REPRINT No. 4

COPYRIGHT ACT 1968

Reprinted as 30 June 1990

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THE SCHEDULE
OATHS AND AFFIRMATIONS

COPYRIGHT ACT 1968

An Act relating to copyright and the protection of certain performances, and for other purposes

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Copyright Act 1968*.[1]

Commencement

2. This Act shall come into operation on a date to be fixed by Proclamation.[1]

Extension to external Territories

4. This Act extends to every external Territory.

Exclusion of Imperial Copyright Act, 1911

5. (1) This Act operates to the exclusion of the *Copyright Act, 1911*.

(2) For the purposes of section 8 of the *Acts Interpretation Act 1901-1966*, the Copyright Act, 1911 shall be deemed to be an Act passed by the Parliament of the Commonwealth and to be repealed by this Act, and the enactment of Part XI shall not be taken to affect the operation of section 8 of the *Acts Interpretation Act 1901-1966* as it operates by virtue of this subsection in relation to matters to which that Part does not apply.

Repeal of Copyright Acts

6. The following Acts are repealed:

Copyright Act 1912;

Copyright Act 1933;

Copyright Act 1935;

Copyright Act 1963.

Act to bind the Crown

7. Subject to Part VII, this Act binds the Crown but nothing in this Act renders the Crown liable to be prosecuted for an offence.

Copyright not to subsist except by virtue of this Act

8. Subject to section 8A, copyright does not subsist otherwise than by virtue of this Act.

Prerogative rights of the Crown in the nature of copyright

8A. (1) Subject to subsection (2), this Act does not affect any prerogative right or privilege of the Crown.

(2) Where a right or privilege of the Crown by way of copyright subsists in a work or published edition of a work, a person does not infringe that right or privilege by doing, or authorizing the doing of, an act in relation to the work or edition without the licence of the Crown if, assuming that that right or privilege of the Crown did not subsist in the work or edition, but copyright subsisted under this Act in the work or edition and was owned by a person other than the Crown, he would not infringe the copyright of that owner in the work or edition by doing, or by authorizing the doing of, that act without the licence of the owner.

(3) Nothing in subsection (2) shall be taken to limit the duration of the right or privilege of the Crown by way of copyright in a work or published edition of a work.

Operation of other laws

9. (1) This Act does not affect the right of, or of a person deriving title directly or indirectly from, the Commonwealth or a State to sell, use or otherwise deal with articles that have been, or are, forfeited under a law of the Commonwealth or of the State.

(3) This Act does not affect the operation of the law relating to breaches of trust or confidence.

PART II—INTERPRETATION

Interpretation

10.[2, 3 and 4] **(1)** In this Act, unless the contrary intention appears:

"adaptation" means:

(a) in relation to a literary work in a non-dramatic form a version of the work (whether in its original language or in a different language) in a dramatic form;

(b) in relation to a literary work in a dramatic form a version of the work (whether in its original language or in a different language) in a non-dramatic form;

(ba) in relation to a literary work being a computer program—a version of the work (whether or not in the language, code or notation in which the work was originally expressed) not being a reproduction of the work;

(c) in relation to a literary work (whether in a non-dramatic form or in a dramatic form):

(i) a translation of the work; or

(ii) a version of the work in which a story or action is conveyed solely or principally by means of pictures; and

(d) in relation to a musical work—an arrangement or transcription of the work;

"archives" means:

(a) archival material in the custody of:

(i) the Australian Archives;

(ii) the Archives Office of New South Wales established by the *Archives Act* 1960 of the State of New South Wales;

(iii) the Public Record Office established by the *Public Records Act* 1973 of the State of Victoria; or

(iv) the Archives Office of Tasmania established by the *Archives Act* 1965 of the State of Tasmania; or

(b) a collection of documents or other material to which this paragraph applies by virtue of subsection (4);

"artistic work" means:

(a) a painting, sculpture, drawing, engraving or photograph, whether the work is of artistic quality or not;

(b) a building or a model of a building, whether the building or model is of artistic quality or not; or

