

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 249

Subject - *Copyright Act 1968*

Copyright Amendment Regulations 2010 (No. 1)

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

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

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

In addition, subsection 186(1) of the Act provides that where it appears to the Governor-General that it is desirable that the Act should apply in relation to an organisation, the regulations may declare that organisation to be an international organisation to which the Act applies if the members of the organisation are from two or more countries, or the Governments of two or more countries, or that the organisation is constituted by persons representing two or more countries, or the Governments of two or more countries.

The Regulations amend the *Copyright Regulations 1969* (the Copyright Regulations) and the *Copyright Tribunal (Procedure) Regulations 1969* (the Copyright Tribunal Regulations) consequential to changes made to the Act by the *Copyright Amendment Act 2006* (the 2006 Act) and the *Copyright Amendment Act (No 1) 1998* (the 1998 Act).

The Copyright Regulations include provisions concerning payment of royalties for making records of copyright musical works where there is no agreement between the parties, or a determination by the Copyright Tribunal; the period for a supplier to retain a person's declaration that a circumvention device or service, supplied to them will be used only for a permitted purpose, and the form of notices to be displayed or given in relation to the copying of copyright material. The Copyright Regulations also declare the international organisations to which the Act applies.

The Copyright Tribunal is a specialist body which principally arbitrates disputes between copyright collecting societies and their licensees over copyright licence fees. The Copyright Tribunal Regulations include general provisions related to the operation of the Copyright Tribunal such as the seal of the Tribunal, the form of applications and references to the Tribunal, and the form of summons to witnesses.

The purpose of the amendments to the Copyright Regulations is to repeal or amend regulations as a consequence of the amendments made by the 2006 Act, replacing Schedules to reflect current drafting style and ensure consistent use of headings, and to update the list of international organisations to which the Act applies.

The purpose of the amendments to the Copyright Tribunal Regulations is to make new regulations or amend existing regulations as a consequence of the amendments made by the 2006 Act and the 1998 Act.

The 2006 Act made major reforms to the Act including clarifying the application of the exception permitting 'fair dealings' with certain works for the purpose of research or study, and enhancing the jurisdiction of the Tribunal. Accordingly, the Copyright Regulations and the Copyright Tribunal Regulations are amended to reflect these changes.

The 1998 Act made minor machinery amendments to the provisions of the Act concerning the Tribunal. Accordingly, the Copyright Tribunal Regulations are amended to reflect these changes. These amendments were not made earlier due to oversight.

Details of the Regulations amending the Copyright Regulations are provided in Attachment A. Details of the Regulations amending the Copyright Tribunal Regulations are provided in Attachment B.

The Act specifies no conditions that need to be satisfied before the power to make each of the Regulations may be exercised.

Each of the Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Each of the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

The Australian Government did not undertake consultation with stakeholders or other bodies as consultation was unnecessary as the instruments are machinery in nature.

Authority: Subsection 249(1) of the *Copyright Act 1968*

Details of the Copyright Amendment Regulations 2010 (No. 1)

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Copyright Amendment Regulations 2010 (No. 1)*.

Regulation 2 – Commencement

This regulation provides that the Regulations commence on the day after they are registered.

Regulation 3 – Amendment of Copyright Regulations 1969

This regulation provides that Schedule 1 amends the *Copyright Regulations 1969* (the Copyright Regulations).

Schedule 1 – Amendments

Item [1] – Regulations 8 to 14

This item omits regulations 8 to 14 of the Copyright Regulations.

Prior to the amendment made by the *Copyright Amendment Act 2006* (the 2006 Act), sub-subparagraph 55(1)(d)(ii)(B) of the Act provided that where there is no agreement between the manufacturer and the copyright owner, or a determination by the Tribunal as to the manner of paying a royalty due for making records of copyright musical works under section 55, the prescribed royalty is to be paid in the manner prescribed by the regulations. Regulation 8 provides that in such circumstances the prescribed royalty is to be paid in accordance with regulations 9 to 14.

The 2006 Act repealed and replaced sub-paragraph 55(1)(d)(ii) of the Act with a provision that eliminates the prescription of the manner of payment in the regulations. The manner of paying the royalty for making records of copyright musical works under section 55 of the Act is to be agreed between the manufacturer and the copyright owner or, failing agreement, is to be determined by the Tribunal. This amendment to the Act necessitated the repeal of regulations 8–14 inclusive.

Item [2] – Regulation 25B

This item omits regulation 25B.

Regulation 25B prescribes the retention period for the purposes of subsection 203G(3) of the Act for a declaration under subsections 116A(3) or 132(5F) of the Act. The 2006 Act repealed all of these provisions. (While there is a new section 203G, this is based on the offence created by the previous subsection 203F(2) rather than a reworking of the former section 203G).

Prior to the repeal of these provisions effected by the 2006 Act, subsection 203G(3) of the Act provided that it was a criminal offence for a person to dispose or destroy, or cause the disposal or destruction, of a declaration made under subsections 116A(3) or 132(5F) (essentially, declarations by a person that the supply of a circumvention device or service would only be used for a permitted purpose) before the expiry of the prescribed retention period for the declaration where the person knew, or was reckless as to whether, that period had not expired.

As the 2006 Act repealed the offences relating to subsections 116A(3) and 132(5F) in the former section 203G, it is necessary to repeal regulation 25B.

Item [3] – After regulation 27

New regulation 28 – Transitional - Application of repealed regulation 25B

New regulation 28 provides that regulation 25B will continue to apply to acts done before the former section 203G was repealed by the 2006 Act. Item 24 of Part 1 of Schedule 1 to the 2006 Act provides that the repeal of section 203G applies only to acts done after the commencement of that Part. This provision ensures that the amendment of section 203G does not have retrospective effect. It also enables criminal prosecutions to continue to be brought for contravention of the former subsection 203G(3).

Item [4] – Schedules 3, 3A, 3B, 4, 8 and 9

This item replaces Schedules 3, 3A, 3B, 4, 8 and 9 with new Schedules.

