

Copyright Tribunal (Procedure) Amendment Regulations 2001 (No. 1) 2001 No. 9

EXPLANATORY STATEMENT

Statutory Rules 2001 No. 9

Issued by the Attorney-General

Copyright Act 1968

Copyright Amendment Regulations 2001 (No. 2)

Copyright Tribunal (Procedure) Amendment Regulations 2001 (No. 1)

The *Copyright Act 1968* (the Copyright Act) grants and determines the scope of copyright in Australia. The *Copyright Amendment (Digital Agenda) Act 2000* (the Digital Agenda Act) amends the Copyright Act to allow reasonable access to copyright material through new communications technologies whilst continuing to promote creative endeavour.

Section 249 of the Copyright Act provides 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.

Section 166 of the Copyright Act provides that the regulations may make provision for, or in relation to, the procedure in connection with the making of references and applications to the Tribunal and the regulation of proceedings before the Tribunal.

Section 4 of the *Acts Interpretation Act 1901* provides for the exercise of statutory powers between passing and commencement of an Act. The Digital Agenda Act which received Royal Assent on 4 September 2000, is due to commence on 4 March 2001.

The purpose of the amending Regulations is to update the Copyright Regulations 1969 and the Copyright Tribunal (Procedure) Regulations 1969 to take account of amendments made to the Copyright Act by the Digital Agenda Act.

The Copyright Regulations prescribe matters relating to, amongst other things, 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.

The Copyright Tribunal (Procedure) Regulations prescribe matters relating to, amongst other things, the making of references and applications to the Copyright Tribunal, and the regulation of proceedings before the Tribunal.

The Copyright Amendment Regulations amend the Copyright Regulations by:

- amending existing regulations under the educational statutory licences in Parts VA and VB of the Copyright Act to reflect the extension of the licences to electronic copying and communication;
- introducing new regulations in relation to new schemes for electronic use in the educational statutory licences in Parts VA and VB, introduced by the Digital Agenda Act;

- providing new regulations relating to the new Part VC statutory licence introduced by the Digital Agenda Act for the retransmission of free-to-air broadcasts;
- amending existing prescribed notices under the Copyright Act to take into account the Digital Agenda reforms, and providing new forms of notice as required by the Digital Agenda Act;
- introducing new regulations to provide detail to support the operation of new simulcasting exceptions introduced by the Digital Agenda Act.

The Copyright Tribunal (Procedure) Amendment Regulations amend the Copyright Tribunal (Procedure) Regulations to provide regulations for the new applications to the Copyright Tribunal introduced by the Digital Agenda Act, and to reflect other changes to the Copyright Act made by the Digital Agenda Act.

In addition, the amending Regulations amend the Copyright Regulations and the Copyright Tribunal (Procedure) Regulations to update terminology as a consequence of changes made by the Digital Agenda Act, and to take into account current drafting practices.

Details of the Copyright Amendment Regulations are included in Attachment A. Details of the Copyright Tribunal (Procedure) Amendment Regulations are included in Attachment B.

Both sets of amending Regulations commenced on the commencement of the Digital Agenda Act. That Act commences on 4 March 2001.

ATTACHMENT A - COPYRIGHT AMENDMENT REGULATIONS

Regulation 1 provides that the amendment regulations are the *Copyright Amendment Regulations 2001 (No. 2)*.

Regulation 2 provides that the amendment regulations commence on the commencement of the Digital Agenda Act. The Digital Agenda Act commences on 4 March 2001.

Regulation 3 provides that Schedule 1 to the amendment regulations amends the Copyright Regulations 1969.

Schedule 1, item 1 inserts a new regulation 4BA. Regulation 4BA prescribes that the destruction period referred to in subsection 47AA(3) of the Digital Agenda Act is twelve months after the end of the relevant simulcast period applicable under the *Broadcasting Services Act 1992* in relation to the broadcasting service that delivers the simulcast.

Schedule 1, item 2 inserts a new regulation 4D. Regulation 4D provides that a notice in the form set out in Schedule 4 must be communicated to a person receiving copyright material for the purposes of paragraph 49(7A)(c) of the Digital Agenda Act.

Schedule 1, item 3 substitutes a new regulation 17A. Regulation 17A provides that the prescribed notice under paragraph 104B(b) for published editions is at Schedule 3 and for audio-visual material is at Schedule 9. In addition, regulation 17A provides that the prescribed size of the notices for the purposes of subsection 104B(b) is 297 millimetres long and 210 millimetres wide.

Schedule 1, item 4 inserts a new regulation 20. Regulation 20 provides that the destruction period referred to in subsection 110C(3) of the Digital Agenda Act is twelve months after the end of the relevant simulcast period applicable under the *Broadcasting Services Act 1992* in relation to the broadcasting service that delivers the simulcast.