(c) a work of artistic craftsmanship to which neither of the last two preceding paragraphs applies;

"Australia" includes the external Territories;

"Australian protected person" means a person who, by virtue of regulations in force under the *Nationality and Citizenship Act 1948-1967*, is, for the purposes of that Act, under the protection of the Australian Government;

"author" , in relation to a photograph, means the person who took the photograph;

"authorized officer" , in relation to a library or archives, means the officer in charge of that library or archives or a person authorized by that officer to act on his behalf;

"broadcast" means transmit by wireless telegraphy to the public;

"building" includes a structure of any kind;

"calendar year" means a period of 12 months commencing on 1 January;

"central records authority" means a body, whether incorporated or unincorporated, in relation to which a declaration under paragraph 10A (1) (a) is in force;

"cinematograph film" means the aggregate of the visual images embodied in an article or thing so as to be capable by the use of that article or thing:

(a) of being shown as a moving picture; or

(b) of being embodied in another article or thing by the use of which it can be so shown;

and includes the aggregate of the sounds embodied in a sound-track associated with such visual images;

"computer program" means an expression, in any language, code or notation, of a set of instructions (whether with or without related information) intended, either directly or after either or both of the following:

(a) conversion to another language, code or notation;

(b) reproduction in a different material form;

to cause a device having digital information processing capabilities to perform a particular function;

"construction" includes erection, and **"reconstruction"** has a corresponding meaning;

"copy" , in relation to a cinematograph film, means any article or thing in which the visual images or sounds comprising the film are embodied;

"dramatic work" includes:

(a) a choreographic show or other dumb show; and

(b) a scenario or script for a cinematograph film;

but does not include a cinematograph film as distinct from the scenario or script for a cinematograph film;

"drawing" includes a diagram, map, chart or plan;

"educational institution" means:

(a) a school or similar institution at which full-time primary education or full-time secondary education is provided or both full-time primary education and full-time secondary education are provided;

(b) a university, a college of advanced education or a technical and further education institution;

(c) an institution that conducts courses of primary, secondary or tertiary education by correspondence or on an external study basis;

(d) a school of nursing in relation to which a notice published under subsection 10A (4) is in force;

(e) an undertaking within a hospital, being an undertaking:

(i) that conducts courses of study or training in the provision of medical services, or in the provision of services incidental to the provision of medical services; and

(ii) in relation to which a notice published under subsection 10A (4) is in force;

(f) a teacher education centre in relation to which a notice published under subsection 10A (4) is in force;

(g) an institution that has, as its principal function, the provision of courses of study or training for the purpose of:

(i) general education;

(ii) the preparation of persons for a particular occupation or profession; or

(iii) the continuing education of persons engaged in a particular occupation or profession;

and in relation to which a declaration under paragraph 10A (1) (b) is in force;

(h) an undertaking within a body administering an educational institution of a kind referred to in a preceding paragraph of this definition, being an undertaking:

(i) that has as its principal function, or as one of its principal functions, the provision of teacher training for persons engaged as instructors in educational institutions of such a kind, or of 2 or more such kinds; and

(ii) in relation to which a declaration under paragraph 10A (1) (b) is in force; or

(j) an institution, or an undertaking within a body administering an educational institution of a kind referred to in a preceding paragraph of this definition, being an institution or undertaking:

(i) that has as its principal function, or as one of its principal functions, the furnishing of material to educational institutions of a kind referred to in a preceding paragraph of this definition, or to educational institutions of 2 or more such kinds, for the purpose of assisting those institutions in their teaching purposes; and

(ii) in relation to which a declaration under paragraph 10A (1) (b) is in force;

but does not include an institution that is conducted for the profit, direct or indirect, of an individual or individuals;

"engraving" includes an etching, lithograph, product of photogravure, woodcut, print or similar work, not being a photograph;

"exclusive licence" means a licence in writing, signed by or on behalf of the owner or prospective owner of copyright, authorizing the licensee, to the exclusion of all other persons, to do an act that, by virtue of this Act, the owner of the copyright would, but for the licence, have the exclusive right to do, and **"exclusive licensee"** has a corresponding meaning;