New Schedule 3

Schedule 3 constitutes the prescribed form of notice for libraries and archives to display on, or near machines installed on their premises to avoid persons making infringing copies of a work or a published edition on that machine claiming that the library or archive authorised the copyright infringement. New Schedule 3 differs to the previous Schedule 3 in a number of ways.

The new Schedule 3 includes the heading ‘Prescribed form of notice to be displayed’. This wording is different to the heading of the form to assist users to appreciate the difference between the heading to the Schedule and the heading to the form.

The new Schedule 3 amends the heading to the prescribed form to ‘Notice about the reproduction of works and the copying of published editions’ replacing the previous heading ‘Prescribed form of notice for sections 39A and 104B of the *Copyright Act 1968*, in relation to the reproduction of works and the copying of published editions’. The heading is placed below the words ‘*Copyright Act 1968*’ (note that this new Schedule changes the reference from ‘*Copyright Regulations 1969*’ to ‘*Copyright Act 1968*’ so that the wording is consistent for all forms that are made for the purpose of a provision of the Act). Previously, the heading is placed above the words ‘Commonwealth of Australia’. These changes reflect current drafting style and ensure consistency between the various prescribed notices in the Schedules to the Copyright Regulations.

Schedule 3 also repeals and replaces the paragraph outlining what constitutes a ‘fair dealing’ for the purpose of research or study.

The 2006 Act repealed and replaced subsections 40(3) and 40(4) of the Act to improve the clarity of, and increase certainty in, the application of the exception in section 40 which permits ‘fair dealings’ with literary, dramatic or musical works for the purpose of research or study. Subsection 40(4), as substituted by the 2006 Act, refers to articles being reproduced for the purpose of different research or a different course of study rather than using the term ‘different subject matter’ as was used in the previous subsection 40(4). It effectively allows more than one article from the same periodical publication to be reproduced (that is, it provides that this will constitute a fair dealing) where those articles are required for the same piece of research or the same course of study. However, the reproduction of large portions of unrelated articles from a periodical publication is prohibited. This item amends the wording in the second paragraph of Schedule 3 (that is, underneath the bullet points) in order to reflect these changes.

Schedule 3 also differs from the previous Schedule 3 by using simplified wording in the third and fourth paragraphs to reflect current drafting style. New Schedule 3 omits the words ‘In the case of’ at the beginning of these paragraphs and replaces them with the word ‘For’. These changes clarify the language but do not affect the meaning of the text.

New Schedule 3A

Schedule 3A constitutes the prescribed form of written record of the making of a sound broadcast by a holder of a print disability radio licence where the work to be broadcast is the whole or part of an article contained in a periodical publication. New Schedule 3A differs to the previous Schedule 3A in a number of ways.

Previously, Schedule 3A did not have a heading. The new Schedule 3A includes the heading ‘Prescribed form of record for an article in a periodical publication’. This wording is different to the heading of the form to assist users to appreciate the difference between the heading to the Schedule and the heading to the form.

The new Schedule 3A amends the heading to the prescribed form. Whilst the content of the heading remains the same, the new Schedule 3A inserts the words ‘*Copyright Act 1968*’ under the reference to ‘Commonwealth of Australia’. The new heading is placed below the words ‘*Copyright Act 1968*’. Previously, the heading was above the words ‘Commonwealth of Australia’. These changes reflect current drafting style and ensure consistency between the various prescribed notices in the Schedules to the Copyright Regulations.

Schedule 3A also uses simplified wording in the paragraphs corresponding to items 2, 3 and 7 of the Schedule to reflect current drafting style. New Schedule 3A omits the words ‘in respect of’ and replaces them with the word ‘for’ in items 2 and 3, and item 7 substitutes the word ‘if’ for the words ‘in a case where’ and the words ‘a description of the page that will enable it to be identified’ instead of ‘such description of the page as will enable it to be identified’. These changes clarify the language but do not affect the meaning of the text.

New Schedule 3B

Schedule 3B constitutes the prescribed form of written record of the making of a sound broadcast by a holder of a print disability radio licence where the work to be broadcast is not the whole or part of an article contained in a periodical publication. New Schedule 3B differs to the previous Schedule 3B in a number of ways.

Previously, Schedule 3B did not have a heading. The new Schedule 3B includes the heading 'Prescribed form of record for a work not in a periodical publication'. This wording is different to the heading of the form to assist users to appreciate the difference between the heading to the Schedule and the heading to the form.

The new Schedule 3B amends the heading to the prescribed form. Whilst the content of the heading remains the same, the new Schedule 3B inserts the words '*Copyright Act 1968*' under the reference to 'Commonwealth of Australia'. The new heading is placed below the words '*Copyright Act 1968*'. Previously, the heading was placed above the words 'Commonwealth of Australia'. These changes reflect current drafting style and ensure consistency between the various prescribed notices in the Schedules to the Copyright Regulations.

Schedule 3B also uses simplified wording in the paragraphs corresponding to items 3 and 4 of the Schedule to reflect current drafting style.

Item 3 of new Schedule 3B is amended by inserting the word 'and' at the end of paragraph (a). Item 4 omits the words 'in a case where' for the word 'if', and the words 'a description of the page that will enable it to be identified' instead of 'such description of the page as will enable it to be identified'. These changes clarify the language but do not affect the meaning of the text.

New Schedule 4

Schedule 4 constitutes the prescribed form of notice to be given by a library or archives to a person who has requested an electronic reproduction of an article (or part of one) contained in a periodical publication or of a published work (or a part of one) from the collection of the library or archives. New Schedule 4 differs to the previous Schedule 4 in a number of ways.

Previously, Schedule 4 did not have a heading. The new Schedule 4 includes the heading 'Prescribed form of notice to library user making request'. This wording is different to the heading of the form to assist users to appreciate the difference between the heading to the Schedule and the heading to the form.

The heading to the form changes slightly. The words 'Form of' are omitted from the start of the heading 'Notice for paragraph 49(7A)(c) of the *Copyright Act 1968*'.

