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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**COPYRIGHT AMENDMENT (DISABILITY ACCESS AND OTHER
MEASURES) BILL 2017**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Communications,
Senator the Hon. Mitch Fifield)

COPYRIGHT AMENDMENT (DISABILITY ACCESS AND OTHER MEASURES) BILL 2017

OUTLINE

The Copyright Amendment (Disability Access and Other Measures) Bill 2017 (Bill) includes a package of measures designed to enhance access to copyright material for persons with a disability, consistent with the World Intellectual Property Organization (WIPO) *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled* (Marrakesh Treaty) ratified by Australia on 10 December 2015; streamline and modernise provisions for the education, libraries and archives sectors of Australia; and harmonise terms of copyright for published and unpublished materials, and allow greater access to and use of culturally valuable materials.

The Bill amends provisions in the *Copyright Act 1968* (Act) to:

- replace the current exception for persons with a disability, and others acting on their behalf, with a fair dealing exception;
- replace the current statutory licences for institutions assisting persons with a print or intellectual disability with a single exception that applies to organisations assisting persons with a disability;
- harmonise and modernise the preservation exceptions for copyright material in libraries, archives and key cultural institutions;
- consolidate and simplify the statutory licences that allow educational institutions to use works and broadcasts;
- allow copyright material to be incorporated into educational assessments conducted online;
- set new standard terms of protection for published and unpublished materials and for Crown copyright in original materials; and
- make minor amendments to update references to Ministers and preconditions for making regulations extending or restricting the operation of the Act in relation to foreign countries.

FINANCIAL IMPACT STATEMENT

The Bill will not have a significant impact on Commonwealth expenditure or revenue.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Copyright Amendment (Disability Access and Other Measures) Bill 2017

The Bill 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 Bill

The general purpose of the Copyright Amendment (Disability Access and Other Measures) Bill 2017 (Bill) is to enhance access to copyright material for persons with a disability, consistent with the World Intellectual Property Organization (WIPO) *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled* (Marrakesh Treaty) ratified by Australia on 10 December 2015; streamline and modernise provisions for the education, libraries and archives sectors of Australia; and harmonise terms of copyright for published and unpublished materials, and allow greater access to and use of culturally valuable materials.

The Bill amends provisions in the Act to:

- replace the current exception for persons with a disability, and others acting on their behalf, with a fair dealing exception;
- replace the current statutory licences for institutions assisting persons with a print or intellectual disability with a single exception that applies to organisations assisting persons with a disability;
- harmonise and modernise the preservation exceptions for copyright material in libraries, archives and key cultural institutions;
- consolidate and simplify the statutory licences that allow educational institutions to use works and broadcasts;
- allow copyright material to be incorporated into educational assessments conducted online;
- set new standard terms of protection for published and unpublished materials and for Crown copyright in original materials; and
- make minor amendments to update references to Ministers and preconditions for making regulations extending or restricting the operation of the Act in relation to foreign countries.

In circumstances where the creation and distribution of copyright material is done by businesses which are incorporated entities (as opposed to individuals), provisions in the Bill would not engage with human rights.

Human rights implications

The Bill engages the following rights:

- rights of a person with a disability in the Convention on the Rights of Persons with Disabilities (CRPD), particularly accessibility in Article 9;
- the right of equality and non-discrimination in Article 26 of the International Covenant on Civil and Political Rights (ICCPR) and Article 5 in the CRPD;
- the right to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life, in Article 26(1) of the CRPD;
- the right to freedom of expression in Article 19 of the ICCPR and Article 21 in the CRPD;
- the right of everyone to benefit from the protection of moral and material interests resulting from any 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);
- rights in work in Article 7 of the ICESCR;
- the right to education in Article 13 of the ICESCR; and
- the right of everyone to take part in cultural life in Article 15(1)(a) of ICESCR.

Rights of persons with a disability and right to accessibility

The CRPD requires State parties to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with a disability without discrimination of any kind on the basis of their disability. There is a general obligation in the CRPD to provide ‘reasonable accommodation’ to ensure persons with a disability can enjoy their rights on an equal basis with others. The CRPD also encourages setting standards and guidelines for access to facilities and services, to ensure private businesses that provide facilities or services to the public take into account access for persons with a disability.

Article 9(1) of the CRPD obliges parties to ‘enable persons with disabilities to live independently and participate fully in all aspects of life’, including to ‘take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to ... information and communications, including information and communications technologies and systems’.

For the purposes of the CRPD, the definition of ‘communication’ in Article 2 includes languages, display of text, Braille, tactile communication, large print and accessible multimedia, as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology. The Bill introduces disability access measures which will simplify and clarify the disability copyright scheme and, in turn, promote the rights to accessible formats and technologies. This will also enable persons with a disability to exercise their right to freedom of opinion and expression (discussed further below).

Rights to equality and non-discrimination

Both the ICCPR and the CRPD acknowledge the need for State parties to assist or recognise the interests of particular groups in the community who may be disadvantaged and require parties to promote the right to equality and non-discrimination.

New definitions in subsection 10(1) of the Act, inserted by Item 1 of Schedule 1 of the Bill, and the new sections 113D, 113E, and 113F (comprising Divisions 1 and 2 of the new Part IVA), inserted by Item 2 of Schedule 1 to the Bill, engage each of these rights.

The process towards Australia's December 2015 ratification of the Marrakesh Treaty prompted the Government to consider the effectiveness of Australia's existing copyright scheme for persons with a disability, including the ability to provide timely access to copyright material in accessible formats. Stakeholder consultation conducted in 2014 and 2015 highlighted that there are a number of practical issues with the current scheme, namely inflexibility in the digital era and complicated terminology which requires an in depth understanding of copyright law in order to apply. The disability access provisions in this Bill seek to simplify and clarify the disability copyright scheme.

The new definition of 'organisation assisting persons with a disability' would mean that educational institutions and not-for-profit organisations with a principal function of providing assistance to persons with a disability can rely on the new sections 113E and 113F to facilitate access to copyright material by persons with a disability. These provisions provide that certain uses pertaining to enabling such access do not infringe copyright, thus encouraging relevant organisations to make copyright material available in accessible formats. These provisions seek to ensure access by persons with a disability, on an equal basis with others, to information.

The new definition of 'person with a disability', designed specifically for the Act, clarifies that a 'person with a disability' is an individual who has difficulty reading, viewing, hearing or comprehending copyright material in a particular form. This new definition is intended to account for a range of disabilities, consistent with the definition of disability as set out in the *Disability Discrimination Act 1992*, and to allow flexibility for a wide range of conditions that would impact on an individual's ability to access copyright material. This definition aligns with guidance provided in the CRPD regarding what constitutes a disability for these particular copyright access purposes. The objective of this definition is to ensure that certain uses of copyright material by such individuals would not infringe copyright law.

Right to reasonable accommodation, and to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life

The provisions in Divisions 1 and 2 of the new Part IVA promote the rights of persons with a disability by providing them reasonable accommodation under Australian copyright law in accordance with Article 5 of the CRPD; by providing appropriate measures for persons with a disability to access information and communications in the form of accessible format copyright materials in accordance with Article 9(1) of the CRPD; and by providing persons with a disability the rights to independence, mental

social and vocational ability, and full inclusion in all aspects of life, in accordance with Article 26(1) of the CRPD. The availability of accessible formats and technologies provided for under these provisions also enables persons with a disability to exercise their right to freedom of opinion and expression in Article 19 of the ICCPR. As such, these provisions are compatible with and promote the rights and freedoms outlined in the CRPD.

The new section 113D sets out the policy objectives of the new Part IVA of the Act, which contains rules governing how accessible format copyright material may be made by or for eligible persons with disability. These uses of copyright material, such as printing or format shifting, are intended to help persons with a disability enjoy accessible content in a timely and equitable way consistent with other people.

The new section 113E provides for a new, flexible ‘fair dealing’ exception for the use of copyright material to make accessible format copies by or on behalf of a person with a disability. This section replaces an existing exception in subsection 200AB(4) of the Act. The new section contains four separate factors which must be considered to determine whether the planned use of copyright material would be fair. These factors accommodate the types of uses that occur in practice when working with copyright material for disability access purposes, and in doing so, ensure that copyright law works in a flexible way to encourage equitable access to copyright material by persons with a disability.

The new section 113F permits relevant organisations to make accessible format copies and provide them to persons with a disability in circumstances where the provision of such material is for the sole use of a person with a disability and the requested material is unavailable commercially in a reasonable timeframe and at an ordinary commercial price. This new section replaces the current statutory licences for institutions that assist persons with a print or intellectual disability with a streamlined single exception that applies to educational institutions and not-for-profit organisations assisting a person with a disability in relation to accessing all forms of copyright material.

The Bill promotes non-discrimination against persons with a disability and the protection of the rights of persons with a disability by removing unnecessary disincentives for persons with a disability, and the organisations assisting them, to access or enable access to copyright material.

These measures in the Bill would facilitate greater access by persons with a disability to information through assistive communications technologies and systems. On this basis, they promote the rights of persons with a disability. In accordance with Article 4(3) of the CRPD, interested parties were consulted closely and actively involved in the development of these provisions.

Right to freedom of expression

Article 19(2) of the ICCPR recognises the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of choice. This right, while not absolute, extends to any medium, including written communications and artistic works.

The abovementioned disability access amendments engage this right.

The disability access provisions introduced by the Bill may be perceived as limiting the right to freedom of expression of creators, disseminators and other owners of the copyright material impacted because the provisions essentially regulate the format or manner of copyright owners' expressions and, to an extent, regulate access to information. The measures may be perceived as doing this by providing that unless copyright owners make accessible versions of their copyright material available on a commercial basis within a reasonable time, persons with a disability and organisations assisting them would be able to copy and / or change the format of the copyright materials, free of charge.

Article 19(3) of the ICCPR recognises that the exercise of this right carries with it special duties and responsibilities and that it may be subject to certain restrictions, but only such as are provided by law and are necessary, relevantly, for respect of the rights of others. The relevant right of others is the right to freedom of expression of persons with a disability. As the right recognised by Article 19(2) is necessarily subject to such a law, the amendments made by Schedule 1 to the Bill are not considered to be inconsistent with the right guaranteed by Article 19.

While the disability access provisions in the Bill may, from one perspective, limit the rights of copyright owners and businesses selling copyright materials to freedom of expression, the CRPD provides that for persons with a disability (that is, users of copyright material), the right to accessible formats and technologies is required to enable them to exercise their right to freedom of opinion and expression. The disability access measures in the Bill would uphold the rights of persons with a disability to access accessible formats and technologies which, in turn, would enable them to exercise their right to freedom of opinion and expression. To the extent that the disability access measures promote this right and the general welfare of a democratic society this limitation of copyright owners' right to freedom of expression is proportionate. The limitation will also be provided by law. On this basis, the Bill is compatible with Article 19 of the ICCPR.

Rights to work, remuneration and protection of the moral or material interests resulting from literary or artistic productions

Some of the disability access measures in the Bill would engage rights in work and to remuneration under Article 7 of the ICESCR, and the right to benefit from the protection of the moral or material interests resulting from the literary or artistic production of which they are authors, as provided for in Article 15(1)(c) of ICESCR.

Article 7 of ICESCR requires parties to recognise the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular, remuneration which provides all workers with fair wages.

The disability access amendments would, in limited circumstances, limit copyright owners' rights to be remunerated for their work as those amendments essentially provide that unless copyright owners make accessible versions of their copyright material available on a commercial basis persons with a disability and organisations assisting them would be able to copy the copyright materials free of charge. In this

regard, effectively, the disability access provisions may limit copyright owners' right to remuneration.

Copyright owners may also consider that in some circumstances, the introduction of such measures would limit their right to benefit from the protection of the moral or material interests resulting from the literary or artistic production of which they are authors, as provided for in Article 15(1)(c) of ICESCR.

Under Article 4 of ICESCR, rights in ICESCR can only be limited where those limitations are consistent with the aims of ICESCR, are provided for by law and are compatible with the purpose of promoting the general welfare in a democratic society.

To the extent that the rights to remuneration and protection of material interests may be limited by the disability access amendments, limitations are provided by law and are compatible with the nature of these rights, in that they enable persons with a disability to access valuable information which could assist them with performance of their own work. These limitations are solely for the purpose of promoting the general welfare of democratic society and – in consideration of the human rights benefits enabled by the provisions – are proportionate. These measures would uphold and promote the rights of persons with a disability to access copyright material and therefore the disability access amendments made by Schedule 1 to the Bill are consistent with the right guaranteed by Article 7 and under the Marrakesh Treaty. On this basis, these provisions are consistent with Australia's human rights obligations.

Right to education

Measures in Divisions 4 and 5 of the new Part IVA of the Act, to be inserted by Item 2 of Schedule 1 to the Bill, would promote the right to education in Article 13 of ICESCR. These measures relate to the consolidation and simplification of the statutory licences that allow educational institutions to use works and broadcasts, and allowing copyright material to be incorporated into educational assessments conducted online.

Article 13 of ICESCR requires States parties to recognise the right of everyone to education. In particular, Article 13(2)(c) provides that education should be made accessible to all, by every appropriate means. Article 13(2)(d) provides that education shall be encouraged and intensified as far as possible.

The abovementioned provisions in the Bill which relate to enabling greater and more straightforward access to, and use of, copyright material by educational institutions, engage and promote this right.

The new Division 4 is designed to simplify the operation of the educational statutory licences. These provisions have been developed in direct response to perceived shortcomings in existing provisions for educational copying in the Act, which require cumbersome and costly mandatory record keeping. The changes introduced by the Bill would consolidate and simplify provisions relating to educational use of copyright material, providing flexibility for both the educational sector and the copyright collecting societies (with whom educational institutions enter into the licences). It is envisaged that these changes would ensure that the licensing schemes continue to balance the economic interests of copyright owners with the copying requirements of educational institutions.

The new Division 5 would set out a framework for the operation of declared collecting societies under this reformed statutory licence, including the requirements for bodies seeking to be declared as collecting societies under the Act, and the circumstances in which such declarations may be revoked.

These measures promote the right to education by removing duplicated administrative provisions, and unnecessary complexity for educational institutions and collecting societies, in making copyright material available for students. These provisions would also amend technology-specific provisions that currently restrict educational institutions from using new technologies.

The new provisions in the Bill relating to the educational sector would also provide that copyright in works other than computer programs or compilations of computer programs, and copyright in a broadcast or in any work, sound recording or cinematography film included in a broadcast would not be infringed by use of that work under certain conditions of an educational statutory licence.

Additionally, the Bill would introduce an exception that allows copyright material to be included in examination questions and answers.

Copyright owners may argue that the introduction of the abovementioned measures might, in some circumstances, compromise their right to benefit from the protection of the moral or material interests resulting from the literary or artistic production of which they are authors, provided for in Article 15 of ICESCR.

To the extent that the protection of interests resulting from literary or artistic production might be limited by these provisions of the Bill, such limitations are consistent with human rights and freedoms recognised or declared in ICESCR, and Australia's human rights obligations. The provisions promote the right to education, through introducing measures which address a need (that is, access to valuable learning resources) not met by current provisions in the Act. To the extent that the limitations on rights imposed by these provisions would facilitate access to the right to education, they are reasonable, necessary and proportionate. Such limitations are therefore permissible under Article 4 of ICESCR.

Right to take part in cultural life

Measures in Division 3 of the new Part IVA, inserted by Item 2 of Schedule 1 to the Bill, and in Schedule 2 to the Bill, would potentially engage the right of everyone to take part in cultural life in Article 15 of ICESCR. The measures in Division 3 of the new Part IVA seek to harmonise and modernise the exceptions relating to preservation of copyright material in libraries, archives and key cultural institutions. Schedule 2 to the Bill would set new standard terms of protection for published and unpublished materials and for Crown copyright in original materials.

