

EXPOSURE DRAFT

2019-2020-2021

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Copyright Amendment (Access Reform) Bill 2021

No. , 2021

(Communications, Urban Infrastructure, Cities and the Arts)

**A Bill for an Act to amend the *Copyright Act 1968*,
and for related purposes**

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1 **A Bill for an Act to amend the *Copyright Act 1968*,**
2 **and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Copyright Amendment (Access Reform) Act 2021*.

6 **2 Commencement**

7 (1) Each provision of this Act specified in column 1 of the table
8 commences, or is taken to have commenced, in accordance with
9 column 2 of the table. Any other statement in column 2 has effect
10 according to its terms.
11

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Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent.	
3. Schedules 2 to 10	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

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

3 Schedules

8 Legislation that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

4 Compensation for acquisition of property

13 (1) If the operation of:
14 (a) this Act; or
15 (b) a provision inserted in the *Copyright Act 1968* by this Act;
16 would result in an acquisition of property (within the meaning of
17 paragraph 51(xxxi) of the Constitution) from a person otherwise

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1 than on just terms (within the meaning of that paragraph), the
2 Commonwealth is liable to pay a reasonable amount of
3 compensation to the person.

4 (2) If the Commonwealth and the person do not agree on the amount
5 of the compensation, the person may institute proceedings in:
6 (a) the Federal Court of Australia; or
7 (b) the Supreme Court of a State or Territory;
8 for the recovery from the Commonwealth of such reasonable
9 amount of compensation as the court determines.

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Schedule 1 Orphan works

1
2

Schedule 1—Orphan works

3

Copyright Act 1968

4

1 At the end of section 113P

5

Add:

6

Exception—orphan works etc.

7

- (7) Subsections (1) and (2) of this section do not apply to an act comprised in the copyright in copyright material if the act is covered by section 116AJA or 116AJB.

8

9

10

2 After Division 2AA of Part V

11

Insert:

12

Division 2AB—Limitation on remedies relating to orphan works etc.

13

14

116AJA Limitation on remedies relating to orphan works

15

(1) If:

16

(a) at a particular time, a person does an act comprised in the copyright in copyright material; and

17

18

(b) the act is an infringement of the copyright; and

19

(c) a reasonably diligent search for the owner or owners of the copyright was conducted within a reasonable period before that time; and

20

21

(d) the outcome of the search is that:

22

23

(i) the identity of the owner, or the identities of each of the owners, of the copyright is unknown; or

24

25

(ii) the identity of the owner is known but the owner cannot be contacted, or the identity of at least one of the owners is known but none of the owners whose identity is known can be contacted; and

26

27

28

29

(e) if:

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Orphan works **Schedule 1**

- 1 (i) the copyright material is a work (within the meaning of
2 Part IX); and
3 (ii) it is reasonably practicable for the author of the
4 copyright material to be identified in accordance with
5 Division 2 of Part IX as the author of the copyright
6 material;
7 the author is identified in accordance with Division 2 of
8 Part IX as the author of the copyright material;
9 a court must not grant relief against the person in respect of the
10 infringement.
- 11 (2) For the purposes of this section, in determining whether a
12 reasonably diligent search for the owner or owners of the copyright
13 was conducted, regard may be had to the following matters:
14 (a) the nature of the copyright material;
15 (b) the purpose and character of the act comprised in the
16 copyright;
17 (c) the manner in which the search was conducted;
18 (d) the person who conducted the search;
19 (e) the technologies, databases and registers that were available
20 for searches;
21 (f) any relevant industry codes of practice.
- 22 (3) Subsection (2) does not limit the matters to which regard may be
23 had.
- 24 (4) For the purposes of this section, in determining whether an act is
25 an infringement of copyright, disregard sections 113P, 135ZZK,
26 135ZZZI and 183.
- 27 (5) For the purposes of this section, assume that paragraph 195(2)(a)
28 were modified by inserting “or section 116AJA” after “this Part”.
- 29 (6) For the purposes of paragraph (1)(e), *author*, in relation to a
30 cinematograph film, means the maker of the film.

31 **116AJB Limitation on remedies relating to former orphan works**

- 32 (1) If:
-

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Schedule 1 Orphan works

- 1 (a) at a particular time, a person did an act (the *past act*)
2 comprised in the copyright in copyright material; and
3 (b) section 116AJA applied to the past act; and
4 (c) at a later time (the *current time*):
5 (i) the identity of the owner, or the identities of at least one
6 of the owners, of the copyright is or are known to the
7 person; and
8 (ii) the owner, or at least one of the owners, can be
9 contacted; and
10 (iii) the person does an act (the *current act*) comprised in the
11 copyright in the copyright material; and
12 (d) the current act is an infringement of the copyright;
13 then:
14 (e) the terms for the doing of the current act are:
15 (i) such terms as are (whether before or after the current
16 time) agreed between the person and the owner or
17 owners of the copyright; or
18 (ii) in default of agreement—such terms as are fixed by the
19 Copyright Tribunal; and
20 (f) if the person complies with such terms as are agreed or
21 fixed—a court must not grant relief against the person in
22 respect of the infringement.

23 Note: See also section 153B.

- 24 (2) For the purposes of this section, in determining whether an act is
25 an infringement of copyright, disregard sections 113P, 135ZZK,
26 135ZZZI and 183.

27 **3 At the end of section 135ZZK**

28 Add:

29 *Exception—orphan works etc.*

- 30 (6) Subsections (1) and (2) of this section do not apply to an act
31 comprised in the copyright in copyright material if the act is
32 covered by section 116AJA or 116AJB.

33 **4 At the end of section 135ZZZI**

34 Add:

1 *Exception—orphan works etc.*

2 (7) Subsections (1), (2), (3) and (4) of this section do not apply to an
3 act comprised in the copyright in copyright material if the act is
4 covered by section 116AJA or 116AJB.

5 **5 After Subdivision C of Division 3 of Part VI**

6 Insert:

7 **Subdivision D—Applications relating to Part V**

8 **153B Applications to Tribunal under section 116AJB**

- 9 (1) The parties to an application to the Tribunal under section 116AJB
10 for the fixing of the terms for the doing by a person of an act
11 comprised in a copyright are:
12 (a) the person; and
13 (b) the owner of the copyright.
- 14 (2) If an application is made to the Tribunal under section 116AJB, the
15 Tribunal must consider the application and, after giving the parties
16 to the application an opportunity of presenting their cases, must
17 make an order fixing the terms for the doing of the act.
- 18 (3) The Tribunal must not make an order under subsection (2) fixing
19 the terms for the doing of the act unless the Tribunal considers that
20 the terms are reasonable.

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Schedule 2 Fair dealing for quotation

1
2

Schedule 2—Fair dealing for quotation

3

Copyright Act 1968

4

1 Subsection 10(1)

5

Insert:

6

authorised officer, in relation to a library or archives, means:

7

(a) the officer in charge of the library or archives; or

8

(b) a person authorised by the officer to act on the officer's behalf.

9

10

2 Subsection 10(1) (definition of *authorized officer*)

11

Repeal the definition.

12

3 Section 113D

13

Omit:

14

The following do not infringe copyright in any copyright material:

15

(a) certain use by or for persons with a disability;

16

(b) certain use for the purposes of libraries, archives and key cultural institutions;

17

18

(c) certain use by educational institutions.

19

substitute:

20

The following do not infringe copyright in any copyright material:

21

(a) certain use by or for persons with a disability;

22

(b) fair dealing for quotation;

23

(c) certain use for the purposes of libraries, archives and key cultural institutions;

24

25

(d) certain use by educational institutions.

26

4 After Division 2 of Part IVA

27

Insert:

1 **Division 2A—Fair dealing for quotation**

2 **113FA Fair dealing for quotation**

3 (1) A fair dealing with copyright material does not constitute an
4 infringement of copyright in the copyright material to the extent
5 that the dealing involves a quotation of the whole or a part of the
6 copyright material, so long as the following conditions are
7 satisfied:

8 (a) the dealing is:

9 (i) by a body administering a library or archives; or

10 (ii) by an authorised officer of a library or archives; or

11 (iii) by a body administering an educational institution; or

12 (iv) by a person authorised by an educational institution to
13 act on behalf of the institution; or

14 (v) by the Commonwealth or a State; or

15 (vi) by a person authorised by the Commonwealth or a State
16 to act on behalf of the Commonwealth or the State, as
17 the case may be; or

18 (vii) by a person or organisation for the purpose of research;

19 (b) either:

20 (i) the quotation is for a non-commercial purpose; or

21 (ii) the quotation is for a commercial purpose in relation to
22 a product or service, but the quotation is immaterial to
23 the value of the product or service;

24 (c) the copyright material has been made public;

25 (d) if:

26 (i) the copyright material is a work (within the meaning of
27 Part IX); and

28 (ii) it is reasonably practicable for the author of the
29 copyright material to be identified in accordance with
30 Division 2 of Part IX as the author of the copyright
31 material;

32 the author is identified in accordance with Division 2 of
33 Part IX as the author of the copyright material; and

34 (e) if it is reasonably practicable for the title or name of the
35 copyright material to be identified—the title or name of the
36 copyright material is identified.

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Schedule 2 Fair dealing for quotation

- 1 Note: A dealing with copyright material for the purpose of research may
2 involve:
3 (a) the publication of the material; or
4 (b) otherwise making the material public.
- 5 (2) For the purposes of this section, in determining whether a dealing
6 with copyright material constitutes a fair dealing with the copyright
7 material, regard must be had to the following matters:
8 (a) the purpose and character of the dealing;
9 (b) the nature of the copyright material;
10 (c) the effect of the dealing upon the potential market for, or
11 value of, the material;
12 (d) if only part of the material is dealt with—the amount and
13 substantiality of the part dealt with, taken in relation to the
14 whole material.
- 15 (3) Subsection (2) does not limit the matters to which regard may be
16 had.
- 17 (4) For the purposes of this section, a quotation may be:
18 (a) a quotation of written material; or
19 (b) a quotation of other material.
- 20 (5) For the purposes of this section, the following are examples of a
21 quotation:
22 (a) a quotation for the purpose of explanation;
23 (b) a quotation for the purpose of illustration;
24 (c) a quotation for the purpose of authority;
25 (d) a quotation for the purpose of homage.
- 26 Note: See also section 15AD of the *Acts Interpretation Act 1901*.
- 27 (6) For the purposes of this section, assume that paragraph 195(2)(a)
28 were modified by inserting “or section 113FA” after “this Part”.
- 29 (7) For the purposes of paragraph (1)(d), **author**, in relation to a
30 cinematograph film, means the maker of the film.