The new Schedule 4 also amends the form to place the heading above the words 'Commonwealth of Australia' which occur after the words '*Copyright Act 1968*' (note that this new Schedule changes the reference from '*Copyright Regulations 1969*' to '*Copyright Act 1968*' so that the wording is consistent for all forms that are made for the purpose of a provision of the Act). These changes reflect current drafting style and ensure consistency between the various prescribed notices in the Schedules to the Copyright Regulations.

The new Schedule 4 substitutes the word ‘under’ for the words ‘pursuant to’ in the first sentence of the notice. This change reflects current drafting style but does not affect the meaning of the text.

New Schedule 8

Schedule 8 constitutes the list of countries to which Division 6 of Part III of the Act applies. (The relevant provisions concern conditions upon which a manufacturer may make records of a musical work or may include part of a literary or dramatic work in a record of a musical work.) New Schedule 8 makes it clear that the heading is actually the heading to the Schedule. It also omits the words ‘in relation’ from the heading ‘Countries in relation to which Division 6 of Part III of the Act applies’ so that the heading reads ‘Countries to which Division 6 of Part III of the Act applies’. This change reflects current drafting style.

New Schedule 9

Schedule 9 constitutes the prescribed form of notice for libraries and archives to display on or near machines installed on their premises (or outside those premises but nevertheless for the convenience of people using the library or archives) in order to avoid a claim for authorisation of copyright infringement if an infringing copy of, or part of, an audio-visual item is made on that machine. New Schedule 9 differs to the previous Schedule 9 in a number of ways.

Previously, Schedule 9 did not have a heading. The new Schedule 9 includes the heading ‘Prescribed form of notice to be displayed for copying of audio-visual items’. This wording is different to the heading of the form to assist users to appreciate the difference between the heading to the Schedule and the heading to the form.

The heading to the form is also changed to ‘Notice about the copying of audio-visual items’ instead of the previous heading ‘Prescribed form of notice for section 104B of the *Copyright Act 1968* in relation to the copying of audio-visual items’. These changes reflect current drafting style and ensure consistency between the various prescribed notices in the Schedules to the Copyright Regulations.

The new Schedule 9 heading is also placed below the words ‘*Copyright Act 1968*’ (note that this new Schedule changes the reference from ‘*Copyright Regulations 1969*’ to ‘*Copyright Act 1968*’ so that the wording is consistent for all forms that are made for the purpose of a provision of the Act). Previously, the heading was placed above the words ‘Commonwealth of Australia’. These changes reflect current drafting style and ensure consistency between the various prescribed notices in the Schedules to the Copyright Regulations.

Item [5] – Schedules 11, 11AA, 11AB, 11AC, 11A, and 11B

This item replaces current Schedules 11, 11AA, 11AB, 11AC, 11A, and 11B with new Schedules.

New Schedule 11

Schedule 11 constitutes the prescribed form of notice that an owner of a specified copyright work may give to the Collector of Customs of Norfolk Island in order to notify the Collector of the owner’s objection to the importation into that Territory of

copies of the work during a certain period. New Schedule 11 differs to the previous Schedule 11 in a number of ways.

Previously, Schedule 11 did not have a heading. The new Schedule 11 includes the heading 'Prescribed form of notice to collector of customs of Norfolk Island'. This wording is different to the heading of the form to assist users to appreciate the difference between the heading to the Schedule and the heading to the form.

The new Schedule 11 amends the content of the heading to the form. New Schedule 11 omits the words 'purposes of' in the heading. These changes clarify the language but do not affect the meaning of the text.

Also, the reference to 'Copyright Regulations' is amended to '*Copyright Regulations 1969*'.

New Schedule 11AA

Schedule 11AA constitutes the prescribed form of written record to be kept by a body administering an institution of its copying of a broadcast where a records notice has been given pursuant to the statutory licence in Part VA of the Act. New Schedule 11AA differs to the previous Schedule 11AA in two ways.

Previously, Schedule 11AA did not have a heading. The new Schedule 11AA includes the heading 'Prescribed form of record for copying of a broadcast'. This wording differs from the heading to the form in order to assist users to appreciate the difference between the heading to the Schedule and the heading to the form.

The new Schedule 11AA also inserts the words 'Commonwealth of Australia' above the reference to the '*Copyright Act 1968*'. This ensures consistency between the various prescribed forms of record in the Copyright Regulations.

New Schedule 11AB

Schedule 11AB constitutes the prescribed form of written record to be kept by a body administering an institution of its communication of a copy of a broadcast where a records notice has been given pursuant to the statutory licence in Part VA of the Act. New Schedule 11AB differs to the previous Schedule 11AB in two ways.

Previously, Schedule 11AB did not have a heading. The new Schedule 11AB includes the heading 'Prescribed form of record for communication of a copy of a broadcast'. This wording differs from the heading to the form in order to assist users to appreciate the difference between the heading to the Schedule and the heading to the form.

The new Schedule 11AB also inserts the words 'Commonwealth of Australia' above the reference to the '*Copyright Act 1968*'. This ensures consistency between the various prescribed forms of record in the Copyright Regulations.

New Schedule 11AC

Schedule 11AC constitutes the prescribed form of notice for a body administering an institution to give with each communication of a copy of a broadcast where a remuneration notice has been given pursuant to the statutory licence in Part VA of the Act. New Schedule 11AC differs to the previous Schedule 11AC in a number of ways.

Previously, Schedule 11AC did not have a heading. The new Schedule 11AC includes the heading 'Prescribed form of notice for communication by administering body'. This wording differs from the heading to the form in order to assist users to appreciate the difference between the heading to the Schedule and the heading to the form.

The new Schedule 11AC heading is placed above the words 'Commonwealth of Australia' occurring after the words '*Copyright Act 1968*' (note that this new Schedule changes the reference from '*Copyright Regulations 1969*' to '*Copyright Act 1968*' so that the wording is consistent for all forms that are made for the purpose of a provision of the Act). This change ensures consistency between the various prescribed forms of notice in the Copyright Regulations.

The new Schedule 11AC also substitutes the words 'pursuant to' for the word 'under' in the first paragraph. This change reflects current drafting style but does not affect the meaning of the text.