Preservation copying provisions

Division 3 of the new Part IVA would replace the current preservation copying provisions in the Act with simpler, uniform provisions that give libraries, archives and prescribed key cultural institutions greater flexibility in preserving copyright material in their collection, whether published or unpublished, without infringing copyright.

The new preservation copying provisions apply to libraries which make all or part of their collections accessible to members of the public, parliamentary libraries, archives and prescribed key cultural institutions. For the purposes of these provisions, libraries ‘accessible to members of the public’ include libraries that are accessible to the public directly or via inter-library loans.

These new provisions would enable libraries, archives and key cultural institutions to make multiple copies of copyright material which are in a version or format that is in line with best practice preservation policy, if a copy of the material cannot be obtained in that version or format. Preservation copies in electronic form would be able to be made available for access by a person at the library, archives or key cultural institution provided reasonable steps are taken to ensure that the person accessing the preservation copy does so in such a way that does not infringe copyright in the preservation copy.

Duration provisions

The new copyright duration provisions provided for in Schedule 2 to the Bill seek to harmonise the term of copyright protection for published and unpublished works, films and sound recordings.

Under the current framework, where copyright materials are unpublished they remain in copyright in perpetuity, meaning productive uses may be lost. Libraries and archives hold large numbers of unpublished materials which are an important part of Australia’s cultural heritage. Setting a term of protection for unpublished materials would allow greater use of the considerable cultural value of these materials.

Insofar as these provisions may regulate the establishment and maintenance of, and access to, libraries, archives and key cultural institutions, these measures would promote the right to enjoy and benefit from culture. The measures would do this by creating a legislative framework which enables students, historians and other researchers, film and television producers and writers to access, use and preserve valuable historical material of cultural significance, without unnecessary regulation or costly and often fruitless rights clearance processes. On this basis, these measures are consistent with Australia’s human rights obligations.

Conclusion

The Bill is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, because it advances the protection of human rights, and, to the extent that it may also limit human rights, those limitations are reasonable and proportionate.

ABBREVIATIONS

The following abbreviations are used in this explanatory memorandum:

Act	<i>Copyright Act 1968</i>
Bill	Copyright Amendment (Disability Access and Other Measures) Bill 2017
Copyright Tribunal or Tribunal	Copyright Tribunal of Australia
Marrakesh Treaty	World Intellectual Property Organization <i>Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled</i>

NOTES ON CLAUSES

Clause 1 – Short title

Clause 1 provides for the short title of the Act to be the *Copyright Amendment (Disability Access and Other Measures) Act 2017*.

Clause 2 – Commencement

Clause 2 of the Bill provides for the Bill, when enacted, to commence as set out in the table.

Item 1 in the table provides that sections 1 to 3, which concern the formal aspects of the Bill, as well as anything not elsewhere covered by the table, will commence on the day the Bill receives the Royal Assent.

Item 2 in the table provides that Schedule 1 commences on a date fixed by proclamation, but if a date is not fixed within six months from the day the Bill receives the Royal Assent, it commences on the day after the end of that period.

Item 3 in the table provides that Schedule 2 commences on 1 January 2019.

Item 4 in the table provides that Schedule 3, Part 1 commences on the day after the Bill receives the Royal Assent.

Item 5 in the table provides that Schedule 3, Part 2 commences on a date fixed by proclamation, but if a date is not fixed within six months from the day the Bill receives the Royal Assent, it commences on the day after the end of that period.

Clause 3 – Schedules

Clause 3 is a machinery clause that enables the Schedules to amend the Act. The Bill contains three Schedules.

Schedule 1—Uses that do not infringe copyright

Part 1 – Main amendments

Copyright Act 1968

Item 1 – Subsection 10(1)

Item 1 inserts definitions to complement the new Part IVA of the Act, which is inserted by Item 2 below.

‘copyright material’

Item 1 introduces a new definition of ‘copyright material’ which covers anything in which copyright subsists. This would include works and other subject-matter. The term ‘work’ is defined in subsection 10(1) as meaning a literary, dramatic, musical or artistic work. Division 3 of Part IV sets out subject-matter other than works. This includes

sound recordings, cinematograph films, television and sound broadcasts and published editions of works.

The definition of copyright material inserted by Item 1 is to apply to all Parts of the Act, except for Subdivision E of Division 3 of Part VI and Division 2 of Part VII where the existing use of the term copyright material applies a separate meaning that specifically excludes computer software.

‘organisation assisting persons with a disability’

Item 1 introduces a new definition of ‘organisation assisting persons with a disability’. This definition applies to two groups of organisations: educational institutions as currently defined in subsection 10(1) of the Act and not-for-profit organisations which provide assistance to persons with a disability as a principal function, or one of its principal functions. This may include, for example, dedicated disability organisations, libraries and other not-for-profit organisations that supply accessible format material to those they assist.

Under the new provisions, organisations would not be required to be ‘declared’ as an ‘organisation assisting persons with a disability’ in order to supply accessible format material to assist persons with a disability. Organisations that currently rely on the statutory declaration scheme under section 10A of the Act would instead need to meet the criteria set out in the definition of ‘organisation assisting persons with a disability’.

‘original form’

Item 1 inserts a new definition of ‘original form’, in relation to copyright material, to complement the preservation copying exceptions for libraries, archives and key cultural institutions in Division 3 of the new Part IVA.

This definition is intended to cover an original, unpublished piece of copyright material prepared by an author of a work or a maker of a sound recording or cinematograph film. An original piece is not necessarily limited to the first version of the copyright material, for example a draft of a book or first cut of a film, and may include a later unpublished version as prepared by the author or maker. It may also include material that is in original form that is later published (for example, a letter that is then published in a book).

‘person with a disability’

Item 1 introduces a definition of ‘person with a disability’. This definition has the effect of limiting the operation of Division 2 of the new Part IVA so that in practice it would apply to anyone with a disability as defined in the *Disability Discrimination Act 1992*, where that person’s disability causes them difficulty in reading, viewing, hearing or comprehending copyright material.

Item 2 – Part IVA – Uses that do not infringe copyright

Item 2 inserts a new Part IVA comprising the following Divisions:

Division 1 – Simplified outline of this Part (section 113D);

Division 2 – Access by or for persons with a disability (sections 113E-113F);

Division 3 – Libraries and archives (sections 113G-113M);

Division 4 – Educational institutions – statutory licence (sections 113N-113U);

Division 5 – Collecting societies (sections 113V-113ZC).

Division 1 – Simplified outline of this Part

Section 113D Simplified outline of this Part

Section 113D outlines the uses of copyright material provided for in the new Part IVA that do not result in an infringement of copyright. This includes certain use by or for persons with disability, certain use for the purposes of libraries, archives and key cultural institutions and certain use by educational institutions.

Note 1 to section 113D clarifies that Part IVA is not the only Part of the Act setting out circumstances in which use of copyright material does not infringe copyright, and that other exceptions and limitations exist in Parts III, IV, VC, VII and X.

Note 2 indicates that for some uses in Part IVA, there may be corresponding exceptions to liability for circumvention of technological protection measures in the *Copyright Regulations 1969*.

Division 2 – Access by or for persons with a disability

The Act currently permits the making of accessible copies of books and other copyright material under a number of different provisions for various disabilities and purposes. Division 2 of the new Part IVA streamlines and consolidates these functions. Two new separate exceptions are inserted: one exception is for persons with a disability and anyone assisting them (section 113E) and one for organisations assisting persons with a disability (section 113F).

The importation and exportation of accessible format copyright material is an important function that underpins Australia's compliance with the Marrakesh Treaty. A fair dealing under section 113E, or a use of copyright material under section 113F, could also extend to the importation or exportation of accessible format copyright material or a communication to the public that occurs across borders.

Under section 37 of the Act, the importation of accessible format copyright material is not an infringement of copyright if the copy would not have been infringing if it had been made in Australia and it is imported for non-commercial purposes. Similarly, section 38 of the Act would not prevent the exportation of accessible format copyright material if the material is made under section 113E or 113F and the material was exported for non-commercial purposes.

Section 113E Fair dealing for purpose of access by persons with a disability

Section 113E is intended to ensure people may make fair dealings with copyright material to enable a person with a disability to enjoy equitable access to copyright material in the same way as a person without a disability. This provision is deliberately flexible and is intended to encourage creativity, innovation and responsiveness to relevant technological advances within the disability sector.

Section 113E enables a person with a disability, or anyone assisting a person with a disability, to make any fair dealing with copyright material to help overcome any access barrier caused by a disability and enjoy copyright material in the format they need with the appropriate features they require. This may include, for example, scanning of a book to allow conversion of its format or enlarging a graph or table in a textbook or changing a book's format so it can be read by a screen reading program. An organisation assisting a person with a disability to access copyright material can rely on section 113E or section 113F (see below).

For the purposes of section 113E, a person with a disability, or anyone assisting a person with a disability, proposing to use copyright material is responsible for determining if the use is a fair dealing. Where a person wishes to access a title from a foreign website of legitimately produced accessible format books, and that access engages copyright, that person – not the operator of the website – would need to determine whether accessing the book is a fair dealing.

Subsection 113E(2) sets out four factors that must be considered prior to determining whether any use of copyright material is a fair dealing under that section. These factors generally replicate those in the existing fair dealing provisions in section 40 of the Act, except that the commercial availability considerations set out at paragraph 40(2)(c) have been omitted. It is well understood that the commercial supply of accessible format material is limited. Each factor should be considered in a fairness assessment, noting that each factor may have a different degree of significance according to each individual use.

The first factor: the purpose and character of the dealing. This factor prompts consideration of whether the use is for the purpose of providing a person with a disability with access to copyright material, as per subsection 113E(1). If the use is made to assist a person with a disability to enjoy copyright material, this factor is likely to be satisfied.

The second factor: the nature of the copyright material. Whether material is in print and available, as well as if it is published or unpublished, are relevant issues for consideration.

The third factor: the effect of the dealing upon the potential market for, or value of the material. This factor requires an analysis of whether the proposed use of copyright material is reasonably fair with regard to the interests of the copyright holder. If material is commercially available, factors one, two and four become more important, noting that a use may still be considered fair even if the material is commercially available. Only substantial market harm from the individual use should be considered unfair.

The fourth factor: if only part of the material is dealt with, the amount and substantiality of the part dealt with, taken in relation to the whole material. This factor requires consideration of the portion of the material to be used or quantity of copies to be made. A copy of the whole copyright material may be required by persons with a disability where the material is not available in the format required or with necessary accessibility features.

Section 113F Use of copyright material by organisations assisting persons with a disability

Section 113F is an exception relating to the use of copyright material by ‘organisations assisting persons with a disability’ (as newly defined in subsection 10(1) – see Item 1). It is intended to enable such organisations to provide accessible format copyright material to such persons without infringing copyright.

For this exception to apply, not only must the copyright material be used solely for the purpose of assisting a person with a disability to access the material in a format that, because of the disability, the person requires, but the organisation, or a person acting on its behalf, must be satisfied that the material, or the relevant part of the material, cannot be obtained in that format within a reasonable time at an ordinary commercial price. Section 113F is intended to ensure that persons with a disability may have access to copyright material at a similar time and cost as other persons.

Section 113F enables an authorised organisation assisting persons with a disability to deal flexibly with copyright material to help those they assist to overcome any barrier caused by a disability and enjoy copyright material in the format they need with the appropriate features they require. This may include converting a book into Easy English, providing captions, providing audio descriptions, scanning for use with other assistive technology and making necessary adjustments so that a user may adjust font size or colour.

This provision is not intended to unreasonably impact on the commercial interests of a copyright holder. Commercial availability testing (that is, requiring consideration of whether the accessible format is available within a reasonable time at an ordinary commercial price) is an important protection mechanism designed to ensure that Australian publishers and distributors would have the first opportunity to implement market solutions to supply persons with a disability with copyright material in accessible formats. Organisations should first seek to purchase copyright material and, only after a reasonable search of authoritative sources, consider making an accessible copy in reliance on the new section 113F.

An appropriate format should include specific features a person needs to enjoy copyright material to the same standard as a person without disability. The format needed by persons with a similar disability may differ depending on the context of the use of the material, such as in an academic setting. For example, a synthetically narrated text-to-speech version with advanced functions will assist a student with a disability navigate, index and search a literary work and any incorporated graphs or tables. Whereas a human narrated audio version may be more suitable for non-academic, recreational reading where ease and comfort tends to be more important to the consumer.

For the purposes of section 113F, international suppliers of non-infringing accessible copyright material into Australia are not required to check commercial availability prior to supplying Australians with a disability their catalogue of accessible format copyright material. If an organisation requests the supply of accessible format material on behalf of an eligible individual in Australia, the requesting organisation, rather than the supplier, must undertake a search to see if the material is already commercially available.

Organisations may continue to report their use of accessible format copyright material to relevant collecting societies, however it will not be a requirement under the Act that this is done. Where a copyright holder makes new accessible titles available for commercial sale, they may wish to notify organisations assisting persons with disability that their work is now available commercially and in which formats, however, again, the Act will not require this to occur.

An organisation assisting persons with a disability may receive a request to provide accessibility services to another not for profit organisation which does not fall under the definition of ‘organisation assisting a person with a disability’. It is intended that organisations assisting persons with a disability are permitted to provide accessibility services to such a requesting not for profit institution subject to the terms of paragraphs 113F(a) and 113F(b).

Division 3 – Libraries and archives

The Act currently includes a number of exceptions that specifically allow staff of libraries and archives to make or communicate copies of material in collections for preservation purposes. There are separate exceptions for libraries and archives (sections 51A and 110B) and for certain key cultural institutions, as prescribed in the regulations (sections 51B, 110BA and 112AA). Currently, a distinction is also drawn in the Act between preservation copying of works and subject-matter other than works, which includes sound recordings and cinematograph films, and also as to whether the material is in original or published form.

Division 3 of the new Part IVA would replace the current preservation copying provisions in the Act with simpler, uniform provisions that give libraries, archives and prescribed key cultural institutions greater flexibility in copying and digitisation of copyright material, whether published or unpublished, to preserve or administer their collections. Division 3 would also replace the current provisions in sections 51A and 110B allowing libraries and archives to copy and communicate copyright material for research purposes.

The new preservation exceptions would apply to libraries accessible to members of the public, parliamentary libraries and archives as defined in section 10 of the Act, as well as prescribed key cultural institutions. This would include, for example, a library or archives that forms part of an educational institution and other cultural institutions, such as a museum or gallery, that either have a library accessible to members of the public or collections to which paragraph (b) of the definition of ‘archives’ in subsection 10(1) of the Act applies by virtue of subsection 10(4).

Division 3 could apply to libraries that are only open to a subcategory of members of the public. This may include, for example, libraries that are only open to students, researchers or members of the library. Government library and archival material could also potentially come within the scope of Division 3. Where it does so, government agencies could rely on the provisions in Subdivision A of Division 3 to make preservation, research and administration copies without recourse to the government statutory licence in section 183 of the Act.

The provisions in Division 3 of the new Part IVA refer to the ‘use’ by libraries and archives and key cultural institutions of copyright material rather than referring to

specific rights such as ‘copying’ or ‘communicating’ material, provided it is for the purpose of preservation. ‘Use’ would also include, for example, the ability to emulate and reformat works as well as storing works in a number of different digital file types.

To reduce the regulatory burden on libraries and archives, libraries and archives would not be required to make and keep a declaration in relation to the lack of availability and suitability of a commercial copy when using material held in published form for preservation purposes. Nor would libraries and archives be required to make any notations on copies of material, of the kind currently referred to in section 203H, to rely on the exceptions provided under the new Division 3.

