

EXPLANATORY STATEMENT

Public Lending Right Act 1985

Public Lending Right Scheme (Payment Rates) Modification 2024

Issued by the authority of the Minister for the Arts

Purpose and operation

The *Public Lending Right Scheme (Payment Rates) Modification 2024* (the Modification Instrument) modifies the *Public Lending Right Scheme 2016* (the Scheme) by adjusting the payment rates which apply under the Scheme for eligible creators and publishers.

The Modification Instrument is made under subsection 5(1) of the *Public Lending Right Act 1985* (the Act), which provides the legislative framework for a Public Lending Right Scheme to, amongst other things, recognise the loss of income by Australian creators and publishers of books held in public lending libraries.

Background

The Scheme, among other things, provides for the annual rates of payment to eligible creators and publishers of eligible books.

Established in 1974, Australia's lending right scheme has assisted thousands of Australian authors and publishers to continue to write and publish books by providing them with recompense for the free use of their books in libraries. The scheme is the main mechanism for Australian Government investment to be provided to Australian authors.

Australia's national cultural policy *Revive: a place for every story, a story for every place* (*Revive*) committed to funding and acting to modernise and extend the *Public Lending Right Scheme 2016* (the Scheme) to include electronic books and audiobooks. The Scheme was most recently modified in 2023 to implement this commitment, including the introduction of a payment table to allow multiple rates of payments, providing greater flexibility to direct funding to emerging and mid-career authors where funding is most needed.

FINANCIAL IMPACT

In 2022-23, the Scheme delivered payments to 6,724 claimants, totalling over \$10.5 million. The number of payments is expected to increase to almost 8,000 in 2023-24 following the inclusion of Australian digital material published in the last five years in the Scheme.

Revive provides new funding of \$12.9 million over four years from 2023-24 to expand and improve the public and educational lending right schemes with \$3.4 million (indexed) in ongoing funding from 2023. The use of tiered payment rates in a payment table ensures that payments remain within the budget allocation while continue to provide lending right annual payments with fairness and equity.

IMPACT ANALYSIS

The Office of Impact Analysis has advised that requirements have been met for the inclusion of tiered payment rates into the Scheme and an Impact Analysis is not required for this instrument (OPBR22-03596).

CONSULTATION

Over many years, key stakeholders (including the Australian Society of Authors and the Australian Publishers Association) have advocated strongly that publishing and reading has changed in Australia, and that an author or creator should be compensated for the free use of their books under the Public Lending Right Scheme, irrespective of format, most recently through the consultation process for the National Cultural Policy, *Revive*.

The use of multiple (tiered) payment rates, as set out in the Modification Instrument, enables the Scheme to provide responsibly targeted funding towards emerging and mid-career authors ensuring that the Scheme continues to encourage the growth in Australian writing and publishing, an outcome that has been widely welcomed by key stakeholders, including industry representatives on the Public Lending Right Committee.

Commencement

The Modification Instrument is a legislative instrument within the meaning of the *Legislation Act 2003*. The gazettal requirement in subsection 5(1) of the Act is taken to be satisfied if the instrument is registered in the Federal Register of Legislation (subsection 56(1) of the *Legislation Act 2003*).

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

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Public Lending Right Scheme (Payment Rates) Modification 2024

This disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The *Public Lending Right Act 2016* (the Act) provides the legislative framework for a Public Lending Right scheme to recognise the loss of income by Australian creators and publishers of books held in public lending libraries.

The *Public Lending Right Scheme 2016* (the Scheme) provides, among other things, for the annual rates of payment to eligible creators and publishers and specifies the eligibility criteria for creators and publishers under the Scheme.

To be eligible for the public lending right, the Scheme specifies certain requirements for *creators* and *publishers*. The effect of the Act is that the Scheme applies only to creators who are: Australian citizens, wherever resident; or ordinarily resident in Australia and to publishers which meet certain criteria (such as having published the book (including electronic books) in Australia and published a new work or revised editions at least once in the preceding three-year period), as set out in the Scheme (as modified from time to time).

The *Public Lending Right Scheme (Payment Rates) Modification 2024* (the Modification Instrument) modifies the Scheme by adjusting the payment rates which apply under the Scheme for eligible creators and publishers.

Human rights implications

This disallowable Legislative Instrument engages the following right:

- The right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author, in Article 15(1)(c) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

This right is important for the purposes of encouraging authors to create work with the assurance that their moral and material interests in their products will be protected.

The overarching objective of the Scheme is to ensure remuneration for loss of income by creators and publishers of books held in public lending libraries.

The impact of the Modification Instrument is to change the payment rates that apply under the Scheme and the Scheme (as modified) will continue to further support and promote the right in Article 15(1)(c) of the ICESCR.

Conclusion

This disallowable Legislative Instrument is compatible with human rights because the Scheme (in the modified form) continues to promote the protection of the material interest of creators and publishers of books (literary products) regardless of form.

Minister for the Arts, The Hon Tony Burke MP

PUBLIC LENDING RIGHT SCHEME (PAYMENT RATES) MODIFICATION 2024

NOTES ON SECTIONS

Section 1: Commencement

1. This section provides the title of the Instrument.

Section 2: Commencement

2. This section provides that the whole Instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3: Authority

3. This section provides that the Instrument has been made under subsection 5(1) of the *Public Lending Right Act 1985* (the Act).

Section 4: Schedules

4. This section specifies that the *Public Lending Right Scheme 2016* is modified as set out in Schedule 1. The Scheme has already been modified several times since its issuance.

Schedule 1—Modifications

Item 1: Subsection 14(2)

5. Subsection 14(2) of the Scheme specifies the rate of payment for eligible creators. The rates are reviewed by the Department annually, taking into consideration the results of the Committee's library surveys and the available Commonwealth budget, and may be subject to change in the future by ministerial determination made pursuant to paragraph 5(1)(b) of the Act.
6. A tiered payment structure is designed to keep the base rate equivalent or above the current rate, but decreases as the number of copies of a book in library surveys increases. This flexibility accommodates expanding claims under the Scheme within the available budget.
7. This item makes substantive change to the rates by substituting a replacement section 14 that includes a new table of applicable (tiered) rates. For books which have an estimated number of copies of 2,000 or less, the new "rate of payment" is \$2.30 per copy. For books which have estimated number of copies of between 2,001 and 5,000, the new "rate of payment" is \$2.28 per copy. For books which have an estimated number of copies between 5,001 and 20,000 the new "rate of payment" is \$2.26. For books which have an estimated number of copies between 20,001 and 70,000 the new "rate of payment" is \$2.20 per copy. For books which have estimated number of copies of 70,001 or more, the new "rate of payment" is \$1.89 per copy.

Item 2: Subsection 15(2)

8. Subsection 15(2) of the Scheme specifies the rate of payment for publishers.
9. This Item makes a modification to subsection 15(2) which is similar to the amendment described at Item 14 above, and changes to the rates by for eligible publishers based on a tiered approach.
10. For books which have estimated number of copies of 2,000 or less, the new “rate of payment” is 57.5 cents per copy. For books which have estimated number of copies of between 2,001 and 5,000, the new “rate of payment” is 57.0 cents per copy. For books which have an estimated number of copies between 5,001 and 20,000 the new “rate of payment” is 56.5 cents per copy. For books which have an estimated number of copies between 20,001 and 70,000 the new “rate of payment” is 55.0 cents per copy. For books which have estimated number of copies of 70,001 or more, the new “rate of payment” is 47.25 cents per copy.