New Schedule 11A

Schedule 11A constitutes the prescribed form of written record of the making of a licensed copy made in hardcopy form or analog form by a body administering an institution where a records notice has been given pursuant to the statutory licence in Part VB of the Act. New Schedule 11A differs to the previous Schedule 11A in a number of ways.

Previously, Schedule 11A did not have a heading. The new Schedule 11A includes the heading 'Prescribed form of record for making a licensed copy'. This wording differs from the heading to the form in order to assist users to appreciate the difference between the heading to the Schedule and the heading to the form.

The new Schedule 11A also inserts the words 'Commonwealth of Australia' above the reference to the '*Copyright Act 1968*'. This ensures consistency between the various prescribed forms of record in the Copyright Regulations.

The new Schedule 11A substitutes the word 'if' for the word 'where' in two places in the footnotes to the prescribed form. This change reflects current drafting style but does not affect the meaning of the text.

New Schedule 11B

Schedule 11B constitutes the prescribed form of notice for a body administering an institution to give with each licensed copy made in electronic form or communication of a licensed copy where an electronic use notice has been given pursuant to the statutory licence in Part VB of the Act. New Schedule 11B differs to the previous Schedule 11B in a number of ways.

Previously, Schedule 11B did not have a heading. The new Schedule 11B inserts the heading 'Prescribed form of notice for electronic use notices'. This wording differs from the heading to the form in order to assist users to appreciate the difference between the heading to the Schedule and the heading to the form.

The new Schedule 11B amends the heading to the prescribed form to 'Notice for paragraph 135ZXA(a) of the *Copyright Act 1968*' omitting the words 'form of' from the beginning of the title. The new heading is placed below the words '*Copyright Act 1968*' (note that this new Schedule changes the reference from '*Copyright Regulations 1969*' to '*Copyright Act 1968*' so that the wording is consistent for all forms that are made for the purpose of a provision of the Act). Previously, the heading was placed above the words 'Commonwealth of Australia'. These changes reflect current drafting style and ensure consistency between the various prescribed notices in the Schedules to the Copyright Regulations.

The new Schedule 11B also substitutes the words 'pursuant to' for the word 'under' in the first paragraph. This change reflects current drafting style but does not affect the meaning of the text.

Item [6] – Schedule 12

The previous Schedule 12 was made pursuant to section 186 of the Act. Subsection 186(1) of the Act provides that where it appears to the Governor-General that it is desirable that the Act should apply in relation to an organisation, the regulations may declare that organisation to be an international organisation to which the Act applies if, the members of the organisation are from two or more countries, or the Governments of two or more countries, or that the organisation be constituted by persons representing two or more countries, or the Governments of two or more countries. Where the Governor-General makes such declaration, copyright subsists in certain material made or first published by that international organisation and that copyright material being afforded protection in Australia.

Searches conducted by the Department of Foreign Affairs and Trade and the Attorney-General's Department identified that some international organisations listed in Schedule 12 had different names, or were no longer in existence.

The searches revealed that:

- The 'Inter-Government Maritime Consultative Organization' was known as the 'International Maritime Organization'.
- The 'Customs Co-operation Council' was known as the 'World Customs Organization'.
- The 'European Launcher Development Organization' was known as the 'European Space Agency'.
- The 'Intergovernmental Committee on European Migration' was known as the 'International Organization for Migration'.
- The 'International Criminal Police Organization' was known as the 'International Criminal Police Organization – Interpol'.

- The 'International Tin Council' was not in existence.
- The 'South East Asia Treaty Organization' was not in existence.
- The 'South Pacific Commission' was known as the 'Secretariat of the Pacific Community'.

Item 6 substitutes a new Schedule 12 which updates the list of international organisations to take account of these changes.

Details of the *Copyright Tribunal (Procedure) Amendment Regulations 2010 (No. 1)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Copyright Tribunal (Procedure) Amendment Regulations 2010 (No. 1)*.

Regulation 2 – Commencement

This regulation provides that the Regulations commence on the day after they are registered.

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

This regulation provides that the *Copyright Tribunal (Procedure) Regulations 1969* (the ‘Copyright Tribunal Regulations’) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Items [1], [2], [5], [21], [25] and [27]

The *Copyright Amendment Act 2006* (the 2006 Act) removed references to ‘the Secretary to the Tribunal’ from the Act and renamed that office ‘Registrar’. Accordingly, the Copyright Tribunal Regulations required amendments in a number of places to reflect this change of name. These items effect such change.

Item 1 omits the definition of ‘Secretary’ in subregulation 4(1) and item 2 inserts a definition for ‘Registrar’. Item 5 substitutes the word ‘Secretary’ with ‘Registrar’ in the heading to regulation 6. Item 21 substitutes the word ‘Secretary’ with ‘Registrar’ in the heading to regulation 37A. Item 25 omits the words ‘Secretary of the Copyright Tribunal’ from Schedule 1, Form 2 of the Copyright Tribunal Regulations and inserts ‘Registrar of the Copyright Tribunal of Australia’ in its place. Item 27 omits the word ‘Secretary’ and inserts the word ‘Registrar’ wherever it occurs in the various regulations, subregulations and paragraphs mentioned in that item.

Item [3] – Subregulation 4(3)

Item 3 omits subregulation 4(3) of the Copyright Tribunal Regulations. This subregulation is an interpretation provision providing that any expression used in the Copyright Tribunal Regulations that is also used in a section of the Act for the purposes of which that regulation is made; and has a defined or other specified meaning in the Act, will have the same meaning in that regulation. This subregulation was omitted as it duplicates section 13 of the *Legislative Instruments Act 2003* concerning the construction of legislative instruments. Section 13 of the *Legislative Instruments Act 2003* is applicable to the Copyright Tribunal Regulations because it applies to all legislative instruments unless specifically excluded.

