



Public Lending Right Scheme 2016

Public Lending Right Act 1985

I, MITCH FIFIELD, Minister for the Arts, approve the following Scheme under subsection 5(1) of the *Public Lending Right Act 1985*.

Dated 28 September 2016.

MITCH FIFIELD
Minister for the Arts

Part 1—Preliminary

1 Name of Instrument

This Instrument is the *Public Lending Right Scheme 2016*.

2 Commencement

This Instrument commences on the day after it is registered on the Federal Register of Legislation.

2A Authority

This Instrument is made under subsection 5(1) of the *Public Lending Right Act 1985*.

2B Repeal

The *Public Lending Right Scheme 1997* in force immediately before this Instrument commences is repealed.

3 Definitions

In this Instrument (the Scheme):

Act means the *Public Lending Right Act 1985*.

book means a written work that has been published but excludes:

- (a) audio-visual kits;
- (b) compact discs;
- (c) computer discs;
- (d) electronic books;
- (e) magazines and other serial publications;
- (f) talking books;

- (g) books designed for a single use (for example sticker books and workbooks); and
- (h) any other material determined by the Committee to be excluded from the Scheme.

Note: A determination under paragraph (h) is a legislative instrument within the definition of the *Legislation Act 2003*.

classified libraries means public lending libraries other than:

- (a) the National Library of Australia; and
- (b) a reference library established by the government of a State or Territory.

Note: The effect of paragraph 5(2)(a) of the Act is that this scheme is limited to books held in libraries in Australia.

commencing year, for a book, means the financial year starting during the first calendar year after the calendar year in which the book was first published.

Example of commencing year:

For a book published at any time in 2016, the commencing year will start on 1 July 2017.

creator, for a book, means an individual mentioned in paragraph 5(4)(a) or 5(4)(c) of the Act.

Note: The individuals mentioned in paragraphs 5(4)(a) and 5(4)(c) of the Act are:

- an Australian author of a book; and
- an Australian person who illustrated, translated, compiled or edited the book or otherwise contributed to its form or contents.

earlier scheme means a former scheme or the previous scheme.

eligible creator has the meaning given by section 5.

eligible publisher has the meaning given by section 6.

estimated number of copies, for a book, means the number estimated under subsection 11(2).

former scheme means:

- (a) the Public Lending Right Scheme approved on 12 June 1997; or
- (b) the Public Lending Right Scheme approved on 15 May 1991; or
- (c) the Public Lending Right Scheme approved on 12 June 1987.

Australian bibliographic database includes the Australian National Bibliographic Database operated by the National Library of Australia and the Schools Catalogue Information Service operated by Education Services Australia.

Note: A number of expressions used in this scheme are defined in the Act (see s 3), including:

- claim
- claimant
- Committee
- previous scheme.

Part 2—Eligibility

Division 1—Purpose of Part

4 Purpose of Part

- (1) Under subsection 6(1) of the Act, the Committee must, in accordance with this scheme, determine the eligibility of a claimant and the amount of the payment (if any) to be made to a claimant.
- (2) This Part sets out the criteria by which eligibility of a creator or publisher is determined and how an eligible book is identified.
- (3) If the claimant is a creator of a book:
 - (a) the claimant must be determined as an eligible creator of the book; and
 - (b) the book must be an eligible book.
- (4) If the claimant is a publisher of a book:
 - (a) the claimant must be determined as an eligible publisher of the book; and
 - (b) the book must be an eligible book.

Division 2—Eligible creator

5 Eligible creator

- (1) The Committee may, in writing, determine that an individual is an eligible creator of a book.
- (2) The individual must be:
 - (a) the sole creator of the book, or one of not more than 5 creators of the book; and
 - (b) eligible to receive a royalty payment for the sale of copies of the book.
- (3) The Committee may have regard to:
 - (a) an entry about the book in an Australian bibliographic database, that names the individual as:
 - (i) a creator of the book; or
 - (ii) having contributed to the book;
 - (b) payments in advance for royalties and whether the creator has a significant continuing financial interest in the book; and
 - (c) any other matter that the Committee considers relevant to deciding whether the individual is a creator of the book or eligible to receive a royalty payment.

Note: The effect of the Act is that this scheme applies only to creators who are:

- (a) Australian citizens, wherever resident; or
- (b) ordinarily resident in Australia.