Schedule 1, item 5 substitutes a new heading for Part 5 of the Copyright Regulations. This amendment is a consequence of the extension of the Part VA statutory licence in the Copyright Act to include the new right of communication introduced by the Digital Agenda Act.

Schedule 1, item 6 amends regulation 23A by removing the reference to transmission from the definitions in regulation 23A. This amendment is the consequence of the replacement of the term "transmission" in the Copyright Act with the wider definition of "broadcast" effected by the Digital Agenda Act.

Schedule 1, item 7 amends subparagraphs 23B(1)(a)(iii) and (iv) to omit each mention of "transmission" and substitute "broadcast". This amendment is the consequence of the replacement of the term "transmission" with the wider definition of "broadcast" in the Digital Agenda Act.

Schedule 1, item 8 substitutes a new regulation 23C. New regulation 23C replaces the existing requirements for the contents of a record in relation to copying of transmissions under paragraph 135K(1)(b) with obligations relating to recording copies of broadcasts, and communications of copies under the Part VA statutory licence. This amendment is a consequence of the extension of the Part VA statutory licence to the new right of communication, and the replacement of the term "transmission" with the wider definition of "broadcast" in the Digital Agenda Act.

Schedule 1, item 9 substitutes a new regulation 23E to provide that records must be sent to the collecting society providing details of copies of broadcasts made, and the communication of such copies. The obligation also extends to deemed copies and communications under subsection 135H(3) of the Copyright Act. Regulation 23E also provides that records must be sent

by certified or registered mail, or otherwise as agreed between the administering body and the collecting society.

Schedule 1, item 10 amends regulation 23F by omitting "transmission" and inserting "broadcast". This amendment is a consequence of the extension of the Part VA statutory licence to include the new right of communication and the replacement of the term "transmission" with the wider definition of "broadcast" in the Digital Agenda Act.

Schedule 1, item 11 amends regulation 23G to provide that the prescribed form of record under paragraph 135K(2)(b) in relation to a copy of a broadcast is Schedule 11AA, and is Schedule 11AB for a communication of a copy of a broadcast. This amendment is a consequence of the extension of the Part VA statutory licence to include the new right of communication to the public, and the replacement of the term "transmission" with "broadcast".

Schedule 1, item 12 inserts new regulations 23HA and 23HB. Regulation 23HA provides an exception to the requirement under section 135KA to provide a notice to users when a copy of a broadcast is communicated. A notice will not be required where a copy of a broadcast is communicated to students within the premises of an educational institution in such a manner that the persons receiving or accessing the communication cannot copy or communicate the broadcast by any means provided by the educational institution. The regulations also allow the collecting society and the administering body to agree to additional circumstances in which a notice will not be required.

New Regulation 23HB provides that the prescribed form of notice under new paragraph 135KA(a) of the Copyright Act is set out in Schedule 11AC.

Schedule 1, item 13 substitutes a new heading for Part 5A of the Schedule. This amendment is a consequence of the extension of the Part VB statutory licence to include the new right of communication introduced by the Digital Agenda Act.

Schedule 1, item 14 amends the Copyright Regulations by inserting the term "remuneration notice" in the definitions in regulation 23JA. The definition provides that the term has the same meaning as the Copyright Act.

Schedule 1, item 15 amends subregulation 23JC(1) by inserting "in hardcopy form" after "relevant reproduction". This amendment is a consequence of amendments made to terminology in Part VB of the Copyright Act by the Digital Agenda Act.

Schedule 1, item 16 amends regulation 23JE by omitting the reference to "(1) For" and inserting the word "For". This amendment corrects a drafting error in the Copyright Regulations.

Schedule 1, item 17 amends regulation 23JE by inserting "in hardcopy form or analog form" after the first mention of "copy". This amendment is a consequence of amendments made to terminology in Part VB of the Copyright Act by the Digital Agenda Act.

Schedule 1, item 18 amends subregulation 23JF(1) by inserting "made in hardcopy form or analog form" after "licensed copy". This amendment is a consequence of the amendments made to terminology in Part VB of the Copyright Act by the Digital Agenda Act.

Schedule 1, item 19 amends subregulation 23JF(2) by inserting "in hardcopy form or analog form" after "licensed copy made". This amendment is a consequence of the amendments made to terminology in Part VB of the Copyright Act by the Digital Agenda Act.

Schedule 1, item 20 amends subregulation 23JG(1) by inserting "in hardcopy form or analog form" after the first mention of "licensed copy". This amendment is a consequence of the amendments made to terminology in Part VB of the Copyright Act by the Digital Agenda Act.

Schedule 1, item 21 amends subregulation 23JG(2) by inserting "in hardcopy form or analog form" after the first mention of "licensed copy". This amendment is a consequence of the amendments made to terminology in Part VB of the Copyright Act by the Digital Agenda Act.