Subdivision A – Public libraries, parliamentary libraries and archives

Section 113G Libraries

Section 113G sets out the libraries to which Subdivision A of the new Division 3 would apply. This includes libraries which make all or part of their collections accessible to members of the public and libraries with the principal purpose of providing library services for members of Parliament. Library collections ‘accessible to members of the public’ include collections that are available to members of the public directly or through inter-library loans. It would not be necessary that library collections are generally open to the public to use or visit. This would enable smaller libraries, for example within universities, which are too costly to keep open but which are still accessible to researchers or other members of the public, to make use of the exceptions.

Section 113H Preservation

Subsection 113H(1) would enable an authorized officer of a library or archives to use copyright material, without infringing copyright, for the purpose of preserving its collection or the collection of another library or archives, if the material is:

- held in original form; and/or
- cannot be obtained in the required version or format consistent with best practice for preservation of such a collection.

This would enable libraries and archives to make multiple copies of copyright material which are in a version or format that is in line with best practice preservation policy, if a copy of the material cannot be obtained in that version or format. This includes making an enhanced, preservation-oriented copy of the material at the point of access or purchase.

In relation to either unpublished or published material, libraries and archives would not be required to wait for material to be damaged or deteriorate, or to have been lost or stolen, before making a preservation copy. If original material has been stolen or deteriorates, or preservation formats change and a copy of the material cannot be obtained in the new format, a library or archives would be able to make a preservation copy sourced from an earlier preservation copy.

Libraries and archives would not be required to continue to hold the source material (original media) from which a preservation copy is made. There may be circumstances in which it is appropriate to destroy the original media, for example, where the cost of

storing the material exceeds the value of storing the material such as where the original media is badly damaged, hazardous to health or is an obsolete computer format.

If a preservation copy made under subsection 113H(1) is in electronic form, subsection 113H(2) would allow the preservation copy to be made available for access by a person at the relevant library or archives, provided reasonable steps are taken by the library or archives to ensure that the person accessing the preservation copy does so in a way that does not infringe copyright in the preservation copy. This provision is not intended to limit use of preservation copies (whether in hardcopy or electronic form) for any other purpose permitted under the Act, for example, reproducing and communicating works by libraries and archives under Division 5 of Part III of the Act.

Section 113J Research

Subsection 113J(1) would enable an authorized officer of a library or archives to use copyright material held in its collection in original form, without infringing copyright, for the purpose of research carried out at the library or archives or another library or archives.

If a research copy made under subsection 113J(1) is in electronic form, subsection 113J(2) would allow the research copy to be made available for access by a person at the library or archives, or at another library or archives for which an electronic research copy is made under subsection (1), provided reasonable steps are taken by the library or archives to ensure that the person accessing the research copy does so in a way that does not infringe copyright in the research copy. This provision is not intended to limit use of research copies (whether in hardcopy or electronic form) for any other purpose permitted under the Act, for example, reproducing and communicating works by libraries and archives under Division 5 of Part III of the Act.

Section 113K Administration of the collection

Section 113K would enable an authorized officer of a library or archives to use copyright material, without infringing copyright, for administrative purposes directly related to the care or control of the collection. This might include, for example, back up copying, reporting (for example, to government) and record keeping, training and use for the purpose of exhibitions.

Subdivision B – Key cultural institutions

Section 113L Meaning of key cultural institution

Section 113L provides for a definition of ‘key cultural institution’. This covers the types of institutions described under current subsections 51B(1), 110BA(1) and 112AA(1) of the Act, and includes libraries and archives that have a statutory function under a Commonwealth, State or Territory law to develop and maintain the collection or are prescribed by regulations made under the Act.

Key cultural institutions that are prescribed in the regulations for the purposes of current sections 51B, 110BA or 112AA would, by virtue of transitional provisions in the Bill, be treated as having been prescribed for the purposes of the new section 113L (see Item 81 of Schedule 1 to the Bill).

Section 113M Preservation

Subsection 113M(1) would enable an authorized officer of a key cultural institution to use copyright material, without infringing copyright, for the purpose of preserving the collection if satisfied that the material is of historical or cultural significance to Australia and the material is:

- held in original form; and/or
- cannot be obtained in the required version or format consistent with best practice for preservation of such collection.

Similar to the provisions in the new section 113H for libraries and archives generally, these amendments would enable key cultural institutions to make multiple copies of copyright material which are in a version or format that is in line with best practice preservation policy, if a copy of the material cannot be obtained in that version or format.

If a preservation copy made under subsection 113M(1) is in electronic form, subsection 113M(2) would allow the preservation copy to be made available for access by a person at the key cultural institution, provided reasonable steps are taken to ensure that the person accessing the preservation copy does so in a way that does not infringe copyright in the preservation copy. This provision is not intended to limit use of preservation copies (whether in hardcopy or electronic form) for any other purpose permitted under the Act, for example, reproducing and communicating works by libraries and archives under Division 5 of Part III of the Act.

Division 4 – Educational institutions – statutory licence

The new Division 4 is intended to simplify the operation of the educational statutory licences, to provide more flexibility for educational institutions and collecting societies to negotiate agreed terms and to remove the mandatory record keeping requirements of the Parts VA and VB statutory licences which are proposed to be repealed.

Section 113N Simplified outline of this Division

Section 113N provides a simplified outline of Division 4. The intention of the Division is to enable educational institutions to copy or communicate works and broadcasts provided the body administering the educational institution agrees to pay equitable remuneration to a collecting society.

Section 113P Copying and communicating works and broadcasts

Section 113P applies to copying and communication of works and broadcasts by educational institutions.

Works

Subsection 113P(1) replaces Part VB of the Act which would be repealed by Item 39. It provides a statutory licence for educational institutions to copy and communicate works, without infringing copyright, provided the conditions at paragraphs 113P(1)(a) to (e) are complied with. These conditions are:

- Paragraph 113P(1)(a) requires that a remuneration notice applying to the work be in force between the body administering the educational institution and the collecting society. The requirements for a remuneration notice are set out at section 113Q. The transitional provisions in Part 3 of Schedule 1 to the Bill provide that a notice issued under the repealed Part VB will be treated as if it had been given under the new section 113Q (see Item 83(3), table item 5).
- Paragraph 113P(1)(b) requires that the work is not a computer program, a compilation of computer programs or a work included in a broadcast. Computer programs, or a compilation of computer programs, are specifically excluded from the operation of subsection 113P(1), and works that form part of a broadcast are provided for in subsection 113P(2).
- Paragraph 113P(1)(c) requires that that the copy or communication is made by or on behalf of the body administering the educational institution solely for the educational purposes of the institution, or of another educational institution if that other institution has a remuneration notice in force under section 113Q. Copying and communicating that is done for a purpose other than an educational purpose, for example private copying of a teacher, is not covered by the statutory licence. The requirement that copying for another educational institution can only be done if the other educational institution has a remuneration notice in force, is to prevent an educational institution being able to acquire free copyright material by requesting another educational institution to undertake copying on its behalf.
- Paragraph 113P(1)(d) requires that the amount of work copied or communicated does not unreasonably prejudice the legitimate interests of the owner of the copyright. Under the previous statutory licence regime, section 135ZG of the Act set out prescribed copying limits. This new provision provides more flexibility for educational institutions to determine what quantity of material can be appropriately copied.
- Paragraph 113P(1)(e) requires that the administering body complies with any relevant agreement between it and the collecting society, and any relevant determination made by the Copyright Tribunal. The intention is that the remuneration notice is an undertaking and informs the collecting society that the educational institution intends to rely on the statutory licence and undertakes to pay remuneration and comply with agreed terms and conditions. The detailed terms agreed between the body administering the educational institution and the collecting society are then set out in a separate agreement. If the parties fail to agree on the terms and conditions for the copying and communicating, these can be determined by the Tribunal under subsection 113P(4).

Broadcasts

Subsection 113P(2) applies to copying and communicating copies of broadcasts by educational institutions. Subsection 113P(2) replaces Part VA of the Act which is repealed by Item 39. Subsection 113P(6) extends the effect of the provisions in subsection 113P(2) to cover copying and communicating the content of broadcasts where they have been delivered online. Subsections 113P(2) and (6) provide a statutory licence for educational institutions enabling them to copy, and communicate copies of,

broadcasts and broadcast content provided the conditions at paragraphs 113P(2)(a) to (d) are complied with. These conditions are:

- Paragraph 113P(2)(a) requires that a remuneration notice applying to the copyright material be in force between the body administering the educational institution and the collecting society. The requirements for a remuneration notice are set out in the new section 113Q. The transitional provisions in Part 3 of Schedule 1 to the Bill provide that a notice issued under the repealed Part VA will be treated as if it had been given under the new section 113Q (see Item 83(3), table item 5).
- Paragraph 113P(2)(b) requires that the material is:
 - the broadcast (subparagraph 113P(2)(b)(i)). A broadcast is defined in section 10 of the Act; or
 - a work, sound recording or cinematographic film included in the broadcast (subparagraph 113P(2)(b)(ii)).
- Paragraph 113P(2)(c) requires that the copy or communication is made by or on behalf of the body administering the educational institution solely for the educational purposes of the institution, or of another educational institution if that other institution has a remuneration notice in force under section 113Q. Copying, or communicating a copy of, a broadcast or the content of a broadcast, for a purpose other than an educational purpose, for example copying by a teacher of a broadcast to be privately watched or listened to at a later time, is not covered by the statutory licence.
- Paragraph 113P(2)(d) requires the administering body to comply with any relevant agreement between the body administering the educational institution and the collecting society, and any relevant determination made by the Copyright Tribunal. The intention is that the remuneration notice is an undertaking and informs the collecting society that the educational institution intends to rely on the statutory licence and undertakes to pay remuneration and comply with agreed terms and conditions. The detailed terms and conditions agreed between the body administering the educational institution and the collecting society are then set out in a separate agreement. If the parties fail to agree on the terms and conditions for the copying and communication, these can be determined by the Tribunal under subsection 113P(4).

Subsection 113P(3) provides that, where a performance is included in a broadcast that has been copied or communicated in accordance with the requirements set out in subsection 113P(2), each performer is taken to have authorised the copying or communication of the whole or a part of a broadcast of the performance or the content of a broadcast of the performance, and the performers are unable to initiate their own legal action under Part XIA of the Act.

Questions determined by Copyright Tribunal

Subsection 113P(4) provides the Tribunal with a broad power to determine questions relating to the educational statutory licence, upon application by either party, should the parties fail to reach agreement.

The transitional provisions in Part 3 of Schedule 1 to the Bill provide that applications to the Tribunal made under repealed sections 135JAA or 135ZWAA that were not fully dealt with by the Tribunal before the commencement of this new subsection, will be treated as if made under the new subsection 113P(4) (see Item 83(1), table items 1 and 2).

Copies and communications subsequently used for other purposes

Subsection 113P(5) provides that where a copy of a work, a broadcast or the underlying work, sound recording or cinematograph film included in a broadcast referred to in subsections 113P(1) or (2) is, with the consent of the relevant administering body:

- used for a purpose other than the educational purposes of an educational institution;
- given to another administering body when there is not a remuneration notice in force with the other educational institution for the relevant copyright material; or
- sold or otherwise supplied for a financial profit,

then subsections 113P(1), (2) and (3) do not apply and will be taken never to have applied to the making of the copy.

This provision replicates subsection 135E(2) of the Act that would be repealed by Item 39. By virtue of the transitional provisions in Part 3 of Schedule 1 to the Bill, an infringement occurring prior to the commencement of this item in contravention of the previous subsection 135E(2) will remain an infringement (see Item 82).

Content of certain broadcasts

Paragraph 113P(6)(a) provides that section 113P also applies to the content of a broadcast, if the broadcast was electronically transmitted using the internet at, or at substantially, the same time as the broadcast. This provision ensures that the educational institution does not infringe copyright in a situation where the copyright material in the broadcast they have copied has been streamed over the internet, by an authorised third party who is not the broadcaster, at approximately the same time as the broadcast.

Paragraph 113P(6)(b) provides that section 113P also applies to the content of a broadcast where a broadcaster of a free-to-air broadcast, makes the content available online at or after the time of the broadcast. This provision allows educational institutions to copy and communicate the content of a free-to-air broadcast that has also been made available online by the broadcaster. This could include catch-up television or radio services.

These provisions are not intended to enable educational institutions to copy other formats of the relevant copyright material, for example CD or DVD, in reliance on the fact that it had been broadcast.

Section 113Q Remuneration notices

Section 113Q provides that a remuneration notice is a written notice given by the body administering an educational institution to a collecting society undertaking to pay equitable remuneration for licensed copying and communicating and to provide

reasonable assistance to the collecting society to enable the society to collect and distribute equitable remuneration. The provision enables an educational institution administered by that body to copy and communicate copyright material. The relevant collecting society is determined by the material being copied, that being either a works collecting society or the broadcast collecting society.

Subsection 113Q(2) provides a definition of ‘licensed copying or communicating’. The definition operates to exclude the statutory licence from applying to material that is copied or communicated under a direct licence from the copyright owner or under another exception in the Act. As an example, the definition does not include copying for a student with a disability which falls within the exception under the new section 113F.

Subsection 113Q(3) links the remuneration notice, which is effectively an agreement between the body administering the educational institution and the collecting society, to the copying and communicating carried out by the educational institution for the copyright material provided for in the remuneration notice, in reliance of that agreement between the body and the collecting society. The body administering the collecting society must have a separate remuneration notice for each collecting society.

Subsection 113Q(4) clarifies that in relation to works, the collecting society can only collect and distribute equitable remuneration for the eligible rights holder or class of eligible rights holder that the works collecting society has been declared for.

When remuneration notice is in force

Subsection 113Q(5) provides that a remuneration notice will come into force on the day on which it is given to the collecting society, or on such later day as is specified in the notice and will remain in force until it is revoked. The remuneration notice, in effect, triggers the operation of the statutory licence under the new section 113P. The collecting society would not be able to refuse a notice which complies with section 113Q.

Subsection 113Q(6) provides that a body administering an educational institution may revoke a remuneration notice by notice in writing to the relevant collecting society. The revocation will take effect three months after the date the notice is given to the collecting society, or such later date as is specific in the notice. This would provide the collecting society sufficient time to act on the revocation.

Transitional provisions relating to remuneration notices issued under repealed Parts VA or VB are provided for in Part 3 of Schedule 1 to the Bill (see Item 83(3), table item 5).

Section 113R Equitable remuneration

Section 113R provides that where a remuneration notice is given by a body administering an educational institution under section 113Q, then the amount payable will be the amount that is determined by agreement between the administering body and the collecting society or, failing agreement, by the Tribunal. Application to the Tribunal may be initiated by either the administering body or the collecting society.

This approach differs from the previous scheme because it does not mandate a particular method for determining remuneration, such as sampling or record keeping. The ability

for parties to negotiate without being restricted as to the methods for determining remuneration is fundamental to the flexibility of the revised licensing scheme established under this Division. Parties are not precluded from using previous approaches. The new statutory licence is intended to be more flexible, less costly and less administratively burdensome on all parties.

Where a remuneration notice is in effect but a rate of remuneration has not been agreed by the parties, subsection 113R(3) allows the Tribunal to determine a rate that has effect in relation to earlier copying and communication.

Section 113S Educational institutions must assist collecting society

Section 113S provides the procedure by which a collecting society can enter the premises of an educational institution for the purpose of reviewing compliance with the remuneration notice and any other relevant terms and conditions.

