 2 Commencement

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

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	22 June 2017
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	22 December 2017
3. Schedule 2	1 January 2019.	1 January 2019
4. Schedule 3, Part 1	The day after this Act receives the Royal Assent.	23 June 2017
5. Schedule 3, Part 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	22 December 2017

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Note: This table relates only to the provisions of this Act as originally enacted.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

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

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### **3 Schedules**

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

## Schedule 1—Uses that do not infringe copyright

### Part 1—Main amendments

#### *Copyright Act 1968*

##### 1 Subsection 10(1)

Insert:

***copyright material*** means anything in which copyright subsists.

Note: This definition does not apply in Subdivision E of Division 3 of Part VI or Division 2 of Part VII (use of copyright material for the Crown): see sections 153DF and 182B.

***organisation assisting persons with a disability*** means:

- (a) an educational institution; or
- (b) a not-for-profit organisation with a principal function of providing assistance to persons with a disability (whether or not the organisation has other principal functions).

***original form***: a library or archives holds copyright material in ***original form*** if the material is held in the collection comprising the library or archives in a form that embodies the material as initially prepared by the author or maker of the material.

Example: A manuscript of a literary, dramatic or musical work.

Note: This definition does not apply in Division 6 of Part III: see subsection 54(6).

***person with a disability*** means a person with a disability that causes the person difficulty in reading, viewing, hearing or comprehending copyright material in a particular form.

##### 2 After Part IV

Insert:

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## **Part IVA—Uses that do not infringe copyright**

### **Division 1—Simplified outline of this Part**

#### **113D Simplified outline of this Part**

The following do not infringe copyright in any copyright material:

- (a) certain use by or for persons with a disability;
- (b) certain use for the purposes of libraries, archives and key cultural institutions;
- (c) certain use by educational institutions.

Note 1: Other provisions of this Act, including Parts III, IV, VC, VII and X, provide that certain other use of copyright material does not infringe copyright.

Note 2: A person may circumvent an access control technological protection measure to enable the person to do an act that, under this Part, does not infringe copyright (if the act is prescribed by regulations made for the purposes of paragraph 116AN(9)(c)).

### **Division 2—Access by or for persons with a disability**

#### **113E Fair dealing for purpose of access by persons with a disability**

- (1) A fair dealing with copyright material does not infringe copyright in the material if the dealing is for the purpose of one or more persons with a disability having access to copyright material (whether the dealing is by any of those persons or by another person).
- (2) The matters to which regard must be had, in determining whether the dealing is a fair dealing for the purposes of this section, include the following matters:
  - (a) the purpose and character of the dealing;
  - (b) the nature of the copyright material;
  - (c) the effect of the dealing upon the potential market for, or value of, the material;

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

**113F Use of copyright material by organisations assisting persons with a disability**

An organisation assisting persons with a disability, or a person acting on behalf of such an organisation, does not infringe copyright in copyright material by using the material if:

- (a) the use is for the sole purpose of assisting one or more persons with a disability to access the material in a format that the person or persons require because of the disability (whether the access is provided by or on behalf of the organisation or by another body or person); and
- (b) the organisation, or the person acting on behalf of the organisation, is satisfied that the material (or a relevant part of the material) cannot be obtained in that format within a reasonable time at an ordinary commercial price.

**Division 3—Libraries and archives**

**Subdivision A—Public libraries, parliamentary libraries and archives**

**113G Libraries**

This Subdivision applies to a library if:

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

Note 1: For references to a Parliament, see section 12.

Note 2: This Subdivision also applies to archives (within the meaning of section 10).

### **113H Preservation**

- (1) An authorized officer of a library or archives does not infringe copyright in copyright material by using the material if:
  - (a) the use is for the purpose of preserving the collection comprising that or another library or archives; and
  - (b) either or both of the following subparagraphs apply:
    - (i) the authorized officer's library or archives holds the material in original form;
    - (ii) the authorized officer is satisfied that a copy of the material cannot be obtained in a version or format that is required for that purpose, consistent with best practice for preserving such collections.
  
- (2) An authorized officer of a library or archives does not infringe copyright in copyright material (the *preservation copy*) by making the preservation copy available to be accessed at the library or archives if:
  - (a) subsection (1) applied to the making of the preservation copy because it was done for the purpose of preserving the collection comprising the library or archives; and
  - (b) the preservation copy is in electronic form; and
  - (c) the body administering the library or archives takes reasonable steps to ensure that a person who accesses the preservation copy at the library or archives does not infringe copyright in the preservation copy.

Note: Other uses of the preservation copy might not infringe copyright because of other provisions of this Act, such as section 49 (Reproducing and communicating works by libraries and archives for users).

### **113J Research**

- (1) An authorized officer of a library or archives does not infringe copyright in copyright material by using the material if:
  - (a) the material forms part of the collection comprising the library or archives; and
  - (b) the library or archives holds the material in original form; and

- (c) the use is for the purpose of research carried out at that or another library or archives.
- (2) An authorized officer of a library or archives does not infringe copyright in copyright material (the *research copy*) by making the research copy available to be accessed at the library or archives if:
  - (a) subsection (1) applied to the making of the research copy because it was done for the purpose of research carried out at the library or archives; and
  - (b) the research copy is in electronic form; and
  - (c) the body administering the library or archives takes reasonable steps to ensure that a person who accesses the research copy at the library or archives does not infringe copyright in the research copy.

Note: Other uses of the research copy might not infringe copyright because of other provisions of this Act, such as section 49 (Reproducing and communicating works by libraries and archives for users).

### **113K Administration of the collection**

An authorized officer of a library or archives does not infringe copyright in copyright material by using the material if the use is for purposes directly related to the care or control of the collection comprising the library or archives.

## **Subdivision B—Key cultural institutions**

### **113L Meaning of *key cultural institution***

A library or archives 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) is prescribed by the regulations for the purposes of this paragraph.

### **113M Preservation**

- (1) An authorized officer of a key cultural institution does not infringe copyright in copyright material by using the material if:
- (a) the material forms part of the collection comprising the key cultural institution; and
  - (b) the authorized officer is satisfied that the material is of historical or cultural significance to Australia; and
  - (c) the use is for the purpose of preserving the material; and
  - (d) either or both of the following subparagraphs apply:
    - (i) the key cultural institution holds the material in original form;
    - (ii) the authorized officer is satisfied that a copy of the material cannot be obtained in a version or format that is required for that purpose, consistent with best practice for preserving such copyright material.

Note: If the use of the copyright material does not meet the requirements of this subsection, the authorized officer might be able to rely on subsection 113H(1) instead.

- (2) An authorized officer of a key cultural institution does not infringe copyright in copyright material (the **preservation copy**) by making the preservation copy available to be accessed at the key cultural institution if:
- (a) subsection (1) applied to the making of the preservation copy because it was done for the purpose of preserving copyright material that formed part of the collection comprising the key cultural institution; and
  - (b) the preservation copy is in electronic form; and
  - (c) the body administering the key cultural institution takes reasonable steps to ensure that a person who accesses the preservation copy at the key cultural institution does not infringe copyright in the preservation copy.

Note: Other uses of the preservation copy might not infringe copyright because of other provisions of this Act, such as section 49 (Reproducing and communicating works by libraries and archives for users).

## Division 4—Educational institutions—statutory licence

### 113N Simplified outline of this Division

An educational institution may copy or communicate certain copyright material for educational purposes if the body administering the educational institution agrees to pay equitable remuneration to a collecting society.

### 113P Copying and communicating works and broadcasts

#### *Works*

- (1) The body administering an educational institution does not infringe copyright in a work by copying or communicating the whole or a part of the work if:
  - (a) a remuneration notice that applies to the educational institution and the work is in force under section 113Q; and
  - (b) the work is not:
    - (i) a computer program; or
    - (ii) a compilation of computer programs; or
    - (iii) a work included in a broadcast; and
  - (c) the copying or communicating occurs solely for the educational purposes of:
    - (i) the educational institution; or
    - (ii) another educational institution, if a remuneration notice that applies to the other educational institution and the work is in force under section 113Q; and
  - (d) the amount of the work copied or communicated does not unreasonably prejudice the legitimate interests of the owner of the copyright; and
  - (e) the copying or communicating complies with:
    - (i) any relevant agreement between the relevant works collecting society and the body administering the educational institution; and
    - (ii) any relevant determination made by the Copyright Tribunal under subsection (4) of this section.