Schedule 1, item 22 amends subregulation 23JG(3) by inserting "in hardcopy form or analog form" after the first mention of "licensed copy". This amendment is a consequence of the amendments made to terminology in Part VB of the Copyright Act by the Digital Agenda Act.

Schedule 1, item 23 amends subregulation 23JJ by inserting "in hardcopy form or analog form" after "licensed copies". This amendment is a consequence of the amendments made to terminology in Part VB of the Copyright Act by the Digital Agenda Act.

Schedule 1, item 24 amends subregulation 23JJ by extending the methods available to an administering body to send records to a collecting society under paragraph 135ZX(1)(d) to include registered mail, certified mail, or by a method as otherwise agreed between the administering body and the collecting society.

Schedule 1, item 25 amends regulation 23JK by inserting "in hardcopy form or analog form" after "licensed copy". This amendment is a consequence of the amendments made to terminology in Part VB of the Copyright Act by the Digital Agenda Act.

Schedule 1, item 26 inserts a new regulation 23JLA. New regulation 23JLA provides the prescribed form of notice under new paragraph 135ZXA(a) of the Copyright Act, is in the form set out in Schedule 11B.

Schedule 1, item 27 inserts a new Part 6 of the Copyright Regulations relating to the retransmission of free-to-air broadcasts. The inclusion of Part 6 is a consequence of the new statutory licence scheme in Part VC of the Copyright Act introduced by the Digital Agenda Act for the remuneration of copyright owners for the retransmission of free-to-air broadcasts containing their copyright material.

Item 27 also inserts new regulations 23K and 23L. New regulation 23K provides for the prescribed particulars that must be contained in an identity card for the purposes of subsection 135ZZQ(1) of the Digital Agenda Act.

New regulation 23L sets out the prescribed provisions that must be included in the rules of a collecting society before it is eligible to become a declared collecting society for the Part VC statutory licence under paragraph 135ZZT(3)(d).

Schedule 1, item 28 inserts a new regulation 25B which provides that for the purposes of new subsection 203G(3) of the Copyright Act, the prescribed retention period for a declaration under new subsections 116A(3) or 132(5F) of the Copyright Act is 6 years from the day when the declaration is made. This amendment is a consequence of the introduction by the Digital Agenda Act of new civil and criminal enforcement measures in the Copyright Act in relation to the manufacture, supply or other dealings with circumvention devices and services.

Schedule 1, item 29 inserts a new Schedule 3 which provides the prescribed form of notice for section 39A of the Copyright Act and for published editions under new section 104B of the Copyright Act.

Schedule 1, item 30 inserts a new Schedule 4 which provides a prescribed form of notice for new paragraph 49(7A)(c) of the Copyright Act.

Schedule 1, item 31 inserts a new Schedule 9 which provides a prescribed form of notice in relation to the copying of audio-visual items under new section 104B of the Copyright Act.

Schedule 1, item 32 amends Schedule 11 by omitting outdated language in relation to the requirement to record the date in the Schedule. This amendment ensures consistency with modern drafting practice.

Schedule 1, item 33 amends Schedule 11AA by omitting each mention of the word "transmission" and inserting the word "broadcast". This amendment is a consequence of the extension of the Part VA statutory licence to the new right of communication and the replacement of the term "transmission" with the wider definition of "broadcast" in the Digital Agenda Act.

Schedule 1, item 34 inserts new Schedules 11AB and 11AC. Schedule 11AB provides a prescribed form of record for communications of copies of broadcasts made by educational institutions under new paragraph 135K(2)(b) of the Copyright Act.

New Schedule 11AC provides a form of notice to be provided by an educational institution when communicating copies of broadcasts under paragraph 135KA(a) of the Digital Agenda Act.

Schedule 1, item 35 inserts a new Schedule 11B which provides a form of notice to be provided by an educational institution when communicating reproductions of works under new paragraph 135ZXA(a) of the Copyright Act.

ATTACHMENT B - COPYRIGHT TRIBUNAL (PROCEDURE) AMENDMENT REGULATIONS

Regulation 1 provides that the amending Regulations are the *Copyright Tribunal (Procedure) Amendment Regulations 2001 (No. 1)*.

Regulation 2 provides that the amending Regulations commence on the commencement of the Digital Agenda Act. The Digital Agenda Act commences on 4 March 2001.

Regulation 3 provides that Schedule 1 to the amending Regulations amends the Copyright Tribunal (Procedure) Regulations 1969.

Schedule 1, item 1 amends Regulation 9 of the Copyright Tribunal (Procedure) Regulations to omit the reference to "the First Schedule" and insert "Schedule 1". This amendment is required for consistency with current drafting practice.