Subsection 113S(1) provides that a collecting society may notify an educational institution of its intention to enter the educational institution's premises on a specified day (which must be at least 7 days after the day on which the entry notice is given). Subsection 113S(2) allows a representative of the collecting society to enter onto the premises in accordance with the terms set out in subsection 113S(3).

Subsection 113S(4) provides the Tribunal with jurisdiction to consider particular questions in relation to the entry onto premises. For example, this could include matters such as whether the representative of the collecting society has undertaken a working-with-children check.

Subsection 113S(5) provides that the educational institution must take all reasonable precautions and exercise reasonable diligence to ensure that the representative of the collecting society is provided with all reasonable and necessary facilities and assistance for the effective assessment of the institution's compliance. Under subsection 113S(6), a body administering an educational institution who breaches this duty will be guilty of an offence punishable on conviction by a fine not exceeding 5 penalty units, currently \$900.

It is considered necessary for the collecting society to have access to institutions as a means of monitoring compliance. The penalty for breach of the duty to allow reasonable access to the premises of an educational institution is necessary to ensure that such inspections are not impeded and to provide a consequence where a body denies reasonable access. This provision replaces the offences provided in current sections 135L and 135ZY that are repealed by Item 39. The relatively low penalty reflects the relatively minor nature of the offence.

Section 113T Voluntary licences

Section 113T provides that the owner of copyright in a work will still maintain the right to grant a licence on his or her own account to an educational institution to make copies of works, broadcasts, sound recordings or films included in broadcasts. The effect of the grant of such a licence would be to take the use of the material outside the meaning of 'licensed copying or communicating' in subsection 113Q(2). However, where an administering body elects to operate under the statutory licensing scheme instead of

entering into a direct licence with the copyright owner and complies with the statutory provisions, it cannot be prevented from relying on the statutory licence.

Section 113U Persons acting on behalf of bodies administering educational institutions

Section 113U provides that any reference to a body administering an educational institution includes a person acting on behalf of the body. This could include, for example, teachers, administrative staff, volunteers or educational resource centres.

Division 5 – Collecting societies

Division 5 sets out the framework for the operation of declared collecting societies under the statutory licence.

Subdivision A – Declaration of collecting society

Section 113V Declaration of collecting society

Applications

Subsection 113V(1) provides that a body can apply to the relevant Minister to be declared as either a works collecting society for all eligible rights holders or specified classes of eligible rights holders, or the broadcasts collecting society. The section retains the current arrangements for the statutory licences where different collecting societies can be declared for specified classes of eligible rights holders in works and a single collecting society can be declared for broadcasts.

‘Eligible rights holder’ is defined in subsection 113V(9) (see below).

Declarations

Upon application, the Minister must either declare or refuse to declare a body to be a collecting society or refer the application to the Tribunal and notify the body of the referral. Upon referral to the Tribunal, the Tribunal may declare the body to be a collecting society and must then notify the Minister of the declaration.

Subsection 113V(4) provides that when a body is declared a works collecting society, the declaration is for eligible rights holders or specified classes of eligible rights holders for ‘works, other than works contained in a broadcast’. Eligible rights holders for ‘works contained in a broadcast’ are covered under the declaration of the broadcast collecting society.

When a declaration of a body as a collecting society is made under section 113V, the Minister is responsible for giving notice of the declaration, whether that declaration has been made by the Minister or the Tribunal.

Existing collecting societies

Subsection 113V(6) is a transitional provision for when there has been a decision to declare a new body as a works collecting society for an eligible rights holder or class of eligible rights holders. This subsection provides that the existing collecting society will

cease to be that collecting society for that eligible rights holder on the day before the declaration of the new collecting society takes effect.

Subsection 113V(7) provides that a remuneration notice given to a predecessor collecting society under section 113Q ceases to be in force, to the extent that it applies to the work copied or communicated in reliance on that remuneration notice, on the cessation day. Once that occurs, the body administering the educational institution would be required to provide the newly declared collecting society with a new remuneration notice for the eligible rights holders or specified classes of eligible rights holders covered by the new declaration.

The transitional provisions in Part 3 of Schedule 1 to the Bill provide for declarations made under sections 135ZZB and 135P to continue to have effect as if they had been made under section 113V (see Items 83(4) and (5)).

Eligible rights holders

Subsection 113V(9) defines eligible rights holder for a works collecting society as the owner of the copyright in a work; and for the broadcast collecting society, the owner of the underlying work, sound recording, or cinematograph film or performer in a performance in a broadcast.

A new owner of copyright in a sound recording of a live performance within the meaning of section 100AB is specifically excluded from the definition of eligible rights holder. This exclusion refers to a performer in a sound recording of a live performance where that recording was made before 1 January 2005. The exclusion reflects the more limited rights that were retrospectively applied to performers in sound recordings when Australia acceded to the WIPO Performances and Phonograms Treaty on 26 April 2007.

The inclusion of a performer in paragraph (b) of the definition of an eligible rights holder for a broadcast collecting society recognises that a performer within the meaning of paragraph (b) may not be the owner of copyright, but has economic rights in their performance embodied in the sound recordings.

Section 113W Requirements for declaration of collecting society

Section 113W replaces current subsection 135P(3) in Part VA and current subsection 135ZZB(3) in Part VB, which are being repealed by Item 39. The new section 113W sets out a single set of requirements that must be fulfilled before the Minister or the Copyright Tribunal can declare a body to be a collecting society. These requirements are that the Minister may not declare a body to be a collecting society unless:

- it is a company limited by guarantee and incorporated under a law of the Commonwealth or a State or a Territory relating to companies (paragraph 113W(a));
- all eligible right holders or their agents are entitled to become its members (paragraph 113W(b));
- payments of dividends to members are prohibited under the collecting society's rules (paragraph 113W(c)); and

- the collecting society’s rules contain provisions as prescribed in the regulations, which are necessary to ensure that the interests of its members, who are eligible rights holders, are adequately protected (paragraph 113W(d)) including:
 - the collection of amounts under the scheme from administering bodies (subparagraph 113W(d)(i));
 - the payment of administrative costs of the society out of amounts collected (subparagraph 113W(d)(ii));
 - the distribution of amounts collected by it (subparagraph 113W(d)(iii));
 - the holding on trust by the society of amounts for eligible copyright owners who are not its members (subparagraph 113W(d)(iv)); and
 - access to records of the society by its members (subparagraph 113W(d)(v)).

Section 113X Revocation of declaration

Section 113X replaces current sections 135Q and 135ZZC in Parts VA and VB, which are being repealed by Item 39, and provides that the Minister may, by instrument, revoke the declaration of a body to be a collecting society if satisfied that the body:

- is not functioning adequately as a collecting society (paragraph 113X(1)(a));
- is not acting in accordance with its rules or in the best interest of its members who are eligible right holders or their agents (paragraph 113X(1)(b));
- has altered its rules to no longer comply with paragraphs 113W(1)(c) or (d) (paragraph 113X(1)(c)); or
- has refused or failed, without reasonable excuse, to comply with the annual reporting and accounting requirements of s113Z or 113ZA (paragraph 113X(1)(d)).

This provision also enables the Minister to refer a question of whether a declaration should be revoked to the Copyright Tribunal for determination. The *Copyright Tribunal (Procedure) Regulations 1969* set out the matters to be addressed when referring a question to the Tribunal.

Subsection 113X(6) suppresses the operation of the standard provision giving the power to revoke, vary or amend an instrument in subsection 33(3) of the *Acts Interpretation Act 1901* given the specific rules about revoking a declaration in section 113X.

Subdivision B – Operation of collecting society

Section 113Y Scope of this Subdivision

Section 113Y sets out the collecting societies to which Subdivision B applies. This is a works collecting society and the broadcasts collecting society.

Section 113Z Annual report and accounts

Section 113Z sets out the obligations of the collecting society with regard to the preparation of annual reports, accounting records and the auditing of such records.

Subsection 113Z(6) clarifies that the section is not to affect any obligations which a collecting society may have with respect to the preparation and lodging of annual returns and accounts pursuant to the law under which it is incorporated.

Under section 113Z, the collecting society would be required to prepare annual reports of its operations and annual audited accounts, and send a copy of these to the relevant Minister. Such reports and accounts would assist the Minister in any decision the Minister is required to make under the new section 113X. The transitional provisions set out in Part 3 of Schedule 1 to the Bill provide that section 113Z will apply to financial years ending on or after the commencement of that item (see Item 83(6)).

Under subsection 113Z(5), the collecting society is also required to give members reasonable access to copies of all reports and audited accounts prepared under section 113Z.

Section 113ZA Amendment of rules

Section 113ZA provides that the collecting society must, within 21 days after any alteration of its rules, send a copy of the rules as altered to the Minister, together with a statement explaining the effect of the alteration and the reason it was made.

Section 113ZB Review of distribution arrangement by Copyright Tribunal

Section 113ZB provides that either a collecting society or a member of the society can apply for a review of the distribution arrangement adopted, or proposed to be adopted, to distribute remuneration collected.

Following an application the Copyright Tribunal must either confirm, vary or substitute the arrangement by way of an order. Any order substituting the arrangement has the effect as if it had been adopted in accordance with the society's rules however this order cannot be applied to any distribution commenced before the Tribunal's order is made.

The transitional provisions set out in Part 3 of Schedule 1 to the Bill provide that orders made under the repealed paragraphs 153DE(4)(b) and 153BAD(4)(b) that are in force immediately before commencement of this item, will have effect as if they had been made under the new paragraph 113ZB(2)(b), and orders that are made under paragraphs 153DE(4)(c) and 153BAD(4)(c) that are in force immediately before commencement of this item will have effect as if they had been made under the new paragraph 113ZB(2)(c) (see Item 83(3), table items 8 to 11).

Section 113ZC Operation of collecting society rules

Section 113ZC confirms that Divisions 4 and 5 of the new Part IVA will apply to the declared collecting society notwithstanding anything to the contrary in the rules of the society, whilst still preserving the operation of any rules capable of operating concurrently with Divisions 4 and 5.

Item 3 – Subdivisions C and D of Division 3 of Part VI

Subdivision C – Applications and referrals relating to Part IVA

Section 153A Applications and referrals relating to Division 4 of Part IVA

Item 3 repeals Subdivisions C and D of Division 3 of Part VI that relate to making applications to the Copyright Tribunal under Parts VA and VB of the Act, which are being repealed, and inserts a new Subdivision C – Applications and referrals relating to Part IVA.

Subsection 153A(1) of the new Subdivision C provides that section 153A applies to an application or referral to the Tribunal of the type mentioned in column 1 of the table in subsection 153A(4).

Subsection 153A(2) provides that the parties to the application or referral are the parties in column 2 of the table in subsection 153A(4).

Subsection 153A(3) provides that the Tribunal must consider the application or referral, give the parties the opportunity to present their cases, and comply with column 3 of the table in subsection 153A(4).

Subsection 153A(4) contains a table, which sets out for each type of application or referral, who the parties to the application or referral should be and the powers the Tribunal has in relation to that application or referral.

Column 1 sets out the types of applications or referrals that may be made to the Tribunal relating to licensed copying and communicating. These include:

- an application under paragraph 113P(4)(b) or 113S(4)(b) to determine a question. A question to be considered by the Tribunal may include whether a copying or communication complied with the agreement between the collecting society and a body administering the educational institution or the issue of an order to a body administering an educational institution enabling the collecting society to enter premises for the purpose of inspecting compliance with a remuneration notice issued under section 113Q;
- an application under paragraph 113R(2)(b) to determine an amount of equitable remuneration for copying carried out under a remuneration notice in section 113Q. This may include an amount for past or future copying or communication under the statutory licence;
- a referral under paragraph 113V(2)(c) of an application by a body to be declared a collecting society;
- a referral under paragraph 113X(2)(b) of a question as to whether a declaration of a body to be a collecting society should be revoked; or
- an application under subsection 113ZB(1) to review the arrangement adopted, or proposed to be adopted, by a collecting society for distributing amounts it collects in a period.

Column 2 sets out who the parties to the application are, as follows:

- in respect to an application to determine a question under paragraphs 113P(4)(b) or 113S(4)(b), the relevant collecting society and the body administering the relevant educational institution;
- in respect to an application to determine an amount of equitable remuneration under paragraph 113R(2)(b), the relevant collecting society and the body administering the relevant educational institution;
- in respect to an application by a body to be declared a collecting society under paragraph 113V(2)(c), the applicant and any person made a party under subsection 153A(5);
- in respect to a referral to have a declaration of a body as a collecting society revoked under paragraph 113X(2)(b), the Minister, the body and any person made a party under subsection 153A(5); and
- in respect to an application under subsection 113ZB(1), the applicant for the review, the collecting society and any member or organisation made a party under subsection 153A(5).

Column 3 sets out what the Tribunal must do, including:

- having regard to any matters prescribed by the regulations, determine the relevant question under subsection 113P(4) or 113S(4);
- having regard to any matters prescribed by the regulations, determine the amount of equitable remuneration under subsection 113R(2);
- declare the applicant to be a collecting society under subsection 113V(3) or refuse to declare the applicant to be a collecting society under that subsection;
- revoke the declaration, or refuse to revoke the declaration, under subsection 113X(3); and
- make an order under subsection 113ZB(2).

If the Minister refers an application to the Tribunal for the declaration or revocation of the declaration of a body as a collecting society, the Tribunal may declare, or revoke a declaration by notifiable instrument. The Minister has the discretion to refer an application for a declaration, or the revocation of a declaration, to the Tribunal under sections 113V and 113X respectively. When this occurs, the Minister becomes a party to the referral along with the applicant society and any other person the Tribunal considers a party to the matter. The Tribunal must afford all parties the opportunity to present their cases and then make a declaration, reject the application or revoke or refuse to revoke the declaration.

Subsection 153A(5) provides that for the purposes of column 2 of item 3, 4 or 5 of the table, the Tribunal may make persons or organizations a party if the person or organization asks to be made a party and:

- for referrals under paragraphs 113V(2)(c) and 113X(2)(b) relating to an application for the declaration or revocation of a body to be a collecting society, the Tribunal considers the person has a sufficient interest in the matter (item 3 and 4, column 2);

- for applications under subsection 113ZB(1), to review distribution arrangements under subsection 113ZB(1), the Tribunal considers that a person or organization has a substantial interest in the arrangement and the person or organization is a member of the collecting society, or is an organization that claims to be representative of members of the collecting society (item 5, column 2).

Item 4 – Subsection 200(1)

Use of works and broadcasts for educational purposes

Item 4 replaces the current subsection 200(1) with simplified provisions that enable a teacher or student to copy a work, or make or copy an adaptation of a work, for educational instruction (see the new subsections 200(1) and (1B)(a)). The copying or adaptation must be carried out by a teacher or student and cannot be done using a device capable of producing multiple copies. In effect, this exception allows a teacher to copy a work by writing the content on a blackboard, whiteboard or overhead projector sheet. It does not, however, provide a non-remunerable exception allowing copying by using reproduction devices such as photocopiers.

The current subparagraph 200(1)(b) would be replaced by the new subsection 200(1A). The new provision would enable teachers and students to copy and communicate all forms of copyright material, including an adaptation of copyright material, without infringing copyright, provided it is for the purpose of conducting or answering examination questions (see the new subsections 200(1A) and (1B)). This amendment ensures Australian schools are able to comply with the National Principles for Online Assessment and would enable examinations to be conducted using future technologies without infringing copyright.

Part 2 – Consequential amendments

Copyright Act 1968

Item 5 – Subsection 10(1)

Item 5 inserts a new definition of ‘body administering’ in subsection 10(1) in relation to (a) a body administering an institution; and (b) a body administering a library or archives. These new definitions replace the current definitions in paragraphs 10(3)(a) and (b) of the Act and are in substantially the same form. Paragraphs 10(3)(a) and (b) would be repealed (see Item 14.)