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Libraries and archives etc. **Schedule 3**
Amendment of the Copyright Act 1968 **Part 1**

1 **Schedule 3—Libraries and archives etc.**

2 **Part 1—Amendment of the Copyright Act 1968**

3 *Copyright Act 1968*

4 **1 Subsection 10(1) (at the end of the definition of *archives*)**

5 Add:

6 Note: An archives may be a *key cultural institution* (as defined by
7 section 113L).

8 **2 Subsection 10(1)**

9 Insert:

10 *library* means a library where:

- 11 (a) all or part of the collection comprising the library is
12 accessible to members of the public directly or through
13 interlibrary loans; or
14 (b) the principal purpose of the library is to provide library
15 services for members of a Parliament.

16 Note 1: For *Parliament*, see section 12 (references to Parliament).

17 Note 2: A library may be a *key cultural institution* (as defined by
18 section 113L).

19 **3 Subsections 10(2), (2A) and (2B)**

20 Repeal the subsections, substitute:

21 (2) Without limiting the expression *reasonable portion* in this Act, if
22 either of the following conditions is satisfied in relation to a
23 literary, dramatic or musical work (other than a computer
24 program):

25 (a) the work is in hardcopy form, and the hardcopy form has at
26 least 10 pages;

27 (b) the work is in electronic form, the electronic form has pages,
28 and the number of pages is at least 10;

29 a copy of part of the work is taken to contain only a *reasonable*
30 *portion* of the work if:

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Schedule 3 Libraries and archives etc.

Part 1 Amendment of the Copyright Act 1968

- 1 (c) the pages that are copied do not exceed, in the aggregate,
2 10% of the number of pages in the work; or
3 (d) in a case where the work is divided into chapters—the pages
4 that are copied exceed, in the aggregate, 10% of the number
5 of pages in the work, but contain only the whole or part of a
6 single chapter of the work.
- 7 (2A) Without limiting the expression *reasonable portion* in this Act, if:
8 (a) a literary, dramatic or musical work (other than a computer
9 program) is in electronic form; and
10 (b) the electronic form of the work does not have pages;
11 a copy of part of the work is taken to contain only a *reasonable*
12 *portion* of the work if:
13 (c) the content that is copied does not exceed, in the aggregate,
14 10% of the content in the work; or
15 (d) in a case where the work is divided into chapters—the
16 content that is copied exceeds, in the aggregate, 10% of the
17 content in the work, but consists of the whole or part of a
18 single chapter of the work.

4 Paragraph 10(3)(ma)

19 Repeal the paragraph.
20

5 Subsection 29(7)

21 Omit “section 52”, substitute “section 113KJ”.
22

6 Section 39A

23 Repeal the section.
24

7 Subsection 40(4)

25 Repeal the subsection.
26

8 Subsection 40(5) (table)

27 Repeal the table, substitute:
28
29

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Libraries and archives etc. **Schedule 3**
Amendment of the Copyright Act 1968 **Part 1**

Works, adaptations and reasonable portions

Item	Work or adaptation	Amount that is reasonable portion
1	A literary, dramatic or musical work (except a computer program), or an adaptation of such a work, where: (a) the work or adaptation is in hardcopy form, and the hardcopy form has at least 10 pages; or (b) the work or adaptation is in electronic form, the electronic form has pages, and the number of pages is at least 10	(a) 10% of the number of pages in the work or adaptation; or (b) if the work or adaptation is divided into chapters—the whole or part of a single chapter of the work or adaptation
2	Any of the following: (a) a literary work in electronic form (other than a computer program or an electronic compilation, such as a database), where the electronic form of the work does not have pages; (b) a dramatic work in electronic form, where the electronic form of the work does not have pages; (c) an adaptation in electronic form of a literary work (other than a computer program or an electronic compilation, such as a database), where the electronic form of the adaptation does not have pages; (d) an adaptation in electronic form of a dramatic work, where the electronic form of the adaptation does not have pages	(a) 10% of the content in the work or adaptation; or (b) if the work or adaptation is divided into chapters—the whole or part of a single chapter of the work or adaptation

1 **9 Subsection 40(6)**

2 Repeal the subsection.

3 **10 Subsection 40(8)**

4 Omit “, (2B)”.

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Schedule 3 Libraries and archives etc.

Part 1 Amendment of the Copyright Act 1968

1 **11 Subsection 40(8)**

2 Omit “, (6)”.

3 **12 Section 47H**

4 Before “An agreement”, insert “(1)”.

5 **13 At the end of section 47H**

6 Add:

7 (2) Subsection (1) does not imply that an agreement, or a provision of
8 an agreement, may exclude or limit, or have the effect of excluding
9 or limiting, the operation of a provision of this Act that is not
10 mentioned in that subsection.

11 **14 Division 5 of Part III**

12 Repeal the Division.

13 **15 Paragraph 80(c)**

14 Omit “section 51”, substitute “section 113KG”.

15 **16 Sections 104A and 104B**

16 Repeal the sections.

17 **17 Section 110A**

18 Repeal the section.

19 **18 Subparagraph 112(a)(ii)**

20 Omit “49, 50,”.

21 **19 Subparagraph 112(a)(ii)**

22 After “113K,”, insert “113KC, 113KD, 113KE, 113KF,”.

23 **20 Subparagraph 112(b)(ii)**

24 Omit “49, 50,”.

25 **21 Subparagraph 112(b)(ii)**

26 After “113K,”, insert “113KC, 113KD, 113KE, 113KF,”.

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Libraries and archives etc. **Schedule 3**
Amendment of the Copyright Act 1968 **Part 1**

1 **22 Paragraph 113F(b)**

2 After “is satisfied”, insert “, after reasonable investigation,”.

3 **23 Section 113G**

4 Repeal the section, substitute:

5 **113G Interpretation**

6 (1) In this Subdivision, a reference to an *article contained in a*
7 *periodical publication* is a reference to anything appearing in such
8 a publication.

9 (2) Subsection (1) does not apply to an artistic work appearing in a
10 periodical publication unless the artistic work is covered by section
11 113KK.

12 **24 Section 113H**

13 Omit “authorized officer” (wherever occurring), substitute “authorised
14 officer”.

15 **25 Subsection 113H(2)**

16 Omit “available to be accessed at the library or archives”, substitute
17 “available to be accessed at the premises of the library or archives, or
18 online,”.

19 **26 Paragraph 113H(2)(b)**

20 After “in”, insert “hardcopy form or”.

21 **27 Paragraph 113H(2)(c)**

22 Omit “at the library or archives”, substitute “at the premises of the
23 library or archives, or online,”.

24 **28 Subsection 113H(2) (note)**

25 Omit “section 49 (Reproducing and communicating works by libraries
26 and archives for users)”, substitute “section 113KD (supply of copies to
27 persons) and section 113KE (supply of copies to other libraries or
28 archives)”.

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Schedule 3 Libraries and archives etc.

Part 1 Amendment of the Copyright Act 1968

1 **29 Subsection 113J(1)**

2 Omit “authorized officer”, substitute “authorised officer”.

3 **30 Paragraph 113J(1)(c)**

4 After “archives”, insert “(whether using the internet or otherwise)”.

5 **31 Subsection 113J(2)**

6 Omit “authorized officer”, substitute “authorised officer”.

7 **32 Subsection 113J(2)**

8 Omit “available to be accessed at the library or archives”, substitute
9 “available to be accessed at the premises of the library or archives, or
10 online,”.

11 **33 Paragraph 113J(2)(a)**

12 After “archives”, insert “(whether using the internet or otherwise)”.

13 **34 Paragraph 113J(2)(b)**

14 After “in”, insert “hardcopy form or”.

15 **35 Paragraph 113J(2)(c)**

16 Omit “at the library or archives”, substitute “at the premises of the
17 library or archives, or online,”.

18 **36 Subsection 113J(2) (note)**

19 Omit “section 49 (Reproducing and communicating works by libraries
20 and archives for users)”, substitute “section 113KD (supply of copies to
21 persons) and section 113KE (supply of copies to other libraries or
22 archives)”.

23 **37 Section 113K**

24 Omit “authorized officer”, substitute “authorised officer”.

25 **38 At the end of Subdivision A of Division 3 of Part IVA**

26 Add:

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Libraries and archives etc. **Schedule 3**
Amendment of the Copyright Act 1968 **Part 1**

1 **113KA Infringing copies made on machines**

2 If:

- 3 (a) a person makes an infringing copy of, or of part of, copyright
4 material on a machine (including a computer); and
5 (b) the machine was installed by or with the approval of the body
6 administering a library or archives:
7 (i) on the premises of the library or archives; or
8 (ii) outside those premises for the convenience of persons
9 using the library or archives; and
10 (c) there is affixed to, or in close proximity to, the machine, in a
11 place readily visible to persons using the machine, a notice of
12 the prescribed dimensions and in accordance with the
13 prescribed form;

14 then neither:

- 15 (d) the body administering the library or archives; nor
16 (e) an authorised officer of the library or archives;
17 is taken to have authorised the making of the infringing copy
18 merely because the copy was made on the machine.

19 **113KB Assisting a member of a Parliament**

- 20 (1) An authorised officer of a library does not infringe copyright in
21 copyright material by a use of the material if:
22 (a) the use is for the sole purpose of assisting a person who is a
23 member of a Parliament in the performance of the person's
24 duties as such a member; and
25 (b) the principal purpose of the library is to provide library
26 services for members of that Parliament.
27 (2) For the purposes of this section, *use* includes any act that would
28 infringe copyright apart from this section.

29 **113KC Making material available online**

- 30 (1) An authorised officer of a library or archives does not infringe
31 copyright in copyright material by making the copyright material
32 available online (whether at the premises of the library or archives,
33 or on the internet) if:
-

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Schedule 3 Libraries and archives etc.

