



## Copyright Regulations 2017

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 14 December 2017

Peter Cosgrove  
Governor-General

By His Excellency's Command

Mitch Fifield  
Minister for Communications

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## Part 1—Preliminary

### 1 Name

This instrument is the *Copyright Regulations 2017*.

### 2 Commencement

- (1) Each provision of this instrument 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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	19 December 2017
2. Section 4	At the same time as Schedule 1 to the <i>Copyright Amendment (Disability Access and Other Measures) Act 2017</i> commences.	22 December 2017
3. Parts 2 to 6	At the same time as Schedule 1 to the <i>Copyright Amendment (Disability Access and Other Measures) Act 2017</i> commences.	22 December 2017
4. Part 7	1 April 2018.	1 April 2018
5. Parts 8 to 16	At the same time as Schedule 1 to the <i>Copyright Amendment (Disability Access and Other Measures) Act 2017</i> commences.	22 December 2017
6. Schedules 1 to 3	At the same time as Schedule 1 to the <i>Copyright Amendment (Disability Access and Other Measures) Act 2017</i> commences.	22 December 2017

Note: This table relates only to the provisions of this instrument as originally made.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

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

### 3 Authority

This instrument is made under the *Copyright Act 1968*.

### 4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

Section 4

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- (a) adaptation;
- (b) artistic work;
- (c) Australia;
- (d) body administering;
- (e) carriage service provider;
- (f) cinematograph film;
- (g) collecting society;
- (h) copy;
- (i) copyright material;
- (j) device;
- (k) dramatic work;
- (l) educational institution;
- (m) eligible rights holder;
- (n) government;
- (o) government copy;
- (p) infringing copy;
- (q) licensed copying or communicating;
- (r) literary work;
- (s) manuscript;
- (t) record;
- (u) Registrar;
- (v) rules;
- (w) sound broadcast;
- (x) sound recording;
- (y) technological protection measure;
- (z) television broadcast;
- (za) the Tribunal;
- (zb) to the public;
- (zc) work;
- (zd) works collecting society.

In this instrument:

*Act* means the *Copyright Act 1968*.

**address for service** of a person or body means an address in Australia at which, or an electronic address through which, documents may be served on the person or body.

**Australian-based:** a person is **Australian-based** if the person:

- (a) resides or carries on business in Australia; or
- (b) if the person is a corporation—has a registered office in Australia.

**caching** has the same meaning as in section 116AB of the Act.

**civil action** means a proceeding of a civil nature between parties, including a counterclaim.

Note: This is essentially the same as the definition of **action** in Part V of the Act.

**designated representative** of a carriage service provider means the person designated under section 19 to receive notifications and notices under Part 6 for the carriage service provider.

**distributable amount** has the meaning given by subsection 17(3).

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**entitled person** has the meaning given by subsection 17(3).

**equitable remuneration** has the meaning given by subsection 17(3).

**infringement notice** means an infringement notice given under section 43.

**infringement officer** means:

- (a) a member of the Australian Federal Police (as defined in the *Australian Federal Police Act 1979*); or
- (b) a member of the police force (however described) of a State or Territory.

**infringing article**, in relation to an offence of strict liability against a provision of Division 5 of Part V of the Act (except subsections 132AQ(5), 132AR(5) and 132AS(5)), means an article that is alleged:

- (a) to be an infringing copy of a work or other subject-matter; and
- (b) to have been involved in the commission of the offence.

**infringing device**, in relation to an offence of strict liability against a provision of Division 5 of Part V of the Act (except subsections 132AQ(5), 132AR(5) and 132AS(5)), means a device that is alleged:

- (a) to have been made to be used for making an infringing copy of a work or other subject-matter; and
- (b) to have been involved in the commission of the offence.

**party** has a meaning affected by section 117.

**potential share** has the meaning given by subsection 17(3).

**President** means the President of the Tribunal.

**reference** of a matter to the Tribunal under the Act includes referral of the matter to the Tribunal under the Act.

**relevant chief executive** means the Commissioner (or head, however described) of the Australian Federal Police or of the police force (however described) of a State or Territory.

**relevant copyright owner** has the meaning given by subsection 17(3).

**relevant file number**, in relation to a Tribunal proceeding, means the file number given by the Registrar to the proceeding.

**sealed** means sealed with the seal of the Tribunal.

**subject to an infringement notice** under Part 9 has the meaning given by section 42.

**system or network** of a carriage service provider means a system or network controlled or operated by or for the carriage service provider.

**Tribunal proceeding** means a proceeding before the Tribunal.

**user**, in relation to copyright material stored on a carriage service provider's system or network, means the person who directed the carriage service provider to store the copyright material on its system or network.

## Part 2—Copyright in original works

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

For the purposes of paragraph 39A(b) of the Act:

- (a) the prescribed dimensions of a notice are at least 297 millimetres long and at least 210 millimetres wide; and
- (b) the prescribed form of notice is a form containing the text in Part 1 or 2 of Schedule 1.

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

For the purposes of subparagraph 49(7A)(c)(ii) of the Act, the following matters are prescribed:

- (a) that further dealings with the reproduction may infringe copyright;
- (b) that Division 3 of Part III of the Act affects whether further dealings would infringe copyright.

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

- (1) For the purposes of paragraphs 52(1)(b) and (2)(b) of the Act, the prescribed notice of the intended publication of the new work is a notice that:
  - (a) is published in accordance with subsection (2) of this section; and
  - (b) sets out the matters described in subsection (3) of this section.
- (2) The notice is to be published in the Gazette at least 2 months before the publication (or subsequent publication) of the new work.
- (3) The notice is to set out:
  - (a) the name of the person (the *intending publisher*) intending to publish the new work and how the intending publisher may be contacted; and
  - (b) the intending publisher's intention to publish the new work; and
  - (c) the title (if any) of the old work and, if that title does not enable that work to be identified, a description of that work that enables that work to be identified; and
  - (d) the time, or an estimate of the time, when the old work was made or the period, or an estimate of the period, over which the making of the old work extended; and
  - (e) the name of the author of the old work, if that name is known to the intending publisher; and
  - (f) the name and address of the library or other place in which a copy, or the manuscript, of the old work is kept; and
  - (g) the name of the person from whom the copy or manuscript of the old work was acquired for the purposes of that library or other place, or a statement

of the fact that the intending publisher does not know the name of that person; and

- (h) that a person claiming to be the owner of the copyright in the old work may give notice of his or her claim to the intending publisher.

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

For the purposes of subparagraphs 55(1)(a)(iii) and (iv) and 59(1)(d)(iii) and (iv) of the Act, Division 6 of Part III of the Act applies to a country that:

- (a) is a party to any of the following:
- (i) the International Convention for the Protection of Literary and Artistic Works done at Berne on 9 September 1886 as revised from time to time;
  - (ii) the Universal Copyright Convention done at Geneva on 6 September 1952 as revised from time to time;
  - (iii) the WIPO Copyright Treaty done at Geneva on 20 December 1996 as revised from time to time; or
- (b) is a member of the World Trade Organization.

Note 1: Information as to which countries are parties to the International Convention for the Protection of Literary and Artistic Works could in 2017 be viewed on the World Intellectual Property Organization's website (<http://www.wipo.int>).

Note 2: Information as to which countries are parties to the Universal Copyright Convention could in 2017 be viewed on the United Nations Educational, Scientific and Cultural Organization's website (<http://www.unesco.org>).

Note 3: Information as to which countries are parties to the WIPO Copyright Treaty could in 2017 be viewed on the World Intellectual Property Organization's website (<http://www.wipo.int>).

Note 4: Information as to which countries are members of the World Trade Organization could in 2017 be viewed on the World Intellectual Property Organization's website (<https://www.wto.org>).

## **9 Notice of intended making of record of musical work**

- (1) For the purposes of paragraph 55(1)(b) of the Act, the prescribed notice of the intended making of a record of a musical work is a written notice given in accordance with this section by the person (the *intending maker*) intending to make the record.

*How notice is given*

- (2) The notice must be given:
- (a) by service of the notice on:
    - (i) the owner of the copyright in the work, if the owner is Australian-based; or
    - (ii) an Australian-based person who has been appointed by the owner of that copyright as the owner's agent for the purpose of receiving notices under section 55 of the Act; or

## Section 10

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- (b) if the intending maker does not know the name, or an address for service, of the owner or of an agent described in subparagraph (a)(ii)—by:
  - (i) publication of the notice in the Gazette; and
  - (ii) if the notice published does not include the information described in subsection (4)—giving that information to the owner or such an agent on application made by the owner or agent.

### *Content of notice*

- (3) The notice must set out:
  - (a) that a person specified in the notice intends to make in Australia a record of the musical work or of part of the musical work; and
  - (b) how the intending maker may be contacted; and
  - (c) the title (if any) of the work and, if that title does not enable the work to be identified, a description of the work that enables the work to be identified; and
  - (d) a statement of the fact (if true) that the record is to comprise a performance of the work in which words are sung, or are spoken incidentally to or in association with the music; and
  - (e) the name of the author of the work, if that is known to the intending maker; and
  - (f) how the information described in subsection (4) may be obtained from a place in Australia if the notice is published as described in paragraph (2)(b) and does not contain that information.
- (4) The notice must, if given as described in paragraph (2)(a), or may, if published as described in paragraph (2)(b), set out:
  - (a) any details known to the intending maker that are needed to enable the owner of the copyright to identify a previous record of the musical work referred to in paragraph 55(1)(a) of the Act; and
  - (b) whether the record that is intended to be made is to be a disc, tape, paper or other device; and
  - (c) the trade description intended to be placed on the label of the record and the proposed trade prefix and catalogue number of the record; and
  - (d) the date on which it is proposed to offer or expose the record for sale to the public in Australia; and
  - (e) the proposed selling price to the public of the record; and
  - (f) the amount of the royalty that the intending maker estimates will be payable to the owner of the copyright for the record.

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

For the purpose of subsection 55(3) of the Act, one month is prescribed.

## **11 Inquiries relating to previous records of musical works—section 61 of the Act**

- (1) For the purposes of section 61 of the Act, this section prescribes:
  - (a) how inquiries relating to the previous making or import of a record of a musical work are to be made; and

- (b) the period for receiving an answer to inquiries.

*Who is to be asked*

- (2) The inquiries must be made of:
  - (a) the owner of the copyright in the musical work; and
  - (b) if words consisting or forming part of a literary or dramatic work were sung or spoken in the musical work, the owner of the copyright in the literary or dramatic work.

*How inquiries are to be made*

- (3) Inquiries must be made in writing.
- (4) Inquiries of an Australian-based owner of copyright must be given to the owner.
- (5) However:
  - (a) if the owner has appointed an Australian-based person as the owner's agent for the purpose of answering inquiries made under section 61 of the Act, the inquiries may be given to the agent; and
  - (b) if a person wishing to make inquiries of an owner does not know the name, or an address for service, of the owner or of such an agent, the inquiries must be published in the Gazette.

*Content of inquiries*

- (6) The inquiries must set out:
  - (a) the name of the person making the inquiries and how the person may be contacted; and
  - (b) the title (if any) of the musical, literary or dramatic work concerned and, if the title does not enable the work to be identified, a description of the work that enables the work to be identified; and
  - (c) the name of the author, if the person making the inquiries knows it; and
  - (d) if the inquiries relate to a particular record—sufficient information to enable the record to be identified; and
  - (e) an inquiry whether a record of the musical work, or of the musical work in which words consisting or forming part of the literary or dramatic work were sung or spoken, has previously been made in, or imported into, Australia:
    - (i) by, or with the licence of, the owner of the copyright in the musical work or in the literary or dramatic work; or
    - (ii) for the purpose of retail sale; or
    - (iii) for use in making other records for the purpose of retail sale.

*Period for answering inquiries*

- (7) The period for receiving an answer to inquiries is 10 days after:
  - (a) the inquiries were given (except by post) or published; or
  - (b) if the inquiries were given by post—the day the inquiries would be delivered in the ordinary course of post.

Section 12

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

- (1) For the purposes of section 77 of the Act, a design is taken to be applied industrially if it is applied:
  - (a) to more than 50 articles; or
  - (b) to one or more articles (other than hand-made articles) manufactured in lengths or pieces.
- (2) For the purposes of paragraph (1)(a), any 2 or more articles are taken to constitute a single article if:
  - (a) they are of the same general character; and
  - (b) they are intended for use together; and
  - (c) the same design, or substantially the same design, is applied to them.
- (3) For the purposes of this section, a design is taken to be applied to an article if:
  - (a) the design is applied to the article by a process (whether a process of printing or embossing or another process); or
  - (b) the design is reproduced on or in the article in the course of the production of the article.



## **Part 3—Copyright in subject-matter other than works**

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

For the purposes of paragraph 104B(b) of the Act:

- (a) the prescribed dimensions of a notice are at least 297 millimetres long and at least 210 millimetres wide; and
- (b) the prescribed form of notice is a form containing the text:
  - (i) in Part 1 or 2 of Schedule 1, if the copy is of a published edition of a work; or
  - (ii) in Part 2 or 3 of Schedule 1, if the copy is of an audio-visual item.

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

For the purposes of paragraph 108(1)(b) of the Act, the period is 7 weeks.

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

For the purposes of subsection 109(3) of the Act, the period is 7 weeks.

## **Part 4—Uses that do not infringe copyright**

### **16 Bodies administering key cultural institutions—paragraph 113L(b) of the Act**

For the purposes of paragraph 113L(b) of the Act, the following bodies are prescribed:

- (a) the Australian Broadcasting Corporation;
- (b) the Australian National University;
- (c) the Special Broadcasting Service Corporation.

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## Part 5—Collecting societies

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

- (1) For the purposes of paragraphs 113W(d), 135ZZT(3)(d) and 135ZZZO(7)(d) of the Act, the following provisions of rules of a collecting society are prescribed:
  - (a) that accounting periods must be determined, in accordance with the rules, by the collecting society for accounting purposes and that no accounting period may extend beyond 30 June in any year;
  - (b) that a consistent practice must be followed with regard to attributing the receipts and expenditure of the collecting society to a particular accounting period;
  - (c) that the collecting society must exercise reasonable diligence in the collection of amounts of equitable remuneration, having regard to the expenses likely to be incurred in the collection of such amounts;
  - (d) that the total amount of any gifts for cultural or benevolent purposes made by the collecting society in respect of any accounting period must not exceed such percentage of the total amount of equitable remuneration received by the society for that accounting period as is specified in the rules;
  - (e) that the administrative costs and other outgoings of the collecting society paid by the society out of the amounts of equitable remuneration collected by it must be reasonable;
  - (f) that the distributable amount relating to each accounting period of the collecting society must be allocated in accordance with a scheme of allocation (the *scheme*) that:
    - (i) is determined in accordance with the rules; and
    - (ii) includes criteria for allocation that are specified in the rules; and
    - (iii) provides for the allocation of potential shares in the distributable amount to entitled persons;
  - (g) that, in relation to each potential share in the distributable amount allocated in accordance with the scheme of the collecting society to an entitled person who is a member of the society at the time of allocation, an amount representing the share must be paid, as soon as is reasonably possible after the allocation, to the entitled person;
  - (h) that, in relation to each potential share in the distributable amount allocated in accordance with the scheme of the collecting society to an entitled person who is not a member of the society at the time of allocation, an amount representing the share:
    - (i) must be paid, as soon as is reasonably possible after the allocation, into a trust fund operated by the society for purposes referred to in paragraph (i); and
    - (ii) subject to subparagraph (iii), must be held in that fund in accordance with the rules of the society; and

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- (iii) if the entitled person becomes a member while the amount is held in the trust fund—must be distributed to the person as soon as is reasonably possible after he or she becomes a member;
  - (i) that a trust fund must be operated by the collecting society for purposes that include the holding on trust, for any entitled person who is not, and whose agent is not, a member of the society, of any potential share allocated to that person in accordance with the scheme;
  - (j) that any part of a distributable amount, relating to an accounting period, that cannot for any reason be distributed must be held on trust in the trust fund referred to in paragraph (i) until distribution becomes possible or until the end of a specified period of not less than 4 years, whichever happens first;
  - (k) that a member of the collecting society must, on request, be given reasonable access to the records of the society, whether or not the member is an entitled person.
- (2) For the purposes of paragraph 153F(6)(f) of the Act, the rules of an applicant to be declared a collecting society are required to include provisions with the effects described in paragraphs (1)(a), (b), (c), (d), (e), (f), (g), (h), (i), (j) and (k) of this section.
- (3) In this instrument:

**distributable amount**, in relation to an accounting period of a collecting society, means the amount of equitable remuneration received by the society that is:

- (a) attributable to that period (in accordance with the practice of the society); or
  - (b) otherwise available for distribution;
- after the payment or reservation, out of that amount, of:
- (c) amounts attributable to that period that are paid or held, in accordance with the rules of the society, for:
    - (i) gifts made by the society; and
    - (ii) administrative costs and other outgoings of the society; and
  - (d) amounts to be carried forward, in accordance with the rules of the society, to the next accounting period.