Item 5 also inserts new definitions of ‘broadcasts collecting society’ and ‘collecting society’ in subsection 10(1) consequential to the insertion of new provisions relating to educational statutory licences in Divisions 4 and 5 of the new Part IVA (see Item 2). The ‘broadcasts collecting society’ is the collecting society declared under section 113V to collect for the copying and communicating of a broadcast, or a work, sound recording or cinematograph film included in a broadcast, as provided in subsection 113P(2). The new definition of collecting society only relates to collecting societies that are declared in relation to statutory licences. The Act does not refer to other non-declared collecting societies, which would still be considered to be collecting societies under the general (non-legislative) meaning of the term.

Item 6 – Subsection 10(1) (definition of *copy*)

Item 6 substitutes a new definition of ‘copy’ in subsection 10(1), which has been expanded to include the meaning of ‘copy’ in relation to works, sound recordings, cinematograph films and broadcasts.

The meaning of copy is defined to mean a reproduction when referring to works (see paragraph (a) of the new definition). This change is consequential to the adoption of the term ‘copyright material’ in the new Part IVA, wherein the term copy is used as a single term to refer to a reproduction of a work and a copy of subject-matter other than works.

The current definition of ‘copy’ in relation to a cinematograph film in subsection 10(1) has been replicated in this new definition in subsection 10(1) (see paragraph (b)).

The current definition of ‘copy’ in relation to a sound recording in paragraph 10(3)(c) has been replicated in this new definition in subsection 10(1) (see paragraph (c)). Paragraph 10(3)(c) would be repealed (see Item 14).

The current definition of ‘copy’ in relation to a broadcast in paragraph 135B(a) has been replicated in this new definition in subsection 10(1) (see paragraph (d)). Section 135B (located in Part VB of the Act) would be repealed (see Item 39).

Item 7 – Subsection 10(1) (at the end of paragraphs (aa), (a), (b) and (c) of the definition of *educational institution*)

Item 7 makes a minor technical amendment by adding the word ‘or’ at the end of these paragraphs.

Item 8 – Subsection 10(1) (paragraphs (d) to (i) of the definition of *educational institution*)

Item 8 repeals paragraphs (d) to (i) of the definition of ‘educational institution’ in subsection 10(1) and inserts new paragraphs (d) to (i), which do not contain references to subsection 10A and remove the requirement for institutions to provide declarations as to the principal function of the institution. These changes are consequential to the repeal of subsection 10A (see Item 17) and the simplification of the educational statutory licences (see Item 2).

Item 9 – Subsection 10(1)

Item 9 inserts a new definition of ‘eligible rights holder’ as provided in subsection 113V(9) for a works collecting society and the broadcast collecting society.

Item 9 also inserts new definitions of ‘government’ and ‘government copy’ in subsection 10(1), which provide cross-references to the meanings of these terms in Division 2 of Part VII (see section 182B). These new definitions in subsection 10(1) are effectively being relocated from section 148 (Subdivision A in Division 3 of Part VI), as Subdivision A is being repealed under Item 42.

Item 10 – Subsection 10(1)

Item 10 repeals definitions of ‘institution assisting persons with an intellectual disability’ and ‘institution assisting persons with a print disability’ from subsection 10(1) and is consequential to the insertion of a new definition of ‘organisation assisting persons with a disability’ (see Item 1).

Item 11 – Subsection 10(1)

Item 11 inserts a new definition of ‘key cultural institution’ in subsection 10(1), which provides a cross-reference to the meaning of ‘key cultural institution’ in the new section 113L of Division 3 of Part IVA (see Item 2).

Item 11 inserts a new definition of ‘licensed copying or communicating’ in subsection 10(1), which provides a cross-reference to the meaning of ‘licensed copying or communicating’ in the new subsection 113Q(2) of Division 4 of Part IVA (see Item 2).

Item 11 inserts a new definition of ‘Parliament’ in subsection 10(1), which provides a cross-reference to the meaning of ‘Parliament’ set out in section 12 of the Act consequential to the new Subdivision A of Division 3 of Part IVA which relates to library services for members of Parliament (see Item 2).

Item 12 – Subsection 10(1) (definition of *person with a print disability*)

Item 12 repeals the definition of a ‘person with a print disability’ from subsection 10(1) consequential to the insertion of a new definition in subsection 10(1) of ‘person with a disability’ (see Item 1).

Item 13 – Subsection 10(1)

Item 13 inserts a new definition of ‘record embodying’ in relation to a sound recording. This definition replicates the current meaning of ‘record embodying a sound recording’ referred to in paragraph 10(3)(1), which would be repealed (see Item 14).

Item 13 also inserts new definitions of ‘remuneration notice’, ‘rules’ and ‘works collecting society’ and is consequential to the repeal of the educational statutory licences contained in Parts VA and VB (see Item 39) and the insertion of new provisions relating to educational statutory licences in Divisions 4 and 5 of the new Part IVA (see Item 2).

Item 14 – Paragraphs 10(3)(a), (b), (c), (f), (h), (ha), (l) and (m)

Item 14 repeals paragraphs 10(3)(a), (b), (c), (f), (h), (ha), (l) and (m).

The provisions in current paragraph 10(3)(a) and (b) relating to references to a body administering an institution and a body administering a library or archives have been repealed and are replicated in the new definition of ‘body administering’ in subsection 10(1) (see Item 5).

The provisions in current paragraph 10(3)(c) relating to references to a copy of a sound recording have been repealed and are replicated in the new definition of ‘copy’ in subsection 10(1) (see Item 6).

The provisions in current paragraph 10(3)(l) relating to references to a record embodying a sound recording have been repealed and are replicated in the new definition of ‘record embodying’ in subsection 10(1) (see Item 13).

Item 14 also repeals paragraphs 10(3)(f), (h), (ha) and (m) relating to educational institutions and institutions assisting persons with a print and intellectual disability, and is consequential to the repeal of the educational statutory licences contained in Parts VA and VB (see Item 39), the repeal of section 200AA (see Item 54), and 200AB(4) (see Item 56) and the insertion of new simplified provisions for access to copyright material by or on behalf of a person with a disability and educational statutory licences (see Item 2).

Item 15 – Subsection 10(5)

Item 15 makes a minor amendment to subsection 10(5) consequential to amendments to the definition of ‘copy’ in subsection 10(1), to reflect that the definition of ‘copy’ in relation to a cinematograph film is now contained in paragraph (b) of the definition of ‘copy’ in subsection 10(1) (see Item 6).

Item 16 – Subsection 10(6)

Item 16 makes a minor amendment to subsection 10(6) consequential to amendments to the definition of ‘copy’ in subsection 10(1), to reflect that the definition of ‘copy’ in relation to a sound recording is now contained in paragraph (c) of the definition of ‘copy’ in subsection 10(1) (see Item 6), and paragraph 10(3)(c) would be repealed (see Item 14).

Item 17 – Sections 10A and 47A

Item 17 repeals section 10A to remove the requirement for an organisation assisting persons with a print or intellectual disability to apply to become declared for the purposes of the Act, and self-declaration for educational institutions (which are now captured in the definition of ‘educational institution’ in subsection 10(1) (see Item 8)).

Item 17 also repeals section 47A relating to sound broadcasts by holders of print disability radio licences.

The repeal of these sections is consequential to the insertion of new simplified provisions for access of copyright material by or on behalf of a person with a disability

(see Item 2). It is intended that any copyright uses made for the purposes of section 47A of a print disability radio service would be made under the new section 113E or 113F. These new sections also provide flexibility for services delivered other than by radio.

Item 18 – Subsections 49(2) and (2C) (note)

Item 18 amends the Notes to subsections 49(2) and (2C), to replace the references to subsection 51A(1), which is being repealed (see Item 22), with references to new subsection 113H(1) under Division 3 of the new Part IVA (see Item 2).

Item 19 – Subsection 49(9) (note)

Item 19 amends the Note to subsection 49(9) to remove the reference to section 203D consequential to the repeal of section 203D (see Item 61).

Item 20 – Subsection 50(2) (note)

Item 20 amends the Note to subsection 50(2) to remove the reference to subsection 51A(1) and replace it with a reference to the new subsection 113H(1), consequential to the repeal of section 51A (see Item 22).

Item 21 – Subsection 50(10) (note)

Item 21 amends the Note to subsection 50(10) to remove the reference to section 203D consequential to the repeal of section 203D (see Item 61).

Item 22 – Sections 51A and 51B

Item 22 repeals the current preservation exceptions in sections 51A and 51B given the new Division 3 of Part IVA (sections 113G to 113M) providing for use of copyright material, without infringement, for the purposes of libraries, archives and key cultural institutions (see Item 2).

Item 23 – At the end of paragraph 53(a)

Item 23 makes a minor technical amendment to insert the word ‘and’.

Item 24 – Paragraph 53(b)

Item 24 amends paragraph 53(b) consequential to the repeal of section 51A of the Act (see Item 22).

Item 25 – At the end of paragraph 53(b)

Item 25 makes a minor technical amendment to insert the word ‘and’.

Item 26 – Paragraph 53(d)

Item 26 amends paragraph 53(d) consequential to the repeal of section 51A of the Act (see Item 22).

Item 27 – At the end of section 54

Item 27 amends section 54 to provide that, for the purposes of Division 6 of Part III, the definition of ‘original form’ in subsection 10(1), inserted by Item 1 of Schedule 1 to the Bill, does not apply. This would have the effect that the reference to ‘original form’ in paragraph 54(1)(a) refers to ‘original form’ in its ordinary meaning, that is, the musical work as it was originally composed, as compared to an adaptation of the work.

Item 28 – Section 100AH (note)

Item 28 removes the reference to ‘a relevant right holder under section 135A’ from the Note to section 100AH and replaces it with a reference to ‘an eligible rights holder under subsection 113V(9)’, is consequential to the repeal of Part VA (see Item 39).

Item 29 – Section 100AH (note)

Item 29 removes the reference to ‘135ZB’ from the Note to section 100AH and is consequential to the repeal of Part VB (see Item 39).

Item 30 – Sections 110B and 110BA

Item 30 repeals sections 110B and 110BA given the new Division 3 of Part IVA (sections 113G to 113M) providing for certain use of copyright material, without infringement, for the purposes of libraries, archives and key cultural institutions (see Item 2).

Item 31 – Subparagraph 112(a)(i)

Item 31 adds a reference in subparagraph 112(a)(i) to section 113E and is consequential to the new section 113E, which provides a fair dealing for the purpose of access by, or on behalf of, a person with a disability (see Item 2).

Item 32 – Subparagraph 112(a)(ii)

Item 32 amends subparagraph 112(a)(ii) to replace references to sections 51A, 51B, 135ZG, 135ZJ, 135ZK, 135ZL, 135ZM, 135ZN, 135ZP, 135ZQ, 135ZR, 135ZS and 135ZT with references to sections 113F, 113H, 113J, 113K, 113M and 113P under the new Divisions 2, 3 and 4 of Part IVA (see Item 2).

Item 33 – Subparagraph 112(b)(i)

Item 33 amends subparagraph 112(b)(i) by including a reference to section 113E and is consequential to the insertion of the new fair dealing exception in section 113E for disability access purposes (Item 2).

Item 34 – Subparagraph 112(b)(ii)

Item 34 amends subparagraphs 112(b)(ii) to replace references to sections 51A, 51B, 135ZG, 135ZJ, 135ZK, 135ZL, 135ZM, 135ZN, 135ZP, 135ZQ, 135ZR, 135ZS and 135ZT with references to sections 113F, 113H, 113J, 113K, 113M and 113P under the new Divisions 2, 3 and 4 of Part IVA (see Item 2).

Item 35 – Section 112AA

Item 35 repeals section 112AA given the new Subdivision B (sections 113L and 113M) of Division 3 of Part IVA providing for the making of preservation copies of significant material in key cultural institutions' collections (see Item 2).

Item 36 – Section 116AB (definition of *copyright material*)

Item 36 repeals the definition of 'copyright material' from section 116AB and is consequential to the insertion of a new definition of 'copyright material' in subsection 10(1) (see Item 1).

Item 37 – Section 132AA (definition of *copyright material*)

Item 37 repeals the definition of 'copyright material' from section 132AA and is consequential to the insertion of a new definition of 'copyright material' in subsection 10(1) (see Item 1).

Item 38 – Section 134B (definition of *copyright material*)

Item 38 repeals the definition of 'copyright material' from section 134B and is consequential to the insertion of a new definition of 'copyright material' in subsection 10(1) (see Item 1).

Item 39 – Parts VA and VB

Item 39 repeals Parts VA and VB which relate to the statutory licences for educational and other institutions and is consequential to the insertion of new educational statutory licences for works and broadcasts and new provisions for disability access (see Item 2).

Item 40 – Section 135ZZI (definition of *rules*)

Item 40 removes the definition of 'rules' in respect to collecting societies from section 135ZZI and is consequential to the insertion of a new definition of 'rules' in subsection 10(1) (see Item 13).

Item 41 – Section 135ZZZF (definition of *rules*)

Item 41 removes the definitions of 'rules' in respect to collecting societies from section 135ZZZF and is consequential to the insertion in subsection 10(1) of the new definition of 'rules' (see Item 13).

Item 42 – Subdivision A of Division 3 of Part VI

Item 42 repeals the definitions of 'copyright material', 'government' and 'government copy' from current section 148 in Subdivision A of Division 3 of Part VI. These definitions draw on the same meanings as used in Division 2 of Part VII relating to Crown use of copyright material (see section 182B).

The definitions in section 148 have been relocated. Item 44 inserts the definition of 'copyright material' in Subdivision E of Division 3 of Part VI. This is because this definition of copyright material (which excludes computer software) is only relevant to

Subdivision E of Division 3 of Part VI, and Division 2 of Part VII. A new, broader definition of ‘copyright material’ has been inserted in subsection 10(1) by Item 1, which applies to all other parts of the Act. The definitions of ‘government’ and ‘government copy’ have been relocated to subsection 10(1) (see Item 9).

Item 43 – Section 149A

Item 43 repeals section 149A, which relates to the matters to be included when making an application to the Copyright Tribunal under section 47A. The repeal of this section is consequential to the repeal of section 47A (see Item 17) and the insertion of new provisions for disability access (see Item 2).

Item 44 – Before section 153E

Item 44 inserts a new definition of ‘copyright material’ in Subdivision E of Division 3 of Part VI that deals with applications to the Copyright Tribunal relating to Part VII of the Act (The Crown). This amendment provides that the definition that applies to the Government use statutory licence in Division 2 of Part VII also applies to Subdivision E of Division 3 of Part VI.

Item 45 – Subdivision F of Division 3 of Part VI

Item 45 repeals Subdivision F of Division 3 of Part VI, which relates to the review by the Copyright Tribunal of declarations of certain educational institutions and is consequential to the repeal of section 10A (see Item 17).

Item 46 – Subsection 195A(3)

Item 46 repeals subsection 195A(3), and substitutes a new subsection 195A(3), which only applies to educational institutions, and not to institutions assisting persons with a print and intellectual disability. This amendment is consequential to the insertion of disability access provisions for organisations assisting persons with a disability (see Item 2).

Item 47 – Paragraphs 195B(1)(a) and (b)

Item 47 repeals paragraphs 195B(1)(a) and (b), which relate to the Attorney-General’s power of refusal to make a declaration or revoking declarations of institutions assisting persons with a print and intellectual disability and is consequential to the repeal of section 10A (see Item 17) and the insertion of new provisions for organisations assisting persons with a disability (see Item 2).