Items [4], [23], [24] and [25]

Subregulation 5(1) of the Copyright Tribunal Regulations specifies what is to be included in the Tribunal's seal. Item 4 omits the words 'Copyright Tribunal' from paragraph 5(1)(b), and replaces with the words 'Copyright Tribunal of Australia'. Items 23 and 24 provide that after the words 'Copyright Tribunal', the words 'of Australia' are inserted in Schedule 1, Form 1 (the form of the title to proceedings) and Form 2 (the form of a summons to witness). As previously noted, item 25 omits the words 'Secretary of the Copyright Tribunal' from Schedule 1, Form 2 and inserts 'Registrar of the Copyright Tribunal of Australia'.

The 2006 Act amended the definition of the Tribunal in order to reflect the new name 'Copyright Tribunal of Australia'. These items ensure that references to the Tribunal in the Copyright Tribunal Regulations in paragraph 5(1)(b) and Schedule 1, refer to the Tribunal's new name.

Pursuant to subsection 13(1) of the *Legislative Instruments Act 2003*, the definition of 'the Copyright Tribunal' or 'the Tribunal' in the Act will apply in the Copyright Tribunal Regulations. Accordingly, not every reference to the 'Copyright Tribunal' in the Copyright Tribunal Regulations needs to be changed to the 'Copyright Tribunal of Australia'.

Item [6] – After regulation 18

This item inserts a new regulation 18A after regulation 18 of the Copyright Tribunal Regulations.

New regulation 18A – Matters to be included in application under subsection 10A(5A)

New regulation 18A prescribes the procedure for a collecting society to make an application to the Tribunal under subsection 10A(5A) of the Act to review a declaration included in a notice published under subsection 10A(4). The *Copyright Amendment Act (No 1) 1998* (the 1998 Act) inserted subsection 10A(5A) into the Act which provides that a collecting society may apply to the Tribunal for review of a declaration made by a body administering an institution, that such an institution constitutes an 'educational institution', as defined in the Act, where pursuant to subsection 10A(4) that declaration has been included in a notice published in the *Gazette*. New regulation 18A is a consequential amendment as it provides a procedure for such an application to be made to the Tribunal. This procedure was not provided for in the Copyright Tribunal Regulations earlier due to oversight.

Regulation 18A outlines four requirements of applications to the Tribunal under subsection 10A(5A). The first two paragraphs require applicants to provide relevant information to the Tribunal, and the third paragraph requires the collecting society to state the grounds for seeking review of the declaration. These three requirements ensure that the Tribunal has the necessary information. The final requirement requires the collecting society to ask the Tribunal to determine the question of whether the notice should be set aside or the declaration confirmed.

Items [7] and [9] – Paragraphs 23B(f) and 23E(f)

Regulation 23B details the matters to be included in an application to the Tribunal under subsection 135J(1) of the Act. Subsection 135J(1) provides that the annual amount of equitable remuneration payable to the collecting society (declared under Part VA of the Act) by the administering body for copies of broadcasts and communications of such copies made while a sampling notice is in force, is to be agreed between the administering body and the collecting society or, failing agreement, is to be determined by the Tribunal.

Regulation 23E details the matters to be included in an application to the Tribunal under subsection 135ZW(1) of the Act. Subsection 135ZW(1) provides that the annual amount of equitable remuneration payable to the relevant collecting society (declared under Part VB of the Act) by the administering body for licensed copies made while a sampling notice is in force, is to be agreed between the administering body and that collecting society or, failing agreement, is to be determined by the Tribunal.

The 1998 Act removed the words ‘per student of the institution concerned’ from subsections 135J(1) and 135ZW(1) of the Act. Accordingly, it is no longer necessary for an application to the Tribunal under subsections 135J(1) or 135ZW(1) to ask the Tribunal ‘to determine the annual amount per student of the institution concerned that is equitable remuneration’ as was stated in paragraphs 23B(f) and 23E(f) of the Copyright Tribunal Regulations.

Items 7 and 9 provide that the words ‘per student of the institution concerned’ are omitted from paragraphs 23B(f) and 23E(f) of the Copyright Tribunal Regulations to accord with the Act.

Item [8] – After regulation 23CB

This item inserts new regulations 23CC to 23CG after current regulation 23CB.

New regulation 23CC – Matters to be included in applications under subsections 135JAA(2) or 135ZWAA(2) of the Act

The 2006 Act inserted sections 135JAA and 135WAA into the Act.

Section 135JAA provides for the determination of any question that is necessary or convenient to help an administering body of an educational or other institution or the collecting society to comply in the future with the requirements of Part VA of the Act (namely, copying and communication of broadcasts). Subsection 135JAA(2) provides that a question to which the section applies must be determined by agreement between the body and the collecting society or, failing such agreement, by the Tribunal, to which either can apply.

Section 135ZWAA is similar to new section 135JAA. The key difference is that section 135ZWAA relates to the determination of questions necessary or convenient to facilitate future compliance with the requirements of Part VB of the Act (namely, reproduction and copying of works and other subject-matter).

Regulation 23CC prescribes the procedures for an administering body or a collecting society to follow when making an application to the Tribunal under subsection 135JAA(2) for the determination of a question referred to in

subsection 135JAA(1), or an application under subsection 135ZWAA(2) for the determination of a question referred to in subsection 135ZWAA(1).

These procedures ensure that the Tribunal is provided with relevant information such as the identity of the parties, the circumstances or events giving rise to the application (including details that relevant criteria provided in the Act have been met), and finally, that it has a question to determine.

New regulation 23CD – Matters to be included in applications under subsections 135K(2A) or 135ZX(2A) of the Act

The 2006 Act inserted subsections 135K(2A) and 135ZX(2A) into the Act.

Subsection 135K(2A) provides for the determination of any matter that is related to an activity required by paragraph 135K(1)(b), (c) or (d) (namely, record keeping activities that an administering body must carry out if it has given a records notice for the copying and communication of broadcasts under Part VA of the Act) where it is necessary or convenient for that matter to be determined, and the matter has not been determined by the relevant provisions of the Act or the *Copyright Regulations 1969*. Such a matter is to be determined by agreement between the administering body and the collecting society or, failing such agreement, by the Tribunal, to which either can apply.