**entitled person**, in relation to a collecting society declared under a section of the Act mentioned in column 1 of an item of the following table, means:

- (a) a member of the collecting society who is:
  - (i) a person described in column 2 of that item; or
  - (ii) the agent of a person described in column 2 of that item; or
- (b) a person described in column 2 of that item who is not a member of the collecting society and whose agent, if any, is not a member.

Entitled person	
Column 1 Section of the Act	Column 2 Person
1 113V	Eligible rights holder
2 135ZZT	Relevant copyright owner (as defined in Part VC of the Act)

**Entitled person**

	<b>Column 1 Section of the Act</b>	<b>Column 2 Person</b>
3	135ZZO	Relevant copyright owner (as defined in Part VD of the Act)
4	153F	Owner of copyright in copyright material as defined in Division 2 of Part VII of the Act

*equitable remuneration*, in relation to a collecting society declared under a section of the Act mentioned in column 1 of an item of the following table, has the meaning given by column 2 of the item.

**Equitable remuneration**

	<b>Column 1 Section of the Act</b>	<b>Column 2 Equitable remuneration</b>
1	113V	Equitable remuneration payable under remuneration notices given to the society under section 113Q of the Act
2	135ZZT	Equitable remuneration payable by retransmitters under section 135ZZM of the Act
3	135ZZZO	Equitable remuneration payable by satellite BSA licensees under section 135ZZZK of the Act
4	153F	Equitable remuneration payable by governments under section 183A of the Act

*potential share* means a share that is:

- (a) a share in a distributable amount; and
- (b) represented by an amount that will be distributed in the circumstances referred to in paragraph (1)(g) or (h).

*relevant copyright owner*:

- (a) in relation to a collecting society declared under section 135ZZT of the Act—has the same meaning as in Part VC of the Act; and
- (b) in relation to a collecting society declared under section 135ZZZO of the Act—has the same meaning as in Part VD of the Act.

## Part 6—Limitation on remedies available against carriage service providers

### Division 1—Preliminary

#### 18 Industry code—section 116AB of the Act

For the purposes of subparagraph (a)(i) of the definition of *industry code* in section 116AB of the Act, the following requirements are prescribed for an industry code that does not deal solely with caching:

- (a) the industry code must be developed through an open voluntary process by a broad consensus of:
  - (i) owners and exclusive licensees of copyright; and
  - (ii) carriage service providers;
- (b) the industry code must include a provision to the effect that *standard technical measures* are technical measures that:
  - (i) are used to protect and identify copyright material; and
  - (ii) are accepted under the industry code or developed in accordance with a process set out in the industry code; and
  - (iii) are available on non-discriminatory terms; and
  - (iv) do not impose substantial costs on carriage service providers or substantial burdens on their systems or networks.

#### 19 Designated representative

- (1) A carriage service provider must designate a person to be the representative of the carriage service provider to receive for the carriage service provider notifications, notices and counter-notices given for the purposes of a condition in subsection 116AH(1) of the Act.
- (2) The carriage service provider must publish a notice in a reasonably prominent location on its website setting out the following information:
  - (a) the title of the position of the designated representative;
  - (b) sufficient information to allow a person to contact the designated representative.

#### 20 Requirements for notifications and notices

A notification, notice or counter-notice given for the purposes of a condition in subsection 116AH(1) of the Act must:

- (a) be in accordance with the form prescribed by this Part; and
- (b) be given by post or electronic communication to the carriage service provider's designated representative.

## **Division 2—Conditions—cached copyright material**

### **21 Notification relating to Category B activity**

For the purposes of condition 3 of item 3 of the table in subsection 116AH(1) of the Act, the form of notification set out in Part 1 of Schedule 2 is prescribed.

**Part 6** Limitation on remedies available against carriage service providers

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

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

**22 Notice in relation to Category C and D activities**

For the purposes of condition 2 of item 4 (Category C activities), and condition 2 of item 5 (Category D activities), of the table in subsection 116AH(1) of the Act, the form of notice set out in Part 2 of Schedule 2 is prescribed.



## **Division 4—Conditions—takedown of copyright material following notice**

### **23 Application of this Division**

For the purposes of condition 3 of item 4 (Category C activities) of the table in subsection 116AH(1) of the Act, this Division prescribes the procedure to be followed in relation to copyright material residing on a carriage service provider's system or network if:

- (a) the owner or exclusive licensee of the copyright in the material, or an agent of the owner or licensee, reasonably believes that the material is infringing; and
- (b) the owner, licensee or agent wishes the carriage service provider to remove or disable access to the material.

### **24 Notice of claimed infringement**

- (1) The owner or exclusive licensee of the copyright in the copyright material, or an agent of the owner or licensee, may give a notice of claimed infringement in relation to the copyright material to the carriage service provider's designated representative.
- (2) The notice of claimed infringement must be in accordance with the form set out in Part 3 of Schedule 2.

### **25 Takedown procedure**

- (1) If a carriage service provider receives a notice of claimed infringement under section 24, the carriage service provider must expeditiously remove, or disable access to, the copyright material specified in the notice and residing on its system or network.
- (2) As soon as practicable after removing, or disabling access to, copyright material under subsection (1), the carriage service provider must send to the user who directed the carriage service provider to store the copyright material on its system or network:
  - (a) a copy of the notice of claimed infringement; and
  - (b) a notice stating:
    - (i) that the copyright material has been removed, or access to it has been disabled; and
    - (ii) that the user may, within 3 months after receiving the copy of the notice of claimed infringement, give a counter-notice in accordance with section 26 of the *Copyright Regulations 2017* to the carriage service provider's designated representative disputing the claims in the notice of claimed infringement.

Note: The carriage service provider need not take any further action in relation to the copyright material unless the carriage service provider receives a counter-notice from the user under section 26.

- (3) A carriage service provider is taken to have complied with subsection (2) if:

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- (a) the carriage service provider has taken reasonable steps to identify the user but has been unable to do so; or
- (b) the carriage service provider sends the documents to the user as required by subsection (2) but they are not received by the user.

### **26 Counter-notice**

- (1) If a user receives a copy of a notice of claimed infringement from a carriage service provider under section 25, the user may give a counter-notice to the carriage service provider's designated representative disputing the claims set out in the notice.

Note: If the user does not give a counter-notice to the carriage service provider's designated representative, the carriage service provider is not required to take any further action in relation to the notice of claimed infringement.

- (2) The counter-notice must:
  - (a) be in accordance with the form set out in Part 4 of Schedule 2; and
  - (b) be given within 3 months after the user receives the copy of the notice of claimed infringement.

### **27 Copy of counter-notice to be sent to copyright owner**

- (1) If a carriage service provider receives a counter-notice from a user under section 26 in response to a notice of claimed infringement, the carriage service provider must, as soon as practicable after receiving the counter-notice, send to the copyright owner, exclusive licensee or agent who gave the notice of claimed infringement:
  - (a) a copy of the counter-notice; and
  - (b) a notice stating that if the owner, licensee or agent does not, within 10 business days after the day the notice was sent, bring an action seeking a court order to restrain the activity that is claimed to be infringing, the carriage service provider will restore, or enable access to, the copyright material on its system or network.
- (2) If the counter-notice is from a user who is an individual, the copy of the counter-notice and the notice under paragraph (1)(b) sent to the copyright owner, licensee or agent under subsection (1) may disclose information that could identify the user if the disclosure is consistent with the *Telecommunications Act 1997* and the *Privacy Act 1988*.

### **28 Restoring copyright material**

- (1) A carriage service provider must comply with this section if:
  - (a) the carriage service provider sends a copy of a counter-notice given by a user and a notice to the copyright owner, exclusive licensee or agent under section 27 in relation to a notice of claimed infringement given by the owner, licensee or agent; and
  - (b) either:
    - (i) the owner, licensee or agent does not, within 10 business days after those documents were sent, notify the carriage service provider's designated representative that the owner, licensee or agent has

- brought an action seeking a court order to restrain the activity that is claimed to be infringing; or
- (ii) the carriage service provider is notified that an action for infringement of the copyright in the copyright material has been discontinued or was unsuccessful.
- (2) The carriage service provider must restore, or enable access to, the copyright material on its system or network:
- (a) if the carriage service provider is not notified by the owner, licensee or agent of the matter mentioned in subparagraph (1)(b)(i) within the period mentioned in that subparagraph—as soon as practicable after the end of that period; or
- (b) if the carriage service provider is notified of the matter mentioned in subparagraph (1)(b)(ii)—as soon as practicable after receiving the notification.

Note: The carriage service provider is not required to have regard to a notification, from the owner, licensee or agent, of a kind mentioned in subparagraph (1)(b)(i) if it is received more than 10 business days after the documents were sent to the owner, licensee or agent under section 27.

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

**29 Application of this Division**

- (1) For the purposes of condition 3 of item 4 (Category C activities) of the table in subsection 116AH(1) of the Act, this Division prescribes the procedure to be followed in relation to copyright material residing on a carriage service provider's system or network if the carriage service provider becomes aware (except as described in subsection (2)):
- (a) that the material is infringing; or
  - (b) of facts or circumstances that make it apparent that the material is likely to be infringing.

Note: The carriage service provider must act expeditiously to remove or disable access to copyright material residing on its system or network if the carriage service provider becomes aware of a matter mentioned in paragraph (1)(a) or (b) in relation to the material—see condition 2A of item 4 of the table in subsection 116AH(1) of the Act.

- (2) This Division does not apply if the carriage service provider becomes aware of a matter mentioned in paragraph (1)(a) or (b) as a result of receiving a notice of claimed infringement under Division 4, or any other notification, from the owner or exclusive licensee of the copyright in the material or from an agent of the owner or licensee.

Note: The procedure prescribed in Division 4 applies if the carriage service provider receives a notice of claimed infringement in relation to the copyright material from the owner or exclusive licensee of the copyright in the material or from an agent of the owner or licensee.

**30 Notice to user**

- (1) As soon as practicable after removing, or disabling access to, the copyright material under condition 2A of item 4 of the table in subsection 116AH(1) of the Act, the carriage service provider must send to the user who directed the carriage service provider to store the copyright material on its system or network a notice stating:
- (a) that the copyright material has been removed, or access to it has been disabled; and
  - (b) the grounds for removing, or disabling access to, the copyright material; and
  - (c) that the user may, within 3 months after receiving the notice, give a counter-notice in accordance with section 31 of the *Copyright Regulations 2017* to the carriage service provider's designated representative:
    - (i) disputing the grounds for removing, or disabling access to, the copyright material; and

- (ii) requesting the carriage service provider to restore, or enable access to, the copyright material on the carriage service provider's system or network.
- (2) A carriage service provider is taken to have complied with subsection (1) if:
  - (a) the carriage service provider has taken reasonable steps to identify the user but has been unable to do so; or
  - (b) the carriage service provider sends the notice to the user as required by subsection (1) but it is not received by the user.

### **31 Counter-notice**

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

Note: If the user does not give a counter-notice to the carriage service provider's designated representative, the carriage service provider is not required to take any further action in relation to the copyright material.

- (2) The counter-notice must:
  - (a) be in accordance with the form set out in Part 5 of Schedule 2; and
  - (b) be given within 3 months after the user receives the notice under section 30.

### **32 Restoring copyright material**

If:

- (a) a carriage service provider receives a counter-notice in relation to copyright material under section 31; and
- (b) on the basis of the information and statements in the counter-notice, the carriage service provider is satisfied that the copyright material is not, or is not likely to be, infringing;

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

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

**33 Application of this Division**

For the purposes of condition 3 of item 5 (Category D activities) of the table in subsection 116AH(1) of the Act, this Division prescribes the procedure to be followed in relation to a reference to copyright material that is provided by a carriage service provider on its system or network if:

- (a) the owner or exclusive licensee of the copyright in the material, or an agent of the owner or licensee, reasonably believes that the material is infringing; and
- (b) the owner, licensee or agent wishes the carriage service provider to remove or disable access to the reference to the material.

**34 Notice of claimed infringement**

- (1) The owner or exclusive licensee of the copyright in the copyright material to which the reference is provided, or an agent of the owner or licensee, may give a notice of claimed infringement to the carriage service provider's designated representative.
- (2) The notice of claimed infringement must be in accordance with the form set out in Part 6 of Schedule 2.

**35 Takedown procedure**

If a carriage service provider receives a notice of claimed infringement under section 34, the carriage service provider must expeditiously remove, or disable access to, the reference to the copyright material specified in the notice and provided by the carriage service provider on its system or network.

## **Division 7—Civil remedies**

### **36 Authority**

This Division has effect for the purposes of section 116AJ of the Act.

### **37 Action taken to comply with a condition**

A carriage service provider is not liable for damages or any other civil remedy as a result of action taken in good faith by the carriage service provider to comply with any of the following conditions:

- (a) condition 3 of item 3 (Category B activities) of the table in subsection 116AH(1) of the Act;
- (b) condition 2, 2A or 3 of item 4 (Category C activities) of the table in subsection 116AH(1) of the Act;
- (c) condition 2, 2A or 3 of item 5 (Category D activities) of the table in subsection 116AH(1) of the Act.

Note: See also Divisions 2, 3, 4, 5 and 6 of this Part in relation to those conditions.

### **38 Failure to restore or enable access to copyright material**

- (1) If a carriage service provider fails to restore, or enable access to, the copyright material on its system or network as required by section 28 or 32, the carriage service provider may be liable for damages or any other civil remedy in a civil action taken by a user or third party affected by the failure.
- (2) However, the carriage service provider is not liable for damages or any other civil remedy in an action taken by the owner or exclusive licensee of the copyright in the copyright material because of the carriage service provider's failure to restore, or enable access to, the copyright material in accordance with section 28 or 32.

### **39 Misrepresentations in notifications and notices**

- (1) A person who gives a notification, notice or counter-notice for the purposes of a condition in subsection 116AH(1) of the Act, must not knowingly make a material misrepresentation in that notification, notice or counter-notice.
- (2) For the purposes of subsection (1), a person knowingly makes a material misrepresentation in a notification, notice or counter-notice if the person does not take reasonable steps to ensure the accuracy of the information and statements included in the notification, notice or counter-notice. This does not limit the circumstances in which a person knowingly makes a material misrepresentation for the purposes of that subsection.
- (3) A person who suffers loss or damage because of a material misrepresentation made knowingly in a notification, notice or counter-notice may bring an action against the person who gave the notification, notice or counter-notice.
- (4) If the court in which the action is brought is satisfied that the person bringing the action suffered loss or damage because of the material misrepresentation, the

**Part 6** Limitation on remedies available against carriage service providers

**Division 7** Civil remedies

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court may grant the person whatever civil remedies for the loss or damage the court thinks fit.