*Broadcasts*

- (2) The body administering an educational institution does not infringe copyright in copyright material by copying, or communicating a copy of, the whole or a part of a broadcast if:
- (a) a remuneration notice that applies to the educational institution and the material is in force under section 113Q; and
  - (b) the material is:
    - (i) the broadcast; or
    - (ii) a work, sound recording or cinematograph film included in the broadcast; and
  - (c) the copying or communicating occurs solely for the educational purposes of:
    - (i) the educational institution; or
    - (ii) another educational institution, if a remuneration notice that applies to the other educational institution and the material is in force under section 113Q; and
  - (d) the copying or communicating complies with:
    - (i) any relevant agreement between the broadcasts collecting society and the body administering the educational institution; and
    - (ii) any relevant determination made by the Copyright Tribunal under subsection (4) of this section.
- (3) For the purposes of Part XIA, each performer in a performance is taken to have authorised the copying, or the communicating a copy, of the whole or a part of:
- (a) a broadcast of the performance; or
  - (b) the content of a broadcast of the performance;
- if subsection (2) applies to the copying or communicating.

Note: The effect of this subsection is that no right of action and no offence occurs, in respect of the copy or communication, under Part XIA (Performers' protection).

*Questions determined by Copyright Tribunal*

- (4) The Copyright Tribunal may determine a question relating to copying or communicating mentioned in subsection (1) or (2) if:
-

- (a) the relevant collecting society and the body administering the relevant educational institution fail to determine the question by agreement under subparagraph (1)(e)(i) or (2)(d)(i); and
- (b) the society or the body applies to the Tribunal to have the Tribunal determine the question.

Note: Section 153A sets out the procedure of the Copyright Tribunal in dealing with the application.

*Copies and communications subsequently used for other purposes*

- (5) Subsections (1), (2) and (3) do not apply, and are taken never to have applied, to copying, or communicating a copy, by a body administering an educational institution if the copy is, with the consent of the body:
  - (a) used for a purpose other than the educational purposes of an educational institution; or
  - (b) given to the body administering another educational institution, if no remuneration notice that applies to the other educational institution and the relevant copyright material is in force under section 113Q; or
  - (c) sold or otherwise supplied for a financial profit.

*Content of certain broadcasts*

- (6) This section applies to the content of a broadcast in the same way as this section applies to a broadcast if the content of the broadcast was:
  - (a) electronically transmitted using the internet at the same time, or at substantially the same time, as the broadcast; or
  - (b) if the broadcast is a free-to-air broadcast—made available online by the broadcaster of the broadcast at the same time as, or after, the broadcast.

## **113Q Remuneration notices**

- (1) A **remuneration notice** is a written notice:
  - (a) that the body administering an educational institution gives to a collecting society; and
  - (b) by which the body undertakes:



- (i) to pay to the society equitable remuneration for licensed copying or communicating; and
- (ii) to give to the society reasonable assistance to enable the society to collect and distribute that equitable remuneration.

Note: For equitable remuneration, see section 113R.

- (2) Copying or communicating mentioned in subsection 113P(1) or (2) is ***licensed copying or communicating*** if the copying or communicating does not infringe copyright only because of section 113P.
- (3) A remuneration notice that a body gives to a collecting society under this section applies to:
  - (a) an educational institution that the body administers; and
  - (b) copyright material for which the society is the collecting society.

Note: See paragraph 113V(4)(a).

- (4) However, the notice does not apply to a work to which paragraph 113P(1)(b) applies if the society is not the works collecting society for the eligible rights holder who owns the copyright in the work.

Note: See paragraph 113V(4)(b).

*When remuneration notice is in force*

- (5) A remuneration notice given under this section:
  - (a) comes into force on:
    - (i) the day on which the notice is given to the relevant collecting society; or
    - (ii) a later day specified in the notice; and
  - (b) remains in force until it is revoked.
- (6) The body administering an educational institution may, at any time, revoke a remuneration notice the body gave to a collecting society under this section. The body revokes the remuneration notice by giving notice in writing to the society. The revocation takes effect:

- (a) at the end of the period of 3 months starting on the day the notice of revocation is given to the society; or
- (b) on a later day specified in the notice of revocation.

### **113R Equitable remuneration**

- (1) The amount of the equitable remuneration that, by a remuneration notice given to a collecting society under section 113Q, the body administering an educational institution undertakes to pay for licensed copying or communicating is the amount:
    - (a) agreed between the society and the body; or
    - (b) determined by the Copyright Tribunal under subsection (2).
  - (2) The Copyright Tribunal may determine the amount of the equitable remuneration if:
    - (a) the society and the body fail to determine the amount by agreement under paragraph (1)(a); and
    - (b) the society or the body apply to the Tribunal to have the Tribunal determine the amount.
- Note: Section 153A sets out the procedure of the Copyright Tribunal in dealing with the application.
- (3) A determination of the Tribunal under subsection (2) may be expressed to have effect in relation to copying or communicating done before the day on which the determination is made.

### **113S Educational institutions must assist collecting society**

- (1) If a remuneration notice that applies to an educational institution is in force under section 113Q, the relevant collecting society may, in writing (the *entry notice*), notify the body administering the educational institution that the society wishes, on a day specified in the notice, to enter the premises of the educational institution for the purpose of reviewing the body's compliance with:
  - (a) the remuneration notice; and
  - (b) any relevant agreements and determinations mentioned in paragraph 113P(1)(e) or (2)(d).
- (2) A person authorised in writing by the collecting society may enter the premises of the educational institution for the purpose

mentioned in subsection (1) after the collecting society gives the entry notice to the body.

- (3) Entry onto premises under subsection (2) may only occur:
- (a) during ordinary working hours of the educational institution; and
  - (b) on the day specified in the entry notice, which must not be earlier than 7 days after the day on which the entry notice is given.
- (4) The Copyright Tribunal may determine a question relating to entry onto premises of an educational institution under this section if:
- (a) the relevant collecting society and the body administering the educational institution fail to determine the question by agreement; and
  - (b) the society or the body applies to the Tribunal to have the Tribunal determine the question.

Note: Section 153A sets out the procedure of the Copyright Tribunal in dealing with the application.

- (5) The body administering an educational institution must:
- (a) ensure that a person who enters the premises of the educational institution under subsection (2) is provided with all reasonable and necessary facilities and assistance for the effective review of the body's compliance with the remuneration notice, agreements and determinations mentioned in paragraphs (1)(a) and (b); and
  - (b) comply with any determinations of the Copyright Tribunal made under subsection (4).
- (6) A body administering an educational institution commits an offence if the body contravenes subsection (5).

Penalty: 5 penalty units.

### **113T Voluntary licences**

- (1) Nothing in this Division affects the right of the owner of the copyright in copyright material to grant a licence authorising any use of that material by the body administering an educational institution.

- (2) Nothing in this Division affects the right of a performer in a performance (within the meaning of Part XIA) to authorise the body administering an educational institution:
- (a) to make, or cause to be made, a sound recording or a cinematograph film of the performance; and
  - (b) to communicate, or cause to be communicated, that recording or film.

**113U Persons acting on behalf of bodies administering educational institutions**

A reference in this Division (other than the first reference in subsection 113S(6)) to the body administering an educational institution includes a reference to a person acting on behalf of the body.

**Division 5—Collecting societies**

**Subdivision A—Declaration of collecting society**

**113V Declaration of collecting society**

*Applications*

- (1) A body may apply, in writing, to the Minister to be declared to be:
- (a) the works collecting society for:
    - (i) all eligible rights holders; or
    - (ii) specified classes of eligible rights holders; or
  - (b) the broadcasts collecting society.

