

Copyright Tribunal (Procedure) Amendment Regulations 1998 (No. 1) 1998 No. 357

EXPLANATORY STATEMENT

Statutory Rules 1998 No. 357

Issued by the authority of the Attorney-General

Copyright Act 1968

Copyright Tribunal (Procedure) Amendment Regulations 1998 (No. 1)

Part VI of the *Copyright Act 1968* (the Copyright Act) provides for the establishment of the Copyright Tribunal (the Tribunal) and sets out the Tribunal's membership, jurisdiction and some of its procedures.

Section 166 of the Copyright Act provides, in part, for regulations to be made for or in relation to the procedure in connection with the making of applications and references to the Tribunal and the regulation of Tribunal proceedings. Section 249 of the Copyright Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted by the Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Copyright Tribunal (Procedure) Regulations 1969* (the Principal Regulations) prescribe Tribunal procedures relating to, amongst other things, the content and form of applications and references to the Tribunal, the filing with the Tribunal and service of documents, the form and service of summons and the recording and notification of Tribunal orders.

The *Copyright Tribunal (Procedure) Amendment Regulations 1998 (No. 1)* (the Amendment Regulations) are made under the authority of sections 166 and 249 of the Copyright Act. The Amendment Regulations update the Principal Regulations in order to achieve consistency with the Copyright Act, following the enactment of the *Copyright Amendment Act (No. 1) 1998* (the Copyright Amendment Act). The Copyright Amendment Act made a number of changes to provisions in the Copyright Act which have related regulations in the Principal Regulations.

The majority of the amendments to the Principal Regulations involve minor changes in terminology, that is, replacing references to "broadcast" and "broadcasts" with "transmission" and "transmissions" respectively, where applicable. Other amendments update the schedules to the Principal Regulations which relate to provisions in the Copyright Act amended by the Copyright Amendment Act, and repeal regulations which refer to previously repealed provisions of the Copyright Act.

Details of the Amendment Regulations are set out in the Attachment.

The Amendment Regulations commence on gazettal.

ATTACHMENT

Regulation 1 names the regulations the *Copyright Tribunal (Procedure) Amendment Regulations 1998* and inserts an appropriate number.

Regulation 2 provides that the regulations commence on gazettal.

Regulation 3 provides that the *Copyright Tribunal (Procedure) Regulations* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1, Item 1 amends the title of the Principal Regulations, in accordance with current drafting practice, to the *Copyright Tribunal (Procedure) Regulations 1969*.

Schedule 1, Item 2 omits the reference to "Part III - Inquiries by the Tribunal (Regulation 16)" from regulation 3. This omission is ancillary to the repeal of Part III made by Item 3 below.

Schedule 1, Item 3 repeals Part III of the Principal Regulations, which comprised regulation 16. Part III is repealed because regulation 16 related to the previously repealed section 148 of the *Copyright Act 1968* (the Copyright Act).

Schedule 1, Item 4 replaces a reference to "broadcasts" in paragraph (e) of regulation 23A with "transmissions". This amendment ensures the terminology used in regulation 23A is consistent with that used in the related provision of the Copyright Act, that is subsection 135H(1). References to "broadcasts" in Part VA of the Copyright Act (which includes subsection 135H(1)) were replaced by "transmissions", following the recent enactment of the *Copyright Amendment Act (No. 1) 1998* (the Copyright Amendment Act).

References to "broadcasts" in paragraph (f) of regulation 23A are replaced with "transmissions" for the same reason (see Item 5).

Schedule 1, Item 6 replaces a reference to "broadcasts" in subparagraph (e)(i) of regulation 23B with "transmissions". This amendment is consistent with the amendment of the related provision of the Copyright Act, that is, section 135J. References to "broadcasts" in section 135J of the Copyright Act were replaced by "transmissions", by virtue of Schedule 10 of the Copyright Amendment Act.

References to "broadcasts" in paragraph (f) of regulation 23B and in regulation 23C are replaced by "transmissions" for the same reason (see Items 7-9).

Schedule 1, Item 10 repeals regulation 25C of the Principal Regulations. This regulation is repealed because it related to the previously repealed subsection 153E(2) of the Copyright Act and is not relevant to the new section 153E inserted by the Copyright Amendment Act.

Schedule 1, Item 11 repeals subparagraph (1)(b)(ia) of regulation 34 of the Principal Regulations. Subparagraph 34(1)(b)(ia) is repealed because it related to the previously repealed section 153E of the Copyright Act and is not relevant to the new section 153E inserted by the Copyright Amendment Act.

Schedule 1, Item 12 substitutes the words "Member or the Secretary" for the word "Member" in the signature block in Form 2 in the First Schedule to the Regulations.

This amendment recognises that Schedule 7 of the Copyright Amendment Act extended the Tribunal's power to issue summonses, granted under subsection 167(2) of the Copyright Act, to the Secretary to the Tribunal. Formerly, Form 2 in the First Schedule to the Regulations recognised that only Tribunal members could issue summonses.