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## Part 7—Technological protection measures

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

- (1) For the purposes of paragraphs 116AN(9)(c) and 132APC(9)(c) of the Act, the doing of an act by a person that does not infringe copyright because of any of the following provisions of the Act is prescribed:
  - (a) section 47D (reproducing computer programs to make interoperable products), so far as it relates to making an article described in paragraph 47D(1)(b);
  - (b) subsection 49(6), (7) or (7B) (reproducing and communicating works by libraries and archives for users);
  - (c) subsection 50(4) (reproducing and communicating works by libraries or archives for other libraries or archives);
  - (d) section 107 (making of a copy of the sound recording for purpose of broadcasting);
  - (e) section 110A (copying and communicating unpublished sound recordings and cinematograph films in libraries or archives);
  - (f) Division 3 (libraries and archives) of Part IVA;
  - (g) Division 4 (educational institutions—statutory licence) of Part IVA.
- (2) For the purposes of paragraphs 116AN(9)(c) and 132APC(9)(c) of the Act, the following are also prescribed:
  - (a) the making by a person of a broadcast of a published sound recording that does not infringe the copyright in the recording because of section 109 of the Act;
  - (b) fair dealing with, or use of, copyright material other than a computer game by a person that is not an infringement of copyright in the material because of Division 2 (access by or for persons with a disability) of Part IVA of the Act;
  - (c) the gaining of access by a person to copyright material to which a technological protection measure has been applied if:
    - (i) the technological protection measure is not operating normally; and
    - (ii) a replacement technological protection measure is not reasonably available;
  - (d) the gaining of access by a person to copyright material that is protected by a technological protection measure that interferes with or damages a product in which it is installed (the **host product**) or another product used in conjunction with the host product:
    - (i) to prevent damage, or further damage, to the host product or another product by the technological protection measure; or
    - (ii) to repair the host product or another product (if circumvention of the technological protection measure is necessary to enable the repair to be carried out);

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- (e) use by a person of a work (other than a computer game) or other subject-matter that is not an infringement of copyright in the work or other subject-matter because of subsection 200AB(1) of the Act because the use is covered by subsection 200AB(3) (use by body administering educational institution) of the Act.

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

### **Division 1—Preliminary**

#### **41 Object of this Part**

The object of this Part is to set up a scheme (for the purposes of sections 133B and section 248SA of the Act) to enable a person who is alleged to have committed an offence of strict liability against Division 5 of Part V, or Subdivision A or B of Division 3 of Part XIA, of the Act to do the following as an alternative to being prosecuted:

- (a) pay the Commonwealth an amount specified in an infringement notice for the alleged offence;
- (b) for an alleged offence against a provision of Division 5 of Part V of the Act (except subsections 132AQ(5), 132AR(5) and 132AS(5)), agree to forfeit to the Commonwealth:
  - (i) each article (if any), in the person's possession when the person is informed how the person may avoid prosecution for the alleged offence, that is alleged to be an infringing copy of a work or other subject-matter and to have been involved in the commission of the offence; and
  - (ii) each device (if any), in the person's possession when the person is informed how the person may avoid prosecution for the alleged offence, that is alleged to have been made to be used for making an infringing copy of a work or other subject-matter and to have been involved in the commission of the offence.

#### **42 Provisions subject to an infringement notice**

Each provision of the Act listed in the following table is *subject to an infringement notice* under this Part:

<b>Provisions of the Act subject to an infringement notice under this Part</b>		
<b>Item</b>	<b>Provision of Act</b>	<b>Summary of strict liability offence created by provision</b>
1	Subsection 132AD(5)	Making infringing copy commercially
2	Subsection 132AE(5)	Selling or hiring out infringing copy
3	Subsection 132AF(7)	Offering infringing copy for sale or hire by way of trade
4	Subsection 132AF(8)	Commercially offering infringing copy for sale or hire
5	Subsection 132AG(7)	Exhibiting an infringing copy in public by way of trade
6	Subsection 132AG(8)	Commercially exhibiting an infringing copy in public
7	Subsection 132AH(5)	Importing infringing copy commercially
8	Subsection 132AI(7)	Distributing infringing copy
9	Subsection 132AJ(5)	Possessing infringing copy for commerce
10	Subsection 132AL(8)	Making device for making infringing copy
11	Subsection 132AO(5)	Causing recording or film to be heard or seen in public

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

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**Provisions of the Act subject to an infringement notice under this Part**

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<b>Item</b>	<b>Provision of Act</b>	<b>Summary of strict liability offence created by provision</b>
12	Subsection 132AQ(5)	Removing or altering electronic rights management information
13	Subsection 132AR(5)	Distributing, importing or communicating copies after removal or alteration of electronic rights management information
14	Subsection 132AS(5)	Distributing or importing electronic rights management information
15	Subsection 248PB(5)	Unauthorised indirect recording during protection period
16	Subsection 248PF(5)	Copying unauthorised recording
17	Subsection 248PG(5)	Unauthorised copying of exempt recording
18	Subsection 248PH(5)	Unauthorised copying of authorised sound recording
19	Subsection 248PI(5)	Selling etc. unauthorised recording
20	Subsection 248PJ(7)	Distributing unauthorised recording
21	Subsection 248PK(5)	Commercial possession or import of unauthorised recording
22	Subsection 248PL(5)	Exhibiting unauthorised recording in public by way of trade
23	Subsection 248PM(5)	Importing unauthorised recording for exhibition by way of trade
24	Subsection 248QC(5)	Copying unauthorised sound recording
25	Subsection 248QD(5)	Selling etc. unauthorised sound recording
26	Subsection 248QE(7)	Distributing unauthorised sound recording
27	Subsection 248QF(5)	Commercial possession or import of unauthorised sound recording
28	Subsection 248QG(5)	Exhibiting unauthorised sound recording in public by way of trade
29	Subsection 248QH(5)	Importing unauthorised sound recording for exhibition by way of trade

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## **Division 2—Infringement notices**

### **43 When an infringement notice may be given**

- (1) If an infringement officer believes on reasonable grounds that a person has committed an offence against a provision subject to an infringement notice under this Part, the infringement officer may give to the person an infringement notice for the alleged offence.
- (2) However, the infringement officer may give to the person an infringement notice for the alleged offence against a provision of Division 5 of Part V of the Act (except subsections 132AQ(5), 132AR(5) and 132AS(5)) only if:
  - (a) an infringement officer has informed the person as described in subsection 49(2) of this instrument; and
  - (b) the person has agreed to forfeit, and has forfeited, to the Commonwealth all infringing articles and devices relating to the alleged offence in the person's possession at the time the person was informed.

Note 1: Subsection 49(2) is about an infringement officer informing a person about the circumstances in which the person may avoid prosecution for an alleged offence against that Division if an infringement notices is issued.

Note 2: Division 3 of this Part deals with forfeiture of infringing articles and devices relating to alleged offences against provisions of Division 5 of Part V of the Act.

- (3) The infringement notice must be given within 12 months after the day on which the offence is alleged to have taken place.
- (4) A single infringement notice must relate only to a single offence against a single provision.

### **44 Matters to be included in an infringement notice**

An infringement notice must:

- (a) be identified by a unique number; and
- (b) state the day on which it is given; and
- (c) state the name of the person to whom the notice is given; and
- (d) state the name and contact details of the person who gave the notice, and that the person is an infringement officer for the purposes of issuing the infringement notice; and
- (e) give brief details of the alleged offence, including:
  - (i) the provision against which the offence was allegedly committed; and
  - (ii) the maximum penalty that a court could impose if the offence were committed; and
  - (iii) the time (if known) and day of, and the place of, the alleged offence; and
- (f) state the amount that is payable under the notice, which must be:
  - (i) 12 penalty units where the person is an individual; or
  - (ii) 60 penalty units where the person is a body corporate; and
- (g) give an explanation of how payment of the amount is to be made; and

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- (h) state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then (unless the notice is withdrawn) the person will not be liable to be prosecuted in a court for the alleged offence; and
- (i) state that payment of the amount is not an admission of guilt or liability; and
- (j) state that the person may apply to the relevant chief executive to have the period in which to pay the amount extended; and
- (k) state that the person may choose not to pay the amount and, if the person does so, the person may be prosecuted in a court for the alleged offence; and
- (l) set out how the notice can be withdrawn; and
- (m) state that if the notice is withdrawn the person may be prosecuted in a court for the alleged offence; and
- (n) state that the person may make written representations to the relevant chief executive seeking the withdrawal of the notice.

**45 Extension of time to pay amount**

- (1) A person to whom an infringement notice has been given may apply to the relevant chief executive for an extension of the period referred to in paragraph 44(h).
- (2) If the application is made before the end of that period, the relevant chief executive may, in writing, extend that period. The relevant chief executive may do so before or after the end of that period.
- (3) If the relevant chief executive extends that period, a reference in this Part, or in a notice or other instrument under this Part, to the period referred to in paragraph 44(h) is taken to be a reference to that period so extended.
- (4) If the relevant chief executive does not extend that period, a reference in this Part, or in a notice or other instrument under this Part, to the period referred to in paragraph 44(h) is taken to be a reference to the period that ends on the later of the following days:
  - (a) the day that is the last day of the period referred to in paragraph 44(h);
  - (b) the day that is 7 days after the day the person was given notice of the relevant chief executive's decision not to extend.
- (5) The relevant chief executive may extend the period more than once under subsection (2).

**46 Withdrawal of an infringement notice**

*Representations seeking withdrawal of notice*

- (1) A person to whom an infringement notice has been given may make written representations to the relevant chief executive seeking the withdrawal of the notice.

*Withdrawal of notice*

- (2) The relevant chief executive may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (3) When deciding whether or not to withdraw an infringement notice (the **relevant infringement notice**), the relevant chief executive:
  - (a) must take into account any written representations seeking the withdrawal that were given by the person to the relevant chief executive; and
  - (b) may take into account the following:
    - (i) whether a court has previously imposed a penalty on the person for an offence against a provision subject to an infringement notice under this Part;
    - (ii) the circumstances of the alleged offence;
    - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for an offence against a provision subject to an infringement notice under this Part if the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the offence in the relevant infringement notice;
    - (iv) any other matter the relevant chief executive considers relevant.

*Notice of withdrawal*

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
  - (a) the person's name and address; and
  - (b) the day the infringement notice was given; and
  - (c) the identifying number of the infringement notice; and
  - (d) that the infringement notice is withdrawn; and
  - (e) that the person may be prosecuted in a court for the alleged offence.

*Refund of amount if infringement notice withdrawn*

- (5) If:
  - (a) the relevant chief executive withdraws the infringement notice; and
  - (b) the person has already paid the amount stated in the notice;the Commonwealth must refund to the person an amount equal to the amount paid.

**47 Effect of payment of amount**

- (1) If the person to whom an infringement notice for an alleged offence against a provision is given pays the amount stated in the notice before the end of the period referred to in paragraph 44(h):
  - (a) any liability of the person for the alleged offence is discharged; and
  - (b) the person may not be prosecuted in a court for the alleged offence; and
  - (c) the person is not regarded as having admitted guilt or liability for the alleged offence; and
  - (d) the person is not regarded as having been convicted of the alleged offence.

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(2) Subsection (1) does not apply if the notice has been withdrawn.

**48 Effect of this Part**

This Part does not:

- (a) require an infringement notice to be given to a person for an alleged offence against a provision subject to an infringement notice under this Part; or
- (b) affect the liability of a person for an alleged offence against a provision subject to an infringement notice under this Part if:
  - (i) the person does not comply with an infringement notice given to the person for the offence; or
  - (ii) an infringement notice is not given to the person for the offence; or
  - (iii) an infringement notice is given to the person for the offence and is subsequently withdrawn; or
- (c) prevent the giving of 2 or more infringement notices to a person for an alleged offence against a provision subject to an infringement notice under this Part; or
- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have committed an offence against a provision subject to an infringement notice under this Part.



## **Division 3—Forfeiture of infringing articles and devices**

### **49 Forfeiture of infringing articles and devices**

- (1) This section applies if:
  - (a) an infringement officer believes on reasonable grounds that a person has committed an offence of strict liability against a provision of Division 5 of Part V of the Act (except subsections 132AQ(5), 132AR(5) and 132AS(5)); and
  - (b) the person possesses an infringing article or an infringing device relating to the alleged offence.
- (2) The infringement officer may inform the person (either orally or by written notice) that the person may avoid prosecution for the alleged offence if:
  - (a) the person agrees to forfeit, and does forfeit, to the Commonwealth all infringing articles and devices that the person possesses in relation to the alleged offence; and
  - (b) the person pays the amount specified in an infringement notice for the alleged offence in accordance with Division 2; and
  - (c) the infringement notice for the alleged offence is not withdrawn.
- (3) If the person agrees to forfeit to the Commonwealth all infringing articles and devices that the person possesses (when informed under subsection (2)) in relation to the alleged offence, the authorised officer:
  - (a) may take possession of the infringing articles and devices; and
  - (b) must give the person a receipt for the infringing articles and devices taken into possession.
- (4) If the person pays the amount specified in an infringement notice given to the person under Division 2 for the alleged offence, the relevant chief executive must cause all infringing articles and devices in relation to the alleged offence that the person agreed to forfeit, and did forfeit, to the Commonwealth to be destroyed.

**Note:** An infringement notice relating to an offence against a provision of Division 5 of Part V of the Act (except subsections 132AQ(5), 132AR(5) and 132AS(5)) may not be given if the recipient does not agree to forfeit to the Commonwealth all infringing articles and devices in the person's possession at that time in relation to the alleged offence—see subsection 43(2).

## Part 9—Seizure of imported copies of copyright material

### 50 Definition of *action period* in section 134B of the Act

For the purposes of the definition of *action period* in section 134B of the Act, the period is 10 working days (as defined in that section).

### 51 Definition of *claim period* in section 134B of the Act

For the purposes of the definition of *claim period* in section 134B of the Act, the period is 10 working days (as defined in that section).

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

- (1) For the purposes of paragraph 135(8)(c) of the Act, the Comptroller-General of Customs may direct a person who notifies the Comptroller-General under subsection 135(2) of the Act to give the Comptroller-General information and evidence about the following:
  - (a) the subsistence of copyright in the material;
  - (b) the ownership of the copyright;
  - (c) if the person who notifies the Comptroller General does so through an agent—the agent’s authority to give the notice for the person.
- (2) The person must comply with the direction.

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

#### *Application of this section*

- (1) For the purposes of subsection 135(9) of the Act, this section applies in relation to the importation into any of the following Territories, from a place other than Australia, of copies of copyright material:
  - (a) Norfolk Island;
  - (b) the Territory of Christmas Island;
  - (c) the Territory of Cocos (Keeling) Islands.

Note: For this purpose, *Australia* includes the external Territories, as it does under section 10 of the Act.

#### *Laws that apply in relation to importation*

- (2) The following provisions (the *applied provisions*) apply, with the modifications described in subsection (3), in relation to the importation:
  - (a) Division 7 of Part V of the Act, except:
    - (i) the definition of *Comptroller-General of Customs* in section 134B; and
    - (ii) subsections 135(1), (2), (3), (6), (6A), (8) and (9);

- (b) sections 50, 51 and 54 of this instrument.

*Modifications of applied provisions*

- (3) The applied provisions apply in relation to the importation into the Territory as if:
- (a) a reference in the applied provisions to Australia were a reference to the Territory; and
  - (b) a reference in the applied provisions to a notice under subsection 135(2) (however described) or a notice given under section 135 were a reference to a notice given under subsection 135(2) of the Act applying apart from this section; and
  - (c) a reference in the applied provisions to the Comptroller-General of Customs had the same meaning as it has in the *Customs Act 1901* as it applies in the Territory because of an Ordinance of the Territory; and
  - (d) a reference (however expressed) in subsection 135(5) or paragraph 135(7)(b) of the Act to revocation or declaration of ineffectiveness of a notice under subsection 135(2) of the Act were a reference to such a revocation or declaration under subsection 135(6) or (6A) of the Act applying apart from this section; and
  - (e) a reference in paragraph 135(7)(d) of the Act to the *Customs Act 1901* were a reference to the *Customs Act 1901* as it applies in the Territory because of an Ordinance of the Territory; and
  - (f) a reference in subsection 135AJ(1) or (3) to copies covered by a notice under section 135 were a reference to copies of copyright material that were imported into the Territory and could be or were seized on the basis of the notice.