*Declarations*

- (2) After receiving the application, the Minister must do one of the following:
- (a) declare the body to be a collecting society;
  - (b) refuse to declare the body to be a collecting society;
  - (c) both:
    - (i) refer the application to the Copyright Tribunal in the way prescribed by the regulations; and

- (ii) notify the body of the referral.
- (3) The Copyright Tribunal may declare the body to be a collecting society if the Minister refers the application to the Tribunal under paragraph (2)(c). The Registrar must notify the Minister of the declaration.
- Note: Section 153A sets out the procedure of the Copyright Tribunal in dealing with the referral.
- (4) A declaration of the body to be a collecting society under this section must declare the body to be a collecting society:
- (a) for either:
- (i) works to which paragraph 113P(1)(b) applies; or
- (ii) copyright material to which paragraph 113P(2)(b) applies; and
- (b) for:
- (i) if subparagraph (a)(i) of this subsection applies—specified classes of eligible rights holders; or
- (ii) in either case—all eligible rights holders.
- (5) The Minister must, by notifiable instrument, give notice of a declaration made under this section.

*Existing collecting societies*

- (6) If:
- (a) a body is declared to be the works collecting society for an eligible rights holder; and
- (b) another body is later declared to be the works collecting society for the eligible rights holder;
- the first declaration ceases to be in effect on the day (the **cessation day**) before the second declaration commences, to the extent the first declaration relates to the eligible rights holder.
- (7) If:
- (a) a remuneration notice given to the first body under section 113Q:
- (i) is in force on the cessation day; and
- (ii) applies to a work; and
- (b) the eligible rights holder owns the copyright in the work;

the notice ceases to be in force on the cessation day, to the extent the notice applies to the work.

- (8) A body cannot be declared to be the broadcasts collecting society while another body is declared to be the broadcasts collecting society.

*Eligible rights holders*

- (9) In this Act:

***eligible rights holder*** means:

- (a) for a works collecting society—the owner of the copyright in a work; or
- (b) for the broadcasts collecting society—any of the following:
  - (i) the owner of the copyright in a work, a sound recording or a cinematograph film (other than a new owner of the copyright in a sound recording of a live performance within the meaning of section 100AB);
  - (ii) a performer in a performance (within the meaning of Part XIA).

### **113W Requirements for declaration of collecting society**

The Minister and the Copyright Tribunal must not declare a body to be a collecting society for eligible rights holders under section 113V unless:

- (a) the body is a company limited by guarantee and incorporated under a law of the Commonwealth, a State or a Territory relating to companies; and
- (b) all of those eligible rights holders, or their agents, are entitled to become its members; and
- (c) its rules prohibit the payment of dividends to its members; and
- (d) its rules contain such other provisions as are prescribed by the regulations, being provisions necessary to ensure that the interests of the collecting society's members who are eligible rights holders or their agents are protected adequately, including provisions about:

- (i) the collection of amounts of equitable remuneration payable under remuneration notices given to the society under section 113Q; and
- (ii) the payment of the administrative costs of the society out of amounts collected by it; and
- (iii) the distribution of amounts collected by it; and
- (iv) the holding on trust by the society of amounts for eligible rights holders who are not its members; and
- (v) access to records of the society by its members.

### **113X Revocation of declaration**

- (1) Subsection (2) applies if the Minister is satisfied that a body declared to be a collecting society under section 113V:
  - (a) is not functioning adequately as the collecting society; or
  - (b) is not acting in accordance with its rules or in the best interests of those of its members who are eligible rights holders or their agents; or
  - (c) has altered its rules so that they no longer comply with paragraphs 113W(c) and (d); or
  - (d) has refused or failed, without reasonable excuse, to comply with section 113Z or 113ZA.
- (2) The Minister may:
  - (a) revoke the declaration; or
  - (b) refer to the Copyright Tribunal, in the way prescribed by the regulations, the question whether the declaration should be revoked.
- (3) The Tribunal may revoke the declaration if:
  - (a) the Minister refers the question to the Copyright Tribunal under paragraph (2)(b); and
  - (b) the Tribunal is satisfied that paragraph (1)(a), (b), (c) or (d) applies to the body.

The Registrar must notify the Minister of the revocation.

Note: Section 153A sets out the procedure of the Copyright Tribunal in dealing with the referral.

- (4) A revocation under this section must specify the day on which it takes effect.
- (5) The Minister must, by notifiable instrument, give notice of a revocation under this section.
- (6) Subsection 33(3) of the *Acts Interpretation Act 1901* does not apply in relation to a power under section 113V of this Act to make a declaration.

## **Subdivision B—Operation of collecting society**

### **113Y Scope of this Subdivision**

This Subdivision applies to:

- (a) a works collecting society; or
- (b) the broadcasts collecting society.

### **113Z Annual report and accounts**

- (1) The collecting society must, as soon as practicable after the end of each financial year:
  - (a) prepare a report of its operations during that financial year; and
  - (b) send a copy of the report to the Minister, for presentation to the Parliament.
- (2) The collecting society must keep accounting records correctly recording and explaining the transactions of the society (including any transactions as trustee) and the financial position of the society.
- (3) The accounting records must be kept in such a manner as will enable true and fair accounts of the society to be prepared from time to time and those accounts to be conveniently and properly audited.
- (4) The collecting society must:
  - (a) as soon as practicable after the end of each financial year, cause its accounts to be audited by an auditor who is not a member of the society; and



- (b) must send to the Minister a copy of its accounts as so audited.
- (5) The collecting society must give its members reasonable access to copies of all reports and audited accounts prepared under this section.
- (6) This section does not affect any obligations of a collecting society relating to the preparation and lodging of annual returns or accounts under the law under which it is incorporated.

### **113ZA Amendment of rules**

The collecting society must, within 21 days after it alters its rules, send a copy of the rules as so altered to the Minister, together with a statement setting out:

- (a) the effect of the alteration; and
- (b) the reasons why it was made.

### **113ZB Review of distribution arrangement by Copyright Tribunal**

- (1) The collecting society or a member of the society may apply to the Copyright Tribunal for review of the arrangement adopted, or proposed to be adopted, by the society for distributing amounts it collects in a period.

Note: Section 153A sets out the procedure of the Copyright Tribunal in dealing with the application.

- (2) After an application is made under subsection (1), the Tribunal must make an order:
  - (a) confirming the arrangement; or
  - (b) varying the arrangement; or
  - (c) substituting for the arrangement another arrangement for distributing amounts the collecting society collects in the period.
- (3) If the Tribunal makes an order varying the arrangement or substituting for it another arrangement, the arrangement reflecting the Tribunal's order:
  - (a) has effect as if it had been adopted in accordance with the society's rules; and

- (b) does not affect a distribution started before the order was made.

### **113ZC Operation of collecting society rules**

Division 4 and this Division apply to the collecting society despite anything in the rules of the society, but nothing in those Divisions affects the rules so far as they can operate together with those Divisions.

### **3 Subdivisions C and D of Division 3 of Part VI**

Repeal the Subdivisions, substitute:

### **Subdivision C—Applications and referrals relating to Part IVA**

#### **153A Applications and referrals relating to Division 4 of Part IVA**

- (1) This section applies to an application or referral to the Tribunal mentioned in column 1 of an item of the table in subsection (4).
- (2) The parties to the application or referral are the parties mentioned in column 2 of the item.
- (3) The Tribunal must:
  - (a) consider the application or referral; and
  - (b) give the parties the opportunity to present their cases; and
  - (c) comply with column 3 of the item.
- (4) This is the table:

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<b>Applications and referrals relating to licensed copying and communicating</b>			
<b>Item</b>	<b>Column 1 Application or referral</b>	<b>Column 2 Parties</b>	<b>Column 3 The Tribunal must ...</b>
1	an application made under paragraph 113P(4)(b) or 113S(4)(b) to determine a question	(a) the relevant collecting society; and (b) the body administering the relevant	having regard to any matters prescribed by the regulations, determine the relevant question under subsection 113P(4) or 113S(4).

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<b>Applications and referrals relating to licensed copying and communicating</b>			
<b>Item</b>	<b>Column 1 Application or referral</b>	<b>Column 2 Parties</b>	<b>Column 3 The Tribunal must ...</b>
		educational institution	
2	an application made under paragraph 113R(2)(b) to determine an amount of equitable remuneration	(a) the relevant collecting society; and (b) the body administering the relevant educational institution	having regard to any matters prescribed by the regulations, determine the amount of equitable remuneration under subsection 113R(2).
3	a referral under paragraph 113V(2)(c) of an application by a body (the <i>applicant</i> ) to be declared to be a collecting society	(a) the applicant; and (b) any person made a party under subsection (5) of this section	(a) declare the applicant to be a collecting society under subsection 113V(3); or (b) refuse to declare the applicant to be a collecting society.
4	a referral under paragraph 113X(2)(b) of the question whether a declaration of a body to be a collecting society should be revoked	(a) the Minister; and (b) the body; and (c) any person made a party under subsection (5) of this section	(a) revoke the declaration under subsection 113X(3); or (b) refuse to revoke the declaration.
5	an application under subsection 113ZB(1) for review of the arrangement adopted, or proposed to be adopted, by a collecting society for distributing amounts it collects in a period	(a) the applicant for the review; and (b) the collecting society (if it is not the applicant); and (c) any member or organization made a party under subsection (5) of this section	make an order under subsection 113ZB(2).