Subsection 135ZX(2A) is similar to new subsection 135K(2A). The key difference is that subsection 135ZX(2A) and the activities required by paragraphs 135ZX(1)(b), (c) or (d) relate to a records notice given in respect of licensed copies made in hardcopy form, or analog form, under Part VB of the Act.

Regulation 23CD prescribes the procedures for an administering body or a collecting society to follow when making an application to the Tribunal under subsections 135K(2A) or 135ZX(2A) for determination of a matter that relates to an activity required by paragraphs 135K(1)(b), (c) or (d) or 135XZ(1)(b), (c) or (d).

These procedures outline the requirements for an application to the Tribunal under subsections 135K(2A) and 135ZX(2A) to ensure that the Tribunal is provided with relevant information such as the identity of the parties, the circumstances or events giving rise to the application, and finally, that it has a question to determine.

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

The 2006 Act inserted subsection 135P(1A) into the Act which requires the Minister, upon receiving an application by a body to be declared a collecting society, to make or refuse the declaration, or to refer the application to the Tribunal, in the way prescribed by the regulations. Regulation 23CE prescribes the procedure for the Minister to refer these applications to the Tribunal pursuant to paragraph 135P(1A)(c) of the Act. The procedure ensures that the Tribunal is provided with relevant information such as the name of, and details about, the body that has applied to be a collecting society for the purposes of Part VA of the Act, and the circumstances or events giving rise to the reference.

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

The 2006 Act inserted subsection 135Q(2) into the Act which allows the Minister not only to revoke the declaration of a body as the collecting society for the purposes of Part VA, but also the option to refer the question of revoking a declaration to the Tribunal, in the way prescribed by the regulations. Subsection 135Q(1) requires that, before exercising that option, the Minister must be satisfied that the society's conduct has come within the description of paragraphs 135Q(1)(a), (b), (c) or (d).

Regulation 23CF prescribes the procedure for the Minister to refer the question of revoking a collecting society's declaration to the Tribunal pursuant to paragraph 135Q(2)(b) of the Act. The procedure ensures that the Tribunal is provided with relevant information such as the name of, and details about, the body which has been declared as the collecting society for the purposes of Part VA of the Act, details of the matters by which the Minister is satisfied under subsection 135Q(1) of the Act, and finally, that it has a question to determine.

New regulation 23CG – Matters to be included in applications under subsections 135SA(1), 135ZZEA(1), 135ZZWA(1) or 183F(1) of the Act

The 2006 Act inserted sections 135SA, 135ZZEA, 135ZZWA and 183F into the Act.

Subsection 135SA(1) allows a declared collecting society, or a member of a society, to apply to the Tribunal for review of the arrangement that their society has adopted, or proposes to adopt, for allocating and distributing remuneration collected over a period to entitled members.

Subsection 135SA(2) provides that if the Tribunal, on an application under subsection 135SA(1), varies the arrangement, or substitutes a new arrangement, the arrangement reflecting the Tribunal's order will operate as if it had been adopted by the society.

Sections 135ZEEA, 135ZZWA and 183F are similar to new section 135SA. However, subsection 135SA(1) relates to an application in respect of the statutory licence under Part VA, while subsection 135ZZEA(1) relates to Part VB, subsection 135ZZWA(1) relates to Part VC and subsection 183F(1) relates to Part VII, Division 2.

Regulation 23CG prescribes the procedure for a collecting society or a member of such a society to follow when making an application to the Tribunal for review of the distribution arrangement adopted, or proposed to be adopted, under a statutory licence in Part VA, Part VB, Part VC or Part VII, Division 2.

The procedures ensure that the Tribunal is provided with relevant information such as the identity of the applicant, whether the application is for review of an adopted or proposed arrangement, the circumstances or events giving rise to the application, the particulars of the arrangement and the particulars of any variation sought or of the arrangement sought to be substituted, and finally, that the Tribunal has a question to determine.

Item [10] - After regulation 23J

This item inserted new regulation 23JA after current regulation 23J.

New regulation 23JA – Matters to be included in references under paragraphs 135ZZB(1A)(c) or 135ZZT(1A)(c) of the Act

The 2006 Act inserted subsections 135ZZB(1) and (1A), and 135ZZT(1) and (1A), into the Act which require the Minister, on receiving an application by a body for declaration under subsections 135ZZB(1) or 135ZZT(1), to make or refuse the declaration, or to refer the application to the Tribunal in the way prescribed by the regulations.

Regulation 23JA prescribes the procedure for the Minister to refer the determination of an application by a body to be declared as a collecting society for all relevant copyright owners or for specified classes of relevant copyright owners for the purposes of Part VB of the Act (if the application is brought pursuant to subsection 135ZZB(1)) or for the purposes of Part VC of the Act (if the application is brought pursuant to subsection 135ZZT(1)), to the Tribunal.

The procedure ensures that the Tribunal is provided with relevant information such as the name of the body that has applied to be a collecting society for the purposes of Part VB or Part VC of the Act, whether the declaration is sought as a collecting society for all relevant copyright owners or for classes of relevant copyright owners and whether at present, another body is so declared, the circumstances or events giving rise to the reference, and finally, that the Tribunal has a question to determine.

New regulation 23JB – Matters to be included in references under paragraphs 135ZZC(2)(b) or 135ZZU(2)(b) of the Act

The 2006 Act inserted subsections 135ZZC(2) and 135ZZU(2) into the Act which allow the Minister to not only revoke the declaration of a body as a collecting society for the purposes of Part VB and Part VC, but also to refer the question of revoking the declaration to the Tribunal in the way prescribed by the regulations.

Subsections 135ZZC(1) and 135ZZU(1) provide that the Minister must be satisfied that the society's conduct has come within the description of paragraph 135ZZC(1)(a), (b), (c) or (d) or paragraph 135ZZU(1)(a), (b), (c) or (d) before referring the decision to the Tribunal.

