

## EXPLANATORY STATEMENT

### *Public Lending Right Act 1985*

#### *Public Lending Right Scheme (Electronic Books and Audiobooks) Modification 2023*

Issued by the authority of the Minister for the Arts

#### **Purpose and operation**

The Modification Instrument modifies the *Public Lending Right Scheme 2016* (the Scheme) to allow eligible creators and publishers of electronic books and audiobooks access to the same lending right available to eligible creators and publishers of physical books. The Modification Instrument also makes several consequential changes as a result of the expansion of the Scheme to electronic books and audiobooks.

The Modification Instrument is made under subsection 5(1) of the *Public Lending Right Act 1985* (the Act), which 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.

The definition of a ‘book’, eligibility for a ‘publisher’, and estimations of book numbers are amended by the Modification Instrument to modernise the Scheme and ensure its relevance to the changing ecology of publishing in Australia. Specifically, the definition of ‘book’ will be amended to remove existing exclusions for books published in a digital form. Magazines and other serial publications, and books designed for a single use will continue to be excluded, and the Public Lending Right Committee will retain the power to determine that other material be excluded from the Scheme.

References to printing of books will also be removed or replaced with words that apply to books in all format.

All other parts of the Scheme can be applied equally to books in physical and electronic formats. This includes the existing concepts of eligible creator, eligible publisher and eligible book.

#### **Background**

The Scheme, among other things, provides for the annual rates of payment to eligible creators and publishers of eligible books.

Established in 1974, Australia’s lending right scheme has assisted thousands of Australian authors and publishers to continue to write and publish books by providing them with recompense for the free use of their books in libraries. The scheme is the main mechanism for Australian Government investment to be provided to Australian authors.

Australia's national cultural policy *Revive: a place for every story, a story for every place* (*Revive*) commits to funding and acting to modernise and extend the Scheme to include electronic books and audiobooks.

## **FINANCIAL IMPACT**

In 2021-22, the scheme delivered payments to almost 7,000 claimants, totalling over \$10 million. The volume of eligible claims is expected to increase by approximately 20-30 percent based on library collection information regarding Australian digital material published in the last five years.

*Revive* provides new funding of \$12.9 million over four years from 2023-24 to expand and improve the public and educational lending right schemes with \$3.4 million (indexed) in ongoing funding from 2023. This new funding is intended to ensure that payments remain within the budget allocation while not reducing the payment rate for existing claimants.

## **IMPACT ANALYSIS**

The Office of Impact Analysis has advised that requirements have been met for the expansion of the lending rights scheme to include digital material and an Impact Analysis is not required for this instrument (OPBR22-03596).

## **CONSULTATION**

Over many years key stakeholders (including the Australian Society of Authors and the Australian Publishers Association) have advocated strongly that publishing and reading has changed in Australia, and that an author or creator should be compensated for the free use of their books under the Public Lending Right Scheme irrespective of format, an electronic or print copy.

Most recently, through the consultation process for *Revive* (authors, illustrators, publishers, libraries and literary agents) universally and urgently supported updating Australia's Public Lending Right Scheme. At the core of these changes is expanding the definition of a book to include digital formats. This will ensure that the scheme is fair and creators and publishers receive recompense for their electronic books and audiobooks.

## **Commencement**

The Modification Instrument is a legislative instrument within the meaning of the *Legislation Act 2003*. The gazettal requirement in subsection 5(1) of the Act is taken to be satisfied if the instrument is registered in the Federal Register of Legislation (subsection 56(1) of the *Legislation Act 2003*).

The Modification 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 (Electronic Books and Audiobooks) Modification 2023***

This disallowable Legislative 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 Disallowable Legislative Instrument**

The *Public Lending Right Act 2016* (the Act) provides the legislative framework for a Public Lending Right scheme to recognise the loss of income by Australian creators and publishers of books held in public lending libraries.

*The Public Lending Right Scheme 1997* (the Scheme) provides, among other things, for the annual rates of payment to eligible creators and publishers and specifies the eligibility criteria for creators and publishers under the Scheme.

To be eligible for the public lending right, the Scheme specifies certain requirements for *creators* and *publishers*. The effect of the Act is that the Scheme applies only to creators who are: Australian citizens, wherever resident; or ordinarily resident in Australia and to publishers who meet certain criteria (such as having published the book in Australia and published a new work or revised editions at least once in the preceding three-year period), as set out in the Scheme (as modified).

The *Public Lending Right Scheme (Electronic Books and Audiobooks) Modification 2023* (the Modification Instrument) modifies the Scheme to allow eligible creators and eligible publishers of digital books and audio versions of printed books and digital books with access to the same lending rights available to eligible creators and publishers of physical (printed) books. The Modification Instrument makes a range of changes to give effect to this expanded scope of books, including several consequential changes consistent with the extension of the public lending right to books not in printed form.

All other parts of the Scheme can be applied equally to books in physical and electronic formats. This includes the existing concepts of *eligible creator*, *eligible publisher* and *eligible book*.

## **Human rights implications**

This disallowable Legislative Instrument 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).

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 to ensure remuneration for loss of income by creators and publishers of books held in public lending libraries.

The impact of the Modification Instrument is to expand the application of the right to creators and publishers of literary products in digital form (covering both electronic books and audio versions of books), thereby further supporting and promoting the right in Article 15(1)(c) of the ICESCR.

## **Conclusion**

This disallowable Legislative Instrument is compatible with human rights because it promotes the protection of the material interest of creators and publishers of books (literary products) regardless of form.