- (5) For the purposes of column 2 of item 3, 4 or 5 of the table, the Tribunal may make the following person or organization a party to the referral or application if the person or organization asks to be made a party:
- (a) in the case of item 3 or 4—a person the Tribunal thinks has a sufficient interest in the matter;
  - (b) in the case of item 5—a person or organization that:
    - (i) the Tribunal thinks has a substantial interest in the arrangement; and
    - (ii) is a member of the collecting society, or is an organization that claims to be representative of members of the collecting society.

#### **4 Subsection 200(1)**

Repeal the subsection, substitute:

- (1) A teacher or student does not infringe copyright in a work by copying the whole or a part of the work if:
- (a) the copying occurs in the course of educational instruction; and
  - (b) the copying is not done using:
    - (i) a device adapted for the production of multiple copies; or
    - (ii) a device capable of producing a copy or copies by a process of reprographic reproduction.
- (1A) Copying or communicating the whole or a part of copyright material does not infringe copyright in the material, if the material is copied or communicated:
- (a) as part of the questions to be answered in an examination; or
  - (b) in an answer to such a question.
- (1B) In subsections (1) and (1A):
- (a) a reference to copying a work or copyright material includes a reference to making or copying an adaptation of the work or material; and
  - (b) a reference to communicating copyright material includes a reference to communicating an adaptation of the material.

## Part 2—Consequential amendments

### *Copyright Act 1968*

#### 5 Subsection 10(1)

Insert:

***body administering:***

- (a) an institution—means:
  - (i) if the institution is a body corporate—the institution; or
  - (ii) otherwise—the body or person (including the Crown) having ultimate responsibility for administering the institution; or
- (b) a library or archives—means:
  - (i) if the library or archives is an archives covered by paragraph (aa) of the definition of ***archives***—the person having the custody of the archives in accordance with the relevant arrangement mentioned in that paragraph; or
  - (ii) otherwise—the body (whether incorporated or not) or person (including the Crown) having ultimate responsibility for administering the library or archives.

***broadcasts collecting society*** means the body declared to be a collecting society by a declaration that is in force under section 113V and to which subparagraph 113V(4)(a)(ii) applies.

***collecting society*** means:

- (a) a works collecting society; or
- (b) the broadcasts collecting society; or
- (c) a body that a declaration in force under section 135ZZT declares to be a collecting society for the purposes of Part VC; or
- (d) a body that a declaration in force under section 135ZZZO declares to be a collecting society for the purposes of Part VD; or

- (e) a company that a declaration in force under section 153F declares to be a collecting society for the purposes of Division 2 of Part VII.

## **6 Subsection 10(1) (definition of copy)**

Repeal the definition, substitute:

**copy:**

- (a) of a work—means a reproduction; or
- (b) of a sound recording—means a record embodying the sound recording, or a substantial part of the sound recording, derived directly or indirectly from a record produced on the making of the sound recording; or

Note: See also subsection (6).

- (c) of a cinematograph film—means any article or thing in which the visual images or sounds comprising the film are embodied; or

Note: See also subsection (5).

- (d) of a broadcast—includes:
  - (i) a record embodying a sound recording of the whole or a part of the broadcast; or
  - (ii) a copy of a cinematograph film of the whole or a part of the broadcast.

## **7 Subsection 10(1) (at the end of paragraphs (aa), (a), (b) and (c) of the definition of educational institution)**

Add “or”.

## **8 Subsection 10(1) (paragraphs (d) to (i) of the definition of educational institution)**

Repeal the paragraphs, substitute:

- (d) a school of nursing; or
- (e) an undertaking within a hospital, if the undertaking conducts courses of study or training in the provision of:
  - (i) medical services; or
  - (ii) services incidental to the provision of medical services;or
- (f) a teacher education centre; or

- (g) an institution with the principal function of providing courses of study or training for any of the following purposes:
  - (i) general education;
  - (ii) the preparation of people for a particular occupation or profession;
  - (iii) the continuing education of people engaged in a particular occupation or profession;
  - (iv) the teaching of English to people whose first language is not English; or
- (h) an undertaking within a body administering an educational institution, if:
  - (i) the educational institution is of a kind referred to in a preceding paragraph of this definition; and
  - (ii) the principal function, or one of the principal functions, of the undertaking is the provision of teacher training to people engaged as instructors in educational institutions of a kind mentioned in a preceding paragraph of this definition, or of 2 or more such kinds; or
- (i) an institution, or an undertaking within a body administering an educational institution of a kind referred to in a preceding paragraph of this definition, if:
  - (i) the principal function, or one of the principal functions, of the institution, or undertaking, is the providing of material to educational institutions of a kind referred to in a preceding paragraph of this definition, or 2 or more such kinds; and
  - (ii) that activity is undertaken for the purpose of helping those institutions in their teaching purposes.

## 9 Subsection 10(1)

Insert:

***eligible rights holder*** has the meaning given by subsection 113V(9).

***government*** has the meaning given by subsection 182B(1).

***government copy*** has the meaning given by subsection 182B(1).

### 10 Subsection 10(1)

Repeal the following definitions:

- (a) definition of *institution assisting persons with an intellectual disability*;
- (b) definition of *institution assisting persons with a print disability*.

### 11 Subsection 10(1)

Insert:

*key cultural institution* has the meaning given by section 113L.

*licensed copying or communicating* has the meaning given by subsection 113Q(2).

*Parliament*: see section 12.

### 12 Subsection 10(1) (definition of *person with a print disability*)

Repeal the definition.

### 13 Subsection 10(1)

Insert:

*record embodying* a sound recording means:

- (a) a record produced upon the making of the sound recording;  
or
- (b) a record that:
  - (i) embodies the sound recording; and
  - (ii) is derived directly or indirectly from a record produced upon the making of the sound recording.

*remuneration notice* means:

- (a) a notice mentioned in section 113Q; or
- (b) a notice mentioned in section 135ZZL; or
- (c) a notice mentioned in section 135ZZZJ.

*rules*, of a collecting society, means the constitution of the society.



*works collecting society* means a body declared to be a collecting society by a declaration that is in force under section 113V and to which subparagraph 113V(4)(a)(i) applies.

**14 Paragraphs 10(3)(a), (b), (c), (f), (h), (ha), (l) and (m)**

Repeal the paragraphs.

**15 Subsection 10(5)**

Omit “For the purposes of the definition of *copy* in subsection (1), such a copy includes”, substitute “A reference to a copy of a cinematograph film includes a reference to”.

**16 Subsection 10(6)**

Omit “For the purposes of paragraph 10(3)(c), a reference to a copy of a sound recording includes”, substitute “A reference to a copy of a sound recording includes a reference to”.

**17 Sections 10A and 47A**

Repeal the sections.

**18 Subsections 49(2) and (2C) (note)**

Omit “subsection 51A(1), to replace the article or published work because it was damaged, had deteriorated or had been lost or stolen”, substitute “subsection 113H(1) (Preservation)”.

**19 Subsection 49(9) (note)**

Omit “, 203D”.

**20 Subsection 50(2) (note)**

Omit “subsection 51A(1), to replace the article or published work because it was damaged, had deteriorated or had been lost or stolen”, substitute “subsection 113H(1) (Preservation)”.

**21 Subsection 50(10) (note)**

Omit “, 203D”.

**22 Sections 51A and 51B**

Repeal the sections.

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**23 At the end of paragraph 53(a)**

Add “and”.

**24 Paragraph 53(b)**

Omit “, section 51 or 51A”, substitute “or section 51”.

**25 At the end of paragraph 53(b)**

Add “and”.