Part 1 Amendment of the Copyright Act 1968

- 1 (a) the copyright material was acquired, in electronic form, as
2 part of the collection of the library or archives; and
3 (b) the library or archives takes reasonable steps to ensure that a
4 person who accesses the copyright material does not infringe
5 copyright in the copyright material.
- 6 (2) An authorised officer of a library or archives does not infringe
7 copyright in copyright material by:
8 (a) making, or causing another person to make, an electronic
9 copy of the copyright material; and
10 (b) making the copy available online (whether at the premises of
11 the library or archives, or on the internet);
12 if:
13 (c) the copyright material was acquired, in hardcopy form, as
14 part of the collection of the library or archives; and
15 (d) the authorised officer is satisfied, after reasonable
16 investigation, that an electronic copy of the copyright
17 material cannot be obtained within a reasonable time at an
18 ordinary commercial price; and
19 (e) the library or archives takes reasonable steps to ensure that a
20 person who accesses the copyright material online does not
21 infringe copyright in the copyright material.

22 Note: Other uses of the electronic copy might not infringe copyright because
23 of other provisions of this Act, such as section 113H (preservation),
24 113J (research), 113M (preservation), 113KD (supply of copies to
25 persons) or 113KE (supply of copies to other libraries or archives).

113KD Supply of copies to persons

Request

- 27
28 (1) Either:
29 (a) a person (the *relevant person*); or
30 (b) a person acting on behalf of the relevant person:
31 may request the authorised officer of a library or archives (the *first*
32 *library or archives*) for the relevant person to be supplied with a
33 copy of the whole or a part of copyright material that is held in the
34 collection of:
35 (c) the first library or archives; or
-

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Libraries and archives etc. **Schedule 3**
Amendment of the Copyright Act 1968 **Part 1**

- 1 (d) another library or archives.
- 2 (2) A request under subsection (1) must include a statement to the
3 effect that:
- 4 (a) the relevant person requires the copy:
- 5 (i) for the purpose of research or study; or
- 6 (ii) for the purposes of the relevant person's private and
7 domestic use; and
- 8 (b) the relevant person will not use the copy for any other
9 purpose.
- 10 (3) A request under subsection (1) must:
- 11 (a) be in writing; and
- 12 (b) be signed by:
- 13 (i) the relevant person; or
- 14 (ii) the person who made the request on behalf of the
15 relevant person.
- 16 (4) To avoid doubt, sections 9 and 10 of the *Electronic Transactions*
17 *Act 1999* apply in relation to a request under subsection (1).
- 18 Note 1: Section 9 of the *Electronic Transactions Act 1999* allows requests to
19 be made by electronic means.
- 20 Note 2: Section 10 of the *Electronic Transactions Act 1999* allows signatures
21 to be given by electronic means.
- 22 (5) However, if it is not practicable to make a request under
23 subsection (1) in writing:
- 24 (a) the request may be made orally; and
- 25 (b) an authorised officer of the first library or archives must
26 make, or cause to be made, a record of the request; and
- 27 (c) subsection (3) of this section does not apply to the request;
28 and
- 29 (d) sections 9 and 10 of the *Electronic Transactions Act 1999* do
30 not apply in relation to the request.
- 31 *Supply of copy*
- 32 (6) If:
- 33 (a) a request is made under subsection (1) by or on behalf of the
34 relevant person; and
-

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Schedule 3 Libraries and archives etc.

Part 1 Amendment of the Copyright Act 1968

1 (b) an authorised officer of a library or archives is satisfied that it
2 is reasonable to supply the relevant person with the copy to
3 which the request relates;

4 the authorised officer does not infringe copyright in copyright
5 material by:

6 (c) making, or causing another person to make, the copy to
7 which the request relates; and

8 (d) supplying the copy to the relevant person.

9 Note: The copy could be made from another copy of the copyright material
10 in the collection of the library or archives that was made without
11 infringing copyright, for example, because of subsection 113H(1)
12 (preservation), subsection 113J(1) (research) or section 113KF
13 (retention copies).

14 (7) Subsection (6) does not apply in relation to a request under
15 subsection (1) if the request includes a statement that, to the
16 knowledge of the authorised officer, is untrue in a material
17 particular.

18 (8) Subsection (6) does not apply in relation to a request under
19 subsection (1) if:

20 (a) a charge is made for making and supplying a copy to which a
21 request relates; and

22 (b) the amount of the charge exceeds the cost of making and
23 supplying the copy.

24 (9) Subsection (6) does not apply to a request under subsection (1) for:

25 (a) a copy of the whole of copyright material (other than an
26 article contained in a periodical publication); or

27 (b) a copy of a part of copyright material (other than an article
28 contained in a periodical publication) that contains more than
29 a reasonable portion of the copyright material;

30 unless an authorised officer of the first library or archives is
31 satisfied, after reasonable investigation, that a copy (not being a
32 second-hand copy in hardcopy form) of the copyright material
33 cannot be obtained within a reasonable time at an ordinary
34 commercial price.

35 (10) For the purposes of subsection (9), if the characteristics of the
36 copyright material are such that subsection 10(2) or (2A) is
37 relevant to the question whether the copy contains only a

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Libraries and archives etc. **Schedule 3**
Amendment of the Copyright Act 1968 **Part 1**

- 1 reasonable portion of the copyright material, then that question is
2 to be determined solely by reference to subsection 10(2) or (2A).
- 3 (11) For the purposes of subsection (9), in determining whether a copy
4 (not being a second-hand copy in hardcopy form) of the copyright
5 material cannot be obtained within a reasonable time at an ordinary
6 commercial price, the authorised officer must take into account:
7 (a) the time by which the relevant person requires it; and
8 (b) the time within which a copy (not being a second-hand copy
9 in hardcopy form) of the work at an ordinary commercial
10 price could be provided to the relevant person; and
11 (c) whether an electronic copy of the work can be obtained
12 within a reasonable time at an ordinary commercial price.
- 13 (12) Subsection (6) does not apply to the making of an electronic copy
14 of the whole or part of copyright material in relation to a request
15 under subsection (1) for communication to the relevant person
16 unless, before or when the copy is communicated to the relevant
17 person, the relevant person is notified in accordance with the
18 regulations:
19 (a) that the copy has been made under this section and that the
20 copyright material might be subject to copyright protection
21 under this Act; and
22 (b) about such other matters (if any) as are prescribed.

23 *Supply*

- 24 (13) For the purposes of this section, *supply* includes supply by way of
25 a communication.

26 **113KE Supply of copies to other libraries or archives**

27 *Request*

- 28 (1) An authorised officer of a library or archives (the *first library or*
29 *archives*) may request, or cause another person to request, an
30 authorised officer of another library or archives (the *second library*
31 *or archives*) to supply the authorised officer of the first library or
32 archives with a copy of the whole or a part of copyright material
33 held in the collection of the second library or archives:

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Schedule 3 Libraries and archives etc.

Part 1 Amendment of the Copyright Act 1968

- 1 (a) for the purpose of including the copy in the collection of the
2 first library or archives; or
- 3 (b) in a case where the principal purpose of the first library or
4 archives is to provide library services for members of a
5 Parliament—for the purpose of assisting a person who is a
6 member of that Parliament in the performance of the person’s
7 duties as such a member; or
- 8 (c) for the purpose of supplying the copy under section 113KD.
- 9 (2) Subsection (1) does not apply to a request if:
- 10 (a) the request is for a purpose covered by paragraph (1)(a) or
11 (c); and
- 12 (b) the request relates to:
- 13 (i) a copy of the whole of copyright material (other than an
14 article contained in a periodical publication); or
- 15 (ii) a copy of a part of copyright material (other than an
16 article contained in a periodical publication), and the
17 part contains more than a reasonable portion of the
18 copyright material;
- 19 unless an authorised officer of the first library or archives is
20 satisfied, after reasonable investigation, that a copy (not being a
21 second-hand copy in hardcopy form) of the copyright material
22 cannot be obtained within a reasonable time at an ordinary
23 commercial price.
- 24 (3) For the purposes of subsection (2), if the characteristics of the
25 copyright material are such that subsection 10(2) or (2A) is
26 relevant to the question whether the copy contains only a
27 reasonable portion of the copyright material, then that question is
28 to be determined solely by reference to subsection 10(2) or (2A).
- 29 (4) For the purposes of subsection (2), if a request under subsection (1)
30 is made for the purpose of supplying the copy under section
31 113KD, then, in determining whether a copy of the copyright
32 material cannot be obtained within a reasonable time at an ordinary
33 commercial price, the authorised officer must take into account:
- 34 (a) the time by which the relevant person referred to in section
35 113KD requires the copy; and
- 36 (b) if the copyright material is in hardcopy form—the time
37 within which a copy (not being a second-hand copy in
-

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Libraries and archives etc. **Schedule 3**
Amendment of the Copyright Act 1968 **Part 1**

- 1 hardcopy form) of the copyright material at an ordinary
2 commercial price could be provided to the relevant person in
3 hardcopy form; and
4 (c) whether the copy can be obtained in electronic form within a
5 reasonable time at an ordinary commercial price.

6 *Supply of copy*

- 7 (5) Subject to this section, if a request is made under subsection (1) in
8 relation to a copy, an authorised officer of the second library or
9 archives does not infringe copyright in copyright material by:
10 (a) making, or causing another person to make, the copy; and
11 (b) supplying the copy to the authorised officer of the first
12 library or archives.

13 Note: The copy could be made from another copy of the copyright material
14 in the collection of the library or archives that was made without
15 infringing copyright, for example, because of subsection 113H(1)
16 (preservation), subsection 113J(1) (research) or section 113KF
17 (retention copies).

- 18 (6) If, under subsection (5), an authorised officer of the second library
19 or archives makes, or causes to be made, a copy of the whole or
20 part of copyright material and supplies it to the authorised officer
21 of the first library or archives in accordance with a request made
22 under subsection (1):
23 (a) for all purposes of this Act, the copy is taken to have been
24 made on behalf of an authorised officer of the first library or
25 archives for the purpose for which the copy was requested;
26 and
27 (b) an action must not be brought against the body administering
28 the second library or archives, or against an authorised
29 officer of the second library or archives, for infringement of
30 copyright by reason of the making or supplying of that copy.