Note 1: These modifications mean only one notice objecting to importation need be given as a basis for seizing copies imported into any of the Territories or any other part of Australia. Likewise, a single revocation or declaration of ineffectiveness of the notice stops seizure of imports of copies to which the notice related into any of the Territories or any other part of Australia.

Note 2: The *Norfolk Island Customs Ordinance 2016* applies the *Customs Act 1901* in Norfolk Island and treats a reference in that Act (as so applying) to the Comptroller-General of Customs as having the same meaning as it has in that Act as it applies of its own force.

Note 3: The *Customs Ordinance 1993* of each of the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands applies the *Customs Act 1901* in the Territory and treats a reference in that Act (as so applying) to the Comptroller-General of Customs as a reference to the Comptroller of the Indian Ocean Territories Customs Service appointed under that Ordinance.

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

For the purposes of paragraph 135AEA(3)(b) of the Act, the following information is prescribed:

- (a) the importer's full name, home or business address and address for service;
- (b) a telephone number for the importer;
- (c) the grounds for seeking the release of the seized copies;
- (d) if the importer's home or business address is not in Australia:
  - (i) the full name and the home or business address of a person who is the importer's agent in Australia; and

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- (ii) an address for service for the person who is the importer's agent in Australia; and
- (iii) a telephone number for the person; and
- (iv) information showing that the person agreed to be the importer's agent;
- (e) if a person or body other than the agent made arrangements on the importer's behalf for the seized copies to be brought to Australia:
  - (i) the full name, home or business address and address for service of the person or body; and
  - (ii) a telephone number for the person or body.

- Note: Examples of grounds for the purposes of paragraph (c) are:
- (a) that the copies are not infringing copies; and
  - (b) that the importation of the copies did not infringe copyright.

## **Part 10—Retransmission of free-to-air broadcasts**

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

For the purposes of subsection 135ZZQ(1) of the Act, the prescribed form of an identity card is a form that includes:

- (a) the following information:
  - (i) the name of the collecting society;
  - (ii) the name and title of the person to whom the identity card is issued;
  - (iii) the name and title of the person who issued the identity card;
  - (iv) the date on which the identity card is issued;
  - (v) the date on which the identity card will expire (no later than 3 years after the day on which the identity card is issued); and
- (b) a statement that the identity card has been issued under section 135ZZQ of the Act; and
- (c) the signature of the person to whom the identity card is issued.

## **Part 11—Copyright Tribunal**

### **Division 1—Preliminary**

#### **56 Authority**

This Part has effect for the purposes of section 166 of the Act, except as indicated in this Part.

#### **57 Organizations treated like persons**

This Part, and the other provisions of this instrument so far as they relate to this Part, apply to an organization (as defined in subsection 136(1) of the Act) in the same way as they apply to a person.

## **Division 2—General provisions**

### **58 Seal of Tribunal**

- (1) The Tribunal is to have a seal.
  - (2) The President is to determine the design of the seal.
  - (3) The seal must be attached to:
    - (a) a document of a kind directed by the President; and
    - (b) any other document as ordered by the Tribunal.
- Note: The President may give directions under section 147 of the Act.
- (4) The seal may be attached to a document by hand, by electronic means or in any other way.

### **59 Filing of documents**

- (1) A document is not filed until it is accepted for filing by the Registrar.  
*Refusing to accept document for filing*
- (2) The Registrar may refuse to accept a document for filing if it does not comply with any provisions of this Part relevant to the document.
- (3) The Registrar must refuse to accept a document for filing if:
  - (a) it is not substantially complete; or
  - (b) it does not substantially comply with this instrument; or
  - (c) it is not properly signed; or
  - (d) the Tribunal has directed that the document not be accepted; or
  - (e) the Tribunal has directed that the document not be accepted without the leave of the Tribunal, and leave has not been obtained.
- (4) If the Registrar refuses to accept a document for filing, the Registrar must give the person who lodged or sent the document written notice of the refusal and written reasons for the refusal.

#### *Recording day of filing*

- (5) The Registrar must record the day on which a document is filed.

### **60 Address for service**

- (1) A person who files with the Registrar a document instituting, or relating to, a Tribunal proceeding must specify in the document an address for service for the person, unless the person has filed another document connected with the proceeding specifying that address.
- (2) The person may later file with the Registrar a written notice, relating to the Tribunal proceeding, that:
  - (a) specifies a new address for service for the person; and

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- (b) is signed by or on behalf of the person.
- (3) The person must give every other party to the Tribunal proceeding a copy of the notice within 7 days after filing the notice.

**61 Tribunal may direct alternative means of service or dispense with service**

The Tribunal may make an order relating to a document this Part requires or permits to be served:

- (a) directing that the document be served by means other than a means permitted by Part 6 of the *Acts Interpretation Act 1901* or section 9 of the *Electronic Transactions Act 1999*; or
- (b) dispensing with service of the document.

**62 Notification of orders of Tribunal and of reasons**

*Written reasons for orders*

- (1) When making an order, the Tribunal must state in writing its reasons for making the order.

*Giving and inspection of orders*

- (2) The Registrar must cause a copy of the document recording the order and of the reasons of the Tribunal:
  - (a) to be given to every party to the application or reference the order relates to; and
  - (b) to be available at each office of the Registrar for public inspection when that office is open for business.

*Exceptions for interim and ancillary orders*

- (3) Subsections (1) and (2) do not apply to an order under section 61, an interim order or an order that is made in respect of an application that is ancillary to another Tribunal proceeding.

*President may direct Registrar to publish order*

- (4) The President may direct the Registrar to publish on the Tribunal's website details of any order of the Tribunal.

*Exception for suspended order*

- (5) Subsections (2) and (4) do not apply to an order whose operation is suspended pending a reference of a question of law to the Federal Court of Australia.



## **Division 3—Applications and references to the Tribunal**

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

#### **63 Form, content and filing of application or reference to the Tribunal**

- (1) An application or reference to the Tribunal must:
  - (a) be in writing; and
  - (b) state the name of the person making the application or reference; and
  - (c) state the general nature of the application or reference and specify the provision of the Act or of this instrument under which the application or reference is made; and
  - (d) subject to subsection (2), include such other matters as are required by this instrument to be included in an application or reference made under that provision; and
  - (e) be signed by or on behalf of the person making the application or reference; and
  - (f) be filed with the Registrar.

Note: Subdivision B requires particular matters to be set out in applications and references made under particular provisions.

- (2) Matters required by this instrument to be included in the application or reference may be omitted if the President gives leave for the omission.
- (3) When granting leave, the President may direct other matters to be included in the application or reference instead of the omitted matters. Those other matters must be included in the application or reference.

#### **64 Giving application or reference to other parties**

- (1) A person making an application or reference to the Tribunal must, within 7 days after filing the application or reference with the Registrar, give each other party to the application or reference:
  - (a) a sealed copy of the application or reference; and
  - (b) written notice that the other party is a party to the application or reference.
- (2) Subsection (1) does not apply to a party that became a party to the application or reference after it was filed.

#### **65 Advertising of applications and references**

- (1) A person making an application or reference to the Tribunal must, within 10 days after filing it with the Registrar, advertise it in:
  - (a) a newspaper circulating throughout Australia; or
  - (b) the Gazette.
- (2) The advertisement must:

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- (a) specify the date on which the application or reference was made and the relevant file number; and
  - (b) state the name, and the address for service, of the person; and
  - (c) state the general nature of the application or reference; and
  - (d) specify the provision of the Act or of this instrument under which the application or reference is made.
- (3) The President may direct that a particular application or reference:
- (a) need not be advertised; or
  - (b) may be advertised in a way other than that required by subsection (1).
- (4) The direction has effect despite subsection (1).
- (5) Subsection (1) does not apply to an application made under a provision described in column 1 of the following table:

<b>Applications that need not be advertised</b>		
	<b>Column 1</b>	<b>Column 2</b>
	<b>Provision</b>	<b>Subject of application</b>
1	Subsection 47(3) of the Act	Determining equitable remuneration
2	Paragraph 59(3)(b) of the Act	Apportioning royalty
3	Subsection 70(3) of the Act	Determining equitable remuneration
4	Subsection 107(3) of the Act	Determining equitable remuneration
5	Paragraph 108(1)(a) of the Act	Determining equitable remuneration
6	Paragraph 113P(4)(b) of the Act	Determining question relating to copying or communicating by educational institution
7	Paragraph 113R(2)(b) of the Act	Determining equitable remuneration
8	Paragraph 113S(4)(b) of the Act	Determining question relating to entry onto premises of educational institution
9	Subsection 135ZZM(1) of the Act	Determining equitable remuneration
10	Subsection 135ZZN(3) of the Act	Determining retransmitter's record system
11	Section 99 of this instrument	Being made party to Tribunal proceeding
12	Section 100 of this instrument	Order relating to Tribunal proceeding

**66 Hearing of application or reference**

- (1) The President must fix a time and place for the hearing of an application or reference to the Tribunal, except:
- (a) an application covered by section 99; or
  - (b) an application or reference in respect of which the Tribunal decides not to have a hearing.

Note: An application covered by section 99 (to be made a party to a Tribunal proceeding) is to be dealt with at the preliminary hearing or hearing of the proceeding.

- (2) The Registrar must give notice of the time and place fixed to:
- (a) the parties to the application or reference; and
  - (b) the persons (if any) who have applied to the Tribunal to be made parties to the application or reference and whose applications to be made parties have not already been determined.

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

### **67 Matters to be included in application under subsection 47(3) of the Act**

An application to the Tribunal under subsection 47(3) of the Act (to determine equitable remuneration for the making of a sound recording, or cinematograph film, used for broadcasting a literary, dramatic or musical work or an adaptation of such a work):

- (a) must set out the circumstances or events giving rise to the application and, in particular, must:
  - (i) identify the work or adaptation; and
  - (ii) identify the sound recording or cinematograph film; and
  - (iii) state whether the applicant is the owner of the copyright in the work or the maker of the recording or film; and
  - (iv) if the applicant is the owner of the copyright—state the name of the maker of the recording or film; and
  - (v) if the applicant is the maker of the recording or film—state the name of the owner of the copyright; and
- (b) must request the Tribunal to determine the amount that is equitable remuneration to the owner of the copyright for the making of the recording or film.

### **68 Matters to be included in application under paragraph 59(3)(b) of the Act**

An application to the Tribunal under paragraph 59(3)(b) of the Act (for apportioning the royalty for making a record comprising the performance of a musical work involving the singing or speaking of words from a literary or dramatic work between the owner of copyright in the musical work and the owner of copyright in the literary or dramatic work):

- (a) must set out the circumstances or events giving rise to the application and, in particular, must:
  - (i) identify the musical work and the literary or dramatic work; and
  - (ii) identify the record; and
  - (iii) state whether the applicant is the owner of the copyright in the musical work or the owner of the copyright in the literary or dramatic work; and
  - (iv) if the applicant is the owner of the copyright in the musical work—state the name of the owner of the copyright in the literary or dramatic work; and
  - (v) if the applicant is the owner of the copyright in the literary or dramatic work—state the name of the owner of the copyright in the musical work; and
- (b) must request the Tribunal to determine the manner in which the royalty payable by the maker of the record in respect of the musical work and the literary or dramatic work is to be apportioned between the owners of the copyrights in those works.

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

An application to the Tribunal under subsection 70(3) of the Act (to determine equitable remuneration for the making of a cinematograph film of an artistic work for including the work in a television broadcast):

- (a) must set out the circumstances or events giving rise to the application and, in particular, must:
  - (i) identify the artistic work; and
  - (ii) identify the cinematograph film; and
  - (iii) state whether the applicant is the owner of the copyright in the work or the maker of the film; and
  - (iv) if the applicant is the owner of the copyright—state the name of the maker of the film; and
  - (v) if the applicant is the maker of the film—state the name of the owner of the copyright; and
- (b) must request the Tribunal to determine the amount that is equitable remuneration to the owner of the copyright for the making of the film.

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

An application to the Tribunal under subsection 107(3) of the Act (to determine equitable remuneration for making a copy of a sound recording for broadcasting):

- (a) must set out the circumstances or events giving rise to the application and, in particular, must:
  - (i) identify the sound recording; and
  - (ii) identify the copy; and
  - (iii) state whether the applicant is the owner of the copyright in the recording or the maker of the copy; and
  - (iv) if the applicant is the owner of the copyright—state the name of the maker of the copy; and
  - (v) if the applicant is the maker of the copy—state the name of the owner of the copyright; and
- (b) must request the Tribunal to determine the amount that is equitable remuneration to the owner of the copyright for the making of the copy.

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

An application to the Tribunal under paragraph 108(1)(a) of the Act (to determine equitable remuneration for causing a published sound recording to be heard in public):

- (a) must set out the circumstances or events giving rise to the application and, in particular, must:
  - (i) identify the sound recording; and
  - (ii) state whether the applicant is the owner of the copyright in the recording or the person causing the recording to be heard in public; and
  - (iii) if the applicant is the owner of the copyright—state the name of the person causing the recording to be heard in public; and

- (iv) if the applicant is the person causing the recording to be heard in public—state the name of the owner of the copyright; and
- (b) must request the Tribunal to determine the amount that is equitable remuneration to the owner of the copyright for the causing of the recording to be heard in public.

## **72 Matters to be included in application under paragraph 113P(4)(b) of the Act**

An application to the Tribunal under paragraph 113P(4)(b) of the Act (to determine a question relating to copying or communicating by a body administering an educational institution) must:

- (a) set out the circumstances or events giving rise to the application; and
- (b) state whether the applicant is the body or a works collecting society or broadcasts collecting society; and
- (c) if the applicant is the body:
  - (i) identify the nature of education provided by the institution or the nature of the material provided by the institution for the purpose of helping other educational institutions in their teaching purposes; and
  - (ii) state the name of the collecting society; and
- (d) if the applicant is a collecting society:
  - (i) give details of the notice relating to it under subsection 113V(5) of the Act; and
  - (ii) state the name of the body; and
- (e) state the question; and
- (f) request the Tribunal to determine the question.

## **73 Application under paragraph 113R(2)(b) of the Act**

*Matters to be included in application*

- (1) An application under paragraph 113R(2)(b) of the Act (to determine the amount of the equitable remuneration that the body administering an educational institution undertakes to pay a collecting society for licensed copying or communicating) must:
  - (a) set out the circumstances or events giving rise to the application; and
  - (b) state whether the applicant is the body administering the institution or the collecting society; and
  - (c) if the applicant is the body:
    - (i) identify the nature of education provided by the institution or the nature of the material provided by the institution for the purpose of helping other educational institutions in their teaching purposes; and
    - (ii) state the name of the collecting society; and
  - (d) if the applicant is the collecting society:
    - (i) give details of the notice relating to it under subsection 113V(5) of the Act; and
    - (ii) state the name of the body; and
  - (e) request the Tribunal to determine the amount.

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*Matters for Tribunal to consider in determining equitable remuneration*

- (2) The following matters are prescribed for the purposes of column 3 of item 2 of the table in subsection 153A(4) of the Act (as matters the Tribunal must have regard to in determining the amount of the equitable remuneration the body administering an educational institution undertakes to pay for licensed copying or communicating involving the whole or part of a work or broadcast):
- (a) the nature of:
    - (i) the work; or
    - (ii) any work, sound recording or cinematograph film included in the broadcast;
  - (b) the nature of the institution;
  - (c) the need to ensure adequate incentive for the production of educational works, educational sound recordings and educational cinematograph films in Australia;
  - (d) the purpose and character of the copying or communication;
  - (e) the effect of the copying or communication on the market for, or value of, the material copied or communicated;
  - (f) the special circumstances of persons undertaking correspondence courses or external study courses provided by the institution, including any difficulties faced by those persons in:
    - (i) engaging in a fair dealing covered by section 40 or 103C of the Act; or
    - (ii) making a request and declaration to which section 49 of the Act applies;
  - (g) any unremunerated contribution by the institution to the creation of the material copied or included in the broadcast.