**26 Paragraph 53(d)**

Omit “section 51A or”.

**27 At the end of section 54**

Add:

*Original form*

(6) The definition of *original form* in subsection 10(1) does not apply in this Division.

**28 Section 100AH (note)**

Omit “a *relevant right holder* under section 135A”, substitute “an *eligible rights holder* under subsection 113V(9)”.

**29 Section 100AH (note)**

Omit “135ZB,”.

**30 Sections 110B and 110BA**

Repeal the sections.

**31 Subparagraph 112(a)(i)**

Omit “or 44”, substitute “, 44 or 113E”.

**32 Subparagraph 112(a)(ii)**

Repeal the subparagraph, substitute:

(ii) a use of the whole or a part of that work, being a use that, because of section 49, 50, 113F, 113H, 113J,

113K, 113M, 113P or 182A, does not infringe copyright in that work; or

**33 Subparagraph 112(b)(i)**

Omit “or 44”, substitute “, 44 or 113E”.

**34 Subparagraph 112(b)(ii)**

Repeal the subparagraph, substitute:

- (ii) a use of a whole or a part of one of those works, or a use of the whole or parts of some or all of those works, being a use that, because of section 49, 50, 113F, 113H, 113J, 113K, 113M, 113P or 182A, does not infringe copyright in that work or those works.

**35 Section 112AA**

Repeal the section.

**36 Section 116AB (definition of *copyright material*)**

Repeal the definition.

**37 Section 132AA (definition of *copyright material*)**

Repeal the definition.

**38 Section 134B (definition of *copyright material*)**

Repeal the definition.

**39 Parts VA and VB**

Repeal the Parts.

**40 Section 135ZZI (definition of *rules*)**

Repeal the definition.

**41 Section 135ZZZF (definition of *rules*)**

Repeal the definition.

**42 Subdivision A of Division 3 of Part VI**

Repeal the Subdivision.

**43 Section 149A**

Repeal the section.

**44 Before section 153E**

Insert:

**153DF Meaning of *copyright material***

In this Subdivision:

*copyright material* has the same meaning as in Division 2 of Part VII.

**45 Subdivision F of Division 3 of Part VI**

Repeal the Subdivision.

**46 Subsection 195A(3)**

Repeal the subsection, substitute:

- (3) A reference in this Part to an educational institution includes a reference to an institution that has at any time been an educational institution.

**47 Paragraphs 195B(1)(a) and (b)**

Repeal the paragraphs.

**48 Paragraph 195B(1)(e)**

Omit “135P(1A)(b), 135ZZB(1A)(b)”, substitute “113V(2)(b)”.

**49 Paragraph 195B(1)(f)**

Omit “135Q(2)(a), 135ZZC(2)(a)”, substitute “113X(2)(a)”.

**50 Subsection 195B(2)**

Repeal the subsection.

**51 Subsection 195B(4)**

Omit “(2) or”.

**52 Subsection 195B(4)**

Omit “(2)(b) or (c) or (3)(b), as the case requires,”, substitute “(3)(b)”.

**53 Subsections 200(3) and (4)**

After “subsections (1),” insert “(1A),”.

**54 Section 200AA**

Repeal the section.

**55 Paragraph 200AB(1)(b)**

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

**56 Subsection 200AB(4)**

Repeal the subsection.

**57 Subsection 200AB(6) (examples 1 and 2)**

Repeal the examples, substitute:

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

**58 After subsection 200AB(6)**

Insert:

(6AA) In working out, for the purposes of subsection 113Q(2) (about the meaning of *licensed copying or communication*), whether copying or communicating does not infringe copyright only because of section 113P, disregard this section.

**59 Subsection 200AB(6A)**

Omit “, (3)(c) or (4)(c)”, substitute “or (3)(c)”.

**60 Subparagraph 203A(1)(b)(i)**

Omit “, 50, 51A or 110B”, substitute “or 50”.

**61 Section 203D**

Repeal the section.

**62 Section 203E (heading)**

Repeal the heading, substitute:

**203E Inspection of records and declarations retained in records of libraries and archives**

**63 Subsection 203E(1)**

Repeal the subsection, substitute:

- (1) The owner of the copyright in a work, sound recording or cinematograph film, or the agent of such an owner, may notify the officer in charge of a library or archives, in writing, that he or she wishes to inspect, on a day specified in the notice:
  - (a) all the relevant declarations retained in the records of the library or archives that relate to the making, in reliance on section 49 or 50, of copies of works or parts of works or of copies of other subject-matter; or
  - (b) such of those declarations as:
    - (i) relate to the making, in reliance on section 49 or 50, of copies of works or parts of works or of copies of other subject-matter; and
    - (ii) were made during a period specified in the notice.
- (2) The day specified in the notice must be an ordinary working day of the library or archives that is at least 7 days after the notice is given.

**64 Paragraphs 203F(a) and 203G(a)**

Omit “, 50, 51A or 110B”, substitute “or 50”.

**65 Subsection 203H(1)**

Omit “, 50 or 51A”, substitute “or 50”.

**66 Subsection 203H(2)**

Repeal the subsection.

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**67 Paragraph 203H(4)(a)**

Repeal the paragraph, substitute:

- (a) the person makes a notation described in subsection (1) on a reproduction of a work or part of a work; and

**68 Subsection 203H(5)**

Omit “subsections (1) and (2)”, substitute “subsection (1)”.

**69 Subparagraphs 203H(5)(b)(iv) and (c)(iv)**

Omit “those subsections apply”, substitute “that subsection applies”.

**70 Subsections 203H(6) to (10)**

Repeal the subsections.

**71 Subsection 248A(1) (at the end of paragraph (aa) of the definition of *exempt recording*)**

Add:

Note: See subsection (1A).

**72 Subsection 248A(1) (paragraphs (c), (d) and (e) of the definition of *exempt recording*)**

Repeal the paragraphs, substitute:

- (c) a direct or indirect sound recording or cinematograph film of a performance if the recording or film is made:
  - (i) by, or on behalf of, the body administering an educational institution; and
  - (ii) solely for the educational purposes of that or another educational institution; or

Note: See section 248B.

- (d) a direct or indirect sound recording or cinematograph film of a performance if the recording or film is a fair dealing with the performance for the purpose of one or more persons with a disability having access to copyright material; or
- (e) a direct or indirect sound recording or cinematograph film of a performance if the recording or film is made:
  - (i) by, or on behalf of, an organisation assisting persons with a disability; and

- (ii) solely for the purpose of assisting one or more persons with a disability to access copyright material in a format that the person or persons require because of the disability (whether the access is provided by or on behalf of the organisation or by another body or person); or
- (ea) a direct or indirect sound recording or cinematograph film of a performance if the recording or film is made by an authorized officer of a library or archives to which Subdivision A of Division 3 of Part IVA applies solely for any of the following purposes:
  - (i) the purpose of preserving the collection comprising that or another library or archives to which that Subdivision applies;
  - (ii) the purpose of research carried out at that or another library or archives to which that Subdivision applies;
  - (iii) purposes directly related to the care or control of the collection comprising the library or archives; or
- (eb) a direct or indirect sound recording or cinematograph film of a performance if the recording or film is made by an authorized officer of a key cultural institution solely for the purpose of preserving copyright material that:
  - (i) forms part of the collection comprising the key cultural institution; and
  - (ii) the authorized officer is satisfied is of historical or cultural significance to Australia; or

**73 Subsection 248A(1) (paragraphs (ja) and (k) of the definition of *exempt recording*)**

Repeal the paragraphs, substitute:

- (ja) a copy of a sound recording if:
  - (i) paragraph (aa), (c), (d), (e), (ea), (eb), (fa), (g) or (j) applies to the sound recording; and
  - (ii) the copy is made solely for a purpose mentioned in any of those paragraphs (other than paragraph (j)); or
- (k) a copy of a cinematograph film if:
  - (i) paragraph (a), (b), (c), (d), (e), (ea), (eb), (f), (g) or (j) applies to the film; and



- (ii) the copy is made solely for a purpose mentioned in any of those paragraphs (other than paragraph (j)); or

**74 Subsection 248A(1) (paragraph (n) of the definition of *exempt recording*)**

Repeal the paragraph, substitute:

- (n) a copy of a sound recording or cinematograph film of a performance if:
  - (i) paragraph (j) applies to the recording or film; and
  - (ii) the copy is made by a person who believes, due to a fraudulent or innocent representation made to the person, that the performer has authorised the making of the copy; or

**75 Subsections 248C(1A) and (2)**

Repeal the subsections, substitute:

- (1A) A sound recording, or a copy of a sound recording, ceases to be an exempt recording if it:
  - (a) is an exempt recording because it was made for a purpose mentioned in paragraph (aaa), (aa), (c), (d), (e), (ea), (eb) or (fa) of the definition of *exempt recording* in subsection 248A(1); and
  - (b) is used for a purpose not mentioned in those paragraphs without the authority of the performer.
- (2) A cinematograph film, or a copy of a cinematograph film, ceases to be an exempt recording if it:
  - (a) is an exempt recording because it was made for a purpose mentioned in paragraph (a), (aaa), (b), (c), (d), (e), (ea), (eb) or (f) of the definition of *exempt recording* in subsection 248A(1); and
  - (b) is used for a purpose not mentioned in those paragraphs without the authority of the performer.

