

EXPLANATORY STATEMENT

Public Lending Right Act 1985

Public Lending Right Scheme 2016 (Modification No. 1 of 2020)

Made by the authority of the Minister for Communications, Cyber Safety and the Arts

Authority

The Minister makes the *Public Lending Right Scheme 2016 (Modification No. 1 of 2020)* (**the Modification**) under paragraph 5(1)(b) of the *Public Lending Right Act 1985* (**the Act**).

Paragraph 5(1)(b) of the Act provides that the Minister may, by notice published in the Gazette, modify the scheme created under the Act for and in relation to the making of payments to persons in respect of books.

The gazettal requirement in paragraph 5(1)(b) of the Act is taken to be satisfied if the instrument is registered as a legislative instrument on the Federal Register of Legislation (subsection 56(1) of the *Legislation Act 2003* (**Legislation Act**)).

Purpose and operation

The Act provides the legislative framework for a Public Lending Right scheme to, amongst other things, recognise the loss of income by Australian creators and publishers of books held in public lending libraries. In 2018-19, payments totalling \$9.374 million were made to 6,879 eligible claimants.

The *Public Lending Right Scheme 2016* (**the Scheme**) provides for the rates of payment to eligible creators and publishers. The amount payable to eligible creators and publishers annually is the applicable Public Lending Right rate of payment, mentioned in subsections 14(2) and 15(2) respectively of the Scheme, multiplied by the estimated number of copies of the book as determined by a library survey.

These rates may be adjusted through a modification to the Scheme made by the Minister pursuant to paragraph 5(1)(b) of the Act. The Office for the Arts within the Department of Infrastructure, Transport, Regional Development and Communications reviews the rates annually, taking into consideration the results of library surveys and the available budget. The library surveys, also conducted annually, provide the estimated number of books held in Australian public lending libraries.

Taking into account the advice of the Office for the Arts (as informed by the results of the 2019-20 library survey), and the advice of the Public Lending Right Committee, the Minister has decided to modify the rates of payment.

The Modification increases the creator rate of payment per book from \$2.14 to \$2.18 and the publisher rate of payment per book from 53.5 cents to 54.5 cents. These increased rates will take effect for payments made from the 2019-20 financial year.

The Modification is a legislative instrument for the purposes of the Legislation Act.

The notes on the provisions of the Modification are set out in Attachment A.

Consultation

The Public Lending Right Committee, established under section 7 of the Act (comprising members of the library and publishing sectors, an author and copyright representative), was consulted. No further consultation was undertaken as the changes to the rates of payment are of a minor technical nature and do not substantially alter the current arrangements under the Scheme.

Regulation Impact Statement

The Office of Best Practice Regulation (**OBPR**) has advised that, as the Modification has no regulatory impact, a Regulatory Impact Statement is not required (OBPR ID: 12961).

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in Attachment B.

Notes on the *Public Lending Right Scheme 2016 (Modification No. 1 of 2020)*

Item 1 Modification

Item 1 provides that the *Public Lending Right Scheme 2016 (the Scheme)* is to be modified as set out in the Instrument.

Item 2 Subsection 14(2)

Item 2 provides that subsection 14(2) of the Scheme is modified to increase the creators' Public Lending Right rate of payment from \$2.14 per copy to \$2.18 per copy.

Item 3 Subsection 15(2)

Item 3 provides that subsection 15(2) of the Scheme is modified to increase the publishers' Public Lending Right rate of payment from 53.5 cents per copy to 54.5 cents per copy.

Item 4 Commencement

Item 4 provides that the Instrument commences on the day after it is registered on the Federal Register of Legislation.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Public Lending Right Scheme 2016 (Modification No. 1 of 2020)

This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Modification

The *Public Lending Right Act 1985 (the Act)* provides the legislative framework for a Public Lending Right scheme to, amongst other things, recognise the loss of income by Australian creators and publishers of books held in public lending libraries. In 2018-19, payments totalling \$9.374 million were made to 6,879 eligible claimants.

The *Public Lending Right Scheme 2016 (the Scheme)* provides for a range of matters, including the rates of payment to eligible creators and publishers. The amount payable to eligible creators and eligible publishers annually is the applicable Public Lending Right rate of payment, mentioned in subsections 14(2) and 15(2) respectively of the Scheme, multiplied by the estimated number of copies of the book as determined by a library survey.

These rates may be adjusted through a modification to the Scheme made by the Minister pursuant to paragraph 5(1)(b) of the Act. The Office for the Arts, within the Department of Infrastructure, Transport, Regional Development and Communications, reviews the rates annually, taking into consideration the results of library surveys and the available budget. The library surveys, also conducted annually, provide the estimated number of books held in Australian public lending libraries. Taking into account the advice of the Office for the Arts (as informed by the results of the 2019-20 library survey), and the advice of the Public Lending Right Committee, the Minister has decided to modify the payment rates.

The *Public Lending Right Scheme 2016 (Modification No. 1 of 2020) (the Modification)* increases the creator rate of payment per copy of book from \$2.14 to \$2.18 and the publisher rate of payment per copy of book from 53.5 cents to 54.5 cents. These increased rates will take effect for payments made from the 2019-20 financial year.

Human rights implications

The Modification engages the following right:

- the right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author, in Article 15(1)(c) of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.

Article 15(1)(c) of the ICESCR enables authors of scientific, literary or artistic products to benefit from the protection of their moral and material interests in these products. This right is important for the purposes of encouraging authors to create work, with the assurance that their moral and material interests in their products will be protected.

The overarching objective of the Scheme is ensuring remuneration for loss of income by creators and publishers of books held in public lending libraries. The Modification is an upward adjustment of the remuneration paid to creators and publishers of works that are held in public lending libraries in Australia.

The impact of the Modification is to maintain and promote the objective of the Scheme by ensuring that the rate of payment is consistent with library surveys and the available budget.

Conclusion

The Modification is compatible with human rights because it promotes the protection of the material interests of authors of books (literary products).