Division 3—Eligible publisher

6 Eligible publisher

- (1) The Committee may, in writing, determine that a person is an eligible publisher of a book.
- (2) The person must have published the book in Australia.
- (3) The person must also be one of the following:
 - (a) a person:
 - (i) whose business consists wholly or substantially of the publication of books; and
 - (ii) who regularly publishes books in Australia;
 - (b) a person who owns or controls an undertaking:
 - (i) which consists wholly or substantially of the publication of books; and
 - (ii) which regularly publishes books in Australia;
 - (c) a creator of a book mentioned in paragraph 5(2)(a);
 - (d) a non-profit Australian organisation that published the book to advance its aims or objectives.
- (4) In this section, regularly publishes means publishing new works or revised editions at least once in the preceding three-year period.
- (5) For the avoidance of doubt, regularly publishes does not include the reprinting of books.

7 Crown not eligible publisher

- (1) The Commonwealth cannot be an eligible publisher.
- (2) A State cannot be an eligible publisher.
- (3) A Territory cannot be an eligible publisher.

- (4) An authority (other than an educational institution) established by a law of the Commonwealth, or a State or Territory, cannot be an eligible publisher.

8 Consideration of issues about publication

- (1) In considering whether a person published a book, the Committee may have regard to the following matters:
- (a) the contract for publication of the book;
 - (b) who copy-edited the book;
 - (c) who designed the book;
 - (d) who supervised the production of the book;
 - (e) who supervised the printing of the book;
 - (f) who marketed the book;
 - (g) who assumes financial responsibility for the publication of the book;
 - (h) any other matter that the Committee considers relevant.
- (2) In considering whether a book has been published in Australia, the Committee may have regard to the following matters:
- (a) where the contract for the publication of the book was made;
 - (b) where the book was copy-edited;
 - (c) where the book was designed;
 - (d) where production of the book was supervised;
 - (e) where printing of the book was supervised;
 - (f) where the book was marketed;
 - (g) any other matter that the Committee considers relevant.

9 Status as eligible publisher

- (1) A person's status as an eligible publisher is not affected solely because a subsequent edition of the book is published.

- (2) A person's status as an eligible publisher is not affected solely because of a dealing about the right to publish a subsequent edition of the book (for example, the licensing of the production of a subsequent edition).
- (3) However, an eligible publisher of a book (the *former publisher*) ceases to be an eligible publisher if:
 - (a) it transfers the rights to publish the book to another publisher (the *new publisher*); and
 - (b) the Committee decides, in writing, that the new publisher has taken on the function of publishing the book in Australia.
- (4) The former publisher ceases to be an eligible publisher of the book from the date of transfer.
- (5) If the new publisher wishes to be considered for a payment under this scheme for the book, the new publisher must:
 - (a) tell the Committee, in writing, that it has acquired the rights to publish the book; and
 - (b) give the Committee any information it needs to determine whether the new publisher is an eligible publisher.

Note: If the Committee determines that the new publisher is an eligible publisher, this scheme applies as if a claim for the book made by the former publisher had been made by the new publisher: see s 21(3).

Division 4—Eligible book

10 Eligible book

- (1) An eligible book is a book that has:
- (a) been allocated an International Standard Book Number (ISBN);
 - (b) been published and offered for sale;
 - (c) an identifiable creator or creators;
 - (d) a total number of eligible creators not exceeding 5;
 - (e) a catalogue record in an Australian bibliographic database; and
 - (f) a minimum print run as determined by the Committee.

Note: Some books without an ISBN that were eligible under earlier schemes are taken to be eligible books: see section 29

Note: A determination under paragraph 10(1)(f) is a legislative instrument within the definition of the *Legislation Act 2003*.

- (2) However, a book is not an eligible book if a claim for the book was not lodged within 5 years of the first publication of the book or a revised edition of that book.
- (3) For the avoidance of doubt, the reprint of a book does not entitle a person to lodge a claim for a book that was first published more than 5 years previously which but for the operation of subsection 10(2) would have been an eligible book under the Scheme.

Part 3—Numbers of books

11 Estimates of numbers of books

- (1) This section applies to an eligible book if it has been the subject of a claim.
- (2) The Committee must, at least annually, estimate the number of copies of the book held in classified libraries, using:
 - (a) the records of classified libraries; and
 - (b) statistical sampling and estimation processes that the Committee considers appropriate.
- (3) However, if the estimated number of copies of the book is less than 50, the Committee:
 - (a) is not required to make another estimate of the number of copies; and
 - (b) must notify every claimant in relation to the book of the estimate, and the effect of paragraph (a) and section 17.
- (4) If a claimant who has been notified under paragraph (3)(b) informs the Committee that the book has been reprinted, or of some other circumstance affecting the number of copies of the book, the Committee may make another estimate of the number of copies of the book.
- (5) The estimate under subsection (4) must be made:
 - (a) in the current year, if the information is given at a time that would enable inclusion of the book in the annual estimates process for the year; or
 - (b) in the year after the information was given to the Committee.