**76 Subsection 248G(1) (note)**

Repeal the note, substitute:

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Note: An educational institution can copy and communicate a broadcast of a performance without the authority of the performer in some circumstances: see Division 4 of Part IVA.

**77 Subsection 248PC(7) (note 2)**

Omit “or other”.

**78 Subsection 248PC(7) (note 2)**

Omit “sections 135E and 135F”, substitute “Division 4 of Part IVA”.

## Part 3—Transitional provisions

### 79 Definitions

In this Part:

*new law* means the *Copyright Act 1968*, as amended by this Schedule.

*old law* means the *Copyright Act 1968*, as in force immediately before the commencement of this item.

### 80 Preservation and research

- (1) Subsection 113H(2) of the new law applies to copyright material that was made:
    - (a) under subsection 51A(1) or 110B(1) or (2) of the old law; and
    - (b) for the purpose of preserving or replacing copyright material that formed part of a collection;as if:
    - (c) subsection 113H(1) of the new law applied to the making of the material; and
    - (d) the material had been made for the purpose of preserving the collection.
  - (2) Subsection 113J(2) of the new law applies to copyright material that was made:
    - (a) under subsection 51A(1) or 110B(1) or (2) of the old law; and
    - (b) for the purpose of research that was, or was to be, carried out at a library or archives;as if:
    - (c) subsection 113J(1) of the new law applied to the making of the material; and
    - (d) the material had been made for the purpose of research carried out at the library or archives.
  - (3) Subsection 113M(2) of the new law applies to copyright material that was made:
    - (a) under section 51B, 110BA or 112AA of the old law; and
-

(b) for the purpose of preserving or replacing copyright material held in a collection;

as if:

- (c) subsection 113M(1) of the new law applied to the making of the material; and
- (d) the material had been made for the purpose of preserving copyright material that formed part of the collection.

## **81 Key cultural institutions**

A regulation:

- (a) made for the purposes of subparagraph 51B(1)(a)(ii), 110BA(1)(a)(ii) or 112AA(1)(a)(ii) of the old law; and
- (b) in force immediately before the commencement of this item;

has effect, from that commencement, as if it had been made for the purposes of paragraph 113L(b) of the new law.

## **82 Educational and other institutions**

- (1) Despite the repeal of subsection 135E(2) of the old law by this Schedule, if:
    - (a) a copy or communication was made before the commencement of this item; and
    - (b) a thing mentioned in paragraph (a), (b) or (c) of that subsection is done, in relation to the copy or communication, on or after that commencement;that subsection applies to the making of the copy or communication, in relation to the thing done.
  - (2) Despite the repeal of subsection 135U(2) of the old law by this Schedule, if:
    - (a) a copy is made before the commencement of this item; and
    - (b) a thing mentioned in paragraph (a), (b) or (c) of that subsection is done, in relation to the copy, on or after that commencement;that subsection applies to the making of the copy, in relation to the thing done.
  - (3) Despite the repeal of subsection 135ZZH(1) of the old law by this Schedule, if:
-

- (a) a copy, record or version was made before the commencement of this item; and
- (b) a thing mentioned in paragraph (a), (b) or (c) of that subsection is done, in relation to the copy, record or version, on or after that commencement;

that subsection applies to the making or communication of the copy, record or version, in relation to the thing done.

### **83 Educational institutions—licensed copying and communicating**

#### *Applications*

- (1) The following table has effect in relation to an application mentioned in column 1 which the Copyright Tribunal did not fully deal with before the commencement of this item:

<b>Applications</b>		
<b>Item</b>	<b>Column 1</b> <b>An application made under ...</b>	<b>Column 2</b> <b>has effect, from the commencement of this item, as if the application had been made under ...</b>
1	subsection 135ZWAA(2) or 135ZX(2A) of the old law	paragraph 113P(4)(b) of the new law for the purposes of subparagraph 113P(1)(e)(ii).
2	subsection 135JAA(2) or 135K(2A) of the old law	paragraph 113P(4)(b) of the new law for the purposes of subparagraph 113P(2)(d)(ii).
3	subsection 135H(1), 135J(1), 135JA(1), 135ZV(1), 135ZW(1) or 135ZWA(1) or (2) of the old law	paragraph 113R(2)(b) of the new law.
4	section 135SA or 135ZZEA of the old law	subsection 113ZB(1) of the new law.

- (2) To avoid doubt, at the commencement of this item, the parties to an application to which item 4 of the table applies are the persons or organizations that were parties to the application immediately before that commencement.

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*Agreements, determinations, remuneration notices and orders*

(3) The following table has effect:

<b>Agreements, determinations, remuneration notices and orders</b>		
<b>Item</b>	<b>Column 1 If ...</b>	<b>Column 2 is in force immediately before the commencement of this item, it has effect, from that commencement, as if it had been ...</b>
1	an agreement made under subsection 135ZWAA(2) or 135ZX(2A) of the old law	made under subparagraph 113P(1)(e)(i) of the new law.
2	an agreement made under subsection 135JAA(2) or 135K(2A) of the old law	made under subparagraph 113P(2)(d)(i) of the new law.
3	a determination made under subsection 135ZWAA(2) or 135ZX(2A) of the old law	made under subsection 113P(4) of the new law for the purposes of subparagraph 113P(1)(e)(ii).
4	a determination made under subsection 135JAA(2) or 135ZK(2A) of the old law	made under subsection 113P(4) of the new law for the purposes of subparagraph 113P(2)(d)(ii).
5	a remuneration notice given under Part VA or VB of the old law	given under section 113Q of the new law.
6	an agreement made under subsection 135H(1), 135J(1), 135JA(1), 135ZV(1), 135ZW(1) or 135ZWA(1) or (2) of the old law	made under paragraph 113R(1)(a) of the new law.
7	a determination made under subsection 135H(1), 135J(1), 135JA(1), 135ZV(1), 135ZW(1) or 135ZWA(1) or (2) of the old law	made under subsection 113R(2) of the new law.
8	an order made under paragraph 153DE(4)(b) of the old law	made under paragraph 113ZB(2)(b) of the new law in relation to each works collecting society.
9	an order made under paragraph 153BAD(4)(b) of the old law	made under paragraph 113ZB(2)(b) of the new law in relation to the broadcasts collecting society.
10	an order made under	made under paragraph 113ZB(2)(c)

<b>Agreements, determinations, remuneration notices and orders</b>		
<b>Item</b>	<b>Column 1</b> <b>If ...</b>	<b>Column 2</b> <b>is in force immediately before the commencement of this item, it has effect, from that commencement, as if it had been ...</b>
	paragraph 153DE(4)(c) of the old law	of the new law in relation to each works collecting society.
11	an order made under paragraph 153BAD(4)(c) of the old law	made under paragraph 113ZB(2)(c) of the new law in relation to the broadcasts collecting society.

### *Collecting societies*

- (4) A declaration:
- (a) made under section 135ZZB of the old law in relation to a body; and
  - (b) in force immediately before the commencement of this item;
- has effect, from that commencement, as if it were a declaration made under section 113V of the new law and to which subparagraph 113V(4)(a)(i) applied.
- (5) A declaration:
- (a) made under section 135P of the old law in relation to a body; and
  - (b) in force immediately before the commencement of this item;
- has effect, from that commencement, as if it were a declaration made under section 113V of the new law and to which subparagraph 113V(4)(a)(ii) applied.
- (6) Section 113Z of the new law applies to financial years ending on or after the commencement of this item.