Note: Item 2 of the table in subsection 153A(4) of the Act is about dealing with an application under paragraph 113R(2)(b) of the Act.

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

An application under paragraph 113S(4)(b) of the Act (to determine a question relating to entry of a person authorised by a collecting society onto premises of an educational institution) must:

- (a) set out the circumstances or events giving rise to the application; and
- (b) state whether the applicant is the body administering the institution or the collecting society; and
- (c) if the applicant is the body:
  - (i) identify the nature of education provided by the institution or the nature of the material provided by the institution for the purpose of helping other educational institutions in their teaching purposes; and
  - (ii) state the name of the collecting society; and
- (d) if the applicant is the collecting society:
  - (i) give details of the notice relating to it under subsection 113V(5) of the Act; and
  - (ii) state the name of the body; and
- (e) state the question; and

- (f) request the Tribunal to determine the question.

### **75 Matters to be included in references under paragraph 113V(2)(c) of the Act**

A reference to the Tribunal under paragraph 113V(2)(c) of the Act (of an application by a body to be declared as a collecting society) must:

- (a) state the name of the body; and
- (b) set out the circumstances or events giving rise to the reference; and
- (c) state that the body has applied to be declared whichever of the following applies:
  - (i) the works collecting society for all eligible rights holders;
  - (ii) the works collecting society for classes of eligible rights holders specified in the application;
  - (iii) the broadcasts collecting society; and
- (d) if there is another body at present declared to be whichever one of subparagraphs (c)(i), (ii) and (iii) applies—state the name of the other body; and
- (e) request the Tribunal to determine the application by declaring the body to be a collecting society under section 113V of the Act or by rejecting the application.

### **76 Matters to be included in references under paragraph 113X(2)(b) of the Act**

A reference to the Tribunal under paragraph 113X(2)(b) of the Act (of the question whether the declaration of a body as a collecting society should be revoked) must:

- (a) state the name of the collecting society; and
- (b) state the provision of the Act under which the declaration was made; and
- (c) state the kind of copyright material and persons for which the body was declared to be a collecting society; and
- (d) give details of the notifiable instrument by which the Minister gave notice of the declaration; and
- (e) state each matter described in a paragraph of subsection 113X(1) of the Act of which the Minister is satisfied and why; and
- (f) request the Tribunal to determine the question whether the declaration of the body as the collecting society should be revoked.

### **77 Matters to be included in applications under subsection 113ZB(1) of the Act**

An application to the Tribunal under subsection 113ZB(1) of the Act (to review a collecting society's actual or proposed arrangement for distributing amounts it collects) must:

- (a) state whether the applicant is the collecting society or a member of the collecting society; and
- (b) state whether the application is for review of the arrangement adopted, or for review of an arrangement proposed to be adopted, by the collecting society for distributing amounts it collects in a period; and
- (c) set out the circumstances or events giving rise to the application; and
- (d) give details of the arrangement; and

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- (e) request the Tribunal to determine the application by making an order confirming the arrangement, varying the arrangement or substituting for the arrangement another arrangement; and
- (f) if variation of the arrangement is requested—give details of the variation; and
- (g) if substitution for the arrangement of another arrangement is sought—give details of the other arrangement.

**78 Matters to be included in application under subsection 135ZZM(1) of the Act**

An application to the Tribunal under subsection 135ZZM(1) of the Act (to determine equitable remuneration payable under a remuneration notice given to a collecting society by or on behalf of a retransmitter for one or more retransmissions of free-to-air broadcasts) must:

- (a) set out the circumstances or events giving rise to the application; and
- (b) state whether the applicant is the retransmitter or the collecting society; and
- (c) if the applicant is the retransmitter—state the name of the collecting society; and
- (d) if the applicant is the collecting society:
  - (i) give details of the declaration of the society under section 135ZZT of the Act; and
  - (ii) state the name of the retransmitter; and
- (e) identify the retransmission or retransmissions; and
- (f) identify the classes of works, sound recordings or cinematograph films that are included in the retransmission or retransmissions; and
- (g) request the Tribunal to determine an amount that is equitable remuneration for the making of the retransmission or retransmissions while the remuneration notice is in force, so far as that equitable remuneration relates to the identified classes of works, sound recordings or cinematograph films.

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

An application to the Tribunal under subsection 135ZZN(3) of the Act (for determining a record system, to be established and maintained by a retransmitter that gave a collecting society a remuneration notice, for records of titles of programs included in retransmissions) must:

- (a) set out the circumstances or events giving rise to the application; and
- (b) state whether the applicant is the retransmitter or the collecting society; and
- (c) if the applicant is the retransmitter—state the name of the collecting society; and
- (d) if the applicant is the collecting society:
  - (i) give details of the declaration of the society under section 135ZZT of the Act; and
  - (ii) state the name of the retransmitter; and
- (e) identify the retransmissions; and



- (f) request the Tribunal to determine the record system that must be established and maintained by the retransmitter under subsection 135ZZN(1) of the Act.

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

A reference to the Tribunal under paragraph 135ZZT(1A)(c) of the Act (of an application by a body to be declared as a collecting society) must:

- (a) state the name of the body; and
- (b) set out the circumstances or events giving rise to the reference; and
- (c) state that the body has applied to be declared as a collecting society under section 135ZZT of the Act; and
- (d) state whether the declaration sought is as a collecting society for all relevant copyright owners or for classes of relevant copyright owners; and
- (e) if there is another body at present declared in relation to those copyright owners as a collecting society under section 135ZZT of the Act—state the name of the other body; and
- (f) request the Tribunal to determine the application by declaring the body to be a collecting society under section 135ZZT of the Act or by rejecting the application.

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

A reference to the Tribunal under paragraph 135ZZU(2)(b) of the Act (of the question whether the declaration of a body as a collecting society should be revoked) must:

- (a) state the name of the collecting society; and
- (b) state the provision of the Act under which the declaration was made; and
- (c) state the relevant copyright owners or the classes of relevant copyright owners for which the collecting society is declared; and
- (d) give details of the declaration of the society under section 135ZZT of the Act; and
- (e) state each matter described in a paragraph of subsection 135ZZU(1) of the Act of which the Minister is satisfied and why; and
- (f) request the Tribunal to determine the question whether the declaration of the body as the collecting society should be revoked.

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

An application to the Tribunal under subsection 135ZZWA(1) of the Act (to review a collecting society's actual or proposed arrangement for distributing amounts it collects) must:

- (a) state whether the applicant is the collecting society or a member of the collecting society; and

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- (b) state whether the application is for review of the arrangement adopted, or for review of an arrangement proposed to be adopted, by the collecting society for distributing amounts it collects in a period; and
- (c) set out the circumstances or events giving rise to the application; and
- (d) give details of the arrangement; and
- (e) request the Tribunal to determine the application by making an order confirming the arrangement, varying the arrangement or substituting for the arrangement another arrangement; and
- (f) if variation of the arrangement is requested—give details of the variation; and
- (g) if substitution for the arrangement of another arrangement is sought—give details of the other arrangement.

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

An application to the Tribunal under subsection 135ZZZS(1) of the Act (to review a collecting society's actual or proposed arrangement for distributing amounts it collects) must:

- (a) state whether the applicant is the collecting society or a member of the collecting society; and
- (b) state whether the application is for review of the arrangement adopted, or for review of an arrangement proposed to be adopted, by the collecting society for distributing amounts it collects in a period; and
- (c) set out the circumstances or events giving rise to the application; and
- (d) give details of the arrangement; and
- (e) request the Tribunal to determine the application by making an order confirming the arrangement, varying the arrangement or substituting for the arrangement another arrangement; and
- (f) if variation of the arrangement is requested—give details of the variation; and
- (g) if substitution for the arrangement of another arrangement is sought—give details of the other arrangement.

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

An application to the Tribunal under subsection 152(2) of the Act (for an order about determining the amount payable by a broadcaster to the owners of copyrights in published sound recordings for broadcasting those recordings in a period) must:

- (a) state whether the applicant is the broadcaster or the owner of a copyright in a published sound recording; and
- (b) if the applicant is the owner of such a copyright—state the name of the broadcaster; and
- (c) specify the period; and
- (d) request the Tribunal to make an order determining, or making provision for determining, the amount payable by the broadcaster to the owners of copyrights in published sound recordings in respect of the broadcasting during that period of those recordings by that broadcaster.

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

An application to the Tribunal under subsection 152(12) of the Act (for amendment of an order under subsection 152(6) of the Act to specify the applicant as one of the persons among whom the amount determined in accordance with the order is to be divided) must:

- (a) specify the order; and
- (b) request the Tribunal to amend the order so as to specify the applicant as one of the persons among whom the amount specified in, or determined in accordance with, the order is to be divided.

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

An application to the Tribunal under subsection 153F(1) of the Act (for a declaration that a company be a collecting society for the purposes of Division 2 of Part VII of the Act) must:

- (a) state that the criteria in subsection 153F(6) of the Act are met and detail how they are met; and
- (b) state whether the applicant seeks a declaration for all government copies or a class of government copies; and
- (c) if another company is declared as a collecting society under section 153F of the Act for the government copies for which the applicant seeks a declaration—state the name of that company; and
- (d) request the Tribunal to determine the application by declaring the applicant to be a collecting society for the purposes of Division 2 of Part VII of the Act or by rejecting the application.

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

An application to the Tribunal under subsection 153G(1) of the Act (for revocation of a declaration under section 153F that a company be a collecting society for the purposes of Division 2 of Part VII of the Act) must:

- (a) if the applicant is not the collecting society—state the name of the collecting society; and
- (b) state that the company is declared to be a collecting society under section 153F of the Act; and
- (c) give details of the notice published in the Gazette about the declaration of the collecting society; and
- (d) state the grounds in subsection 153G(5) of the Act that will be relied on in the case; and
- (e) request the Tribunal to revoke the declaration of the company as a collecting society.

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

An application to the Tribunal under subsection 153K(1) of the Act (for an order determining the method for working out remuneration payable under subsection 183A(2) of the Act for government copies made for the services of a government in a period):

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- (a) must set out the circumstances or events giving rise to the application and, in particular, must:
  - (i) identify the copyright material relevant to the application; and
  - (ii) state the period for which the order is sought; and
  - (iii) state whether the government copies made in the period were made by the Commonwealth or by a State, and, if a State, name the State; and
  - (iv) state that subsection 183(5) of the Act does not apply to the government copies made in the period because a company is the relevant collecting society for the purposes of Division 2 of Part VII of the Act for the copies, and the society has not ceased operating as that collecting society; and
  - (v) if a government copy is to be omitted from the Tribunal's order determining the method—state the reason for the omission; and
- (b) must request the Tribunal to make an order determining the method for working out remuneration payable under subsection 183A(2) of the Act for government copies made for the services of the government in the particular period.

**89 Matters to be included in reference under section 154 of the Act**

- (1) A reference of a licence scheme to the Tribunal by a licensor under section 154 of the Act must:
  - (a) state that the licensor proposes to bring the scheme into operation; and
  - (b) state whether the scheme relates to:
    - (i) licences in respect of literary, dramatic or musical works; or
    - (ii) licences in respect of sound recordings; or
    - (iii) licences both in respect of literary, dramatic or musical works and in respect of sound recordings; and
  - (c) state whether the licensor:
    - (i) is the owner or prospective owner of the copyright in the works or recordings; or
    - (ii) is acting as agent for the owners or prospective owners in relation to the negotiation or granting of such licences; and
  - (d) request the Tribunal to make such order, confirming or varying the scheme or substituting for the scheme another scheme proposed by one of the parties, as the Tribunal considers reasonable in the circumstances.
- (2) The reference must include a copy of the licence scheme.

**90 Reference of existing licence scheme under section 155 of the Act**

- (1) A reference of a licence scheme to the Tribunal under section 155 of the Act must:
  - (a) state whether the person referring the scheme is:
    - (i) the licensor operating the scheme; or
    - (ii) an organization claiming to be representative of persons requiring licences in cases included in a class of cases to which the scheme applies; or

- (iii) a person claiming that he or she requires a licence in a case included in a class of cases to which the scheme applies; and
  - (b) specify the class of cases to which the reference relates; and
  - (c) state the name of the other party to the dispute that gave rise to the reference; and
  - (d) set out details of the matter in dispute; and
  - (e) request the Tribunal to make such order, confirming or varying the scheme or substituting for the scheme another scheme proposed by one of the parties, so far as it relates to the class of cases to which the reference relates, as the Tribunal considers reasonable in the circumstances.
- (2) If the reference is made by an organization claiming to be representative of persons requiring licences, the Tribunal must, before determining the question whether the organization is reasonably representative of the class of persons that it claims to represent, give each of the following an opportunity to present a case in relation to that question:
- (a) every other party to the reference;
  - (b) every person who has applied to be made a party to the reference and whose application has not been determined.

## **91 Reference under section 156 of the Act**

- (1) A reference to the Tribunal under section 156 of the Act of a licence scheme reflecting an order of the Tribunal under section 154 or 155 of the Act so far as it relates to cases in a class must:
- (a) specify:
    - (i) the date when the Tribunal last made an order with respect to the scheme that applies to the class; and
    - (ii) the relevant file number for the Tribunal proceedings in which that order was made; and
  - (b) specify the class; and
  - (c) state whether the person referring the scheme is:
    - (i) the licensor operating the scheme; or
    - (ii) an organization claiming to be representative of persons requiring licences in cases included in the class; or
    - (iii) a person claiming that he or she requires a licence in a case included in the class; and
  - (d) if the reference arises from a dispute:
    - (i) state the name of the other party to the dispute; and
    - (ii) set out details of the matter in dispute; and
  - (e) if leave of the Tribunal is required for the making of the reference:
    - (i) if that leave has already been granted—specify the date when the Tribunal granted the leave and the relevant file number; and
    - (ii) in any other case—state the grounds on which leave is sought for the making of the reference and request the Tribunal to grant leave for the making of the reference; and
  - (f) request the Tribunal to make an order about the scheme as previously confirmed, varied or substituted, by confirming or varying the scheme or

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substituting for the scheme another scheme proposed by one of the parties, as the Tribunal considers reasonable in the circumstances.

Note: Section 92 deals with applications for leave.

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

### **92 Application for leave under subsection 156(2) of the Act to refer licence scheme to the Tribunal**

- (1) This section applies if a person:
  - (a) wants the leave of the Tribunal under subsection 156(2) of the Act to refer to the Tribunal under subsection 156(1) of the Act a licence scheme reflecting an order of the Tribunal under section 154 or 155 of the Act so far as it relates to cases in a class; and
  - (b) wants the leave granted before the preliminary hearing or the hearing of the reference.
- (2) The person must make an application to the Tribunal that:
  - (a) describes the general nature of the scheme as previously confirmed, varied or substituted by the Tribunal; and
  - (b) specifies the class of cases in relation to which the applicant wishes to refer the scheme to the Tribunal; and
  - (c) specifies:
    - (i) the date when the Tribunal last made an order with respect to the scheme in relation to that class of cases; and
    - (ii) the relevant file number; and
  - (d) if the proposed reference arises from a dispute:
    - (i) states the name of the other party to the dispute; and
    - (ii) sets out details of the matter in dispute; and
  - (e) states the grounds on which leave is sought for the making of the reference; and
  - (f) requests the Tribunal to grant leave to the applicant to refer the scheme to the Tribunal in so far as it relates to that class of cases.
- (3) The parties to the application are:
  - (a) the applicant; and
  - (b) if the application is not made by the licensor operating the scheme—that licensor; and
  - (c) such other persons (if any) as apply to the Tribunal to be made parties to the application and are made parties to the application under subsection (4).
- (4) The Tribunal may make a person party to the application if the person:

- (a) applies to the Tribunal to be made a party to the application; and
  - (b) appears to the Tribunal to have a substantial interest in the operation of the scheme so far as it relates to the class of cases specified in the application.
- (5) The Tribunal must:
- (a) consider the application; and
  - (b) give the parties to the application an opportunity to present their cases; and
  - (c) make such order, either granting or refusing the application, as the Tribunal thinks fit.