Item 48 – Paragraph 195B(1)(e)

Item 48 omits from paragraph 195B(1)(e), which relates to the refusal by the Minister to declare a body a collecting society, references to paragraphs 135P(1A)(b) and 135ZZB(1A)(b) and substitutes a reference to paragraph 113V(2)(b). This is consequential to the repeal of Parts VA and VB (see Item 39) and the insertion of new provisions for collecting societies (see Item 2).

Item 49 – Paragraph 195B(1)(f)

Item 49 omits from paragraph 195B(1)(f), which relates to the revocation by the Minister of a declaration of a collecting society, references to paragraphs 135Q(2)(a) and 135ZZC(2)(a) and substitutes a reference to paragraph 113X(2)(a). This is consequential to the repeal of Parts VA and VB (see Item 39) and the insertion of new provisions for collecting societies (see Item 2).

Item 50 – Subsection 195B(2)

Item 50 repeals subsection 195B(2), which relates to reviewable decisions of the Attorney-General in respect to declaring and revoking declarations of an institution assisting a person with a print and intellectual disability under section 10A. The repeal is consequential to the repeal of section 10A (see Item 17) and the insertion of new provisions for organisations assisting persons with a disability (see Item 2).

Item 51 – Subsection 195B(4)

Item 51 omits ‘(2) or’ from the first part of subsection 195B(4) and is consequential to the repeal of subsection 195B(2) (see Item 50).

Item 52 – Subsection 195B(4)

Item 52 omits ‘(2)(b) or (c) or (3)(b), as the case requires’ from subsection 195B(4) and substitutes ‘(3)(b)’ and is consequential to the repeal of subsection 195B(2) (see Item 50).

Item 53 – Subsections 200(3) and (4)

Item 53 inserts ‘(1A),’ after subsection (1) and is consequential to the amendments made to subsection 200(1) which relocates examination copying from current subsection 200(1)(b) to the new subsection (1A) (see Item 4).

Item 54 – Section 200AA

Item 54 repeals section 200AA, which relates to the use of broadcasts by institutions assisting persons with an intellectual disability. This function is now provided for by the insertion of new provisions for organisations assisting a person with a disability (see Item 2).

Item 55 – Paragraph 200AB(1)(b)

Item 55 omits reference to ‘, (3) or (4)’ from paragraph 200AB(1)(b) and substitute ‘or (3)’ which is consequential to the repeal of subsection 200AB(4) (see Item 56) and the insertion of the new fair dealing exception in section 113E for use by or for persons with a disability (see Item 2).

Item 56 – Subsection 200AB(4)

Item 56 repeals subsection 200AB(4), which relates to use of works and other subject-matter by or for persons with a disability, and is consequential to the insertion of

the new fair dealing exception in section 113E for use by or for persons with a disability (see Item 2).

Item 57 – Subsection 200AB(6) (examples 1 and 2)

Item 57 repeals the examples below subsection 200AB(6) and substitutes a single example in relation to paragraph (a). The removal of the second example is consequential to the insertion of the new fair dealing exception in section 113E for use by or for persons with a disability (see Item 2). The substitution of the word ‘appliance’ with the word ‘device’ in the new example is consequential to the revised terminology in the new subsection 200(1) (see Item 4).

Item 58 – After subsection 200AB(6)

Item 58 inserts a new subsection 200AB(6AA). The new subsection clarifies that when determining whether copying and communication is ‘licensed copying or communicating’ under subsection 113Q(2), section 200AB should be disregarded. In effect, copying or communication is not licensed copying or communication if any exception other than sections 200AB or 113P apply to it. However, if particular copying or communication does not come within another exception, or the statutory licence in section 113P, then subsection 200AB(3) may still apply.

Item 59 – Subsection 200AB(6A)

Item 59 omits the words ‘, (3)(c) or (4)(c)’ from subsection 200AB(6A) and substitutes ‘or (3)(c)’. This removes the reference to subsection 200AB(4) and is consequential to the repeal of subsection 200AB(4) (see Item 56) and the insertion of the new fair dealing exception in section 113E for use by or for persons with a disability (see Item 2).

Item 60 – Subparagraph 203A(1)(b)(i)

Item 60 omits references to sections 51A or 110B from subparagraph 203A(1)(b)(i) to remove provisions relating to making and keeping declarations under section 51A or 110B. Sections 51A and 110B would be repealed by Items 22 and 30 following the insertion of Division 3 of the new Part IVA (see Item 2). Division 3 provides for certain use of copyright material, without infringement, for the purposes of libraries, archives and key cultural institutions. To reduce the regulatory burden on libraries and archives, for the purposes of the new Division 3, libraries and archives would not be required to make or keep declarations.

Item 61 – Section 203D

Item 61 repeals section 203D consequential to the repeal of sections 51A and 110B under Items 22 and 30 following the insertion of Division 3 of the new Part IVA (see Item 2). The specific offence of failing to arrange declarations in chronological order in section 203D is no longer considered necessary. There are other offence provisions in the Act (for example, subsection 203E(6)) that are sufficient to achieve the underlying policy intent of facilitating inspection of records and declarations made by libraries and archives.

Item 62 – Section 203E (heading)

Item 62 makes a minor technical amendment to the heading of section 203E to clarify that section 203E relates only to the inspection of records and declarations retained in records of libraries and archives and not in other institutions.

Item 63 – Subsection 203E(1)

Item 63 amends section 203E to remove provisions relating to making and keeping declarations under sections 51A or 110B which would be repealed by Items 22 and 30 following the insertion of Division 3 of the new Part IVA (see Item 2). Division 3 provides for certain use of copyright material, without infringement, for the purposes of libraries, archives and key cultural institutions. To reduce the regulatory burden on libraries and archives, for the purposes of the new Division 3, libraries and archives would not be required to make or keep declarations.

Item 64 – Paragraphs 203F(a) and 203G(a)

Item 64 amends sections 203F and 203G to remove provisions relating to making and keeping declarations under sections 51A or 110B which would be repealed by Items 22 and 30 following the insertion of Division 3 of the new Part IVA (see Item 2). Division 3 provides for certain use of copyright material, without infringement, for the purposes of libraries, archives and key cultural institutions. To reduce the regulatory burden on libraries and archives, they would not be required to make or keep declarations for the purposes of the new Division 3.

Items 65 to 69 – Subsections 203H(1), (2), (4)(a), (5), (5)(b)(iv) and (c)(iv)

Items 65 to 69 amend section 203H to remove references to sections 51A or 110B which would be repealed by Items 22 and 30 following the insertion of Division 3 of the new Part IVA (see Item 2). Division 3 provides for certain use of copyright material, without infringement, for the purposes of libraries, archives and key cultural institutions. To reduce the regulatory burden on libraries and archives, they would not be required to make notations on copies of a work for the purposes of the new Division 3.

Item 70 – Subsections 203H(6) to (10)

Item 70 repeals subsections 203H(6) to (10), which relate to marking and record keeping requirements by educational and other institutions and is consequential to the repeal of the Part VA and VB statutory licences (see Item 39).

Item 71 – Subsection 248A(1) (at the end of paragraph (aa) of the definition of *exempt recording*)

Item 71 adds a note to paragraph (aa) of the definition of ‘exempt recording’ in subsection 248A(1) that provides a cross-reference to subsection 248A(1A).

Under paragraph (aa), an ‘exempt recording’ includes an indirect sound recording of a performance that is a fair dealing with the performance for the purpose of research or study. Subsection 248A(1A) sets out, for the purposes of paragraph (aa), the matters

which must be considered in determining whether a sound recording is a fair dealing with a performance for the purpose of research or study.

Item 72 – Subsection 248A(1) (paragraphs (c), (d) and (e) of the definition of *exempt recording*)

Item 72 updates the definition of ‘exempt recording’ in subsection 248A(1) consequential to the insertion of the new Part IVA that permits certain uses of copyright material (including a sound recording or cinematograph film) by or for persons with a disability, for the purposes of libraries, archives and key cultural institutions, and by educational institutions (see Item 2).

Item 72 repeals paragraphs (c), (d) and (e) of the definition of ‘exempt recording’ and substitutes those provisions with new paragraphs (c), (d), (e), (ea) and (eb) as follows:

- the new paragraph (c) replaces the current paragraph (c), and provides that an exempt recording means a direct or indirect sound recording or cinematograph film of a performance if the recording or film is made by, or on behalf of, the body administering an educational institution and solely for the educational purposes of that institution or another educational institution. This amendment complements Division 4 of the new Part IVA;
- the new paragraph (d) provides that an exempt recording means a direct or indirect sound recording or cinematograph film of a performance if the recording or film is a fair dealing with the performance for the purpose of one or more persons with a disability having access to copyright material. This amendment complements section 113E in Division 2 of the new Part IVA;
- the new paragraph (e) replaces the current paragraphs (d) and (e), and provides that an exempt recording means a direct or indirect sound recording or cinematograph film of a performance if the recording or film is made by, or on behalf of, an ‘organisation assisting persons with a disability’ (as newly defined in subsection 10(1)) and solely for the purpose of assisting one or more persons with a disability to access copyright material in the required format (whomsoever provides the access). This amendment complements section 113F in Division 2 of the new Part IVA.
- the new paragraph (ea) provides that an exempt recording means a direct or indirect sound recording or cinematograph film of a performance if the recording or film is made by an authorized officer of a library or archives to which Subdivision A of Division 3 of the new Part IVA applies and solely for the purposes of preservation or administration of the library or archival collection, or research, as set out in the new Subdivision A.
- The new paragraph (eb) provides that an exempt recording means a direct or indirect sound recording or cinematograph film of a performance if the recording or film is made by an authorized officer of a library or archives that is a ‘key cultural institution’ (as defined in the new section 113L) and solely for the purpose of preservation of copyright material of historical or cultural significance to Australia in the library or archival collection, as set out in Subdivision B of Division 3 of the new Part IVA.

Item 73 – Subsection 248A(1) (paragraphs (ja) and (k) of the definition of *exempt recording*)

Item 73 substitutes paragraphs (ja) and (k) of the definition of ‘exempt recording’ consequential to amendments made by Item 72.

Paragraph (ja) of the definition of ‘exempt recording’ would be amended to include a copy of a sound recording made solely for purposes referred to in new paragraphs (c), (d), (e), (ea) and (eb). For greater clarity paragraph (ja) would also be amended to include a reference to existing paragraph (j) as a substitute for existing subparagraph (n)(ia).

Paragraph (k) of the definition of ‘exempt recording’ would be amended to include a copy of a cinematograph film made solely for purposes referred to in new paragraphs (c), (d), (e), (ea) and (eb). For greater clarity paragraph (k) would also be amended to include a reference to existing paragraph (j) as a substitute for existing subparagraph (n)(ii).

Item 74 – Subsection 248A(a) (paragraph (n) of the definition of *exempt recording*)

Item 74 amends paragraph (n) of the definition of ‘exempt recording’ to remove subparagraphs (ia) and (ii) consequential to amendments made by Item 73. Amended paragraph (n) would have the same effect as existing subparagraph (n)(i).

Item 75 – Subsections 248C(1A) and (2)

Item 75 substitutes subsections 248C(1A) and (2) consequential to amendments made by Item 72 which inserts new paragraphs (c), (d), (e), (ea) and (eb) of the definition of ‘exempt recording’ in subsection 248A(1).

New subsection 248C(1A) provides that a sound recording or a copy of a sound recording, that is an exempt recording because it was made for a purpose mentioned in paragraph (aaa), (aa), (c), (d), (e), (ea), (eb) or (fa) of the definition of ‘exempt recording’ in subsection 248A(1), ceases to be an exempt recording if it used for a purpose that is not mentioned in those paragraphs without the authority of the performer.

New subsection 248C(2) provides that a cinematograph film or a copy of a cinematograph film, that is an exempt recording because it was made for a purpose mentioned in paragraph (a), (aaa), (b), (c), (d), (e), (ea), (eb) or (f) of the definition of ‘exempt recording’ in subsection 248A(1), ceases to be an exempt recording if it used for a purpose that is not mentioned in those paragraphs without the authority of the performer.

Item 76 – Subsection 248G(1) (note)

Item 76 substitutes the Note to subsection 248G(1) consequential to the repeal of Part VA (see Item 39) and the insertion of new provisions for the use of copyright material by educational institutions in Division 4 of the new Part IVA (see Item 2).

Items 77 and 78 – Subsection 248PC(7) (note 2)

Items 77 and 78 amend Note 2 to subsection 248PC(7) consequential to the repeal of Part VA (see Item 39) and the insertion of new provisions for the use of copyright material by educational institutions in Division 4 of the new Part IVA (see Item 2).

Part 3 – Transitional provisions

Item 79 – Definitions

Item 79 is a machinery clause that provides for references to ‘new law’ and ‘old law’ for the purposes of the transitional provisions in Part 3 of Schedule 1 to the Bill.

Item 80 – Preservation and research

Item 80 contains transitional provisions relating to the use of copyright material made by libraries and archives, and key cultural institutions under the old law for preservation and research purposes (preservation and research copies).

These transitional provisions would apply the new subsections 113H(2), 113J(2) and 113M(2) so as to enable preservation and research copies made in electronic form under the old law (sections 51A, 51B, 110B, 110BA or 112AA) to be made available for electronic access by a person at the library or archives, or key cultural institution, as if the copies were made under the new subsections 113H(1), 113J(1) and 113M(1).

Item 81 – Key cultural institutions

Item 81 contains transitional provisions that would enable key cultural institutions prescribed in the regulations for the purposes of section 51B, 110BA or 112AA of the old law to be treated as having been prescribed in the regulations for the purposes of paragraph 113L(b) of the new law.

Item 82 – Educational and other institutions

Item 82 provides in effect that a copy or communication that was made before the commencement of Item 82, and that was used, made or given in the manner set out in subsection 135E(2), 135U(2) or 135ZZH(1) under Parts VA and VB of the old law will continue to be an infringement of copyright despite the repeal of Parts VA and VB by Item 39.

Item 83 – Educational institutions – licensed copying and communicating

Applications

The table at Item 83(1) provides that:

- an application made to the Tribunal under subsections 135ZWAA(2), 135ZX(2A), 135JAA(2) or 135K(2A) of the old law, not fully dealt with before commencement of Item 83, will have effect from the commencement of Item 83 as if it had been made under the corresponding paragraphs contained within section 113P of the new law;

- an application made to the Tribunal under subsections 135H(1), 135J(1), 135JA(1), 135ZV(1), 135ZW(1) or 135ZWA(1) or (2) of the old law, not fully dealt with before commencement of Item 83, will have effect from the commencement of Item 83 as if it had been made under paragraph 113R(2)(b) of the new law;
- an application made to the Tribunal under sections 135SA or 135ZZEA of the old law, not fully dealt with before commencement of Item 83, will have effect from the commencement of Item 83 as if it had been made under subsection 113ZB(1) of the new law.

Item 83(2) provides that the parties to an application for review of the distribution arrangement under sections 135SA or 135ZZEA, are the same persons or organisations that were parties to the application immediately before commencement of Item 83.