## **84 Inspection notices**

- A notice:
- (a) given under paragraph 203E(1)(a) of the old law; and
  - (b) specifying a day occurring on or after the day this item commences;

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has effect, from that commencement, as if it had been given under subsection 203E(1) of the new law.



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## Schedule 2—Duration of copyright

### *Copyright Act 1968*

#### **1 Subsection 10(1)**

Insert:

***generally known***: without limiting when the identity of the author of a work is ***generally known***, the identity is ***generally known*** if it can be ascertained by reasonable enquiry.

***made public*** has a meaning affected by section 29A.

#### **2 Subsection 14(2)**

Omit “180,”.

#### **3 After section 29**

Insert:

#### **29A Making public**

- (1) Without limiting when a work is ***made public***, it is ***made public*** when:
  - (a) the work, or an adaptation of the work, is:
    - (i) published, performed in public, broadcast or otherwise communicated to the public; or
    - (ii) if the work is an artistic work—exhibited in public; or
  - (b) if the work is an artistic work included in a cinematograph film—the film is seen in public; or
  - (c) if the work is a building—the building has been constructed; or
  - (d) records of the work, or of an adaptation of the work, are:
    - (i) offered to the public (whether or not for sale); or
    - (ii) exposed for sale to the public.
- (2) Without limiting when copyright material other than a work is ***made public***, the material is ***made public*** when:
  - (a) it is published; or

- (b) if the material is a sound recording—it is:
    - (i) heard in public; or
    - (ii) communicated to the public; or
  - (c) if the material is a cinematograph film—it is:
    - (i) seen in public (to the extent it consists of visual images); or
    - (ii) heard in public (to the extent it consists of sounds); or
    - (iii) communicated to the public; or
  - (d) copies of the material are:
    - (i) offered to the public (whether or not for sale); or
    - (ii) exposed for sale to the public.
- (3) Subsections 29(4) to (7) apply, for the purposes of this section, in relation to making public in the same way as those subsections apply in relation to publication.

#### 4 Sections 33 and 34

Repeal the sections, substitute:

#### 33 Duration of copyright in original works

- (1) This section applies to copyright that subsists in a work under this Part.

*Works first made public before 1 January 2019*

- (2) The following table has effect if the work was first made public before 1 January 2019.

<b>Duration of copyright—works first made public before 1 January 2019</b>		
<b>Item</b>	<b>Column 1 If ...</b>	<b>Column 2 the copyright continues to subsist until ...</b>
1	no other item of this table applies	70 years after the calendar year in which the author of the work died.
2	(a) the work is: (i) a literary work (other than a	70 years after the calendar year in which

<b>Duration of copyright—works first made public before 1 January 2019</b>		
<b>Item</b>	<b>Column 1 If ...</b>	<b>Column 2 the copyright continues to subsist until ...</b>
	computer program); or (ii) a dramatic work; or (iii) a musical work; or (iv) an engraving; and (b) the author of the work has died; and (c) the work was not first made public before the author died; and (d) item 3 does not apply	the work was first made public.
3	the identity of the author of the work is not generally known at any time before the end of 70 years after the calendar year in which the work was first made public	70 years after the calendar year in which the work was first made public.

*Works never made public, and works first made public on or after 1 January 2019*

- (3) The following table has effect if the work was not first made public before 1 January 2019.

<b>Duration of copyright—works not first made public before 1 January 2019</b>		
<b>Item</b>	<b>Column 1 If ...</b>	<b>Column 2 the copyright continues to subsist until ...</b>
1	no other item of this table applies	70 years after the calendar year in which the author of the work died.
2	(a) the identity of the author is not generally known at any time before the end of 70 years after the calendar year in which the work was made; and (b) the work is not first made public before the end of 50 years after the calendar year in which the work was made	70 years after the calendar year in which the work was made.
3	(a) the identity of the author is not generally	70 years after the

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<b>Duration of copyright—works not first made public before 1 January 2019</b>		
<b>Item</b>	<b>Column 1 If ...</b>	<b>Column 2 the copyright continues to subsist until ...</b>
	known at any time before the end of 70 years after the calendar year in which the work was first made public; and	calendar year in which the work was first made public.
	(b) the work is first made public before the end of 50 years after the calendar year in which the work was made	

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## **5 Sections 79 and 80**

Repeal the sections, substitute:

### **79 References to any one or more of joint authors**

A reference in section 32 to the author of a work is taken to be a reference to any one or more of the authors of the work if the work is a work of joint authorship.

### **79A References to the identity of none of joint authors being generally known**

A reference in any of the following provisions to the identity of the author of a work not being generally known is taken to be a reference to the identity of none of the authors of the work being generally known if the work is a work of joint authorship:

- (a) item 3 of the table in subsection 33(2);
- (b) item 2 or 3 of the table in subsection 33(3).

### **80 References to whichever of joint authors died last**

A reference in any of the following provisions to the author of a work is taken to be a reference to the author who died last if the work is a work of joint authorship to which section 81 does not apply:

- (a) item 1 or 2 of the table in subsection 33(2);
- (b) item 1 of the table in subsection 33(3);
- (c) section 51.

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**6 Subsection 81(2)**

Omit “or could be ascertained by reasonable inquiry”.

**7 Subsection 81(3)**

Repeal the subsection, substitute:

- (3) A reference in any of the provisions mentioned in subsection (3A) to the author of the work is taken to be a reference to:
- (a) the author whose identity was disclosed; or
  - (b) if the identity of 2 or more of the authors was disclosed—  
whichever of those authors died last.
- (3A) The provisions are as follows:
- (a) item 1 or 2 of the table in subsection 33(2);
  - (b) item 1 of the table in subsection 33(3).

**8 Paragraph 81(4)(b)**

Omit “or can be ascertained by reasonable inquiry”.

**9 Sections 93 and 94**

Repeal the sections, substitute:

**93 Duration of copyright in sound recordings and films**

- (1) This section applies to copyright that subsists in copyright material under this Part, if the material is:
- (a) a sound recording; or
  - (b) a cinematograph film.

*Copyright material first made public before 1 January 2019*

- (2) The copyright continues to subsist until 70 years after the calendar year in which the copyright material was first made public if the material was first made public before 1 January 2019.

*Copyright material never made public, and material first made public on or after 1 January 2019*

- (3) The following table has effect if the copyright material was not first made public before 1 January 2019.

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<b>Duration of copyright—copyright material not first made public before 1 January 2019</b>		
<b>Item</b>	<b>Column 1 If ...</b>	<b>Column 2 the copyright continues to subsist until ...</b>
1	the copyright material is first made public before the end of 50 years after the calendar year in which the material was made	70 years after the calendar year in which the material was first made public.
2	item 1 does not apply	70 years after the calendar year in which the copyright material was made.

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**10 At the end of paragraph 129(2)(a)**

Add “and”.

**11 Paragraph 129(2)(c)**

Omit “or can be ascertained by reasonable inquiry”.

**12 Sections 180 and 181**

Repeal the sections, substitute:

**180 Duration of Crown copyright in original works, sound recordings and films**

Copyright in copyright material subsists until 50 years after the calendar year in which the material is made if:

- (a) the material is a work, sound recording or cinematograph film; and
- (b) the Commonwealth or a State:
  - (a) is the owner; or
  - (b) would, but for an agreement to which section 179 applies, be the owner;of copyright in the material.

**13 Before section 184**

Insert:

**Division 1—Foreign countries**

**14 Before section 186**

Insert:

**Division 2—International organizations**

**15 At the end of paragraph 187(1)(a)**

Add “and”.

**16 Paragraph 187(1)(b)**

Repeal the paragraph.

**17 At the end of paragraph 187(2)(a)**

Add “and”.

**18 Paragraph 187(2)(b)**

Repeal the paragraph.

**19 At the end of section 187**

Add:

(4) This section has effect subject to section 188A.

**20 At the end of paragraph 188(1)(a)**

Add “and”.