Note: All editions of an eligible book are to be counted in estimating the number of copies of the book held in classified libraries, even if they have different ISBN numbers: see s 12.

12 Revised or re-issued editions

- (1) A revised or re-issued edition of an eligible book is taken to be a copy of the eligible book.
- (2) Subsection (1) applies whether or not the revised or re-issued edition has been allocated another International Standard Book Number.

Note: Some books without an ISBN that were eligible under earlier schemes are taken to be eligible books: see s 29.

Part 4—Payments

Division 1—Types of payments

13 Types of payments under the Scheme

The payments that may be made under this scheme are:

- (a) a creators' public lending right payment; and
- (b) a publishers' public lending right payment.

Division 2—Amount of payments

14 Creators' public lending right payment

- (1) The amount of a creators' public lending right payment for a book is the creators' public lending right rate of payment mentioned in subsection (2) multiplied by the estimated number of copies of the book.
- (2) The creators' public lending right rate of payment is \$2.11 per copy.
- (3) If there is more than 1 eligible creator of a book, the amount of the creators' public lending right payment for the book is to be paid to each creator in proportion to his or her share of royalty payments for the book.

15 Publishers' public lending right payment

- (1) The amount of a publishers' public lending right payment for a book is the publishers' public lending right rate of payment mentioned in subsection (2) multiplied by the estimated number of copies of the book.
- (2) The publishers' public lending right rate of payment is 52.75 cents per copy.
- (3) If there is more than 1 eligible publisher of a book, the amount of publishers' public lending right payment for the book is to be paid to them:
 - (a) in accordance with an agreement (if any) between them dealing with the issue of division of profits from the book; or
 - (b) in any other case—as the Committee considers appropriate.

16 Minimum and maximum payments under the Scheme

- (1) The Minister may determine a minimum payment amount. The Committee may determine different minimum payment amounts for creators and publishers. If the total amount that would be payable to a claimant for a financial year under this scheme is less than the relevant minimum payment amount, the amount is not payable and no credit will accrue.
- (2) The Minister may determine a maximum payment amount. The Committee may determine different maximum payment amounts for creators and publishers. If the total amount that would be payable to a claimant for a financial year under this scheme is more than the relevant maximum payment amount, any amount in excess of the maximum payment amount is not payable and no credit will accrue.
- (3) For the purpose of this section, the total amount payable under this scheme to a claimant who is an eligible creator is the sum of the amounts payable for all eligible books of which the claimant is an eligible creator.
- (4) For the purpose of this section, the total amount payable under this scheme to a claimant that is an eligible publisher is the sum of the amounts payable for all eligible books of which the claimant is an eligible publisher.
- (5) If none of the eligible creators of an eligible book is to be paid for the book because of subsection (1):
 - (a) a payment under this scheme is not payable to a publisher for the book; and
 - (b) the book is not to be counted in working out a payment (if any) to be made to a publisher.

Note: A determination under subsection 16(1) and (2) are a legislative instrument within the definition of the *Legislation Act 2003*.

Division 3—Making payments

17 Ineligibility for payment

A payment under this scheme must not be paid for a book if the estimated number of copies of the book is less than 50.

Note: See s 16 for a minimum payment provision.

18 Mode of payment

A payment under this scheme must be made in a single payment.

19 Payment for each financial year

- (1) A payment under this scheme is payable for each financial year, from the commencing year, that begins after a claim under Part 5 was made.
- (2) In identifying a book's commencing year, the Committee may have regard to the date of first or other publication of the book recorded in an entry about the book in an Australian bibliographic database.

Note 1: Subsection 21(1) does not prevent approval of a publishers' public lending right payment for an eligible book for a financial year if transfer of the publisher's rights to the book occurred in that financial year: see s 9(4) and 21(3).

Note 2: A payment for a financial year that does not proceed because of s 27 is taken not to have been payable for that financial year and payments for later financial years are not to be made, unless s 27(7) applies: see s 27(6).

Part 5—Claims

20 Claim form

The Committee may approve a claim form to be used by a claimant.