Agreements, determinations, remuneration notices and orders

The table at Item 83(3) provides that:

- agreements made under repealed subsections 135ZWAA(2), 135ZX(2A), 135JAA(2) or 135KA(2A), and in force immediately before the commencement of Item 83, will now be taken to have been made under the corresponding provisions in the new section 113P inserted by Item 2, being subparagraphs 113P(1)(e)(i) and 113P(2)(d)(i) respectively;
- determinations made under repealed sections 135ZWAA(2) and 135ZX(2A) or 135JAA(2) and 135K(2A), and in force immediately before the commencement of Item 83, will now be taken to have been made under the corresponding provisions in the new subsection 113P(4), inserted by Item 2, for the purposes of subparagraphs 113P(1)(e)(ii) and 113P(2)(d)(ii) respectively;
- remuneration notices given under repealed Parts VA or VB, and being in force immediately before commencement of Item 83, will now be taken to have been given under the new section 113Q, inserted by Item 2;
- agreements made under subsections 135H(1), 135J(1), 135JA(1), 135ZV(1), 135ZW(1) or 135ZWA(1) or (2), that are being repealed by Item 39, and being in force immediately before commencement of Item 83, will now be taken to have been made under the new paragraph 113R(1)(a) inserted by Item 2;
- determinations made under subsections 135H(1), 135J(1), 135JA(1), 135ZV(1), 135ZW(1) or 135ZWA(1) or (2), that are being repealed by Item 39, will now be taken to have been made under the new subsection 113R(2) inserted at Item 2;
- orders made under paragraphs 153DE(4)(b) or 153BAD(4)(b), that are being repealed by Item 39, will now be taken to have been made under the new paragraph 113ZB(2)(b) inserted at Item 2;

- orders made under paragraphs 153DE(4)(c) or 153BAD(4)(c), that are being repealed by Item 39, will now be taken to have been made under the new paragraph 113ZB(2)(b) inserted at Item 2.

Collecting societies

Items 83(4) and (5) provide that declarations made under sections 135ZZB and 135P repealed by Item 39, will continue to have effect as if the declarations had been made under the new section 113V and to which subparagraphs 113V(4)(a)(i) and (ii) applied respectively.

Item 83(6) provides that for the purpose of annual reports for financial years ending on or after the commencement of Item 83, the provisions of the new section 113Z, inserted by Item 2, will apply.

Item 84 – Inspection notices

Item 84 enables notices given under paragraph 203E(1)(a) of the old law, which specify a date for inspection that occurs on or after the commencement of Item 84, to have effect as if the notice had been given under the new subsection 203E(1) inserted by Item 63.

Schedule 2 – Duration of copyright

Copyright Act 1968

The amendments in Schedule 2 to the Bill establish new standard terms of protection for works, sound recordings and cinematograph films, dependent upon whether such material has been made public before or after 1 January 2019 when the new provisions would take effect.

Works

Currently, the Act provides for different terms of copyright protection for works that are published or otherwise made public and works that are not made public. Generally the copyright in works made public subsists until either:

- the end of 70 years after the end of the calendar year in which the author of the work died ('life of author plus 70 years') (subsection 33(2)); or
- if the work had not been made public before the death of the author, the end of 70 years after the end of the calendar year in which the material was first made public ('first made public plus 70 years') (subsection 33(3)).

In relation to 'anonymous or pseudonymous' works, currently copyright continues to subsist until the end of 70 years after the end of the calendar year in which the work was first made public ('first made public plus 70 years') (section 34).

Where copyright works are not made public, they remain in copyright in perpetuity, and so their productive uses may be lost. Currently, libraries and archives hold large numbers of unpublished materials which are an important part of Australia's cultural heritage. Setting a term of protection for unpublished works would allow greater use of the considerable cultural value of these materials.

The proposed amendments seek to harmonise the copyright term for works by creating a new standard protection period of 'life of author plus 70 years' that does not differentiate between works that are made public and those that are not. The new standard term would apply to works created before 1 January 2019 that remain unpublished (or otherwise not made public) at that date. The delay in commencement of these provisions would enable a copyright owner of a work created by a deceased author to make that work public before commencement of the new provisions and rely on a protection period similar to the existing duration provisions for works that are made public (that is, 'first made public plus 70 years').

In relation to works where the identity of the author remains generally unknown, the proposed amendments would provide a standard protection period of 70 years from the year in which a work is 'made' (that is, 'date made plus 70 years'). However, if the work is made public within 50 years of its making, the proposed amendments provide a protection period of 'first made public plus 70 years'.

Sound recordings and cinematograph films

Sections 93 and 94 currently provide that copyright in a sound recording and a cinematograph film subsists for 70 years from publication.

The proposed amendments amend these provisions to provide that if the sound recording or cinematograph film (as the case may be) is made public within 50 years of being made then copyright subsists for 70 years from first being made public (that is, ‘first made public plus 70 years’). If the copyright material is not made public within 50 years of being made the proposed amendments provide for a protection period of 70 years from the making of the sound recording or cinematograph film (that is, ‘date made plus 70 years’).

These standard terms of protection would apply to sound recordings and cinematograph films created before 1 January 2019 that are not made public before that date. If made public before 1 January 2019, the proposed amendments provide a protection period of ‘first made public plus 70 years’.

Crown copyright

The proposed amendments repeal sections 180 and 181 of the Act and insert a new, consolidated section 180 that provides for a new standard term of protection for works, sound recordings and cinematograph films owned by the Crown of 50 years from the year in which the material is made (that is, ‘date made plus 50 years’), whether the material is made public or not.

International organizations

Sections 187 and 188 set out the copyright term for works, sound recordings and cinematograph films made or first published by international organizations. Schedule 12 of the *Copyright Regulations 1969* lists the international organizations to which these provisions apply.

The current term of copyright for international organizations is unlimited for unpublished subject matter, and 70 years from first publication for published copyright material. The term of copyright for published editions is 25 years from first publication (section 96). Copyright in a new edition of a work or works published by an international organization continues to subsist for 25 years from first publication.

The proposed amendments set out new terms of protection for copyright material made by international organizations. If the copyright material is made public within 50 years of being made then copyright subsists for 70 years from first being made public (that is, ‘first made public plus 70 years’). If the copyright material is not made public within 50 years of being made the proposed amendments provide for a protection period of 70 years from the making of the material (that is, ‘date made plus 70 years’). These standard terms of protection would apply to copyright material created before 1 January 2019 that is not made public before that date. If made public before 1 January 2019, the proposed amendments provide a protection period of ‘first made public plus 70 years’.

If the copyright material is a published edition to which subsection 188(3) applies, the copyright continues to subsist for 25 years from first being made public (that is, ‘first made public plus 25 years’).

The tables below set out the duration provisions that generally would apply to works, sound recordings and cinematograph films from 1 January 2019.

Copyright material made before 1 January 2019 (other than Government copyright material)			
Type of material	Factors affecting duration	Copyright expired IF	Otherwise, duration is
Literary, dramatic, musical work, engraving	Made public before death	author died before 1 January 1955*	life of author + 70 years
	Made public after death but before 1 January 2019	made public before 1 January 1955*	first made public + 70 years
	Not made public before 1 January 2019	author died before 1 January 1948**	life of author + 70 years
Computer program		author died before 1 January 1955*	life of author + 70 years
Artistic works other than photographs or engravings		author died before 1 January 1955*	life of author + 70 years
Photograph		made before 1 January 1955*	life of author + 70 years
Works where the author is unknown, or the works are made by an international organization	Made public before 1 January 2019	made public before 1 January 1955*	first made public + 70 years
	Never made public	made before 1 January 1948**	date made + 70 years
	Made public on or after 1 January 2019 but not within 50 years of being made	made before 1 January 1948**	date made + 70 years
	Made public on or after 1 January 2019 and within 50 years of being made	made public before 1 January 1955*	first made public + 70 years
Sound recording	Made public before 1 January 2019	made before 1 January 1955*	first made public + 70 years
	Never made public	made before 1 January 1955*	date made + 70 years
	Made public on or after 1 January 2019 but not within 50 years of being made	made before 1 January 1955*	date made + 70 years
	Made public on or after 1 January 2019 and within 50 years of being made	made before 1 January 1955*	first made public + 70 years
Cinematograph film (made on or after 1 May 1969)***	Made public before 1 January 2019	N/A	first made public + 70 years
	Never made public	N/A	date made + 70 years
	Made public on or after 1 January 2019 but not within 50 years of being made	N/A	date made + 70 years
	Made public on or after 1 January 2019 and within 50 years of being made	N/A	first made public + 70 years

Copyright material made on or after 1 January 2019 (other than Government copyright material)			
Type of material	Factors affecting duration	Copyright expired IF	Otherwise, duration is
Works where the author is known		N/A	life of author + 70 years
Works where the author is unknown	Not made public within 50 years of being made	N/A	date made + 70 years
	Made public within 50 years of being made	N/A	first made public + 70 years
Sound recording	Not made public within 50 years of being made	N/A	date made + 70 years
	Made public within 50 years of being made	N/A	first made public + 70 years
Cinematograph film	Not made public within 50 years of being made	N/A	date made + 70 years
	Made public within 50 years of being made	N/A	first made public + 70 years

Government copyright material made before or after 1 January 2019			
Type of material	Factors affecting duration	Copyright expired IF	Otherwise, duration is
Works made, or first published, by a Commonwealth, State or Territory		made before 1 January 1968**	date made + 50 years
Sound recording		made before 1 January 1968**	date made + 50 years
Cinematograph film (made on or after 1 May 1969)***		N/A	date made + 50 years

Notes to tables:

* For this copyright material, copyright expired before 1 January 2005. Generally, prior to 1 January 2005, copyright lasted until 50 years from the end of the year in which the creator died or, for some material, until 50 years from the end of the year in which the material was first published. As a result of the Australia-United States Free Trade Agreement (AUSFTA), on 1 January 2005 the period of protection for most types of copyright material was extended to 70 years from the end of the year in which the creator died or 70 years from the end of the year in which the material was first published. If copyright had expired before 1 January 2005, copyright was not revived.

** The amendments made by Schedule 2 to the Bill that provide for the new copyright terms would have the effect that copyright in this copyright material would cease before 1 January 2019. By virtue of the transitional provisions in Item 15 of Schedule 2 to the Bill, that copyright will instead cease to subsist on 1 January 2019.

*** Section 221 of the *Copyright Act 1968* provides that copyright does not subsist by virtue of section 90 in a cinematograph film made before the commencement of the Act (1 May 1969). Cinematograph films made before 1 May 1969 may be protected as a combination of original dramatic works, photographs and sound recordings.

Item 1 – Subsection 10(1)

Item 1 inserts a new definition of ‘generally known’ in subsection 10(1) relating to when the identity of the author of copyright material is said to be ‘generally known’. Without limiting the meaning, the definition clarifies that the identity of the author is generally known if it can be ascertained by reasonable enquiry.

Item 1 inserts a new definition of ‘made public’ in subsection 10(1) that provides a cross-reference to the meaning of ‘made public’ in the new section 29A (see Item 3 below).

Item 2 – Subsection 14(2)

Item 2 amends subsection 14(2) to remove the reference to section 180 consequential to substitution of section 180 by Item 12, as the new section 180 does not include any reference to the publication, or absence of publication of a work.

Item 3 – After section 29 (new section 29A)

Item 3 inserts a new section 29A that provides a definition of ‘made public’ for the purposes of the Act, and in particular for the proposed new scheme for duration of copyright in original works, sound recordings and cinematograph films established by Schedule 2 to the Bill.

Without limiting when certain copyright material is ‘made public’, the new section 29A sets out a range of factors that constitute when a work, sound recording or cinematograph film is ‘made public’. Whilst this includes when a work, sound recording or cinematograph film has been published (within the meaning affected by section 29 of the Act), the concept of ‘making public’ is a broader concept than publication. In most instances copyright material will be ‘first made public’ when it is ‘first published’, however, material could, in certain circumstances, be made public before publication. Publication (as defined in section 29) generally depends on the supply, by sale or otherwise, of reproductions or copies of the printed version or other relevant media to the public. If, for example, a play or the script of a film has been performed, or the film has been shown in public (which would constitute ‘making public’), but copies of the printed version of the play have not been supplied to the public, or copies of the film have not been offered or exposed for sale or hired out, this would not constitute publication.

Under the new section 29A, a work, sound recording or cinematograph film is also ‘made public’ when the relevant material is ‘communicated to the public’. ‘Communicate’ is defined in current subsection 10(1) to mean ‘making available online or electronically transmit (whether over a path, or a combination of paths, provided by a material substance or otherwise) a work or other subject-matter, including a performance or live performance within the meaning of this Act’. A communication ‘to the public’, in the context of the proposed new duration of copyright provisions inserted by Schedule 2, would ordinarily not cover one-to-one communications, that are not open to members of the public to access. Such one-to-one communications could include an internal communication, for example, when a library or archives makes copyright material available on an intranet for administrative purposes. It could also include external one-to-one communications, for example, when a library emails a copy

of a manuscript to another library under interlibrary loan or when a library or archives directly acquires audiovisual or other material from a third party digital delivery service such as a satellite platform containing aggregated content which is made available by copyright owners.

The new subsection 29A(3) provides that subsections 29(4) to (7) apply in relation to making public in the same way as in relation to publication. This would mean, for example, that in determining whether a work or other subject matter has been made public, any unauthorized making public shall be disregarded (subsection 29(6)). Under subsection 29(7), subject to section 52, an unauthorized making public of copyright material will occur if done otherwise than by, or with the licence of, the copyright owner; and an unauthorized making public of material in which copyright does not subsist will occur if done otherwise than by, or with the licence of, the author of the work, or the maker or publisher of the sound recording or cinematograph film (as the case may be).

Item 4 – Sections 33 and 34

Item 4 repeals sections 33 and 34 of the Act and replaces them with a new section 33 which sets out a new scheme for duration of copyright in original works covering:

- works first made public before 1 January 2019 (that is, on commencement of Schedule 2 to the Bill); and
- works never made public, and works first made public on or after 1 January 2019.

Subsection 33(2) Works first made public before 1 January 2019

Proposed subsection 33(2) sets out in a table the duration scheme for works first made public before 1 January 2019, and covers three scenarios:

- item 1 of the table – provides for a new standard protection period of ‘life of author plus 70 years’ where no other item of this table applies. This is the default position. This period would apply, for example, if the work is first made public *before* the author of the work has died and the identity of the author is generally known at any time within 70 years of the work being first made public;
- item 2 of the table – provides for a protection period of ‘first made public plus 70 years’ if the author of the work has died and the work was not first made public before the author died, and item 3 does not apply;
- item 3 of the table – provides for a protection period of ‘first made public plus 70 years’ if the identity of the author is not generally known at any time within 70 years of the work being first made public.

Subsection 33(3) – Works never made public, and works first made public on or after 1 January 2019

Proposed subsection 33(3) sets out in a table the duration scheme for works never made public, and works first made public on or after 1 January 2019, and covers three scenarios:

- item 1 of the table – provides for a new standard protection period of ‘life of author plus 70 years’ where no other item of the table applies. This is the default position. For example, where the author becomes generally known within 70 years of the work being made, copyright duration would default to the standard protection period of ‘life of author plus 70 years’;
- item 2 of the table – provides for a protection period of ‘made plus 70 years’ if the identity of the author is not generally known within 70 years of the work being made and the work is not first made public before the end of 50 years after the calendar year in which the work was made;
- item 3 of the table – provides for a protection period of ‘first made public plus 70 years’ if the identity of the author is not generally known at any time within 70 years of the work being first made public, and the work is first made public within 50 years of the work being made.

Item 5 – Sections 79 and 80

Item 5 repeals sections 79 and 80 and substitutes new sections 79, 79A and 80.

Current sections 79 and 80 relate to works of joint authorship and include references to current sections 33 and 34 dealing with duration of copyright in original works and in anonymous and pseudonymous works. Sections 33 and 34 are proposed to be repealed and a new section 33 inserted (see Item 4). As a consequence current sections 79 and 80 are being updated to refer to the relevant items of the tables in the new subsection 33(2) and (3) and omit any references to section 34.