**21 Paragraph 188(1)(b)**

Repeal the paragraph.

**22 At the end of paragraph 188(2)(a)**

Add “and”.

**23 Paragraph 188(2)(b)**

Repeal the paragraph.

**24 At the end of paragraph 188(3)(a)**

Add “and”.

**25 Paragraph 188(3)(b)**

Repeal the paragraph.

**26 At the end of section 188**

Add:

- (5) This section has effect subject to section 188A.

**27 At the end of Part VIII**

Add:

**188A Duration of international organization copyright**

- (1) This section applies to copyright that subsists in copyright material under section 187 or 188.

*Copyright material first made public before 1 January 2019*

- (2) The copyright continues to subsist, subject to subsection (4), until 70 years after the calendar year in which the copyright material was first made public if the material was first made public before 1 January 2019.

*Copyright material never made public, and material first made public on or after 1 January 2019*

- (3) The following table has effect, subject to subsection (4), if the copyright material was not first made public before 1 January 2019.



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**Duration of copyright—copyright material not first made public before 1 January 2019**


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<b>Item</b>	<b>Column 1 If ...</b>	<b>Column 2 the copyright continues to subsist until ...</b>
1	the copyright material is first made public before the end of 50 years after the calendar year in which the material was made	70 years after the calendar year in which the material was first made public.
2	item 1 does not apply	70 years after the calendar year in which the copyright material was made.

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*Editions*

- (4) If the copyright material is an edition to which subsection 188(3) applies, the copyright continues to subsist until 25 years after the calendar year in which the edition was first made public.

**28 Sections 233 to 235**

Repeal the sections, substitute:

**235 Crown copyright in films**

- (1) This section applies to a cinematograph film made before the commencement of this Act.
- (2) Section 178 does not apply in relation to the film.
- (3) Sections 176, 177 and 180 apply:
- in relation to the film in accordance with subsection 222(1) if the film was an original dramatic work (within the meaning of section 204); and
  - in relation to photographs forming part of the film in the same way as those sections apply in relation to photographs not forming part of a cinematograph film.

## **29 Application of amendments**

The amendments made by this Schedule apply in relation to copyright material made before, on or after the commencement of this item.

## **30 Transitional provision**

If the amendments made by this Schedule would have the effect that copyright in copyright material ceased to subsist at a time occurring before the commencement of this item, that copyright ceases to subsist on the commencement of this item, instead of at that earlier time.

## **31 Compensation for acquisition of property**

- (1) If the operation of this Schedule would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in:
  - (a) the Federal Court of Australia; or
  - (b) the Supreme Court of a State or Territory;for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

## **Schedule 3—Minor amendments**

### **Part 1—References to Attorney-General**

#### ***Copyright Act 1968***

##### **1 Section 135ZZX**

Omit “Attorney-General”, substitute “Minister”.

##### **2 Subsection 183(6)**

Omit “by the Attorney-General of the Commonwealth or the Attorney-General of the State.”, substitute:

by:

- (a) in the case of the Commonwealth—the Minister; or
- (b) in the case of a State—the Minister of the State with responsibility for copyright.

##### **3 Subsection 183D(1)**

Omit “Attorney-General”, substitute “Minister”.

##### **4 Paragraph 183D(4)(b)**

Omit “Attorney-General”, substitute “Minister”.

##### **5 Subsection 183D(5)**

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

##### **6 Section 183E**

Omit “Attorney-General”, substitute “Minister”.

##### **7 Transitional—amendments do not affect things done**

###### ***Things done under amended provisions***

- (1) Subitem (2) applies to a thing done under a provision of the *Copyright Act 1968* if:
  - (a) the provision is amended by an item of this Part; and

- (b) the thing was in force immediately before the commencement of that item.
- (2) The thing has effect, after the commencement of that item, as if it had been done under that provision as amended by that item. However, this is not taken to change the time at which the thing was actually done.

***Amendments do not affect requirements for things done***

- (3) Subitem (4) applies to a thing done under the *Copyright Act 1968* if:
  - (a) the thing was in force, and complied with a requirement of that Act, immediately before the commencement of an item of this Part; and
  - (b) immediately after the commencement of that item, the thing fails to comply with that requirement solely because of the amendments of that Act made by that item.
- (4) Disregard those amendments when considering, on and after the commencement of that item, whether the thing complies with that requirement.

***Meaning of thing done***

- (5) In this item, a ***thing done*** includes:
  - (a) the making of an instrument; and
  - (b) the making of a decision.

**8 Instrument may deal with transitional etc. matters**

- (1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Part.
- (2) To avoid doubt, the rules may not do the following:
  - (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;

- (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act or an Act amended by this Part;
  - (e) directly amend the text of this Act or an Act amended by this Part.
- (3) This Part (other than subitem (2) of this item) does not limit the rules that may be made for the purposes of subitem (1).

## Part 2—Preconditions for making regulations

### *Copyright Act 1968*

#### 9 Subsection 10(1)

Insert:

*international agreement* means:

- (a) a convention to which Australia is a party; or
- (b) an agreement or arrangement between Australia and a foreign country, including an agreement, arrangement or understanding between a Minister and an official or authority of a foreign country.

#### 10 Subsection 184(3)

Repeal the subsection, substitute:

- (3) Before the Governor-General makes a regulation for the purposes of subsection (1) applying a provision of this Act in relation to a country other than Australia:
  - (a) the country must be a party to an international agreement specified, in relation to the provision of this Act, by the regulations for the purposes of this paragraph; or
  - (b) the Minister must be satisfied that adequate protection is or will be given under the law of the country to owners of copyright under this Act in the class of works or other subject-matter to which the provision of this Act relates.

#### 11 Subsection 185(1)

Repeal the subsection.

#### 12 Subsection 185(2)

Omit “Regulations made for the purposes of this section may”, substitute “The regulations may, subject to subsection (3),”.

#### 13 Subsection 185(3)

Repeal the subsection, substitute:

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- (3) Before the Governor-General makes a regulation for the purposes of subsection (2) in relation to a country:
- (a) the Minister must be satisfied that that the law of the country:
    - (i) does not give adequate protection to Australian works;  
or
    - (ii) does not give adequate protection in relation to a class or classes of such works;(whether the lack of protection relates to the nature of the work or the nationality, citizenship or country of residence of its author, or all of those matters); and
  - (b) the Minister must have regard to the nature and extent of that lack of protection.

#### **14 Subsection 186(1)**

Repeal the subsection, substitute:

- (1) The regulations may, subject to subsection (1A), declare an organization:
- (a) of which 2 or more countries, or the Governments of 2 or more countries, are members; or
  - (b) that is constituted by persons representing 2 or more countries, or representing the Governments of 2 or more countries;
- to be an international organization to which this Act applies.
- (1A) Before the Governor-General makes a regulation for the purposes of subsection (1) in relation to an organization, the Minister must be satisfied that it is desirable that this Act should apply in relation to the organization.

#### **15 Subsection 248U(3)**

Repeal the subsection, substitute:

- (3) Before the Governor-General makes a regulation for the purposes of subsection (1) applying a provision of this Part in relation to a foreign country:
- (a) the country must be a party to an international agreement specified, in relation to the provision of this Part, by the regulations for the purposes of this paragraph; or

(b) the Minister must be satisfied that adequate protection is or will be given under the law of the country to performers in performances:

- (i) protected under this Act; and
- (ii) to which the provision of this Part relates.

**16 Subsection 248V(1)**

Repeal the subsection.

**17 Subsection 248V(2)**

Omit “Regulations made for the purposes of this section may”, substitute “The regulations may, subject to subsection (3),”.

**18 At the end of section 248V**

Add:

- (3) Before the Governor-General makes a regulation for the purposes of subsection (2) in relation to a foreign country:
  - (a) the Minister must be satisfied that that the law of the country does not give adequate protection to Australian performances (whether the lack of protection relates to all or any of the ways that the provisions may be applied by the regulations under subsection 248U(1)); and
  - (b) the Minister must have regard to the nature and extent of that lack of protection.

**19 Application of amendments**

The amendments made by items 10 to 18 of this Schedule apply in relation to a regulation made on or after the commencement of this item.

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*[Minister’s second reading speech made in—  
House of Representatives on 22 March 2017  
Senate on 29 March 2017]*

(40/17)

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