- 31 (7) Subsection (6) does not apply in relation to a request under
32 subsection (1) if:
33 (a) a charge is made for making and supplying a copy to which a
34 request relates; and
35 (b) the amount of the charge exceeds the cost of making and
36 supplying the copy.

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Schedule 3 Libraries and archives etc.

Part 1 Amendment of the Copyright Act 1968

1

Supply

2

(8) For the purposes of this section, *supply* includes supply by way of a communication.

3

4

113KF Retention copies

5

If:

6

(a) a request (the *original request*) is made under subsection 113KD(1) or 113KE(1) for the supply of a copy of the whole or a part of copyright material; and

7

8

9

(b) an authorised officer of a library or archives is authorised by subsection 113KD(6) or 113KE(5), as the case requires, to make, or cause to be made, the copy to which the request relates;

10

11

12

13

then:

14

(c) an authorised officer of the library or archives does not infringe copyright in the copyright material by making, or causing another person to make, a copy (the *retention copy*) of the whole or the part, as the case may be, of the copyright material; and

15

16

17

18

19

(d) an authorised officer of the library or archives does not infringe copyright in the copyright material by using the retention copy for:

20

21

22

(i) making a copy of the whole or the part, as the case may be, of the copyright material in response to the original request, and supplying the copy in response to the original request; and

23

24

25

26

(ii) making further copies of the whole or the part, as the case may be, of the copyright material in response to future requests under subsection 113KD(1) or 113KE(1), and supplying those copies in response to those future requests.

27

28

29

30

31

Note: Other uses of the retention copy might not infringe copyright because of other provisions of this Act, such as section 113H (preservation), 113J (research), 113M (preservation) or 113KC (making material available online).

32

33

34

EXPOSURE DRAFT

Libraries and archives etc. **Schedule 3**
Amendment of the Copyright Act 1968 **Part 1**

1 **113KG Use of unpublished copyright material**

2 *Literary, dramatic, musical or artistic work*

3 (1) If, at a time more than 50 years after the end of the calendar year in
4 which the author of a literary, dramatic, musical or artistic work
5 died, copyright subsists in the work but:

6 (a) the work has not been published; and

7 (b) a copy of the work, or, in the case of a literary, dramatic or
8 musical work, the manuscript of the work, is kept in the
9 collection of a library or archives where it is, subject to any
10 regulations governing that collection, open to public
11 inspection;

12 then:

13 (c) a person does not infringe copyright in the work by making
14 or communicating a copy of the work:

15 (i) for the purposes of research or study; or

16 (ii) for the purposes of the person's private and domestic
17 use; or

18 (iii) with a view to publication; and

19 (d) an authorised officer of the library or archives does not
20 infringe copyright in the work by:

21 (i) making, or causing another person to make, a copy of
22 the work; and

23 (ii) supplying the copy to a person;

24 if the authorised officer is satisfied that the person requires
25 the copy:

26 (iii) for the purposes of research or study; or

27 (iv) for the purposes of the person's private and domestic
28 use; or

29 (v) with a view to publication.

30 *Sound recording or cinematograph film*

31 (2) If, at a time more than 50 years after the time at which, or the
32 expiration of the period during which, a sound recording or
33 cinematograph film was made, copyright subsists in the sound
34 recording or cinematograph film but:

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Schedule 3 Libraries and archives etc.

Part 1 Amendment of the Copyright Act 1968

- 1 (a) the sound recording or cinematograph film has not been
2 published; and
- 3 (b) a record embodying the sound recording, or a copy of the
4 cinematograph film, is kept in the collection of a library or
5 archives where it is, subject to any regulations governing that
6 collection, accessible to the public;
- 7 then:
- 8 (c) a person does not infringe copyright in the sound recording
9 or cinematograph film by the making of a copy, or the
10 communication, of the sound recording or cinematograph
11 film:
12 (i) for the purposes of research or study; or
13 (ii) for the purposes of the person's private and domestic
14 use; or
15 (iii) with a view to publication; and
- 16 (d) an authorised officer of the library or archives does not
17 infringe copyright in the sound recording or cinematograph
18 film by:
19 (i) making, or causing another person to make, a copy of
20 the sound recording or cinematograph film; and
21 (ii) supplying the copy to a person;
22 if the authorised officer is satisfied that the person requires
23 the copy:
24 (iii) for the purposes of research or study; or
25 (iv) for the purposes of the person's private and domestic
26 use; or
27 (v) with a view to publication; and
- 28 (e) an authorised officer of the library or archives does not
29 infringe copyright in the sound recording or cinematograph
30 film by communicating, or causing another person to
31 communicate, the sound recording or cinematograph film to a
32 person if the authorised officer is satisfied that the person
33 requires the communication:
34 (i) for the purposes of research or study; or
35 (ii) for the purposes of the person's private and domestic
36 use.
-

EXPOSURE DRAFT

Libraries and archives etc. **Schedule 3**
Amendment of the Copyright Act 1968 **Part 1**

1

Supply

2

- (3) For the purposes of this section, *supply* includes supply by way of a communication.

3

4

113KH Use of unpublished theses or similar literary works

5

- (1) An authorised officer of a library or archives does not infringe copyright in copyright material by a use of the material if:

6

7

- (a) the material forms part of the collection comprising:

8

(i) the library of a university or similar institution; or

9

(ii) an archives; and

10

- (b) the material is:

11

(i) the manuscript of an unpublished thesis or similar literary work; or

12

13

(ii) a copy of an unpublished thesis or similar literary work; and

14

15

- (c) a request has been made by, or on behalf of, a person to be supplied with a copy of the material; and

16

17

- (d) the use of the material is for the purpose of:

18

(i) making, or causing another person to make, the copy; or

19

(ii) supplying the copy to the person; and

20

- (e) the authorised officer is satisfied that the person:

21

(i) requires the copy for the purposes of research or study or for the purposes of the person's private and domestic use; and

22

23

24

(ii) will not use it for any other purpose; and

25

- (f) the authorised officer is satisfied that it is reasonable to supply the copy to the person.

26

27

Supply

28

- (2) For the purposes of this section, *supply* includes supply by way of a communication.

29

30

113KJ Publication of unpublished works kept in libraries or archives

31

32

- (1) If:
-

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Schedule 3 Libraries and archives etc.

Part 1 Amendment of the Copyright Act 1968

- 1 (a) a published literary, dramatic or musical work (the *new*
2 *work*) incorporates the whole or a part of a work (the *old*
3 *work*) to which subsection 113KG(1) applied immediately
4 before the new work was published; and
- 5 (b) before the new work was published, the prescribed notice of
6 the intended publication of the work had been given; and
- 7 (c) immediately before the new work was published, the identity
8 of the owner of the copyright in the old work was not known
9 to the publishers of the new work;
- 10 then, for the purposes of this Act, the first publication of the new
11 work, and any subsequent publication of the new work (whether in
12 the same or in an altered form) so far as it constitutes a publication
13 of the old work, is taken not to be an infringement of the copyright
14 in the old work or an unauthorised publication of the old work.
- 15 (2) Subsection (1) does not apply to a subsequent publication of the
16 new work incorporating a part of the old work that was not
17 included in the first publication of the new work unless:
- 18 (a) subsection 113KG(1) would, but for this section, have
19 applied to that part of the old work immediately before that
20 subsequent publication; and
- 21 (b) before that subsequent publication, the prescribed notice of
22 the intended publication had been given; and
- 23 (c) immediately before that subsequent publication, the identity
24 of the owner of the copyright in the old work was not known
25 to the publisher of that subsequent publication.
- 26 (3) If a work, or part of a work, has been published and, because of
27 this section, the publication is taken not to be an infringement of
28 the copyright in the work, the copyright in the work is not
29 infringed by a person who, after the publication took place:
- 30 (a) broadcasts the work, or that part of the work; or
31 (b) electronically transmits the work, or that part of the work
32 (other than in a broadcast) for a fee payable to the person
33 who made the transmission; or
34 (c) performs the work, or that part of the work, in public; or
35 (d) makes a record of the work, or that part of the work.
-

EXPOSURE DRAFT

Libraries and archives etc. **Schedule 3**
Amendment of the Copyright Act 1968 **Part 1**

1 **113KK Application of this Subdivision to illustrations**
2 **accompanying articles and other works**

3 For the purposes of this Subdivision, if:

- 4 (a) a literary, dramatic or musical work; or
5 (b) an article; or
6 (c) a thesis;

7 is accompanied by an explanatory or illustrative artistic work (the
8 **illustration**), the illustration is taken to be part of the work, article
9 or thesis, as the case requires.

10 **113KL Use of copyright material in the care of the National**
11 **Archives of Australia**

12 (1) An authorised officer of an archives covered by subparagraph (a)(i)
13 or paragraph (aa) of the definition of **archives** in subsection 10(1)
14 does not infringe copyright in copyright material by using the
15 material if:

- 16 (a) the material forms part of the collection comprising the
17 archives; and
18 (b) the collection is open to public inspection; and
19 (c) the use is for the purposes of:
20 (i) making a working copy of the material; or
21 (ii) making a reference copy of the material and supplying it
22 to the central office, or to a regional office, of the
23 National Archives of Australia.

24 (2) Subsection (1) does not apply in relation to making and supplying
25 a reference copy to the central office, or to a regional office, of the
26 National Archives of Australia, unless the authorised officer of the
27 archives is satisfied that:

- 28 (a) a reference copy has not previously been supplied to that
29 office; or
30 (b) a reference copy previously supplied to that office has been
31 lost, damaged or destroyed.

32 (3) In this section:

33 **reference copy**, in relation to copyright material, means a copy of
34 the material made from a working copy for supply to the central

EXPOSURE DRAFT

Schedule 3 Libraries and archives etc.

Part 1 Amendment of the Copyright Act 1968

1 office, or to a regional office, of the National Archives of Australia
2 for use by that office in providing access to the material to
3 members of the public.

4 *supply* includes supply by way of a communication.

5 *working copy*, in relation to a copyright material, means a copy of
6 the material made for the purpose of enabling the National
7 Archives of Australia to retain the copy and use it for making
8 reference copies of the material.