Regulation 23JB prescribes the procedure for the Minister to refer the determination of whether to revoke the declaration of a particular body as a collecting society for the purposes of Part VB or Part VC of the Act to the Tribunal pursuant to paragraphs 135ZZC(2)(b) or 135ZZU(2)(b) of the Act.

The procedure ensures that the Tribunal is provided with relevant information such as the name of, and details about, the body who has been declared as a collecting society for the purposes of Part VB or Part VC, details of the matters by which the Minister is satisfied under subsection 135ZZC(1) or 135ZZU(1) of the Act, and finally that the Tribunal has a question to determine.

Item [11] – After regulation 25B

This item inserted new regulation 25C after current regulation 25B.

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

The 1998 Act inserted section 153F into the Act. Subsection 153F(1) provides that a company limited by guarantee may apply to the Tribunal for a declaration that it be a collecting society for the purposes of Division 2 of Part VII of the Act. This provision necessitated a new regulation detailing the requirements for an application to the Tribunal. The Copyright Tribunal Regulations were not amended earlier in this regard due to oversight.

Regulation 25C prescribes the procedure for a company limited by guarantee to follow when making an application to the Tribunal pursuant to subsection 153F(1) for a declaration that it be a collecting society for the purposes of Division 2 of Part VII.

The procedure ensures that the Tribunal is provided with relevant information such as details that the criteria in subsection 153F(6) are met, whether a declaration is sought for all relevant government copies or for a specified class of copies, whether at present, another body is so declared, and finally, that the Tribunal has a question to determine.

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

The 1998 Act inserted section 153G into the Act which provides the mechanics for an application to the Tribunal to revoke a declaration of a collecting society that has been declared under section 153F. This provision necessitated a new regulation detailing the requirements for such an application to the Tribunal. The Copyright Tribunal Regulations were not amended earlier in this regard due to oversight.

Regulation 25D prescribes the procedure for a collecting society declared pursuant to section 153F, a member of that society, or a government, to follow when making an application to the Tribunal pursuant to subsection 153G(1) for the revocation of the declaration of that society as a collecting society for the purposes of Division 2 of Part VII.

The procedure ensures that the Tribunal is provided with relevant information such as the name of, and details about, the body who has been declared as a collecting society for the purposes of Division 2 of Part VII, the grounds in subsection 153G(5) that will be relied on, and finally that the Tribunal has a question to determine.

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

The 1998 Act inserted section 153K into the Act which provides for applications to the Tribunal by a government or a collecting society to determine the method of working out equitable remuneration payable under subsection 183A(2) for government copies in a particular period. The section applies where the parties cannot reach agreement. The Tribunal's order may also specify how and when payments are to be paid (subsection 153K(4)). This provision necessitated a new regulation detailing the requirements for such an application to the Tribunal. The Copyright Tribunal Regulations were not amended earlier in this regard due to oversight.

Regulation 25E prescribes the procedure for a collecting society declared pursuant to section 153F (that is, for the purposes of Division 2 of Part VII – use of copyright material for the Crown) or a government, to follow when making an application to the Tribunal pursuant to subsection 153K(1) for an order determining the method for working out remuneration payable under subsection 183A(2) for government copies made for the services of the government in a particular period.

The procedure ensures that the Tribunal is provided with relevant information such as the circumstances or events giving rise to the application. In particular, the identification of the relevant copyright material, the relevant period in respect of which an order is to be sought, the identification of the Commonwealth or the State that made the government copies in that period, that subsection 183(5) does not apply, and whether and why any copies are to be excluded from the Tribunal's determination. Finally, the new provision requires the application to request the Tribunal to make an order.

Items [12] and [13] – Paragraphs 26(1)(d) and 27(1)(e)

The 2006 Act amended subsections 154(4) and 155(5) of the Act, to extend the range of orders that the Tribunal can make in references relating to proposed and existing licence schemes. The amendments enable the Tribunal, on a reference, to review a licensing scheme, substitute a new scheme, being one proposed by a party to the reference, or vary, or confirm the scheme. Items 12 and 13 update the nature of the request to be made to the Tribunal to include the full range of orders now available to the Tribunal.

Regulation 26 prescribes the matters to be included in a reference of a proposed licence scheme to the Tribunal under section 154, and regulation 27 details the matters to be included in a reference of an existing licence scheme to the Tribunal under section 155 of the Act. Paragraphs 26(1)(d) and 27(1)(e) detail the nature of the request to be made to the Tribunal, namely 'to make such order, confirming or varying the scheme' as is considered reasonable by the Tribunal in the circumstances.

Items 12 and 13 provide that the words 'the scheme' are omitted from paragraphs 26(1)(d) and 27(1)(e) of the Copyright Tribunal Regulations and the words 'the scheme or substituting for the scheme another scheme proposed by one of the parties' are inserted.

Items [14] – Paragraph 28(2)(a)

Regulation 28 prescribes the matters to be included in an application for leave under subsection 156(2) of the Act to refer a licence scheme to the Tribunal under subsection 156(1).

Paragraph 28(2)(a) of the Copyright Tribunal Regulations provides that the application for leave shall 'describe the general nature of the scheme as previously confirmed or varied by the Tribunal'. As noted above at items 12 and 13, the 2006 Act amended subsections 154(4) and 155(5) of the Act, extending the range of orders that the Tribunal can make in references relating to proposed and existing licence schemes. Accordingly, it was necessary to amend paragraph 28(2)(a) so that this requirement in the application for leave accurately reflects the full range of ways

in which the Tribunal may have dealt with the licence scheme under sections 154 or 155 in its previous order.

Item 14 provides that the words ‘confirmed or varied’ are omitted from paragraph 28(2)(a) of the Copyright Tribunal Regulations and the words ‘confirmed, varied or substituted’ are inserted.

Item [15] – Paragraph 29(1)(g)

Item 15 substitutes a new paragraph 29(1)(g) of the Copyright Tribunal Regulations.

Regulation 29 details the matters to be included in a reference of a licence scheme to the Tribunal under section 156 of the Act. Section 156 concerns the further reference of a licence scheme to the Tribunal where the Tribunal has previously made an order (although not an interim order) under section 154 (in relation to a proposed licence scheme) or section 155 (in relation to an existing licence scheme).