**Minister for the Arts, The Hon Tony Burke MP**

# **PUBLIC LENDING RIGHT SCHEME (ELECTRONIC BOOKS AND AUDIO BOOKS) MODIFICATION 2023**

## **NOTES ON SECTIONS**

### **Section 1: Commencement**

1. This section provides the title of the Instrument.

### **Section 2: Commencement**

2. This section provides that the whole Instrument commences on the day after it is registered on the Federal Register of Legislation.

### **Section 3: Authority**

3. This section provides that the Instrument has been made under subsection 5(1) of the *Public Lending Right Act 1985* (the Act).

### **Section 4: Schedules**

4. This section specifies that the *Public Lending Right Scheme 2016* is modified as set out in Schedule 1. The Scheme has already been modified several times since its issuance, largely to modify the payment rates which apply under the Scheme.

### **Schedule 1—Modifications**

#### **Item 1: Definitions**

5. This item repeals the definition of book and replaces with a modified form. The new definition of book retains the existing element of a book being a work that has been published, yet expands the type of books to cover not only printed books, but also electronic books and audiobook versions of printed and electronic books. The revised definition continues the existing exclusions of magazines and other serial publications; books designed for a single use (for example sticker books and workbooks); and other excluded material.
6. Modifying the definition of ‘book’ in this way makes electronic books and audio books eligible for inclusion under the Scheme.

**Item 2: Subsection 6(5)**

7. This item omits “reprinting” and substitutes “re-releasing” to remove print specific terms to further ensure the criterion for *eligible publisher* under the Scheme clearly applies to publication of electronic books and audiobooks.

**Item 3: Paragraph 8(1)(e)**

**Item 4: Paragraph 8(2)(e)**

8. These items insert the words “in the case of a printed book” before the word “who supervised” in the relevant paragraph to clarify that the criterion imposed by the paragraph applies only to printed books.

**Item 5: Paragraph 10(1)(d)**

**Item 6: Paragraph 10(1)(e)**

**Item 7: Paragraph 10(1)(f)**

**Item 8: Subsection 10(1) (second note)**

9. Item 7 repeals paragraph 10(1)(d) (which imposed a minimum print run criteria (as determined by the Committee) from the criteria of an eligible book as it is irrelevant to electronic books and audiobooks, and no longer has utility for printed books in the application of the Scheme.
10. Items 5 and 6 are consequential changes (removing the operator “and”) to reflect the repealing of paragraph 10(1)(f). Similarly, item 8 repeals the note accompanying section 10 to reflect the repealing of paragraph 10(1)(f).

**Item 9: Subsection 10(3)**

11. This item replaces the term, “reprint”, substitutes “re-release” at subsection 10(3) to update the exclusion relating to 5-year rule relating to reprints so that it can also apply also to electronic books and audiobooks.

**Item 10: Subsection 11(4)**

12. This item omits the term, “reprinted”, and substitutes it with a format neutral term “re-released” to ensure the rule under subsection 11(4) which allows the Committee to make another estimate of copies of the book in certain circumstances can also apply to the estimation of numbers of electronic books and audiobooks in a like manner to printed books.

**Item 11:**

13. This item updates the heading to section 12 and is consequential to the changes made by Items 12 and 13 to subsections 12(1) and (2).

**Item 12: Subsection 12(1)**

**Item 13: Subsection 12(2)**

14. This item omits the term, “re-issued” and substitutes “re-released” to ensure that the rule under subsection 12(1), dealing with how later editions of an eligible book are counted towards the copies of the eligible book. This change ensures books in printed and digital form are treated equally for counting purposes, i.e. any revised or released version of the legible book (in whatever format) is taken to be a copy of the eligible book.
15. Item 12 makes a similar change to subsection 12(2) (omitting “re-issued”, substitute “re-released”) to ensure format neutrality, as outlined above.

**Item 14: Subsection 14(2)**

16. Subsection 14(2) of the Scheme specifies the rate of payment for creators. The applicable rate is currently is \$2.19 per copy of an eligible book. This figure reflects the current applicable rate as set out in the ministerial determination, *Public Lending Right Scheme 2016 (Modification No.1 of 2021)* (2021 Modification). The rate is reviewed by the Department annually, taking into consideration the results of the Committee’s library surveys and the available Commonwealth budget, and may be subject to change in the future by ministerial determination made pursuant to paragraph 5(1)(b) of the Act.
- This item does not make any substantive change to the existing rate but instead changes the format for presenting the applicable rate by introducing a table (comprised of two columns “Estimated number of copies of a book” and “rate of payment” and two rows).
17. Using a table is intended to readily accommodate the introduction of a tiered payment structure in the future. A tiered payment structure that keeps the base rate equivalent to the current rate, but decreases as the number of copies of a book in library surveys increases, will accommodate expanding claims on the schemes within the available budget.

**Item 15: Subsection 15(2)**

18. Item 14 makes a modification to subsection 15(2) which is similar to the amendment described at Item 13 above, altering the format in which the payment rate for eligible publishers is presented.
19. Subsection 15(2) of the Scheme specifies the rate of payment for publishers. The rate is currently is 54.75 cents per copy of an eligible book. This figure reflects the current applicable rate set out in the 2021 Modification. This item does not make any substantive change to the existing rate yet instead changes the format for presenting the rate by introducing a table (comprised of two columns “Estimated number of copies of a book” and “Rate of payment” and two rows).