### **93 Application under subsection 157(1) of the Act**

- (1) An application to the Tribunal under subsection 157(1) of the Act (relating to the refusal or failure of a licensor operating a licence scheme to grant, or procure the grant, to the applicant of a licence in accordance with the scheme):
- (a) must set out the circumstances or events giving rise to the application and, in particular, must:
    - (i) specify the case in which a licence is required by the applicant; and
    - (ii) specify the licence scheme; and
    - (iii) state the name of the licensor; and
    - (iv) specify the date or approximate date on which the applicant requested the licensor to grant, or procure the grant, of a licence in accordance with the scheme; and
  - (b) must request the Tribunal to make:
    - (i) an order stating the charges and the conditions that the Tribunal considers apply under the scheme for the applicant; or
    - (ii) an order that the applicant be granted a licence in the terms proposed by the applicant, the licensor or another party to the application.
- (2) The licensor is a party to the application.

### **94 Application under subsection 157(2) of the Act**

- (1) An application to the Tribunal under subsection 157(2) of the Act (relating to a claim that the grant of a licence in accordance with a licence scheme in a case in which the applicant requires a licence would be subject to charges or conditions that are not reasonable in the circumstances of the case):
- (a) must set out the circumstances or events giving rise to the application and, in particular, must:
    - (i) specify the case; and
    - (ii) specify the licence scheme; and
    - (iii) state the name of the licensor operating the scheme; and
    - (iv) specify the charges or conditions that the applicant claims are not reasonable; and
  - (b) must request the Tribunal to make:
    - (i) an order stating the charges and the conditions that the Tribunal considers reasonable in the circumstances for the applicant; or
    - (ii) an order that the applicant be granted a licence in the terms proposed by the applicant, the licensor or another party to the application.

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- (2) The licensor is a party to the application.

**95 Application under subsection 157(3) of the Act**

- (1) This section applies to an application to the Tribunal under subsection 157(3) of the Act relating to a claim that the applicant requires a licence in a case to which a licensing scheme does not apply and that a licensor:
- (a) has unreasonably refused or failed to grant, or procure the grant, of the licence; or
  - (b) proposes that the licence should be granted subject to the payment of charges, or to conditions, that are unreasonable.
- (2) The application must set out the circumstances or events giving rise to the application and, in particular, must:
- (a) specify the case; and
  - (b) state the name of the licensor; and
  - (c) in the case of a refusal or failure to grant, or procure the grant of, the licence—specify the date or approximate date on which the applicant requested the licensor to grant, or procure the grant of, the licence; and
  - (d) in the case of a proposal of unreasonable charges or conditions—specify those charges or conditions.
- (3) The application must request the Tribunal to make:
- (a) an order that the applicant be granted a licence in the terms proposed by the applicant, the licensor or another party to the application; or
  - (b) an order stating the charges and the conditions that the Tribunal considers reasonable in the circumstances for the applicant.
- (4) The licensor is a party to the application.

**96 Applications under subsection 157(4) of the Act**

- (1) This section applies to an application to the Tribunal under subsection 157(4) of the Act by an organization that claims:
- (a) that it is representative of persons requiring licences in cases to which a licence scheme does not apply; and
  - (b) that a licensor:
    - (a) has unreasonably refused or failed to grant, or procure the grant, of the licences; or
    - (b) proposes that the licences should be granted subject to the payment of charges, or to conditions, that are unreasonable.
- (2) The application must set out the circumstances or events giving rise to the application and, in particular, must:
- (a) specify the cases in which the licences are required; and
  - (b) state the name of the licensor; and
  - (c) in the case of a refusal or failure to grant, or procure the grant of, the licences—specify the dates or approximate dates on which the licensor was requested to grant, or procure the grant of, the licences; and



- (d) in the case of a proposal of unreasonable charges or conditions—specify those charges or conditions.
- (3) The application must request the Tribunal to make:
  - (a) an order that a licence be granted, in the terms proposed by the applicant, the licensor or another party to the application, to each person who:
    - (i) is specified in the order (whether by reference to a class or otherwise); and
    - (ii) was represented by the applicant or was a party to the application; or
  - (b) an order stating the charges (if any) and the conditions that the Tribunal considers reasonable in the circumstances for the persons represented by the applicant.
- (4) The licensor is a party to the application.

### **97 Application under subsection 183(5) of the Act**

- (1) This section applies to an application to the Tribunal to fix terms under subsection 183(5) of the Act for the doing, by the Commonwealth, a State or a person authorised by the Commonwealth or a State, of an act that:
  - (a) is comprised in copyright; and
  - (b) does not infringe copyright because of subsection 183(1) of the Act.
- (2) The application must set out the circumstances or events giving rise to the application and, in particular, must:
  - (a) identify the work or other subject-matter to which the application relates; and
  - (b) identify the act; and
  - (c) state whether the applicant is:
    - (i) the owner or exclusive licensee of the copyright in the work or other subject-matter; or
    - (ii) the Commonwealth; or
    - (iii) a State; and
  - (d) if the applicant is the owner or exclusive licensee of the copyright:
    - (i) state whether the act was or is to be done by the Commonwealth, a State or a person authorised by the Commonwealth or a State; and
    - (ii) if the act was or is to be done by a State or a person authorised by a State—identify the State; and
  - (e) if the applicant is the Commonwealth or a State—state the name of the owner or exclusive licensee of the copyright.

Note: Subsection 183(9) of the Act modifies subsection 183(5) of the Act to apply to the exclusive licensee (if there is one) of the copyright instead of the owner of the copyright.

- (3) The application must request the Tribunal to fix terms as between the owner or exclusive licensee of the copyright and the Commonwealth or the State for the doing of any of the acts comprised in the copyright under subsection 183(1) of the Act.

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

An application to the Tribunal under subsection 183F(1) of the Act (to review an actual or proposed arrangement for distributing amounts collected by a collecting society for use of copyright material by the Crown) must:

- (a) state whether the applicant is the collecting society or a member of the collecting society; and
- (b) state whether the application is for review of the arrangement adopted, or for review of an arrangement proposed to be adopted, by the collecting society for distributing amounts it collects in a period; and
- (c) set out the circumstances or events giving rise to the application; and
- (d) give details of the arrangement; and
- (e) request the Tribunal to determine the application by making an order confirming the arrangement, varying the arrangement or substituting for the arrangement another arrangement; and
- (f) if variation of the arrangement is requested—give details of the variation; and
- (g) if substitution for the arrangement of another arrangement is sought—give details of the other arrangement.

**Subdivision C—Applications ancillary to Tribunal proceedings**

**99 Application to be made a party to a Tribunal proceeding**

- (1) An application to the Tribunal by a person seeking to be made a party to a Tribunal proceeding must:
  - (a) state the date when the Tribunal proceeding was started and the relevant file number for the proceeding; and
  - (b) state the interest of the person:
    - (i) if the Tribunal proceeding is a reference under section 113V, 135ZZT or 135ZZO, or an application under section 153F, of the Act—in the question whether the applicant should be declared to be a collecting society; and
    - (ii) if the Tribunal proceeding is a reference under section 113X, 135ZZU or 135ZZP, or an application under section 153G, of the Act—in the question whether the declaration of the collecting society should be revoked; and
    - (iii) if the Tribunal proceeding is an application under section 113ZB, 135ZZWA, 135ZZS or 183F of the Act—in the arrangement; and
    - (iv) if the Tribunal proceeding is an application under section 152 of the Act—in the matter applied for; and
    - (v) if the Tribunal proceeding is a reference under section 154 of the Act—in the operation of the scheme that is referred; and
    - (vi) if the Tribunal proceeding is a reference under section 155 or 156, or an application under section 157, of the Act—in the matter in dispute; and
    - (vii) if the Tribunal proceeding is an application for leave of the Tribunal under subsection 156(2) of the Act to refer a licence scheme to the

- Tribunal—in the operation of the scheme so far as it relates to the class of cases specified in the application; and
- (viii) if the Tribunal proceeding is a reference or application under Subdivision H of Division 3 of Part VI of the Act and the person is the Australian Competition and Consumer Commission—in the matter that is referred or applied for; and
  - (c) request the Tribunal to make the person a party to the Tribunal proceeding.
- (2) The application must be dealt with at the preliminary hearing (if any) or the hearing of the Tribunal proceeding.
  - (3) The Tribunal must give each of the following an opportunity to make a presentation on whether the applicant should be made a party to the Tribunal proceeding:
    - (a) the applicant;
    - (b) every party to the Tribunal proceeding;
    - (c) every other person who has applied to be made a party to the Tribunal proceeding and whose application has not been determined.

### **100 Application for order about matter related to Tribunal proceeding**

- (1) A party to a Tribunal proceeding (except an application to be made a party to another Tribunal proceeding) may apply to the Tribunal requesting the Tribunal to make an order with respect to any matter relating to the proceeding.
- (2) The application must:
  - (a) state the date when the Tribunal proceeding was started and the relevant file number for the proceeding; and
  - (b) set out the circumstances or events giving rise to the application.

### **101 Consenting to order about matter related to Tribunal proceeding**

- (1) If an application is made under subsection 100(1) for an order with respect to any matter relating to a Tribunal proceeding, a party to the proceeding may consent to the making of the order.
- (2) The consent may be endorsed on the application or set out in a separate document filed with the Registrar.
- (3) If the consent is set out in a separate document that is not filed with the application, the party must give the applicant a copy of the document within 7 days after the document is filed.

### **102 When notice or copy of application under section 100 need not be given**

- (1) A party that has consented to the making of an order applied for under section 100 need not be given:
  - (a) notice of the application; or
  - (b) a copy of the application.
- (2) If the President or the Tribunal gives leave, a person who has not consented to the making of an order applied for under section 100 need not be given:

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- (a) notice of the application; or
- (b) a copy of the application.

**103 Dealing with application under section 100**

- (1) The Tribunal must consider an application made under section 100 and may make such order in relation to the application as the Tribunal considers reasonable in the circumstances.
- (2) However, the Tribunal:
  - (a) must not refuse the application in whole or in part without giving the applicant an opportunity to present a case; and
  - (b) must not grant the application in whole or in part without giving each party that lodged an objection to the application an opportunity to present a case.

## **Division 4—Ancillary matters**

### **Subdivision A—General**

#### **104 Consolidating applications and references**

- (1) If 2 or more applications or references are pending before the Tribunal, the Tribunal may, on its own initiative or on the application of a party to any of them:
  - (a) direct that some or all of them be considered together; and
  - (b) give such consequential directions as the Tribunal considers necessary.

Note: This allows consideration together of 2 or more applications, 2 or more references or a combination of one or more applications and one or more references.

#### *Consulting parties before consolidating*

- (2) Before giving a direction under this section, the Tribunal must give each party to each application or reference concerned an opportunity to present a case.

#### **105 Directions as to procedure**

#### *Directions for Tribunal proceedings that have not started to be heard*

- (1) If the Tribunal has not started hearing a Tribunal proceeding, the President may:
  - (a) give directions; or
  - (b) authorise a member of the Tribunal to give directions;as to the procedure to be followed in connection with the hearing before the Tribunal of the proceeding.
- (2) A direction or authorisation by the President under subsection (1) may:
  - (a) be of general application; or
  - (b) relate to the hearing of:
    - (i) one or more particular proceedings; or
    - (ii) proceedings included in a particular class of proceedings.

#### *Directions for Tribunal proceedings that have started to be heard*

- (3) If the Tribunal has started hearing a Tribunal proceeding:
  - (a) the member of the Tribunal presiding; or
  - (b) any other member of the Tribunal authorised by the member presiding;may give directions as to the procedure to be followed in connection with the hearing before the Tribunal of the proceeding and of any related Tribunal proceeding (whether or not the Tribunal has started to hear the related proceeding).

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### *Variation and revocation of directions given under this section*

- (4) A direction or authorisation given under this section may be varied or revoked at any time by a member of the Tribunal who may give the direction or authorisation under this section.

## **106 Request as to constitution of Tribunal**

- (1) A request under subsection 146(3) of the Act by a party to an application or reference that the Tribunal be constituted by more than one member for the purposes of that application or reference must:
- (a) be in writing addressed to the Registrar; and
  - (b) specify the day on which the application or reference was filed with the Registrar and the relevant file number; and
  - (c) state the name of the party making the request; and
  - (d) be signed by or on behalf of that party; and
  - (e) be filed with the Registrar before the Tribunal begins to consider the application or reference.
- (2) The party making the request must give every other party to the application or reference a sealed copy of the request within 7 days after filing the request.

## **107 Withdrawal of application or reference**

### *Leave for withdrawal*

- (1) A person who has made an application or reference to the Tribunal may, with the leave of the Tribunal, withdraw the application or reference at any time before the Tribunal has determined it.

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

- (2) The leave of the Tribunal may be granted unconditionally or subject to such conditions as the Tribunal thinks reasonable.

### *Method of withdrawal*

- (3) Withdrawal of an application or reference to the Tribunal must be made by:
- (a) filing with the Registrar a notice in writing:
    - (i) addressed to the Registrar; and
    - (ii) specifying the day on which the application or reference was made and the relevant file number; and
    - (iii) stating that the person who made the application or reference withdraws it; and
    - (iv) signed by or on behalf of that person; and
  - (b) giving every other party to the application or reference a sealed copy of the notice.

This applies whether the withdrawal is made with the leave of the Tribunal or under subsection 154(6) or 155(7) of the Act (applying of its own force or because of subsection 156(5)) of the Act.

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## **108 Amendment of documents**

- (1) The Tribunal may grant leave to a party to a Tribunal proceeding to amend a document the party previously filed with the Registrar in connection with the proceeding.
- (2) The leave may be granted unconditionally or subject to such conditions as the Tribunal thinks reasonable.
- (3) If the leave is granted, the party must file with the Registrar a statement of the amendments.
- (4) The amendments are taken to be made when the statement is filed.
- (5) The party must give every other party to the Tribunal proceeding a sealed copy of the statement within 7 days after filing the statement.

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

### **109 Request for reference of question of law to Federal Court of Australia**

#### *Form and content of request*

- (1) A request to the Tribunal for the reference of a question of law in a Tribunal proceeding to the Federal Court of Australia under subsection 161(1) of the Act must:
  - (a) be in writing addressed to the Registrar; and
  - (b) state the name of the party making the request; and
  - (c) specify the question of law; and
  - (d) be signed by or on behalf of the party making the request; and
  - (e) be filed with the Registrar.

#### *Notice of request*

- (2) The party making the request must give every other party to the Tribunal proceeding a sealed copy of the request, and a notice of the party's right under subsection (3):
  - (a) in any case—within 7 days after filing the request with the Registrar; and
  - (b) if the hearing of the proceeding to which the request relates has not commenced or has been adjourned—not later than the day fixed for the commencement of the hearing or to which the hearing has been adjourned.

#### *Presenting case to the Tribunal relating to request*

- (3) A party to the proceeding may present a case in writing to the Tribunal in relation to the request within 21 days after:
  - (a) if the party made the request—filing the request with the Registrar; or
  - (b) if the party was given a sealed copy of the request—being given that copy.
- (4) The Tribunal may give to each party to the Tribunal proceeding an opportunity to present a case orally to the Tribunal in relation to the request.

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### *Notice of decision on request*

- (5) The Registrar must give notice of the Tribunal's decision on the request to:
  - (a) the party that made the request; and
  - (b) each other party that:
    - (i) presented a case to the Tribunal in relation to the request; or
    - (ii) notified the Tribunal that the party wished to be informed of the decision.