21 Claims

- (1) A person who considers that they may be entitled to a payment under this scheme may make a claim by completing an approved form and sending it to the Committee.
- (2) A claim for a book covers payments for each financial year, unless the Committee, by writing, requires the claimant to make a new claim for the book.
- (3) If a new publisher becomes an eligible publisher of a book under subsection 9(3), this scheme applies as if a claim for the book made by the former publisher had been made by the new publisher.

22 Determination of eligibility

As soon as practicable after a claim is made for a book, the Committee must, in writing, determine whether the claimant is:

- (a) an eligible creator of the book (see section 5); or
- (b) an eligible publisher of the book (see section 6).

Note: Under s 20(2) of the Act, the Committee must, in writing, inform the claimant of the determination.

23 Approval of payments to creators

The Committee may approve the making of a creators' public lending right payment to a claimant who is an eligible creator of an eligible book.

23A Payment in financial year of creator's death

The Committee may approve the making of a creator's lending right payment, in accordance with this scheme, to the legal personal representative of an eligible creator of an eligible book, who has died, for the financial year in which the creator died. The creator must already have made a claim for payment in accordance with this scheme.

Note: Under s19(1) a payment cannot be made in the financial year of the claim.

24 Approval of payments to publishers

The Committee may approve the making of a publishers' public lending right payment to a claimant who is an eligible publisher of an eligible book.

25 Underpayments

- (1) This section applies if the Committee considers that an amount paid to a claimant under this scheme or an earlier scheme for a financial year was less than the correct amount.
- (2) The Committee may, for a subsequent financial year, approve a payment to the claimant of an amount equal to the difference between the amount that was paid and the correct amount.
- (3) To avoid doubt, a payment under subsection (2) is in addition to any payment to the claimant that may be approved under section 23 or 24 for the subsequent financial year.

Note: A payment for a financial year that does not proceed because of s 27 is taken not to have been payable for that financial year: see s 27(6).

26 Overpayments

If an amount paid to a claimant under this scheme or an earlier scheme is more than the correct amount, the excess amount is a debt due to the Commonwealth and may be recovered:

- (a) in a court of competent jurisdiction; or
- (b) by deduction of the whole or part of the excess amount from an amount that would otherwise be payable to the claimant under this scheme.

27 Circumstances in which payment not to be made

- (1) The Committee must not approve a payment to an individual under section 23 or 24 if the Committee is aware that the individual has died however a payment may be approved in accordance with section 23A.

Note: Section 23A allows payments to be made in the financial year of the creator's death.

- (2) The Committee must not approve a payment to a body corporate under section 24 if the Committee is aware that the body corporate has been wound up.
- (3) The Committee must cancel an approved payment to a body corporate that is wound up before the payment is made.
- (4) The Committee must not approve a payment to a claimant under section 23 or 24 if the Committee cannot locate the claimant after taking reasonable steps.
- (5) The Committee must cancel an approved payment to a claimant who cannot be located, after taking reasonable steps.

- (6) A payment for a financial year that does not proceed because of this section is taken not to have been payable for that financial year and payments for later financial years are taken not to be payable.
- (7) However, if a claimant who could not be located contacts the Committee, payments may be resumed for the financial year starting after the Committee was contacted.
- (8) The power of the Committee under this section not to proceed with a payment applies to payments for:
 - (a) any period before the exercise of the power; and
 - (b) the financial year in which the power is exercised.

Part 6—General

28 Information about the Scheme

- (1) The Committee must, at least once a year, publish information about eligibility for payments under this scheme.
- (2) The Committee may advertise this scheme in the way it considers appropriate.

29 Application of the Scheme to claim under earlier scheme

- (1) A claim for a book made under an earlier scheme is not recognised for this scheme if it had been determined that the book, creator or publisher was not eligible under the earlier scheme.
- (2) Any other claim for a book made under an earlier scheme is recognised for this scheme as if it had been made under section 21.
- (3) If no payments had been made for a book under an earlier scheme, this scheme applies to the book as if the last estimate of the number of copies of the book that had been made under the earlier scheme (if one had been made) were an estimate under this scheme.
- (4) If payments had been made for the book under an earlier scheme, this scheme applies to the book as if it were an eligible book.
- (5) If payments had been made for the book under an earlier scheme, this scheme applies to the book as if the book's creator were an eligible creator.

- (6) If payments had been made for the book under an earlier scheme, this scheme applies to the book as if the book's publisher were an eligible publisher.
- (7) If payments had been made for the book under an earlier scheme, this scheme applies to the book as if the last estimate of the number of copies of the book made under the earlier scheme (if an estimate had been made) were an estimate under this scheme.

Note: See s 3(5) of the Act regarding claimants under the previous scheme.