"future copyright" means copyright to come into existence at a future time or upon the happening of a future event;

"handicapped reader" means:

(a) a blind person;

(b) a person suffering severe impairment of his sight;

(c) a person unable to hold or manipulate books or to focus or move his eyes; or

(d) a person suffering from a perceptual handicap;

"infringing copy" means:

(a) in relation to a work—a reproduction of the work, or of an adaptation of the work, not being a copy of a cinematograph film of the work or adaptation;

(b) in relation to a sound recording—a copy of the sound recording not being a sound-track associated with visual images forming part of a cinematograph film;

(c) in relation to a cinematograph film—a copy of the film;

(d) in relation to a television broadcast or a sound broadcast—a copy of a cinematograph film of the broadcast or a record embodying a sound recording of the broadcast; and

(e) in relation to a published edition of a work—a reproduction of the edition;

being an article the making of which constituted an infringement of the copyright in the work, recording, film, broadcast or edition or, in the case of an article imported without the licence of the owner of the copyright, would have constituted an infringement of that copyright if the article had been made in Australia by the importer;

"institution" includes an educational institution;

"institution assisting handicapped readers" means:

(a) an educational institution; or

(b) any other institution, not being an institution conducted for the profit, direct or indirect, of an individual or individuals, that has as its principal function, or one of its principal functions, the provision of literary or dramatic works to handicapped readers and in relation to which a declaration under paragraph 10A (1) (c) is in force;

"institution assisting intellectually handicapped persons" means:

(a) an educational institution; or

(b) any other institution, not being an institution conducted for the profit, direct or indirect, of an individual or individuals, that has as its principal function, or one of its principal functions, the provision of assistance to intellectually handicapped persons and in relation to which a declaration under paragraph 10A (1) (d) is in force;

"international organization to which this Act applies" means an organization that is declared by regulations made for the purposes of section 186 to be an international organization to which this Act applies, and includes:

(a) an organ of, or office within, an organization that is so declared; and

(b) a commission, council or other body established by such an organization or organ;

"judicial proceeding" means a proceeding before a court, tribunal or person having by law power to hear, receive and examine evidence on oath;

"law of the Commonwealth" includes a law of a Territory;

"literary work" includes:

(a) a table, or compilation, expressed in words, figures or symbols (whether or not in a visible form); and

(b) a computer program or compilation of computer programs;

"manuscript" , in relation to a work, means an original document embodying the work, whether written by hand or not;

"material form" , in relation to a work or an adaptation of a work, includes any form (whether visible or not) of storage from which the work or adaptation, or a substantial part of the work or adaptation, can be reproduced;

"officer in charge" means:

(a) in relation to archives—the archivist or other person having, for the time being, immediate care and control of the collection comprising the archives;

(b) in relation to a central records authority—the person having, for the time being, immediate care and control of the records deposited with the authority; and

(c) in relation to a library—the librarian or other person having, for the time being, immediate care and control of the collection comprising the library;

"photograph" means a product of photography or of a process similar to photography, other than an article or thing in which visual images forming part of a cinematograph film have been embodied, and includes a product of xerography, and **"photographic"** has a corresponding meaning;

"plate" includes a stereotype, stone, block, mould, matrix, transfer, negative or other similar appliance;

"prospective owner" means:

(a) in relation to a future copyright that is not the subject of an agreement of a kind referred to in subsection 197 (1)—the person who will be the owner of the copyright on its coming into existence; or

(b) in relation to a future copyright that is the subject of such an agreement—the person in whom, by virtue of that subsection, the copyright will vest on its coming into existence;

"record" means a disc, tape, paper or other device in which sounds are embodied;

"sculpture" includes a cast or model made for purposes of sculpture;

"sound broadcast" means sounds broadcast otherwise than as part of a television broadcast;

"sound recording" means the aggregate of the sounds embodied in a record;