### **110 Fixing new date for hearing if party requests reference of question of law to Federal Court of Australia**

- (1) This section applies if:
  - (a) a party to a Tribunal proceeding requests the Tribunal to refer a question of law to the Federal Court of Australia under subsection 161(1) of the Act; and
  - (b) a day has been fixed for a hearing (whether or not a further hearing) of the proceeding that is less than 28 days after the filing of the request.
- (2) The President must fix a new day for the hearing of that Tribunal proceeding that is more than 28 days after the filing of the request.
- (3) The Registrar must give the parties to the Tribunal proceeding notice of the new day.

### **111 Adjournment of Tribunal proceeding pending decision of Federal Court of Australia**

If:

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

### **112 Tribunal proceeding after determination of question of law by Federal Court of Australia**

- (1) If a question of law arising in a Tribunal proceeding has been referred to the Federal Court of Australia under section 161 of the Act, and determined by the Court, any party to the proceeding before the Court may file with the Registrar an office copy of the Court's order.
- (2) When the copy has been filed, the President must fix a time and place for the resumption of the hearing of the Tribunal proceeding, unless:
  - (a) the question of law was referred to the Federal Court of Australia after the Tribunal had given its decision in the Tribunal proceeding; and
  - (b) that decision is consistent with the determination of the Court.



- (3) The Registrar must give the parties to the Tribunal proceeding notice of the time and place fixed.

### **113 Prescribed period for purposes of subsection 161(2) of the Act**

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

### **114 Prescribed period for purposes of subsection 161(3) of the Act**

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

### **115 Suspension of orders of Tribunal pending reference of question of law to Federal Court of Australia**

- (1) If, after the Tribunal has given its decision in a Tribunal proceeding, the Tribunal refers to the Federal Court of Australia a question of law that arose in the Tribunal proceeding, the Tribunal may suspend the operation of any order it made in the Tribunal proceeding.
- (2) The Registrar must:
- (a) give every party to the Tribunal proceeding written notice of the suspension; and
  - (b) if details of the order have been published under a direction given under subsection 62(4)—publish details of the suspension in a manner specified by the President.

### **116 Modified operation of Part VI of the Act in relation to suspended Tribunal orders**

While an order of the Tribunal is suspended:

- (a) paragraph 154(6)(a), and subsections 155(8) and (10), of the Act operate as if the order had not been made; and
- (b) paragraph 154(6)(b) of the Act operates as if the order had not been suspended; and
- (c) section 159 of the Act does not operate in relation to the order.

## Division 5—Miscellaneous

### 117 Parties to Tribunal proceeding are also parties to ancillary application connected with Tribunal proceeding

If, under a provision of the Act or this instrument, a person is a party to a Tribunal proceeding, the person is, for the purposes of this instrument, also a party to any ancillary application that is made under this instrument and is connected with the Tribunal proceeding.

### 118 Extension of time

- (1) The Tribunal or the President may extend the time prescribed or allowed by or under this Part for doing any act by such period or periods as the Tribunal or the President thinks fit.

Note: Some examples of time prescribed for doing an act are time for filing a document with the Registrar and time for giving a person a document.

- (2) The extension may be subject to such conditions as the Tribunal or the President thinks fit.
- (3) The extension may be given before or after the end of the time concerned.

### 119 Fees for copies

- (1) This section applies if, at the request of a person, the Registrar, or a member of the staff assisting the Tribunal, makes a copy of all or part of a document that:
  - (a) is filed or lodged with the Tribunal in connection with an application or reference to the Tribunal; or
  - (b) sets out the reasons for an order made by the Tribunal.
- (2) A fee is payable by the person, consisting of:
  - (a) \$0.80 for the first page of the document copied; and
  - (b) \$0.20 for each extra page of the document copied.
- (3) Subsection (2) does not apply if the person made the request in the performance of his or her duties as a member of the Tribunal, the Registrar or a member of the staff assisting the Tribunal.

### 120 Payment of witnesses' fees and expenses

- (1) This section applies if a person (the *witness*) attends, in accordance with a summons, or at the request of a party to a Tribunal proceeding or of the Tribunal, for either or both of the following purposes:
  - (a) to give evidence in a Tribunal proceeding;
  - (b) to produce documents or articles in a Tribunal proceeding.
- (2) The person on whose behalf the witness is summoned or at whose request the witness attends must pay the witness fees and expenses.

- (3) However, if the witness is summoned or attends at the request of the Tribunal, the Commonwealth must pay the witness fees and expenses.

## **121 Summons**

### *Form of summons to witness*

- (1) A summons to a witness under subsection 167(2) of the Act must be in the form in Part 1 of Schedule 3.

### *Form of summons to produce documents or articles*

- (2) A summons to produce specified documents or articles under subsection 167(3) of the Act must be in the form in Part 2 of Schedule 3.

### *Service of summons*

- (3) A summons under subsection 167(2) or (3) of the Act must be served on a person by delivering a copy of the summons to the person personally.

## **122 Power to exempt from procedural requirements**

- (1) Subject to the Act, the Tribunal may, in special circumstances, exempt a person from compliance with any procedural requirements of this Part relating to a Tribunal proceeding.
- (2) The exemption may be subject to conditions.

## **123 Effect of non-compliance with this Part**

- (1) Subject to the Act, non-compliance with this Part does not make void a Tribunal proceeding or an order of the Tribunal.
- (2) However, the Tribunal may do any of the following to the Tribunal proceeding or order in such manner and upon such terms as the Tribunal thinks fit:
  - (a) set it aside wholly or in part as irregular;
  - (b) amend it;
  - (c) otherwise deal with it.

## Part 12—The Crown

### 124 Information on use of copyright material for services of the Crown— subsection 183(4) of the Act

- (1) For the purposes of subsection 183(4) of the Act, the owner of a copyright must be informed of the doing of any act comprised in the copyright by a notice given in accordance with this section.

#### *Giving the notice*

- (2) The notice is to be given to the owner or owner's agent.
- (3) The notice is to be given in Australia if the person giving the notice knows a way of contacting the owner or owner's agent in Australia.
- (4) However, the notice is to be given by publishing the notice in the Gazette if the person giving the notice for the Commonwealth or the State does not know a way of contacting either the owner or the owner's agent.

#### *Content of the notice*

- (5) The notice must:
  - (a) be given in the name of the Commonwealth or the State, as appropriate; and
  - (b) set out:
    - (i) the International Standard Book Number (if any) in respect of the work or other subject-matter concerned if that number can be ascertained from that work or other subject-matter; and
    - (ii) if such a number cannot be so ascertained, or if such a number does not enable the work or other subject-matter concerned to be identified—the title (if any) of that work or other subject-matter and, if that title does not enable the work or subject-matter to be identified, a description of the work or subject-matter that enables it to be identified; and
  - (c) specify the act to which the notice relates; and
  - (d) state whether the act has been done by the Commonwealth or the State or by a person authorised by the Commonwealth or the State; and
  - (e) if the act has been done by a person authorised by the Commonwealth or the State—state the name of that person; and
  - (f) state that the purpose of the notice is to inform the owner under subsection 183(4) of the Act of the doing of the act.

## **Part 13—Extension or restriction on operation of Act**

### **125 International organizations to which the Act applies—subsection 186(1) of the Act**

For the purposes of subsection 186(1) of the Act, the organizations specified in the following table are declared to be international organizations to which the Act applies.

<b>International organizations to which the Act applies</b>	
<b>Item</b>	<b>Organization</b>
1	Food and Agriculture Organization of the United Nations
2	International Bank for Reconstruction and Development
3	International Centre for Settlement of Investment Disputes
4	International Civil Aviation Organization
5	International Development Association
6	International Finance Corporation
7	International Fund for Agricultural Development
8	International Labour Organization
9	International Maritime Organization
10	International Monetary Fund
11	International Telecommunication Union
12	Multilateral Investment Guarantee Agency
13	Organization of American States
14	United Nations
15	United Nations Educational, Scientific and Cultural Organization
16	United Nations Industrial Development Organization
17	Universal Postal Union
18	World Health Organization
19	World Intellectual Property Organization
20	World Meteorological Organization
21	World Tourism Organization

## Part 14—Moral rights

### 126 Other information and particulars for notices under section 195AT of the Act

*Notice relating to artistic work affixed to or forming part of building*

- (1) For the purposes of paragraph 195AT(2A)(c) of the Act, the following information and particulars are prescribed for inclusion in a notice to an author, or a person (the **author's representative**) representing the author, relating to an artistic work affixed to or forming part of a building:
  - (a) the date of the notice;
  - (b) the name (if any) and address of the building;
  - (c) a brief description of the work and its location in or on the building;
  - (d) the name and address of the owner of the building;
  - (e) the owner's contact details during business hours, including work telephone number and email address (if available);
  - (f) the name of the person who can provide the author or author's representative with access to the work and that person's contact details;
  - (g) the business hours during which the author or author's representative may reasonably have access to the work;
  - (h) in relation to a change in the building (other than by relocation, demolition or destruction), a brief description of the change and the extent (if any) to which the work is likely to be affected;
  - (i) in relation to the relocation of the building, a brief description of the place and form of the relocation, and the extent to which the work is likely to be affected.

*Notice relating to building or plans or instructions for construction*

- (2) For the purposes of paragraph 195AT(3A)(c) of the Act, the following information and particulars are prescribed for inclusion in a notice to an author, or a person (the **author's representative**) representing the author, relating to a building or any plans or instructions used in the construction of the building or a part of the building:
  - (a) the date of the notice;
  - (b) the name (if any) and address of the building;
  - (c) the name and address of the owner of the building;
  - (d) the owner's contact details during business hours, including work telephone number and email address (if available);
  - (e) the name of the person who can provide the author or author's representative with access to the building and that person's contact details;
  - (f) the business hours during which the author or author's representative may reasonably have access to the building;
  - (g) in relation to a change in the building (other than by relocation, demolition or destruction), a brief description of the change and the extent (if any) to which the building is likely to be affected;

- (h) in relation to the relocation of the building, a brief description of the place and form of the relocation and the extent to which the building is likely to be affected.

*Notice relating to moveable artistic work*

- (3) For the purposes of paragraph 195AT(4B)(c) of the Act, the following information and particulars are prescribed for inclusion in a notice to an author, or a person (the ***author's representative***) representing the author, relating to the removal or relocation of a moveable artistic work situated at a place that is accessible to the public:
  - (a) the date of the notice;
  - (b) a brief description of the moveable artistic work;
  - (c) the address of the place, or description of the location, at which the moveable artistic work may be accessed;
  - (d) the name and address of the remover of the moveable artistic work;
  - (e) the remover's contact details during business hours, including work telephone number and email address (if available);
  - (f) if necessary, the name of the person who can provide the author or author's representative with access to the moveable artistic work, and that person's contact details;
  - (g) if necessary, the business hours during which the author or author's representative may reasonably have access to the moveable artistic work;
  - (h) if the moveable artistic work is to be permanently removed or relocated, the address or description of the new location or storage location (if not open to the public) of the moveable artistic work;
  - (i) if the removal or relocation of the moveable artistic work will result in a change of ownership in the work, the name and address of the new owner.

## **Part 15—Miscellaneous**

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

For the purposes of subparagraph 203A(1)(b)(iii) and paragraph 203G(b) of the Act, the period for keeping the declaration is 4 years after the making of the reproduction to which the declaration relates.



## Part 16—Transitional matters

### 128 Directions about information relating to objection to import of copyright material

A direction in force under subregulation 21(1) of the *Copyright Regulations 1969* (relating to import into Australia of copyright material) immediately before the commencement of Part 9 of this instrument has effect on and after that commencement as if it had been given under subsection 52(1) of this instrument.

### 129 Objection to import of copyright material into Norfolk Island

A notice in force under subregulation 23(2) of the *Copyright Regulations 1969* (relating to import into Norfolk Island of copyright material) immediately before the commencement of Part 9 of this instrument has effect on and after that commencement, for the purposes of section 53 of this instrument relating to Norfolk Island, as if the notice:

- (a) had been given under subsection 135(2) of the Act when it was given under subregulation 23(2) of the *Copyright Regulations 1969*; and
- (b) were subject to subsections 135(6) and (6A) of the Act (about revocation and declaration of ineffectiveness of the notice).

Note: The notice does not have effect for the purposes of section 53 of this instrument relating to other Territories or for the purposes of section 135 of the Act applying apart from section 53 of this instrument to imports into parts of Australia other than the external Territories.

### 130 Limitation on remedies available against carriage service providers

- (1) A thing done under a provision of Part 3A (Limitation on remedies available against carriage service providers) of the *Copyright Regulations 1969* before the commencement of Part 6 of this instrument has effect on and after that commencement as if it had been done under the corresponding provision of Part 6 of this instrument.
- (2) To avoid doubt, subsection (1) has effect even if the thing was done using a form prescribed in a provision of Schedule 10 to the *Copyright Regulations 1969*. In that case, it has effect under subsection (1) as if it had been done using a form prescribed in a corresponding provision of Schedule 2 to this instrument.
- (3) For the purposes of this section, the following table shows which provisions of Part 6 of, and Schedule 2 to, this instrument correspond to provisions of Part 3A (Limitation on remedies available against carriage service providers) of, and Schedule 10 to, the *Copyright Regulations 1969*.

Corresponding provisions	
Provision of the <i>Copyright Regulations 1969</i>	Corresponding provision of the <i>Copyright Regulations 2017</i>
1 Regulation 20C	Section 19
2 Regulation 20E	Section 21

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**Corresponding provisions**

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	<b>Provision of the <i>Copyright Regulations 1969</i></b>	<b>Corresponding provision of the <i>Copyright Regulations 2017</i></b>
3	Regulation 20F	Section 22
4	Regulation 20G	Section 23
5	Regulation 20I	Section 24
6	Regulation 20J	Section 25
7	Regulation 20K	Section 26
8	Regulation 20L	Section 27
9	Regulation 20M	Section 28
10	Regulation 20P	Section 30
11	Regulation 20Q	Section 31
12	Regulation 20R	Section 32
13	Regulation 20T	Section 34
14	Regulation 20U	Section 35
15	Part 1 of Schedule 10	Part 1 of Schedule 2
16	Part 2 of Schedule 10	Part 2 of Schedule 2
17	Part 3 of Schedule 10	Part 3 of Schedule 2
18	Part 4 of Schedule 10	Part 4 of Schedule 2
19	Part 5 of Schedule 10	Part 5 of Schedule 2
20	Part 6 of Schedule 10	Part 6 of Schedule 2

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

- (1) If:
- (a) a thing was done for a particular purpose under the *Copyright Tribunal (Procedure) Regulations 1969* as in force immediately before those Regulations were repealed; and
  - (b) the thing could be done for that purpose under this instrument;
- the thing has effect for the purposes of this instrument as if it had been done under this instrument.
- (2) Without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to a notice, application, reference or other instrument being given or made.
- (3) An approval of a design of a seal of the Tribunal that was in force for the purposes of the *Copyright Tribunal (Procedure) Regulations 1969* immediately before they were repealed continues in force as if it were a determination of the design of the seal under subsection 58(2) of this instrument.

## **Schedule 1—Form of notice near machine for copying works, published editions or audio-visual items**

Note: See sections 5 and 13.

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

Commonwealth of Australia

*Copyright Act 1968*

#### **Notice about the reproduction of works and the copying of published editions**

##### **Warning**

Copyright owners are entitled to take legal action against persons who infringe their copyright. A reproduction of material that is protected by copyright may be a copyright infringement. Certain dealings with copyright will not constitute an infringement, including:

- (a) a reproduction that is a fair dealing under the *Copyright Act 1968* (the *Act*), including a fair dealing for the purposes of research or study; or
- (b) a reproduction that is authorised by the copyright owner.

It is a fair dealing to make a reproduction for research or study, of one or more articles in a periodical publication for the same research or same course of study or, for any other work, of a reasonable portion of a work.

For a published work in hardcopy form that is not less than 10 pages and is not an artistic work, 10% of the number of pages, or one chapter, is a reasonable portion.

For a published work in electronic form only, a reasonable portion is not more than, in the aggregate, 10% of the number of words in the work.

More extensive reproduction may constitute fair dealing. To determine whether it does, it is necessary to have regard to the criteria set out in subsection 40(2) of the Act.

