

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2005 No. 15**

Issued by the authority of the Attorney-General

*Copyright Act 1968*

*Copyright Amendment Regulations 2005 (No. 1)*

The *Copyright Act 1968* (the Act) grants and determines the scope of copyright in Australia.

Section 249 of the Act provides, in part, 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 *US Free Trade Agreement Implementation Act 2004* (the USFTA Act) contains 10 schedules that amended the relevant Australian legislation to fulfil Australia's obligations under the Australia-United States Free Trade Agreement (AUSFTA). The USFTA Act received Royal Assent on 16 August 2004 and most provisions came into effect on 1 January 2005. Schedule 9 to the USFTA Act amended the Act to fulfil obligations under Chapter 17 of the AUSFTA, which deals with Intellectual Property Rights (including Copyright).

The *Copyright Amendment Regulations 2005* amend the *Copyright Regulations 1969* (the Principal Regulations) to reflect the new definition of 'relevant right holder' in the Act, as amended by the USFTA Act.

Part 4 of Schedule 9 to the USFTA Act repealed the definition of 'relevant copyright owner' in section 135A of the Act, which deals with copying and communication of broadcasts by educational and other institutions, and inserted a new definition of 'relevant right holder'. This new definition covers performers in addition to those rights holders referred to in the repealed definition.

Part 5 of the Principal Regulations includes references to 'relevant copyright owner'. Accordingly, the Principal Regulations are amended to replace the term 'relevant copyright owner' with the term 'relevant right holder'.

In addition, the USFTA Act amended the Act to grant performers, in addition to copyright owners, rights to remuneration under the statutory licence scheme for educational making and communicating copies of broadcasts. The Regulations amend the prescribed notice in Schedule 11AC of the Principal Regulations, made under s 135KA(a) of the Act, to refer performers as well as copyright owners.

Details of the Regulations are provided in the [Attachment](#).

The Department of Communications Information Technology and the Arts has been consulted in relation to these amendments and supports the amendments. The Audio Visual

Collecting Society (Screenrights), the declared collecting society under Part VA which is responsible for collection and distribution of remuneration under the statutory licence in Part VA of the Act, has also been consulted and will ensure appropriate mechanisms will be in place to deal with new obligations affected by these amendments.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

Authority: Section 249 of the  
*Copyright Act 1968*

## **ATTACHMENT**

### Details of the *Copyright Amendment Regulations 2005 (No. 1)*

**Regulation 1** provides that the regulations are the *Copyright Amendment Regulations 2005 (No. 1)*.

**Regulation 2** provides that regulations 1, 2 and 3 and Schedule 1 outlined below commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Regulation 3** provides that Schedule 1 to the regulations amends the *Copyright Regulations 1969*.

### **Schedule 1**

**Item 1** amends regulation 23A by omitting ‘relevant copyright owner’ and inserting ‘relevant right holder’.

**Item 2** amends paragraph 23J(1)(h) by omitting ‘relevant copyright owner’ and inserting ‘relevant right holder’.

**Item 3** amends paragraph 23J(1)(h) by omitting ‘allocated to that owner’ and inserting ‘allocated to that holder’.

**Item 4** amends paragraph 23J(1)(j) by omitting ‘a relevant copyright owner or the agent of a relevant copyright owner,’ and inserting ‘a relevant right holder or the agent of a relevant right holder,’.

**Item 5** amends subregulation 23J(2) by omitting from paragraph (a) of the definition of ‘qualified person’ ‘a relevant copyright owner or the agent of a relevant copyright owner;’ and inserting ‘a relevant right holder or the agent of a relevant right holder;’.

**Item 6** amends subregulation 23J(2) by omitting from paragraph (b) of the definition of ‘qualified person’ ‘a relevant copyright owner’ and inserting ‘a relevant right holder’.

**Item 7** amends the Form in Schedule 11AC by omitting ‘copyright protection under the Act.’ and inserting ‘copyright or performers’ protection under the Act.’.