Item 5 also inserts a new section 79A that relates to works of joint authorship where none of the authors of the work are generally known. The new section 79A provides that for works of joint authorship, references in certain items of the tables in subsection 33(2) and (3) to the identity of the author of a work not being generally known are taken to be references to the identity of none of the authors of the work being generally known.

Item 6 – Subsection 81(2)

Item 6 makes consequential amendments to subsection 81(2) given the proposed new definition of ‘generally known’ in subsection 10(1) of the Act, which defines ‘generally known’ as including if the author’s identity ‘can be ascertained by reasonable inquiry’. (see Item 1).

Item 7 – Subsection 81(3)

Item 7 repeals subsection 81(3), which refers to the current section 33, and inserts new subsections 81(3) and (3A) consequential to the new section 33 (see Item 4). The new subsections 81(3) and (3A) refer to the relevant provisions set out in the table in proposed new section 33.

Item 8 – Paragraph 81(4)(b)

Item 8 makes consequential amendments to paragraph 81(4)(b) given the proposed new definition of ‘generally known’ in subsection 10(1) of the Act. This new provision

defines ‘generally known’, in the context of when the identity of the author of copyright material is ‘generally known’, as including ‘if it can be ascertained by reasonable inquiry’ (see Item 1).

Item 9 – Sections 93 and 94

Item 9 repeals sections 93 and 94 of the Act and replaces them with a new section 93 which sets out a new scheme for duration of copyright in sound recordings and cinematograph films (‘copyright material’) covering:

- sound recordings and cinematograph films first made public before 1 January 2019 (that is, on commencement of Schedule 2 of the Bill); and
- sound recordings and cinematograph films never made public, and sound recordings and cinematograph films first made public on or after 1 January 2019.

Subsection 93(2) – Copyright material first made public before 1 January 2019

Proposed subsection 93(2) provides for a standard protection period of ‘first made public plus 70 years’ if the relevant sound recording or cinematograph film was first made public before 1 January 2019.

Subsection 93(3) – Copyright material never made public, and material first made public on or after 1 January 2019

Proposed subsection 93(3) sets out in a table the duration scheme for sound recordings and cinematograph films never made public, and sound recordings and cinematograph films first made public on or after 1 January 2019, and covers two scenarios:

- item 1 of the table – provides for a standard protection period of ‘first made public plus 70 years’ if the relevant copyright material is first made public within 50 years of having been made;
- item 2 of the table – provides for a standard protection period of ‘made plus 70 years’ where item 1 of the table does not apply. This is the default position. This period would apply if, for example, the relevant copyright material is never made public or if the material is first made public on or after 1 January 2019 but not within 50 years of having been made.

Item 10 – At the end of paragraph 129(2)(a)

Item 10 is a minor technical amendment.

Item 11 – Paragraph 129(2)(c)

Item 11 makes a consequential amendment to paragraph 129(2)(c) given the proposed new definition of ‘generally known’ in subsection 10(1) of the Act. This new provision defines ‘generally known’, in the context of when the identity of the author of copyright material is ‘generally known’, as including ‘if it can be ascertained by reasonable inquiry’ (see Item 1).

Item 12 – Sections 180 and 181

Item 12 repeals sections 180 and 181 of the Act which provide for duration of Crown copyright in original works, and sound recordings and cinematograph films respectively, and substitutes them with a new, consolidated section 180.

Section 180 applies to literary, dramatic, musical and artistic works of which the Commonwealth or a State is the owner of copyright. Section 180 currently provides for different copyright terms for published and unpublished Crown copyright works, and for different terms as between the various types of works:

- for literary, dramatic or musical works, copyright in published works subsists until 50 years after the end of the calendar year in which the work was first published (that is, ‘first published plus 50 years’). Where the work is unpublished, copyright continues to subsist in perpetuity (subsection 180(1));
- for artistic works, copyright subsists until 50 years after the end of the calendar year in which the work was first made (that is, ‘work first made plus 50 years’) (subsection 180(2));
- for engravings or photographs, copyright subsists until 50 years after the end of the calendar year in which the engraving or photograph is first published (that is, ‘first published plus 50 years’) (subsection 180(3)).

Section 181 applies to sound recordings and cinematograph films of which the Commonwealth or a State is the owner. Section 181 currently provides that copyright in a sound recording or cinematograph film subsists until 50 years after the end of the calendar year in which the recording or film is first published (that is, ‘first published plus 50 years’).

The new section 180 provides for a standard term of copyright protection for works, sound recordings and cinematograph films owned by the Crown of 50 years after the calendar year in which the material is made (that is, ‘made plus 50 years’), whether the material is made public or not. This would set a copyright term for copyright material owned by the Crown that is never published and align the copyright terms for all works, sound recordings and cinematograph films with that for artistic works.

Item 13 – Before section 184

Item 13 inserts a new heading ‘Division 1 – Foreign Countries’ covering sections 184 and 185 of the Act.

Item 14 – Before section 186

Item 14 inserts a new heading ‘Division 2 – International organizations’ covering section 186 to new section 188A of the Act.

Item 15 – At the end of paragraph 187(1)(a)

Item 15 is a minor technical amendment.

Item 16 – Paragraph 187(1)(b)

Item 16 repeals paragraph 187(1)(b) to remove the provision for the subsistence of copyright in perpetuity for unpublished works.

The repeal of this paragraph is consequential to the insertion of new standard terms of protection for copyright material made or first published by an international organization in section 188A (see Item 27).

Item 17 – At the end of section 187(2)(a)

Item 17 is a minor technical amendment.

Item 18 – Paragraph 187(2)(b)

Item 18 repeals paragraph 187(2)(b) relating to the duration of copyright in works first published by an international organization.

The repeal of this paragraph is consequential to the insertion of new standard terms of protection for copyright material made or first published by an international organization as set out in section 188A (see Item 27).

Item 19 – At the end of section 187

Item 19 inserts a new subsection (4) making clear that section 187 has effect subject to the new standard terms of protection for copyright material made or first published by an international organization as set out in section 188A (see Item 27).

Item 20 – At the end of paragraph 188(1)(a)

Item 20 is a minor technical amendment.

Item 21 – Paragraph 188(1)(b)

Item 21 repeals paragraph 188(1)(b) to remove the provision for the subsistence of copyright in perpetuity for unpublished sound recordings or cinematograph films.

The repeal of this paragraph is consequential to the insertion of new standard terms of protection for copyright material made or first published by an international organization as set out in section 188A (see Item 27).

Item 22 – At the end of paragraph 188(2)(a)

Item 22 is a minor technical amendment.

Item 23 – Paragraph 188(2)(b)

Item 23 repeals paragraph 188(2)(b) relating to the duration of copyright in a sound recording or cinematograph film first published by an international organization.

The repeal of this paragraph is consequential to the insertion of new standard terms of protection for copyright material made or first published by an international organization as set out in section 188A (see Item 27).

Item 24 – At the end of paragraph 188(3)(a)

Item 24 is a minor technical amendment.

Item 25 – Paragraph 188(3)(b)

Item 25 repeals paragraph 188(3)(b) relating to the duration of copyright in an edition of a work or works published by an international organization.

The repeal of this paragraph is consequential to the insertion of new standard terms of protection for copyright material made or first published by an international organization as set out in section 188A (see Item 27).

Item 26 – At the end of section 188

Item 26 inserts a new provision making clear that section 188 has effect subject to the new standard terms of protection for copyright material made or first published by an international organization as set out in section 188A (see Item 27).

Item 27 – At the end of Part VIII

Item 27 inserts a new section 188A that sets out a new scheme for duration of copyright in original works and other subject-matter (‘copyright material’), made or first published by international organizations.

Subsection 188A(2) – Copyright material first made public before 1 January 2019

Proposed subsection 188A(2) provides for a new standard protection period of ‘first made public plus 70 years’ if the relevant copyright material was first made public before 1 January 2019, and is not an edition to which subsection 188(3) applies.

Subsection 188A(3) Copyright material never made public, and material first made public on or after 1 January 2019

Proposed subsection 188A(3) sets out in a table the duration scheme for copyright material never made public, and copyright material first made public on or after 1 January 2019, and is not an edition to which subsection 188(3) applies. This table covers two scenarios:

- item 1 of the table – provides for a standard protection period of ‘first made public plus 70 years’ if the relevant copyright material is first made public within 50 years of having been made;
- item 2 of the table – provides for a standard protection period of ‘made plus 70 years’ where item 1 of the table does not apply. This is the default position and would apply if, for example, the copyright material is never made public or if the material is first made public on or after 1 January 2019 but not within 50 years of having been made.

Subsection 188A(4) – Editions

Proposed subsection 188A(4) provides for a standard protection period, if the copyright material is a published edition to which subsection 188(3) applies, of 25 years after the edition was first made public.

Item 28 – Sections 233 to 235 (Crown copyright in films)

Item 28 repeals sections 233 and 234 relating to duration of Crown copyright in photographs and sound recordings consequential to the proposed repeal of sections 180 and 181 and insertion of the new section 180 (see Item 12).

On commencement of the new section 180, there would be no distinction between the Crown copyright terms for artistic works (currently provided for under subsection 180(2)) and photographs (currently provided under subsection 180(3)). This would render section 233 obsolete.

Under the new section 180, the current term of Crown copyright in sound recordings, namely 50 years after first publication, is being replaced with a new standard term of 50 years after the material is made. This would render section 234 obsolete.

Item 28 also repeals and substitutes section 235 relating to Crown copyright in cinematograph films consequential to the repeal of current sections 180 and 181 and insertion of the new section 180 by Item 12.

Item 29 – Application of amendments

Item 29 is a machinery provision that applies the amendments made by Schedule 2 to the Bill to works made before, on or after the commencement of this Item 29.

Item 30 – Transitional provision

Item 30 contains a transitional provision relating to the potential cessation of copyright under the amendments made by Schedule 2 to the Bill. If the new copyright duration schemes established under Schedule 2 would have the effect that copyright in a work ceased to subsist before the commencement of Item 30 (1 January 2019), this transitional provision would operate so as to preserve copyright up until that date.

Item 31 – Compensation for acquisition of property

Item 31 is a ‘safety net’ provision that ensures that ‘just terms’ compensation is payable if Schedule 2 to the Bill, once enacted, results in an acquisition of property within the meaning of paragraph 51(xxxi) of the Constitution. Paragraph 51(xxxi) of the Constitution allows the Commonwealth to acquire property on ‘just terms’ from any State or person for any purpose in respect of which the Parliament has power to make laws. By ensuring ‘just terms’ compensation is payable, Item 31 ensures the constitutional validity of Schedule 2.

Schedule 3 – Minor Amendments

Copyright Act 1968

The items in Schedule 3 contain amendments relating to references to Ministers (Part 1) and to preconditions for making regulations extending or restricting the operation of the Act in relation to foreign countries (Part 2).

Part 1 – References to Attorney-General

Items 1, 3, 4, 5 and 6 – Section 135ZZX, subsections 183D(1), 183D(4)(b) and 183D(5) and section 183E

Items 1, 3, 4, 5 and 6 substitute references in the Act to the ‘Attorney-General’ with ‘Minister’. These amendments ensure the provisions reflect alterations made by the Acts Interpretation (Substituted References – Section 19BA) Amendment Order 2015 (No. 1) pursuant to subsection 19BA(1) of the *Acts Interpretation Act 1901*.

Item 2 – Subsection 183(6)

Item 2 amends subsection 183(6) of the Act to substitute the reference to ‘the Attorney-General of the Commonwealth’ to ‘the Minister’, and to substitute the reference to ‘the Attorney-General of the State’ to ‘the Minister of the State with responsibility for copyright’.

These amendments are designed to ensure this provision refers to the relevant Commonwealth and State Ministers with responsibility for copyright.

Items 7 and 8 – Transitional, savings and applications provisions

Items 7 and 8 include provision for transitional, savings and application provisions to ensure that the amendments made by Part 1 of Schedule 3 do not result in any unintended consequences.

Part 2 – Preconditions for making regulations

Item 9 – Subsection 10(1)

Item 9 inserts a new definition of ‘international agreement’ in subsection 10(1) of the Act to clarify the scope of the power in sections 184 and 248U (as amended by Items 10 and 15) to make regulations applying provisions of the Act in relation to a foreign country that is party to an international agreement relating to copyright. Such an international agreement may include, for example, a convention to which Australia is a party, or an agreement or arrangement between Australia and a foreign country such as a bilateral free trade agreement in which copyright forms a part.

Item 10 – Subsection 184(3)

Item 10 repeals and substitutes subsection 184(3) of the Act to modernise and clarify the circumstances in which regulations may be made to extend the operation of the Act (other than the provisions of Part XIA relating to performers’ protection) to foreign

countries. Under the proposed new subsection 184(3), in order for regulations to be made applying a provision of the Act in relation to a foreign country, either:

- (a) the country must be a party to an international agreement specified in the regulations for this purpose, or
- (b) the Minister must be satisfied that adequate protection is or will be given under the law of that country to owners of copyright under the Act in the relevant class of works or other subject-matter.

Items 11 to 13 – Subsections 185(1), (2) and (3)

Items 11 to 13 make amendments to modernise the provisions in section 185 relating to the making of regulations that restrict the application of copyright protections in the Act to non-resident authors who were or are citizens or nationals of foreign countries, and bodies incorporated under the laws of foreign countries, that do not give adequate protection to Australian works.

Currently, under section 185 the Governor-General is required to have regard to the nature and extent of the lack of protection for Australian works in making regulations for the purposes of this section in relation to a foreign country.

Under the proposed amendments to section 185, before regulations are made by the Governor-General for the purposes of the section, the onus is upon the Minister to be satisfied that the law of the foreign country does not give adequate protection to Australian works and have regard to the nature and extent of that lack of protection.

Item 14 – Subsection 186(1)

Item 14 amends makes amendments to modernise the provisions in section 186 relating to the making of regulations to apply provisions of the Act to an international organization of which two or more countries or Governments are members, or their representatives constitute the organization.

Currently, subsection 186(1) provides that, where it appears to the Governor-General that it is desirable that the Act should apply to such an organization, the regulations may declare that organization to be an international organization to which this Act applies.

Under the proposed amendments to subsection 186(1), before regulations are made by the Governor-General making a declaration of this kind, the Minister must be satisfied that it is desirable that this Act should apply in relation to the organization.

Item 15 – Subsection 248U(3)

Item 15 repeals and substitutes subsection 248U(3) of the Act to modernise and clarify the circumstances in which regulations may be made to extend the provisions of Part XIA of the Act, relating to performers' protections, to a foreign country. Under the proposed new subsection 248U(3), in order for regulations to be made applying a provision of Part XIA in relation to a foreign country, either:

- (a) the country must be a party to an international agreement specified in the regulations, or

- (b) the Minister must be satisfied that adequate protection is or will be given under the law of that country to performers in performances relevant to Part XIA that are protected under the Act.

Items 16 to 18 – Section 248V

Items 16 to 18 make amendments to modernise the provisions in section 248V relating to the making of regulations that restrict the application of performers' protections in Part XIA of the Act to non-resident performers who were or are citizens or nationals of foreign countries that do not give adequate protection to Australian performances.

Currently, under section 248V the Governor-General is required to have regard to the nature and extent of the lack of protection for Australian performances in making regulations for the purposes of this section in relation to a foreign country.

Under the proposed amendments to section 248V, before regulations are made by the Governor-General for the purposes of the section, the onus is upon the Minister to be satisfied that the law of the foreign country does not give adequate protection to Australian performances and have regard to the nature and extent of that lack of protection.

Item 19 – Application of Amendments

Item 19 is included to ensure that the amendments made by Part 2 of Schedule 3 do not result in any unintended consequences.