9 **39 Subsection 113M(1)**

10 Omit “authorized officer” (wherever occurring), substitute “authorised
11 officer”.

12 **40 Subsection 113M(2)**

13 Omit “authorized officer”, substitute “authorised officer”.

14 **41 Subsection 113M(2)**

15 Omit “available to be accessed at the key cultural institution”, substitute
16 “available to be accessed at the premises of the key cultural institution,
17 or online.”.

18 **42 Paragraph 113M(2)(b)**

19 After “in”, insert “hardcopy form or”.

20 **43 Paragraph 113M(2)(c)**

21 Omit “at the key cultural institution”, substitute “at the premises of the
22 key cultural institution, or online.”.

23 **44 Subsection 113M(2) (note)**

24 Omit “section 49 (Reproducing and communicating works by libraries
25 and archives for users)”, substitute “section 113KD (supply of copies to
26 persons) and section 113KE (supply of copies to other libraries or
27 archives)”.

28 **45 Section 195A**

29 Repeal the section.

EXPOSURE DRAFT

Libraries and archives etc. **Schedule 3**
Amendment of the Copyright Act 1968 **Part 1**

1 **46 Sections 203A to 203H**

2 Repeal the sections.

3 **47 Subsection 248A(1) (paragraphs (ea) and (eb) of the**
4 **definition of *exempt recording*)**

5 Omit “authorized officer” (wherever occurring), substitute “authorised
6 officer”.

EXPOSURE DRAFT

Schedule 3 Libraries and archives etc.

Part 2 Consequential amendments

1 **Part 2—Consequential amendments**

2 *Parliamentary Service Act 1999*

3 **48 Section 38I**

4 Omit “of sections 48A and 104A”, substitute “of section 113KB”.

5 **49 Section 38I (note)**

6 Omit “Sections 48A and 104A of the *Copyright Act 1968* apply”,
7 substitute “Section 113KB of the *Copyright Act 1968* applies”.

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Libraries and archives etc. **Schedule 3**
Application **Part 3**

1 **Part 3—Application**

2 **50 Application—pre-commencement requests**

3 *Scope*

- 4 (1) This item applies if:
- 5 (a) before the commencement of this item, a request was made
- 6 under:
- 7 (i) subsection 49(1) of the *Copyright Act 1968*; or
- 8 (ii) subsection 49(2A) of that Act; or
- 9 (iii) subsection 50(1) of that Act; and
- 10 (b) the request was not fulfilled before the commencement of
- 11 this item.

12 *Application*

- 13 (2) Despite the amendments of the *Copyright Act 1968* made by:
- 14 (a) this Schedule (other than the repeal of sections 203A to 203H
- 15 of that Act); and
- 16 (b) item 2 of Schedule 2 to this Act;
- 17 the *Copyright Act 1968* continues to apply, in relation to:
- 18 (c) the request; and
- 19 (d) the fulfilment of the request;
- 20 as if those amendments had not been made.

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Schedule 4 Education

1
2

Schedule 4—Education

3

Copyright Act 1968

4

1 Subsection 27(4)

5
6

After “for the purposes of this Act”, insert “(other than section 113MA)”.

7

2 Section 28

8

Repeal the section.

9

3 Section 106 (at the end of the heading)

10

Add “etc.”.

11

4 Paragraph 106(1)(b)

12

Repeal the paragraph, substitute:

13

(b) as part of the activities of, or for the benefit of, a registered charity; or

14

15

(c) as part of the activities of, or for the benefit of:

16

(i) an educational institution; or

17

(ii) a library; or

18

(iii) an archives;

19

that:

20

(iv) is not established or conducted for profit; and

21

(v) is not a charity; or

22

(d) as part of the activities of, or for the benefit of, a club, society or other organisation:

23

24

(i) that is not established or conducted for profit; and

25

(ii) the principal objects of which are connected with the advancement of religion, education or social welfare;

26

and

27

28

(iii) that is not a charity.

29

5 At the end of subsection 106(2)

30

Add:

31

; or (c) in relation to:

- 1 (i) an educational institution; or
2 (ii) a library; or
3 (iii) an archives;
4 of a kind mentioned in paragraph (c) of that subsection, if a
5 charge is made for admission to the place where the
6 recording is to be heard and any of the proceeds of the charge
7 are applied otherwise than for the purposes of:
8 (iv) the educational institution; or
9 (v) the library; or
10 (vi) the archives;
11 as the case may be; or
12 (d) in relation to a club, society or other organisation of a kind
13 mentioned in paragraph (d) of that subsection, if a charge is
14 made for admission to the place where the recording is to be
15 heard and any of the proceeds of the charge are applied
16 otherwise than for the purposes of the club, society or other
17 organisation, as the case may be.

18 **6 Section 113D**

19 Omit “by educational institutions”, substitute “for educational
20 purposes”.

21 **7 Before Division 4 of Part IVA**

22 Insert:

23 **Division 3A—Educational purposes—general**

24 **113MA Use of copyright material in the course of educational** 25 **instruction**

26 *Scope*

- 27 (1) This section applies if educational instruction is provided by an
28 educational institution.

29 *Use of copyright material*

- 30 (2) The body administering the educational institution, or a person
31 taking part in the giving or receiving of the educational instruction,
-

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Schedule 4 Education

- 1 does not infringe copyright in copyright material by using the
2 material if:
- 3 (a) the use is in the course of giving or receiving the educational
4 instruction; and
- 5 (b) any of the following apply:
- 6 (i) the use is a performance of the material;
- 7 (ii) the use is an act that causes the material to be seen or
8 heard;
- 9 (iii) the use is the copying or communication of the material,
10 and the use facilitates the performance of the material;
- 11 (iv) the use is the copying or communication of the material,
12 and the use facilitates an act that causes the material to
13 be seen or heard;
- 14 (v) the use is the making of an audio recording, or an
15 audio-visual recording, of the whole or a part of the
16 material, and the use facilitates the performance of the
17 material;
- 18 (vi) the use is the making of an audio recording, or an
19 audio-visual recording, of the whole or a part of the
20 material, and the use facilitates an act that causes the
21 material to be seen or heard; and
- 22 (c) if the use is the making of an audio recording, or an
23 audio-visual recording, of the whole or a part of the
24 material—the recording is made available on a temporary
25 basis to persons taking part in the giving or receiving of the
26 educational instruction; and
- 27 (d) if the use is making the material available online (whether at
28 the premises of the educational institution or on the
29 internet)—the body administering the educational institution
30 takes reasonable steps to limit access to the material to
31 persons taking part in the giving or receiving of the
32 educational instruction; and
- 33 (e) the use is not wholly or partly for the purpose of the
34 educational institution obtaining a commercial advantage or
35 profit.
- 36 (3) A provision of this Act (other than this section) does not, by
37 implication, limit this section.
-

1 *Interpretation*

2 (4) In this section:

3 (a) a reference to copying copyright material includes a
4 reference to making or copying an adaptation of the material;
5 and

6 (b) a reference to communicating copyright material includes a
7 reference to communicating an adaptation of the material.

8 (5) For the purposes of this section, *use* includes any act that would
9 infringe copyright apart from this section.

10 **113MB Use of works and broadcasts for educational purposes**

11 (1) A teacher or student does not infringe copyright in a work by
12 copying the whole or a part of the work if:

13 (a) the copying occurs in the course of educational instruction;
14 and

15 (b) the copying is not done using:

16 (i) a device adapted for the production of multiple copies;
17 or

18 (ii) a device capable of producing a copy or copies by a
19 process of reprographic reproduction.

20 (2) Copying or communicating the whole or a part of copyright
21 material does not infringe copyright in the material, if the material
22 is copied or communicated:

23 (a) as part of the questions to be answered in an examination; or

24 (b) in an answer to such a question.

25 (3) In subsections (1) and (2):

26 (a) a reference to copying a work or copyright material includes
27 a reference to making or copying an adaptation of the work
28 or material; and

29 (b) a reference to communicating copyright material includes a
30 reference to communicating an adaptation of the material.

31 (4) The making of a record of a sound broadcast, being a broadcast
32 that was intended to be used for educational purposes, does not

EXPOSURE DRAFT

Schedule 4 Education

- 1 constitute an infringement of copyright in a work or sound
2 recording included in the broadcast if:
- 3 (a) the record is made by, or on behalf of, the person or authority
4 in charge of a place of education that is not conducted for
5 profit; and
- 6 (b) the record is not used except in the course of instruction at
7 that place.
- 8 (5) The making of a record of a sound broadcast is not an infringement
9 of copyright in the broadcast if the record is made by, or on behalf
10 of, the body administering an educational institution and is not
11 used except for the educational purposes of that institution or
12 another educational institution.
- 13 (6) For the purposes of sections 38 and 103, in determining whether
14 the making of an article constituted an infringement of copyright,
15 subsections (1), (2), (4) and (5) are to be disregarded.
- 16 (7) For the purposes of any provision of this Act relating to imported
17 articles, in determining whether the making of an article made
18 outside Australia would, if the article had been made in Australia
19 by the importer of the article, have constituted an infringement of
20 copyright, subsections (1), (2), (4) and (5) are to be disregarded.

21 **113MC Proxy web caching by educational institutions**

22 *Scope*

- 23 (1) This section applies if:
- 24 (a) a computer system is operated by or on behalf of a body
25 administering an educational institution; and
- 26 (b) the system is operated primarily to enable staff and students
27 of the institution to use the system to gain online access for
28 educational purposes to works and other subject-matter
29 (whether they are made available online using the internet or
30 merely the system); and
- 31 (c) the system automatically makes:
- 32 (i) temporary electronic reproductions of works made
33 available online through the system to users of the
34 system in response to action by the users; and
-

- 1 (ii) temporary electronic copies of other subject-matter
2 made available online through the system to users of the
3 system in response to action by the users; and
4 (d) those reproductions and copies are made by the system
5 merely to facilitate efficient later access to the works and
6 other subject-matter by users of the system.

7 *Copyright not infringed*

- 8 (2) Copyright in a work or other subject-matter reproduced or copied
9 by the system as described in paragraphs (1)(c) and (d) is not
10 infringed by:
11 (a) that reproduction or copying; or
12 (b) the later communication of the work or other subject-matter,
13 using that reproduction or copy, to a user of the system.
- 14 (3) This section does not limit section 43A, 43B, 111A, 111B or
15 113MA.
- 16 (4) Disregard this section in determining whether copyright in a work
17 or other subject-matter is infringed by an act that:
18 (a) involves a system like one described in subsection (1) except
19 that the system is not operated as described in
20 paragraphs (1)(a) and (b); and
21 (b) corresponds to an act described in paragraph (2)(a) or (b).