A court may impose penalties and award damages in relation to offences and infringements relating to copyright material.

Higher penalties may apply, and higher damages may be awarded, for offences and infringements involving the conversion of material into digital or electronic form.

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

Commonwealth of Australia

*Copyright Act 1968*

### **Notice about the reproduction of works and the copying of published editions and audio-visual items**

#### **Warning**

Copyright owners are entitled to take legal action against persons who infringe their copyright. A court may impose penalties and award damages in relation to offences and infringements relating to copyright material. Higher penalties may apply, and higher damages may be awarded, for offences and infringements involving the conversion of material into digital or electronic form.

#### **Reproduction of works and copying of published editions**

A reproduction of material that is protected by copyright may be a copyright infringement. Certain dealings with copyright will not constitute an infringement, including:

- (a) a reproduction that is a fair dealing under the *Copyright Act 1968* (the *Act*), including a fair dealing for the purposes of research or study; or
- (b) a reproduction that is authorised by the copyright owner.

It is a fair dealing to make a reproduction for research or study, of one or more articles in a periodical publication for the same research or same course of study or, for any other work, of a reasonable portion of a work.

For a published work in hardcopy form that is not less than 10 pages and is not an artistic work, 10% of the number of pages, or one chapter, is a reasonable portion.

For a published work in electronic form only, a reasonable portion is not more than, in the aggregate, 10% of the number of words in the work.

More extensive reproduction may constitute fair dealing. To determine whether it does, it is necessary to have regard to the criteria set out in subsection 40(2) of the Act.

#### **Copying of audio-visual items**

Unless otherwise permitted by the Act, unauthorised use of audio-visual items in which copyright subsists may infringe copyright in that item.

It is not an infringement of copyright in an audio-visual item to use that item in a manner that is a fair dealing under section 103C of the Act.

Section 103C of the Act relates to fair dealing for the purpose of research or study and sets out the matters that must be considered in determining whether a reproduction of an audio-visual item is a fair dealing.

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

Commonwealth of Australia

*Copyright Act 1968*

### **Notice about the copying of audio-visual items**

#### **Warning**

Copyright owners are entitled to take legal action against persons who infringe their copyright. Unless otherwise permitted by the *Copyright Act 1968* (the **Act**), unauthorised use of audio-visual items in which copyright subsists may infringe copyright in that item.

It is not an infringement of copyright in an audio-visual item to use that item in a manner that is a fair dealing under section 103C of the Act.

Section 103C of the Act relates to fair dealing for the purpose of research or study and sets out the matters that must be considered in determining whether a reproduction of an audio-visual item is a fair dealing.

A court may impose penalties and award damages in relation to offences and infringements relating to copyright material.

Higher penalties may apply, and higher damages may be awarded, for offences and infringements involving the conversion of material into digital or electronic form.

## Schedule 2—Forms for Part 6

Note: See sections 21, 22, 24, 26, 31 and 34.

### Part 1—Form of notification relating to cached copyright material

Commonwealth of Australia

*Copyright Regulations 2017*

#### Notification that cached copyright material has been removed or access has been disabled at the originating site

To [*name of carriage service provider*]

1. I give this notification for the purposes of condition 3 of item 3 of the table in subsection 116AH(1) of the *Copyright Act 1968* and section 21 of the *Copyright Regulations 2017*.
2. I am the \*owner/\*exclusive licensee/\*agent of the owner/\*agent of the exclusive licensee of the copyright in the following cached copyright material, and I believe in good faith that it has been removed from, or access to it has been disabled at, the originating site:  
  

[*insert sufficient information to enable the carriage service provider to identify:*  
(a) *the cached copyright material; and*  
(b) *the originating site from which the cached copyright material has been removed or at which access has been disabled; and*  
(c) *the cached copyright material on the carriage service provider's system or network that is to be removed, or to which access is to be disabled*]
3. I have taken reasonable steps to ensure that the information and statements in this notification are accurate.

Name:

Address:

Telephone number:

Email address:

[*signature*]

\*Owner/\*Exclusive licensee/\*Agent of the owner/\*Agent of the exclusive licensee

\* *Omit if inapplicable*

Note 1: Strict compliance with this form is not required and substantial compliance is sufficient—see section 25C of the *Acts Interpretation Act 1901*.

Note 2: A civil action for a civil remedy may be brought by a person who suffers loss or damage because of a material misrepresentation made knowingly in this notification—see section 39 of the *Copyright Regulations 2017*.

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

Commonwealth of Australia

*Copyright Regulations 2017*

### Notice relating to copyright material that has been found to be infringing by an Australian court

To [*name of carriage service provider*]

1. I give this notice for the purposes of condition 2 of \*item 4/\*item 5 of the table in subsection 116AH(1) of the *Copyright Act 1968* and section 22 of the *Copyright Regulations 2017*.
2. I am the \*owner/\*exclusive licensee/\*agent of the owner/\*agent of the exclusive licensee of the copyright in the following copyright material \*that resides on your system or network/\*to which you have provided a reference on your system or network, and I believe, in good faith, that the copyright material has been found to be infringing by an Australian court:  
  
[*insert sufficient information to enable the carriage service provider:*  
(a) *to identify the copyright material that has been found to be infringing by an Australian court; and*  
(b) *to locate on the carriage service provider's system or network the copyright material or the reference provided by the carriage service provider on its system or network to the copyright material*]
3. I have taken reasonable steps to ensure that the information and statements in this notice are accurate.

Name:

Address:

Telephone number:

Email address:

[*signature*]

\*Owner/\*Exclusive licensee/\*Agent of the owner/\*Agent of the exclusive licensee

\* *Omit if inapplicable*

Note 1: Strict compliance with this form is not required and substantial compliance is sufficient—see section 25C of the *Acts Interpretation Act 1901*.

Note 2: A civil action for a civil remedy may be brought by a person who suffers loss or damage because of a material misrepresentation made knowingly in this notice—see section 39 of the *Copyright Regulations 2017*.



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

Commonwealth of Australia

*Copyright Regulations 2017*

#### **Notice by copyright owner, licensee or agent of claimed infringement of copyright in copyright material**

To [*name of carriage service provider*]

1. I give this notice for the purposes of condition 3 of item 4 of the table in subsection 116AH(1) of the *Copyright Act 1968* and section 24 of the *Copyright Regulations 2017*.
2. I am the \*owner/\*exclusive licensee/\*agent of the owner/\*agent of the exclusive licensee of the copyright in the following copyright material residing on your system or network, and I believe, in good faith, that the storage of the material on your system or network is not authorised by the owner or any exclusive licensee of the copyright in that material, or by the *Copyright Act 1968*, and is therefore an infringement of the copyright in the material:

[*insert sufficient information to enable the carriage service provider:*

(a) *to identify the copyright material in respect of which the infringement is claimed; and*

(b) *to locate on the carriage service provider's system or network the copyright material]*

3. I have taken reasonable steps to ensure that the information and statements in this notice are accurate.

Name:

Address:

Telephone number:

Email address:

[*signature*]

\*Owner/\*Exclusive licensee/\*Agent of the owner/\*Agent of the exclusive licensee

\* *Omit if inapplicable*

Note 1: Strict compliance with this form is not required and substantial compliance is sufficient—see section 25C of the *Acts Interpretation Act 1901*.

**Schedule 2** Forms for Part 6

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

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Note 2: A civil action for a civil remedy may be brought by a person who suffers loss or damage because of a material misrepresentation made knowingly in this notice—see section 39 of the *Copyright Regulations 2017*.

Note 3: As soon as practicable after removing, or disabling access to, copyright material identified in this notice, the carriage service provider to which this notice is given must send a copy of this notice to the user who directed the carriage service provider to store the material on the carriage service provider's system or network, along with a notice stating that the material has been removed, or access to it has been disabled, and that the user may give a counter-notice within 3 months—see section 25 of the *Copyright Regulations 2017*.

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

Commonwealth of Australia

*Copyright Regulations 2017*

### **Counter-notice in response to notice by copyright owner, licensee or agent of claimed infringement of copyright**

To [*name of carriage service provider*]

1. Having received a copy of a notice of claimed infringement from you under section 25 of the *Copyright Regulations 2017* in relation to the following copyright material, I give this counter-notice for the purposes of condition 3 of item 4 of the table in subsection 116AH(1) of the *Copyright Act 1968* and section 26 of the *Copyright Regulations 2017*:

[*insert sufficient information to enable the carriage service provider to identify:*

- (a) *the copyright material in respect of which the infringement is claimed; and*
- (b) *where on the carriage service provider's system or network the copyright material was stored]*

2. I am the user who directed you to store the copyright material on your system or network.
3. I believe, in good faith on the grounds set out in paragraph 4, that the notice of claimed infringement was given because of \*a mistake as to fact or law in relation to the copyright material/\*a mistake in identifying the copyright material.
4. The grounds for my belief in the statement in paragraph 3 are as follows:

[*state the grounds*]

*Omit the following paragraph if the user does NOT live in, or carry on a business in, Australia.*

- \*5. I agree to comply with the orders of a court having jurisdiction in the place in Australia where I live or undertake my business.

*Omit the following paragraph if the user lives in, or carries on a business in, Australia.*

- \*5. I agree to comply with the orders of a court having jurisdiction in a place in Australia where you are located and where an action for infringement of the copyright in the copyright material could be brought.

**Schedule 2** Forms for Part 6

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

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6. I will accept service of process in any action for infringement of the copyright in the copyright material.
7. I have taken reasonable steps to ensure that the information and statements in this counter-notice are accurate.

Name:

Address:

Telephone number:

Email address:

[*signature*]

User

\* *Omit if inapplicable*

Note 1: Strict compliance with this form is not required and substantial compliance is sufficient—see section 25C of the *Acts Interpretation Act 1901*.

Note 2: This counter-notice must be given to the carriage service provider's designated representative within 3 months after the user receives the notice of claimed infringement to which the counter-notice relates—see section 26 of the *Copyright Regulations 2017*.

Note 3: A civil action for a civil remedy may be brought by a person who suffers loss or damage because of a material misrepresentation made knowingly in this counter-notice—see section 39 of the *Copyright Regulations 2017*.

Note 4: As soon as practicable after the carriage service provider receives this counter-notice, the carriage service provider must send a copy of it to the copyright owner, licensee or agent (who gave the notice of claimed infringement to which this counter-notice responds), together with a notice stating that if the owner, licensee or agent does not, within 10 business days after the date the notice was sent, bring an action seeking a court order to restrain the activity that is claimed to be infringing, the carriage service provider will restore, or enable access to, the copyright material on its system or network—see section 27 of the *Copyright Regulations 2017*.

Note 5: Information that could identify a user who is an individual may be disclosed by the carriage service provider in the copy of this counter-notice or the notice referred to in Note 4 sent to the copyright owner, licensee or agent if the disclosure is consistent with the *Telecommunications Act 1997* and the *Privacy Act 1988*. If the carriage service provider is required by a court to disclose identifying information about a user who is an individual, the information must be disclosed.

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

Commonwealth of Australia

*Copyright Regulations 2017*

### **Counter-notice in response to takedown of copyright material without notice from copyright owner, licensee or agent**

To [*name of carriage service provider*]

1. Having received a notice from you under section 30 of the *Copyright Regulations 2017* in relation to the following copyright material, I give this counter-notice for the purposes of condition 3 of item 4 of the table in subsection 116AH(1) of the *Copyright Act 1968* and section 31 of the *Copyright Regulations 2017*:

[*insert sufficient information to enable the carriage service provider to identify:*

- (a) *the copyright material that has been removed, or to which access has been disabled; and*
- (b) *where on the carriage service provider's system or network the copyright material was stored]*

2. I am the user who directed you to store the copyright material on your system or network.
3. I believe, in good faith on the grounds set out in paragraph 4, that you have removed, or disabled access to, the copyright material because of \*a mistake as to fact or law in relation to the copyright material/\*a mistake in identifying the copyright material.
4. The grounds for my belief in the statement in paragraph 3 are as follows:  
  
[*state the grounds*]
5. I have taken reasonable steps to ensure that the information and statements in this counter-notice are accurate.

Name:

Address:

Telephone number:

Email address:

[*signature*]

User

**Schedule 2** Forms for Part 6

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

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\* *Omit if inapplicable*

- Note 1: Strict compliance with this form is not required and substantial compliance is sufficient—see section 25C of the *Acts Interpretation Act 1901*.
- Note 2: This counter-notice must be given to the carriage service provider’s designated representative within 3 months after the user receives the notice to which this counter-notice relates—see section 31 of the *Copyright Regulations 2017*.
- Note 3: An action for a civil remedy may be brought by a person who suffers loss or damage because of a material misrepresentation made knowingly in this counter-notice—see section 39 of the *Copyright Regulations 2017*.
- Note 4: If the carriage service provider is satisfied, on the basis of the information and statements in this counter-notice, that the copyright material is not, or is not likely to be, infringing, the carriage service provider must restore, or enable access to, the copyright material on its system or network—see section 32 of the *Copyright Regulations 2017*.

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

Commonwealth of Australia

*Copyright Regulations 2017*

### **Notice by owner, licensee or agent of claimed infringement by reference to infringing copyright material**

To [*name of carriage service provider*]

1. I give this notice for the purposes of condition 3 of item 5 of the table in subsection 116AH(1) of the *Copyright Act 1968* and section 34 of the *Copyright Regulations 2017*.
2. I am the \*owner/\*exclusive licensee/\*agent of the owner/\*agent of the exclusive licensee of the copyright in the following copyright material to which you have provided a reference on your system or network:
 

*[insert sufficient information to enable the carriage service provider:*

  - (a) to identify the copyright material in respect of which the infringement is claimed; and*
  - (b) to locate on the carriage service provider's system or network the reference provided by the carriage service provider to the copyright material]*
3. I believe, in good faith, that the copyright material is infringing under the *Copyright Act 1968*.
4. I have taken reasonable steps to ensure that the information and statements in this notice are accurate.

Name:

Address:

Telephone number:

Email address:

*[signature]*

\*Owner/\*Exclusive licensee/\*Agent of the owner/\*Agent of the exclusive licensee

\* *Omit if inapplicable*

Note 1: Strict compliance with this form is not required and substantial compliance is sufficient—see section 25C of the *Acts Interpretation Act 1901*.

**Schedule 2** Forms for Part 6

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

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Note 2: A civil action for a civil remedy may be brought by a person who suffers loss or damage because of a material misrepresentation made knowingly in this notice—see section 39 of the *Copyright Regulations 2017*.



## **Schedule 3—Forms of summons**

Note: See section 121.

### **Part 1—Summons to witness**

Commonwealth of Australia

*Copyright Act 1968*

In the Copyright Tribunal of Australia

*[Title of Tribunal proceeding]*

To: *[name and address of witness]*

- 1 You are summoned to attend before the Copyright Tribunal of Australia at *[place]* on *[day, month and year]*, at *[time]* \*am/\*pm and on any other days as required until the hearing of proceedings in relation to the \*application/\*reference/\*inquiry is completed or you are released from further attendance.
2. You are required to attend before the Tribunal to give evidence in the proceedings.

*Omit the following paragraph if the witness is not required to produce any documents or articles.*

- \*3. You are required to bring with you and produce the following \*documents/\*articles/\* documents and articles: *[set out the documents and articles required]*

Date:

\*President/\*Deputy President/\*Member/\*Registrar of the Copyright Tribunal of Australia

\* *omit, if inapplicable*

## Part 2—Summons to produce documents or articles

Commonwealth of Australia

*Copyright Act 1968*

In the Copyright Tribunal of Australia

*[Title of Tribunal proceeding]*

To: *[name and address of witness]*

1. You are summoned to produce to the Copyright Tribunal of Australia the following \*documents/\*articles/\* documents and articles: *[set out the documents and articles required]*
  2. You are required to produce the \*documents/\*articles/\* documents and articles to *[specified person]* at *[specified time and specified place]*
- \* *omit, if inapplicable*