Schedule 1, item 2 substitutes a new subregulation 18(4). Subregulation 18(4) provides an exception for certain applications to the Copyright Tribunal from the requirement to advertise that an application has been made to the Copyright Tribunal. Item 2 adds reference to the applications made under subsections 153BA, 153BB, 153DA, 153M, and 153N in subregulation 18(4). This amendment is a consequence of the extension of the Part VA and VB statutory licences in the Copyright Act made by the Digital Agenda Act, and the introduction of a new Part VC of the Copyright Act containing a statutory licence for the retransmission of free-to-air broadcasts.

Schedule 1, item 3 amends paragraph 23A(e) by omitting "transmissions" and inserting "broadcasts". This amendment is the consequence of the replacement of the term "transmission" in the Copyright Act with the wider definition of "broadcast" effected by the Digital Agenda Act.

Schedule 1, item 4 substitutes a new paragraph 23A(f) which requests the Copyright Tribunal to determine equitable remuneration for copies of broadcasts and communications of such copies. This amendment is a consequence of the amended definition of "broadcast", and the extension of the Part VA statutory licence in the Copyright Act to include the new right of communication introduced by the Digital Agenda Act.

Schedule 1, item 5 substitutes new paragraphs 23B(e) and (f). This amendment is a consequence of the extension of the Part VA statutory licence in the Copyright Act to include the new right of communication introduced by the Digital Agenda Act.

Schedule 1, item 6 substitutes new paragraphs 23C(e) and (f). This amendment is a consequence of the extension of the Part VA statutory licence in the Copyright Act to include the new right of communication introduced by the Digital Agenda Act.

Schedule 1, item 7 inserts new regulations 23CA and 23CB. Regulation 23CA prescribes the matters that are to be included in an application to the Copyright Tribunal under s.135JA(1) for the determination of equitable remuneration under an agreed system.

Regulation 23CB prescribes the matters that are to be included in an application to the Copyright Tribunal under s. 135JA(3) for the determination of the matters and processes constituting an agreed system under Part VA of the Copyright Act.

Item 7 is a consequence of the extension of the statutory licence scheme in Part VA of the Copyright Act to allow the collecting society and an administering body to elect to use an agreed system.

Schedule 1, item 8 inserts new regulations 23G, 23H, 23J, 23K, and 23L. Regulation 23G prescribes the matters that are to be included in an application to the Copyright Tribunal under s.

135ZME(3) for the determination of the division of equitable remuneration between the owner or owners of copyright in an artistic work and the owner or owners of copyright in an article or other literary, dramatic or musical work that is accompanied by that artistic work. Regulation 23G is a consequence of the extension of the statutory licence scheme in Part VB to the electronic reproduction or communication of literary, dramatic or musical works that are accompanied by illustrative artistic works.

Regulation 23H prescribes the matters that are to be included in an application to the Copyright Tribunal under s. 135ZWA(1) for the determination of the amount of equitable remuneration payable for making licensed copies and licensed communications under an electronic use system. Regulation 23H is a consequence of the extension of the Part VB statutory licence in the Copyright Act by the Digital Agenda Act to include the electronic reproduction and communication of works.

Regulation 23J prescribes the matters that are to be included in an application to the Copyright Tribunal under s. 135ZWA(2) for the determination of the matters and processes constituting an electronic use system. Regulation 23J is a consequence of the introduction of an electronic use system for the purposes of Part VB of the Copyright Act to govern electronic reproductions and communications.

Regulations 23K and 23L are a consequence of the new statutory licence scheme in Part VC of the Copyright Act introduced by the Digital Agenda Act for the remuneration of underlying copyright owners for the retransmission of free-to-air broadcasts.

Regulation 23K prescribes the matters that are to be included in an application to the Copyright Tribunal for the determination of the amount of equitable remuneration payable for making retransmissions under the Part VC statutory licence.

Regulation 23L prescribes the matters that are to be included in an application to the Copyright Tribunal for the determination of the matters and processes constituting a records system under the new Part VC statutory licence.

Schedule 1, item 9 amends subregulation 44(1) of the Copyright Tribunal (Procedure) Regulations to omit the reference to "the First Schedule" and insert "Schedule 1".

Schedule 1, item 10 amends Regulation 46 of the Copyright Tribunal (Procedure) Regulations to omit the reference to "the Second Schedule" and insert "Schedule 2".

Schedule 1, Item 11 omits the heading "The Schedules".

Schedule 1, item 12 substitutes a new heading for Schedule 1.

Schedule 1, item 13 substitutes a new Form 2. Form 2 prescribes the form of summons to a witness required to appear in the Copyright Tribunal.

Schedule 1, item 14 substitutes a new heading for Schedule 2.

The amendments to items 9 to 14 ensure consistency with current drafting practice.