22 *System*

- 23 (5) For the purposes of this section, *system* includes network.

24 **8 After section 113T**

25 Insert:

26 **113TA Implied licences**

27 In determining whether there is an implied licence to do an act
28 comprised in a copyright, disregard sections 113P and 113S.

29 **9 Sections 200 and 200AAA**

30 Repeal the sections.

EXPOSURE DRAFT

Schedule 4 Education

1 **10 Paragraph 248(2)(a)**

2 Omit “referred to in subsection 28(1)”, substitute “covered by
3 section 113MA”.

EXPOSURE DRAFT

Use of copyright material by the Commonwealth or a State **Schedule 5**
Amendments **Part 1**

1 **Schedule 5—Use of copyright material by the**
2 **Commonwealth or a State**

3 **Part 1—Amendments**

4 *Copyright Act 1968*

5 **1 Subsection 10(1) (definition of *government*)**

6 Repeal the definition.

7 **2 Subsection 10(1) (definition of *government copy*)**

8 Repeal the definition.

9 **3 Subsection 10(1)**

10 Insert:

11 *State* has a meaning affected by paragraph (3)(n).

12 **4 Paragraph 100AH(d)**

13 Omit “section 183”, substitute “sections 183 and 183A”.

14 **5 Section 153E (heading)**

15 Omit “183(5)”, substitute “183A(3)”.

16 **6 Subsections 153E(1) and (2)**

17 Omit “183(5)”, substitute “183A(3)”.

18 **7 At the end of section 153E**

19 Add:

20 (3) The Tribunal must not make an order under subsection (2) fixing
21 the terms for the doing of an act unless the Tribunal considers that
22 the terms are reasonable.

23 **8 After section 153E**

24 Insert:

EXPOSURE DRAFT

Schedule 5 Use of copyright material by the Commonwealth or a State
Part 1 Amendments

1 **153EA Applications to Tribunal under subsection 183B(2)**

2 (1) The parties to an application to the Tribunal under
3 subsection 183B(2) for the fixing of the terms for the copying or
4 communication of copyright material where the copying or
5 communication is done for the services of the Commonwealth or a
6 State are:

- 7 (a) the Commonwealth or the State, as the case may be; and
8 (b) the owner of the copyright.

9 (2) If an application is made to the Tribunal under subsection 183B(2):

- 10 (a) the Tribunal is to consider the application; and
11 (b) after giving the parties to the application an opportunity of
12 presenting their cases, the Tribunal is to make an order fixing
13 the terms for the copying or communication of the copyright
14 material.

15 (3) The Tribunal must not make an order under paragraph (2)(b) fixing
16 the terms for the copying or communication of copyright material
17 unless the Tribunal considers that the terms are reasonable.

18 **9 Section 153F (heading)**

19 Omit “government copies”, substitute “copyright material”.

20 **10 Subsection 153F(5)**

21 Repeal the subsection, substitute:

22 (5) A declaration of a company as a collecting society for the purposes
23 of Division 2 of Part VII may be a declaration in relation to:

- 24 (a) the copying or communication of all copyright material; or
25 (b) the copying or communication of a specified class of
26 copyright material; or
27 (c) the copying of all copyright material; or
28 (d) the copying of a specified class of copyright material; or
29 (e) the communication of all copyright material; or
30 (f) the communication of a specified class of copyright material.

EXPOSURE DRAFT

Use of copyright material by the Commonwealth or a State **Schedule 5**
Amendments **Part 1**

1 **11 Paragraph 153F(6)(a)**

2 Omit “in force in a State or Territory”, substitute “of the
3 Commonwealth, a State or a Territory”.

4 **12 Paragraphs 153F(6)(b) and (c)**

5 Repeal the paragraphs, substitute:

- 6 (b) in the case of an application for a declaration in relation to:
7 (i) the copying or communication of all copyright material;
8 or
9 (ii) the copying of all copyright material; or
10 (iii) the communication of all copyright material;
11 that the applicant’s rules permit the owner, or the agent of the
12 owner, of the copyright in any copyright material to become
13 a member; and
14 (c) in the case of an application for a declaration in relation to:
15 (i) the copying or communication of a class of copyright
16 material; or
17 (ii) the copying of a class of copyright material;
18 that the applicant’s rules permit the owner, or the agent of the
19 owner, of the copyright in any copyright material the copying
20 of which, in accordance with section 183, would be within
21 that class to become a member; and
22 (ca) in the case of an application for a declaration in relation to:
23 (i) the copying or communication of a class of copyright
24 material; or
25 (ii) the communication of a class of copyright material;
26 that the applicant’s rules permit the owner, or the agent of the
27 owner, of the copyright in any copyright material the
28 communication of which, in accordance with section 183,
29 would be within that class to become a member; and

30 **13 Subparagraph 153F(6)(e)(i)**

31 Omit “183A”, substitute “183B”.

32 **14 Paragraph 153G(1)(c)**

33 Repeal the paragraph, substitute:

34 (c) the Commonwealth;

EXPOSURE DRAFT

Schedule 5 Use of copyright material by the Commonwealth or a State
Part 1 Amendments

1 (d) a State.

2 **15 Section 153J**

3 Repeal the section, substitute:

4 **153J Amendment and revocation of previous declaration on the**
5 **declaration of another collecting society**

6 (1) If:

7 (a) a declaration (the *previous declaration*) is in force under
8 section 153F in relation to a company; and

9 (b) the Tribunal makes another declaration (the *current*
10 *declaration*) under that section in relation to another
11 company; and

12 (c) the previous declaration is partly inconsistent with the current
13 declaration;

14 the Tribunal must, by notifiable instrument, amend the previous
15 declaration so as to ensure that the previous declaration is wholly
16 consistent with the current declaration.

17 (2) The amendment of the previous declaration under subsection (1)
18 takes effect when the current declaration takes effect.

19 (3) If:

20 (a) a declaration (the *previous declaration*) is in force under
21 section 153F in relation to a company; and

22 (b) the Tribunal makes another declaration (the *current*
23 *declaration*) under that section in relation to another
24 company; and

25 (c) the previous declaration is wholly inconsistent with the
26 current declaration;

27 the Tribunal must, by notifiable instrument, revoke the previous
28 declaration.

29 (4) The revocation of the previous declaration under subsection (3)
30 takes effect when the current declaration takes effect.

EXPOSURE DRAFT

Use of copyright material by the Commonwealth or a State **Schedule 5**
Amendments **Part 1**

1 *Inconsistency*

2 (5) For the purposes of this section, the following principles apply in
3 determining the extent to which a declaration under section 153F is
4 consistent with another declaration under that section:

- 5 (a) only one company can be the relevant collecting society in
6 relation to the copying of particular copyright material for the
7 purposes of Division 2 of Part VII;
8 (b) only one company can be the relevant collecting society in
9 relation to the communication of particular copyright
10 material for the purposes of Division 2 of Part VII.

11 **16 Section 153K**

12 Repeal the section.

13 **17 Division 2 of Part VII (heading)**

14 Omit “the Crown”, substitute “the Commonwealth or a State
15 (general)”.

16 **18 Subsection 182B(1) (definition of *government*)**

17 Repeal the definition.

18 **19 Subsection 182B(1) (definition of *government copy*)**

19 Repeal the definition.

20 **20 Section 182C**

21 Repeal the section, substitute:

22 **182C Relevant collecting society**

23 (1) A company is the relevant collecting society in relation to the
24 copying of copyright material if there is in force, under Division 3
25 of Part VI, a declaration of the company as the collecting society
26 for the purposes of this Division in relation to:

- 27 (a) the copying or communication of all copyright material; or
28 (b) the copying or communication of a class of copyright
29 material that includes the first-mentioned copyright material;
30 or
31 (c) the copying of all copyright material; or
-

EXPOSURE DRAFT

Schedule 5 Use of copyright material by the Commonwealth or a State Part 1 Amendments

- 1 (d) the copying of a class of copyright material that includes the
2 first-mentioned copyright material.
- 3 (2) A company is the relevant collecting society in relation to the
4 communication of copyright material if there is in force, under
5 Division 3 of Part VI, a declaration of the company as the
6 collecting society for the purposes of this Division in relation to:
7 (a) the copying or communication of all copyright material; or
8 (b) the copying or communication of a class of copyright
9 material that includes the first-mentioned copyright material;
10 or
11 (c) the communication of all copyright material; or
12 (d) the communication of a class of copyright material that
13 includes the first-mentioned copyright material.

21 Section 183 (heading)

14 Omit “the Crown”, substitute “the Commonwealth or a State”.

22 Subsection 183(1)

15 Repeal the subsection, substitute:

- 16 (1) The Commonwealth or a State, or a person authorised in writing by
17 the Commonwealth or a State to act on behalf of the
18 Commonwealth or State, does not infringe copyright in copyright
19 material by doing any act comprised in the copyright if:
20 (a) the act is done for the services of the Commonwealth or
21 State; and
22 (b) the act does not infringe copyright only because of this
23 subsection.
24
25

23 Subsections 183(4), (5), (6), (7), (8) and (9)

26 Repeal the subsections.
27

24 Subsection 183(11)

28 Omit “The reproduction, copying or communication of the whole or a
29 part of a work or other subject-matter”, substitute “The copying or
30 communication of copyright material”.
31

EXPOSURE DRAFT

Use of copyright material by the Commonwealth or a State **Schedule 5**
Amendments **Part 1**

1 **25 Subsection 183(11)**

2 After “this section”, insert “, section 183A and section 183B”.

3 **26 At the end of section 183**

4 Add:

5 (12) Subsection (1) does not apply to an act comprised in the copyright
6 in copyright material if the act is covered by section 116AJA or
7 116AJB.

8 **27 Sections 183A, 183B and 183C**

9 Repeal the sections, substitute:

10 **183A Notice and terms of use—owner of the copyright**

11 *Notice*

- 12 (1) If an act comprised in the copyright in copyright material has been
13 done under subsection 183(1) for the services of the
14 Commonwealth or a State, the Commonwealth or State must:
- 15 (a) as soon as practicable, inform the owner of the copyright, as
16 prescribed, of the doing of the act; and
 - 17 (b) give the owner such information relating to the doing of the
18 act as the owner from time to time reasonably requires.