Paragraph 29(1)(g) of the Copyright Tribunal Regulations required the reference to the Tribunal to detail the nature of the request made, namely ‘to make such order in relation to the scheme as previously confirmed or varied, in so far as it relates to cases included in the class of cases to which the reference relates, whether by way of confirming, varying or further varying the scheme’ as is considered reasonable by the Tribunal in the circumstances. However, as noted above, amendments made by the 2006 Act enable the Tribunal, on a reference to review a licensing scheme, to substitute a new scheme, being one proposed by a party to the reference in addition to varying or confirming the scheme that is the subject of the reference. Item 15 updates the nature of the request to be made to the Tribunal so as to include the full range of orders now available to the Tribunal. The new paragraph also clarifies the language to reflect current drafting style but does not affect the meaning of the text.

Items [16], [17], [18] and [19] – Paragraphs 30(1)(b), 31(1)(b), 32(1)(b) and 33(1)(b)

Regulations 30, 31, 32 and 33 concern applications to the Tribunal under section 157 of the Act, specifically under subsections 157(1), (2), (3) and (4), concerning applications in relation to licences.

Items 16, 17, 18 and 19 provide, that a new paragraph be substituted in paragraphs 30(1)(b), 31(1)(b), 32(1)(b) and 33(1)(b) of the Copyright Tribunal Regulations. Previously, paragraphs 31(1)(b) and 32(1)(b) were in identical terms to each other and the paragraphs substituted are again in identical terms to each other. Previously, paragraphs 30(1)(b) and 33(1)(b) differed from each other and the paragraphs substituted again differ from each other.

The 2006 Act repealed the former subsection 157(6) and substituted new subsections 157(6), 157(6A), 157(6B) and 157(6C). Subsections 157(6A), 157(6B) and 157(6C) prescribe the orders available to the Tribunal if it is satisfied that a claim made under subsections 157(1), (2), (3) or (4) is well founded (subsection 157(6A) concerns orders dealing with applications under subsection 157(1), subsection 157(6B) concerns orders dealing with applications under subsections 157(2) or (3) and subsection 157(6C) concerns orders dealing with applications under subsection 157(4)). The primary purpose of this amendment was to add to the orders

that can be made in each case, by allowing the Tribunal to order the grant of a licence to the applicant in the terms proposed by either the applicant, the licensor or another party to the application.

Items 16, 17, 18 and 19 update the nature of the request to be made to the Tribunal in an application under each of these grounds to include the full range of orders now available to the Tribunal. These items also employ the current drafting style which simplifies and clarifies the prescription of the procedure applicable.

Item [20] – Subregulation 34(1)

This item substitutes current subregulation 34(1) with a new subregulation.

Regulation 34 relates to an application to the Tribunal, to be made a party to a proceeding before it. Subregulation 34(1) prescribes the information to be included in such application, namely the date of the commencement of proceedings, the relevant file number and the interest of the applicant. Previously, paragraph 34(1)(b), which concerns the requirement to set out the interest of the applicant, specifically referred to applications under sections 152 or 157 of the Act, references under sections 154, 155 or 156 and an application for leave under subsection 156(2).

As noted at item 8 above, the 2006 Act introduced new subsections 135P(1A) and 135Q(2), and new sections 135SA, 135ZZEA, 135ZZWA, and 183F into the Act.

As noted at item 10 above, the 2006 Act also introduced new subsections 135ZZB(1A), 135ZZC(2), 135ZZT(1A), and 135ZZU(2) into the Act.

As noted at item 11 above, the 1998 Act also inserted subsections 153F(1) and 153G(1) into the Act.

These new provisions relate to various references and applications to the Tribunal.

The 2006 Act also inserted section 157B into the Act which provides that, in a reference or application regarding licences and licence schemes, the Tribunal may make the Australian Competition and Consumer Commission (ACCC) a party to the reference or application, if the ACCC asks to be made a party, and the Tribunal is satisfied that it is appropriate to do so.

Item 20 provides the necessary updates to paragraph 34(1)(b) in light of the various amendments to the Act so that all the proceedings before the Tribunal (that is, the various references and applications) for which it is possible for a person to request that they be made a party, are listed.

Paragraph 34(1)(b) does not require amendment in relation to applications under new subsections 135KA(2A), 135ZX(2A), 135JAA(2) and 135ZWAA(2) as subsections 153BAA(1), 153DB(1), 153BAAA(1) and 153DAA(1) state the parties in the applications.

Item 20 also uses the current drafting style which simplifies and clarifies the prescription of the procedure under subregulation 34(1).

Items [22] and [26] – Regulation 44 and Schedule 1, after Form 2

Item 22 substitutes a new regulation 44. Item 26 inserts a new Form 3 in the Copyright Tribunal Regulations which is a summons to produce documents.

Regulation 44 relates to a summons to a witness. The relevant provision in the Act is section 167. The 2006 Act repealed subsection 167(2) of the Act and replaced it with new subsections 167(2) and (3) which allows the Registrar or a member of the Tribunal to summon a person to appear before the Tribunal to give evidence (subsection 167(2)), and also to summon a person to produce specified documents or articles by producing them to a specified person at a specified time at a specified place (subsection 167(3)). Accordingly, the Copyright Tribunal Regulations required amendment to reflect these changes.

Item 22 substitutes a new regulation 44 to refer to both a summons under subsection 167(2) and a summons under subsection 167(3) and uses the current drafting style. New subregulation 44(2) requires a summons to produce specified documents or articles under subsection 167(3) to accord substantially with Form 3 in the Copyright Tribunal Regulations.

Item 26 inserts a new standard form for a summons to produce documents in Schedule 1 of the Copyright Tribunal Regulations. Subregulation 44(1) requires a summons to a witness to attend the Tribunal to give evidence under subsection 167(2) to accord substantially with Form 2 in the Copyright Tribunal Regulations. Accordingly, there is a need for a similar provision in relation to a summons to produce documents pursuant to subsection 167(3) of the Act.