

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2011 No. 149**

Subject - *Copyright Act 1968*

*Copyright Amendment Regulations 2011 (No. 1)*

Subsection 249(1) of the *Copyright Act 1968* (the Act) provides, in part, that the Governor-General may make regulations prescribing all matters that are required or permitted by the Act to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Regulations amend the *Copyright Regulations 1968*, to prescribe the Australian Broadcasting Corporation (ABC), Australian National University Archives Program (ANU), and Special Broadcasting Service Corporation (SBS) as key cultural institutions.

Under exceptions provided by the Act, libraries and archives are permitted to make copies of certain works in their collection without infringing copyright. Under section 51A of the Act, three copies of a work can be made for research, preservation of deteriorating materials, replacement of lost or damaged materials, and for administrative purposes directly related to the care and control of the collection. Sections 110B and 112 of the Act provide for similar copying of films, sound recordings and published editions.

Sections 51B, 110BA, and 112AA of the Act enable key cultural institutions to make up to three preservation copies of such works that are of historical or cultural significance to Australia. A key cultural institution is defined as a body that has the function of developing and maintaining a collection under Commonwealth or State law, or has been prescribed by the regulations.

The ABC, ANU and SBS maintain collections that are historically or culturally significant to Australia and contain works that are unique and often irreplaceable. However, the general copying provisions within the Act for libraries and archives do not meet these preservation needs. The Regulations would allow the ABC, ANU and SBS to proactively preserve materials prior to any deterioration.

The Department undertook consultation with key stakeholders representing libraries and copyright owners, including the Australian Copyright Council, whose members include Aboriginal Artist Agency Limited, Australian Commercial and Media Photographers, Australian Institute of Architects, Australian Institute of Professional Photography, Ausdance, Australian Music Centre, Australasian Music Publishers Association, Australian Publishers Association, Australian Recording Industry Association, Australian Screen Directors Authorship Collecting Society, Australasian Society of Authors, Australian Writer's Guild, Christian Copyright Licensing International, Media and Entertainment Arts Alliance, Musicians Union of Australia, National Association for the Visual Arts, National Tertiary Education Industry Union, and Screen Producer's Union of Australia.

Other organisations consulted included Australian Digital Alliance, Australian Library and Information Association, Australasian Performing Right Association Limited/Australasian Mechanical Copyright Owners Society Limited, Copyright Agency Limited, Council of Australian University Libraries, National and State Libraries Australia, Phonographic

Performance Company of Australia Ltd, Screenrights, and Viscopy. The letters sent to each stakeholder described the relevant key cultural institution provisions, the procedure for prescribing institutions as key cultural institutions and requested comments, which would be included in the recommendations made to the Attorney-General on whether or not to prescribe the ABC, SBS and ANU.

All replies supported prescribing the ABC, SBS and ANU as key cultural institutions, provided that the institutions complied with the provisions of Act and only made copies for preservation purposes.

Details of the Regulations are provided in the Attachment.

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

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

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

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

**Details of the Copyright Amendment Regulations 2011 (No. 1)**

**Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Copyright Amendment Regulations 2011 (No. 1)*.

**Regulation 2 – Commencement**

This regulation provides that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Regulation 3 – Amendments of Copyright Regulations 1968**

This regulation provides that Schedule 1 amends the *Copyright Regulations 1968* (the Principal Regulations).

**Schedule 1 – Amendments**

**Item [1] – Regulation 4E**

This item inserts a new regulation 4E in the Principal Regulations.

The new regulation 4E provides that for the purposes of subparagraph 51B(1)(a)(ii) of the Act, each body mentioned in Schedule 5 is prescribed as a key cultural institution.

**Item [2] – Regulation 19A**

This item inserts a new regulation 19A in the Principal Regulations.

The new regulation 19A provides that for the purposes of subparagraph 110BA(1)(a)(ii) of the Act, each body mentioned in Schedule 5 is prescribed as a key cultural institution.

**Item [3] – Regulation 20AA**

This item inserts a new regulation 20AA in the Principal Regulations.

The new regulation 20AA provides that for the purposes of subparagraph 112AA(1)(a)(ii) of the Act, each body mentioned in Schedule 5 is prescribed as a key cultural institution.

**Item [4] – Schedule 5**

This item inserts a new Schedule 5 in the Principal Regulations.

The new Schedule 5 prescribes the Australian Broadcasting Corporation, the Australian National University Archives Program (ANU), and the Special Broadcasting Services Corporation as key cultural institutions for the purposes of subparagraphs 51B(1)(a)(ii), 110BA(1)(a)(ii) and 112AA(1)(a)(ii) of the Act.