19 Note: See also section 183B (special arrangements—collecting society).

- 20 (2) Paragraph (1)(a) does not apply if it appears to the Commonwealth
21 or State that it would be contrary to the public interest to comply
22 with that paragraph.

23 *Terms of use*

- 24 (3) If an act comprised in the copyright in copyright material has been
25 done under subsection 183(1) for the services of the
26 Commonwealth or a State, the terms for the doing of the act are:
- 27 (a) such terms as are agreed (whether before or after the act is
28 done) between the Commonwealth or State and the owner of
29 the copyright; or
 - 30 (b) in default of agreement—such terms as are fixed by the
31 Copyright Tribunal.

EXPOSURE DRAFT

Schedule 5 Use of copyright material by the Commonwealth or a State Part 1 Amendments

1 Note: See also section 183B (special arrangements—collecting society).

2 *Agreement or licence*

3 (4) An agreement or licence (whether made or granted before or after
4 the commencement of this Act) fixing the terms on which a person
5 other than the Commonwealth or a State may do acts comprised in
6 a copyright is inoperative with respect to the doing of those acts,
7 after the commencement of this Act, under subsection 183(1),
8 unless the agreement or licence has been approved by:

9 (a) in the case of the government of the Commonwealth—the
10 Minister; or

11 (b) in the case of the government of a State—the Minister of the
12 State with responsibility for copyright.

13 *Purchaser of article*

14 (5) If:

15 (a) an article is sold; and

16 (b) the sale of the article is not, by virtue of subsection 183(1),
17 an infringement of a copyright;

18 the purchaser of the article, and a person claiming through the
19 purchaser of the article, is entitled to deal with the article as if the
20 Commonwealth or State, as the case may be, were the owner of
21 that copyright.

22 *Exclusive licensee*

23 (6) If an exclusive licence is in force in relation to any copyright, this
24 section has effect as if any reference in this section to the owner of
25 the copyright were a reference to the exclusive licensee of the
26 copyright.

27 **183B Special arrangements—collecting society**

28 (1) If:

29 (a) an act comprised in the copyright in copyright material has
30 been done under subsection 183(1) for the services of the
31 Commonwealth or a State; and

32 (b) the act consists of:

33 (i) the copying of the copyright material; or

EXPOSURE DRAFT

- 1 (ii) the communication of the copyright material; and
2 (c) if subparagraph (b)(i) applies—a company is the relevant
3 collecting society in relation to the copying of the copyright
4 material for the purposes of this Division; and
5 (d) if subparagraph (b)(ii) applies—a company is the relevant
6 collecting society in relation to the communication of the
7 copyright material for the purposes of this Division; and
8 (e) the company has not ceased operating as that collecting
9 society; and
10 (f) the Commonwealth or State chooses to deal exclusively with
11 the relevant collecting society in relation to the copying or
12 communication of the copyright material;
13 subsections 183A(1) and (3) do not apply in relation to the copying
14 or communication of the copyright material.

15 *Terms of use*

- 16 (2) If, as a result of subsection (1) of this section, subsection 183A(3)
17 does not apply to the copying or communication of copyright
18 material in a particular period for the services of the
19 Commonwealth or a State, the terms for the copying or
20 communication of the material are:
21 (a) such terms as are agreed between the Commonwealth or
22 State and:
23 (i) in the case of the copying of the copyright material—the
24 relevant collecting society for the copying of the
25 copyright material; or
26 (ii) in the case of the communication of the copyright
27 material—the relevant collecting society for the
28 communication of the copyright material; or
29 (b) in default of agreement—such terms as are fixed by the
30 Copyright Tribunal.
- 31 (3) If remuneration is not paid in accordance with:
32 (a) the agreement; or
33 (b) the Copyright Tribunal's order fixing the terms for the
34 copying or communication of the copyright material;
35 then:

EXPOSURE DRAFT

Schedule 5 Use of copyright material by the Commonwealth or a State Part 1 Amendments

- 1 (c) in the case of the copying of the copyright material—the
2 relevant collecting society for the copying of the copyright
3 material may recover the remuneration as a debt due to the
4 society in a court of competent jurisdiction; and
- 5 (d) in the case of the communication of the copyright material—
6 the relevant collecting society for the communication of the
7 copyright material may recover the remuneration as a debt
8 due to the society in a court of competent jurisdiction.
- 9 (4) Subsection (2) does not apply to the copying or communication of
10 copyright material for the services of the Commonwealth or a State
11 if it appears to the Commonwealth or State that it would be
12 contrary to the public interest to disclose information about the
13 copying or communication of the copyright material.

14 **183C Implied licences**

15 In determining whether there is an implied licence to do an act
16 comprised in a copyright, disregard sections 183, 183A and 183B.

17 **28 At the end of Part VII**

18 Add:

19 **Division 3—Use of copyright material provided to the** 20 **Commonwealth or a State**

21 **183G Use of copyright material provided to the Commonwealth or a** 22 **State**

- 23 (1) The copyright in copyright material is not infringed by a use of the
24 copyright material if:
- 25 (a) the use is by:
- 26 (i) the Commonwealth or a State; or
27 (ii) a person authorised in writing by the Commonwealth or
28 a State; and
- 29 (b) the material was provided to the Commonwealth or State;
30 and
- 31 (c) the use is for the services of the Commonwealth or State; and

EXPOSURE DRAFT

Use of copyright material by the Commonwealth or a State **Schedule 5**
Amendments **Part 1**

- 1 (d) the use is not wholly or partly for the purpose of the
2 Commonwealth or State obtaining a commercial advantage
3 or profit; and
4 (e) the use is reasonable having regard to:
5 (i) the purpose for which the material was provided to the
6 Commonwealth or State; or
7 (ii) any related purpose.
- 8 (2) For the purposes of this section, *use* includes any act that would
9 infringe copyright apart from this section.

EXPOSURE DRAFT

Schedule 5 Use of copyright material by the Commonwealth or a State

Part 2 Application and transitional

Part 2—Application and transitional

29 Transitional—declaration of collecting society

(1) If:

(a) a declaration of a company as a collecting society for the purposes of Division 2 of Part VII of the *Copyright Act 1968* was in force immediately before the commencement of this item; and

(b) the declaration was in relation to all government copies; the declaration has effect, after the commencement of this item, as if it were a declaration in relation to the copying of all copyright material.

(2) If:

(a) a declaration of a company as a collecting society for the purposes of Division 2 of Part VII of the *Copyright Act 1968* was in force immediately before the commencement of this item; and

(b) the declaration was in relation to government copies of a specified class of copyright material; the declaration has effect, after the commencement of this item, as if it were a declaration in relation to the copying of that class of copyright material.

30 Application—pre-commencement use of copyright material

Scope

(1) This item applies if an act (the *past act*) comprised in a copyright was done under subsection 183(1) of the *Copyright Act 1968* before the commencement of this item.

Application

(2) Despite the amendments of the *Copyright Act 1968* made by this Schedule, that Act continues to apply, in relation to:

(a) the past act; and

(b) in a case where the past act was the making of a government copy—a company, so far as it is the relevant collecting

EXPOSURE DRAFT

Use of copyright material by the Commonwealth or a State **Schedule 5**
Application and transitional **Part 2**

- 1 society in relation to the government copy for the purposes of
2 Division 2 of Part VII of the *Copyright Act 1968*;
3 as if:
4 (c) those amendments had not been made; and
5 (d) item 29 of this Schedule had not been enacted.

EXPOSURE DRAFT

Schedule 6 Registrar of the Copyright Tribunal
Part 1 Amendment

1 **Schedule 6—Registrar of the Copyright**
2 **Tribunal**

3 **Part 1—Amendment**

4 *Copyright Act 1968*

5 **1 Subsections 170(2), (4) and (5)**

6 Omit “the Minister”, substitute “the Chief Executive Officer and
7 Principal Registrar of the Federal Court of Australia”.

EXPOSURE DRAFT

Registrar of the Copyright Tribunal **Schedule 6**
Transitional **Part 2**

1 **Part 2—Transitional**

2 **2 Transitional—instrument of appointment of the Registrar of**
3 **the Copyright Tribunal**

4 *Scope*

5 (1) This item applies to an instrument of appointment of the Registrar of the
6 Copyright Tribunal that was:

7 (a) made by the Minister under subsection 170(2) of the
8 *Copyright Act 1968*; and

9 (b) in force immediately before the commencement of this item.

10 *Effect of instrument*

11 (2) The instrument has effect after the commencement of this item as if it
12 had been made under that subsection (as amended by this Schedule) by
13 the Chief Executive Officer and Principal Registrar of the Federal Court
14 of Australia.

EXPOSURE DRAFT

Schedule 7 Regulations relating to technological protection measures

1 **Schedule 7—Regulations relating to**
2 **technological protection measures**
3

4 *Copyright Act 1968*

5 **1 Paragraph 249(4)(a)**

6 Repeal the paragraph.

7 **2 Subsection 249(4) (note)**

8 Repeal the note.

9 **3 Paragraph 249(8)(a)**

10 Repeal the paragraph.

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Schedule 8—Archives

Copyright Act 1968

1 Subsection 10(1) (paragraph (a) of the definition of *archives*)

Repeal the paragraph, substitute:

- (a) archival material in the custody of:
 - (i) the National Archives of Australia; or
 - (ii) the State Archives and Records Authority established by the *State Records Act 1998* (NSW); or
 - (iii) the Public Record Office established by the *Public Records Act 1973* (Vic.); or
 - (iv) the Queensland State Archives established by the *Public Records Act 2002* (Qld); or
 - (v) the State Records Office established by the *State Records Act 2000* (WA); or
 - (vi) the office of State Records established by the *State Records Act 1997* (SA); or
 - (vii) the Archives Office of Tasmania established by the *Archives Act 1983* (Tas.); or

EXPOSURE DRAFT

Schedule 9 Referrals
Part 1 Amendments

1 **Schedule 9—Referrals**

2 **Part 1—Amendments**

3 *Copyright Act 1968*

4 **1 Subsection 135ZZT(1C) (note)**

5 Omit “reference”, substitute “referral”.

6 **2 Subsection 135ZZU(3) (note)**

7 Omit “reference”, substitute “referral”.

8 **3 Subsection 135ZZZO(4) (note)**

9 Omit “reference”, substitute “referral”.

10 **4 Subsection 135ZZZP(3) (note)**

11 Omit “reference”, substitute “referral”.

12 **5 Subsection 144A(3)**

13 Omit “reference” (last occurring), substitute “referral”.

14 **6 Subsection 146(3)**

15 Omit “reference” (wherever occurring), substitute “referral”.

16 **7 Division 3 of Part VI (heading)**

17 Omit “references”, substitute “referrals”.

18 **8 Subsection 153A(5)**

19 Omit “referral or application”, substitute “application or referral”.

20 **9 Subdivision G of Division 3 of Part VI (heading)**

21 Omit “references”, substitute “referrals”.

22 **10 Section 153P (heading)**

23 Omit “References”, substitute “Referrals”.

EXPOSURE DRAFT

Referrals **Schedule 9**
Amendments **Part 1**

1 **11 Subsection 153P(2)**

2 Omit “reference”, substitute “referral”.

3 **12 Section 153Q (heading)**

4 Omit “References”, substitute “Referrals”.

5 **13 Subsection 153Q(2)**

6 Omit “reference”, substitute “referral”.

7 **14 Subdivision GA of Division 3 of Part VI (heading)**

8 Omit “references”, substitute “referrals”.

9 **15 Section 153U (heading)**

10 Omit “References”, substitute “Referrals”.

11 **16 Subsection 153U(2)**

12 Omit “reference”, substitute “referral”.

13 **17 Section 153V (heading)**

14 Omit “References”, substitute “Referrals”.

15 **18 Subsection 153V(2)**

16 Omit “reference”, substitute “referral”.

17 **19 Subdivision H of Division 3 of Part VI (heading)**

18 Omit “References and applications”, substitute “Applications and
19 referrals”.

20 **20 Section 154 (heading)**

21 Omit “Reference”, substitute “Referral”.

22 **21 Section 154**

23 Omit “reference” (wherever occurring), substitute “referral”.

24 **22 Section 155 (heading)**

25 Omit “Reference”, substitute “Referral”.

EXPOSURE DRAFT

Schedule 9 Referrals
Part 1 Amendments

1 **23 Section 155**

2 Omit “reference” (wherever occurring), substitute “referral”.

3 **24 Section 156 (heading)**

4 Omit “reference”, substitute “referral”.

5 **25 Section 156**

6 Omit “reference” (wherever occurring), substitute “referral”.

7 **26 Section 157A**

8 Omit “reference or application” (wherever occurring), substitute
9 “application or referral”.

10 **27 Section 157B (heading)**

11 Omit “reference or application”, substitute “application or referral”.

12 **28 Section 157B**

13 Omit “reference or application” (wherever occurring), substitute
14 “application or referral”.

15 **29 Subsection 158(1)**

16 Omit “reference” (wherever occurring), substitute “referral”.

17 **30 Subsection 159(1)**

18 Omit “reference”, substitute “referral”.

19 **31 Section 160**

20 Omit “reference” (wherever occurring), substitute “referral”.

21 **32 Section 161 (heading)**

22 Omit “Reference”, substitute “Referral”.

23 **33 Subsection 161(4)**

24 Omit “reference”, substitute “referral”.

25 **34 Subsection 161(6)**

26 Omit “reference”, substitute “referral”.

EXPOSURE DRAFT

Referrals **Schedule 9**
Amendments **Part 1**

- 1 **35 Subsection 166(1)**
2 Omit “references and applications” (wherever occurring), substitute
3 “applications and referrals”.
- 4 **36 Paragraph 166(2)(a)**
5 Omit “reference”, substitute “referral”.
- 6 **37 Subsection 169A(1)**
7 Omit “reference”, substitute “referral”.
- 8 **38 Subsections 169A(2) and (3)**
9 Omit “references”, substitute “referrals”.
- 10 **39 Section 232 (heading)**
11 Omit “**References and applications**”, substitute “**Applications and**
12 **referrals**”.

EXPOSURE DRAFT

Schedule 9 Referrals

Part 2 Application

1 **Part 2—Application**

2 **40 Application—pre-commencement proceedings instituted**
3 **in the Copyright Tribunal**

4 *Scope*

5 (1) This item applies if proceedings by way of a reference to the Copyright
6 Tribunal were instituted before the commencement of this item.

7 *Application*

8 (2) Despite the amendments of the *Copyright Act 1968* made by this
9 Schedule (other than the amendments of section 161 of that Act), that
10 Act continues to apply, in relation to those proceedings, as if those
11 amendments had not been made.

12 **41 Application—pre-commencement referrals to the Federal**
13 **Court of Australia**

14 *Scope*

15 (1) This item applies if, before the commencement of this item, the
16 Copyright Tribunal referred a question of law to the Federal Court of
17 Australia under subsection 161(1) of the *Copyright Act 1968*.

18 *Application*

19 (2) Despite the amendments of section 161 of the *Copyright Act 1968* made
20 by this Schedule, that section continues to apply, in relation to the
21 referral, as if those amendments had not been made.

EXPOSURE DRAFT

Notifiable instruments **Schedule 10**
Amendments **Part 1**

1 **Schedule 10—Notifiable instruments**

2 **Part 1—Amendments**

3 *Copyright Act 1968*

4 **1 Paragraph 135ZZT(1A)(a)**

5 Omit “by notice in the *Gazette*”, substitute “by notifiable instrument”.

6 **2 Subsection 135ZZT(1B)**

7 Repeal the subsection.

8 **3 Paragraph 135ZZU(2)(a)**

9 Omit “by notice in the *Gazette*”, substitute “by notifiable instrument”.

10 **4 Section 135ZZX**

11 Omit “by notice in the *Gazette*”, substitute “by notifiable instrument”.

12 **5 Paragraph 135ZZZO(2)(a)**

13 Omit “by notice published in the *Gazette*”, substitute “by notifiable
14 instrument”.

15 **6 Subsection 135ZZZO(3)**

16 Repeal the subsection.

17 **7 Paragraph 135ZZZP(2)(a)**

18 Omit “by notice published in the *Gazette*”, substitute “by notifiable
19 instrument”.

20 **8 Section 135ZZZT**

21 Omit “by notice published in the *Gazette*”, substitute “by notifiable
22 instrument”.

23 **9 Paragraph 153F(4)(a)**

24 Before “declare the applicant”, insert “by notifiable instrument,”.

EXPOSURE DRAFT

Schedule 10 Notifiable instruments

Part 1 Amendments

1 **10 Subsection 153F(8)**

2 Repeal the subsection.

3 **11 Paragraph 153G(4)(a)**

4 Before “revoke the declaration”, insert “by notifiable instrument,”.

5 **12 Subsection 153G(7)**

6 Repeal the subsection.

7 **13 Paragraph 153P(4)(a)**

8 Before “declare the applicant”, insert “by notifiable instrument,”.

9 **14 Subsection 153P(5)**

10 Repeal the subsection.

11 **15 Paragraph 153Q(4)(a)**

12 Before “revoke the declaration”, insert “by notifiable instrument,”.

13 **16 Subsection 153Q(5)**

14 Repeal the subsection, substitute:

15 (5) If the Tribunal revokes the declaration of the collecting society, the
16 revocation must specify the day on which it takes effect.

17 **17 Paragraph 153U(4)(a)**

18 Before “declare the applicant”, insert “by notifiable instrument,”.

19 **18 Subsection 153U(5)**

20 Repeal the subsection.

21 **19 Paragraph 153V(4)(a)**

22 Before “revoke the declaration”, insert “by notifiable instrument,”.

23 **20 Subsection 153V(5)**

24 Repeal the subsection, substitute:

25 (5) If the Tribunal revokes the declaration of the collecting society, the
26 revocation must specify the day on which it takes effect.

EXPOSURE DRAFT

Notifiable instruments **Schedule 10**
Application **Part 2**

1 **Part 2—Application**

2 **21 Application—declarations, appointments and revocations**

- 3 (1) The amendments of section 135ZZT of the *Copyright Act 1968* made by
4 this Schedule apply in relation to a declaration made after the
5 commencement of this item.
- 6 (2) The amendment of section 135ZZU of the *Copyright Act 1968* made by
7 this Schedule applies in relation to a revocation that happened after the
8 commencement of this item.
- 9 (3) The amendment of section 135ZZX of the *Copyright Act 1968* made by
10 this Schedule applies in relation to an appointment made after the
11 commencement of this item.
- 12 (4) The amendments of section 135ZZZO of the *Copyright Act 1968* made
13 by this Schedule apply in relation to a declaration made after the
14 commencement of this item.
- 15 (5) The amendment of section 135ZZZP of the *Copyright Act 1968* made
16 by this Schedule applies in relation to a revocation that happened after
17 the commencement of this item.
- 18 (6) The amendment of section 135ZZZT of the *Copyright Act 1968* made
19 by this Schedule applies in relation to an appointment made after the
20 commencement of this item.
- 21 (7) The amendments of section 153F of the *Copyright Act 1968* made by
22 this Schedule apply in relation to a declaration made after the
23 commencement of this item.
- 24 (8) The amendments of section 153G of the *Copyright Act 1968* made by
25 this Schedule apply in relation to a revocation that happened after the
26 commencement of this item.
- 27 (9) The amendments of section 153P of the *Copyright Act 1968* made by
28 this Schedule apply in relation to a declaration made after the
29 commencement of this item.
- 30 (10) The amendments of section 153Q of the *Copyright Act 1968* made by
31 this Schedule apply in relation to a revocation that happened after the
32 commencement of this item.
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EXPOSURE DRAFT

Schedule 10 Notifiable instruments

Part 2 Application

- 1 (11) The amendments of section 153U of the *Copyright Act 1968* made by
2 this Schedule apply in relation to a declaration made after the
3 commencement of this item.
- 4 (12) The amendments of section 153V of the *Copyright Act 1968* made by
5 this Schedule apply in relation to a revocation that happened after the
6 commencement of this item.