"sound-track" , in relation to visual images forming part of a cinematograph film, means:

(a) the part of any article or thing, being an article or thing in which those visual images are embodied, in which sounds are embodied; or

(b) a disc, tape or other device in which sounds are embodied and which is made available by the maker of the film for use in conjunction with the article or thing in which those visual images are embodied;

"sufficient acknowledgement" , in relation to a work, means an acknowledgement identifying the work by its title or other description and, unless the work is anonymous or pseudonymous or the author has previously agreed or directed that an acknowledgement of his name is not to be made, also identifying the author;

"television broadcast" means visual images broadcast by way of television, together with any sounds broadcast for reception along with those images;

"the Australian Broadcasting Commission" means the Australian Broadcasting Commission that was established under the *Broadcasting and Television Act 1942*;

"the Australian Broadcasting Corporation" means the Australian Broadcasting Corporation established under the *Australian Broadcasting Corporation Act 1983*;

"the Commonwealth" includes the Administration of a Territory;

"the Copyright Act, 1911" means the Imperial Act known as the Copyright Act, 1911;

"the Copyright Tribunal" or **"the Tribunal"** means the Copyright Tribunal established by Part VI, and includes a member of that Tribunal exercising powers of that Tribunal;

"the Crown" includes the Crown in right of a State, the Crown in right of the Northern Territory and the Crown in right of Norfolk Island and also includes the Administration of a Territory other than the Northern Territory or Norfolk Island;

"the minimum royalty" , in relation to a record, means the amounts applicable in respect of the record under subsection 56 (5) and subparagraph 57 (b) (i) or, if those provisions are affected by regulations made for the purposes of section 58, under those provisions as so affected;

"the National Librarian" has the same meaning as in the *National Library Act 1960-1967*;

"the National Library" means the National Library established under the *National Library Act 1960-1967*;

"the royalty" , in relation to a record, means the amount applicable in respect of the record under subsection 56 (1) or, if that subsection is affected by regulations made for the purposes of section 58, under that subsection as so affected;

"the Special Broadcasting Service" means the Special Broadcasting Service established by the *Broadcasting Act 1942*;

"will" includes a codicil;

"wireless telegraphy" means the emitting or receiving, otherwise than over a path that is provided by a material substance, of electromagnetic energy;

"wireless telegraphy apparatus" means an appliance or apparatus for the purpose of transmitting or receiving sounds or visual images by means of wireless telegraphy;

"work" means a literary, dramatic, musical or artistic work;

"work of joint authorship" means a work that has been produced by the collaboration of two or more authors and in which the contribution of each author is not separate from the contribution of the other author or the contributions of the other authors;

"writing" means a mode of representing or reproducing words, figures or symbols in a visible form, and **"written"** has a corresponding meaning.

(1A) Without limiting the meaning of the expression **"educational purposes"** in this Act, a copy of the whole or a part of a work or other subject-matter shall be taken, for the purposes of the provision in which the expression appears, to have been made, used or retained, as the case may be, for the educational purposes of an educational institution if:

(a) it is made or retained for use, or is used, in connection with a particular course of instruction provided by the institution; or

(b) it is made or retained for inclusion, or is included, in the collection of a library of the institution.

(2) Without limiting the meaning of the expression **"reasonable portion"** in this Act, where a literary, dramatic or musical work is contained in a published edition of that work, being an edition of not less than 10 pages, a copy of part of that work, as it appears in that edition, shall be taken to contain only a reasonable portion of that work if the pages that are copied in the edition:

(a) do not exceed, in the aggregate, 10% of the number of pages in that edition; or

(b) in a case where the work is divided into chapters exceed, in the aggregate, 10% of the number of pages in that edition but contain only the whole or part of a single chapter of the work.

(3) In this Act, unless the contrary intention appears:

(a) a reference to the body administering an institution or a central records authority shall be read as:

(i) in a case where the institution or authority is a body corporate—a reference to the institution or authority, as the case may be; or

(ii) in any other case—a reference to the body or person (including the Crown) having ultimate responsibility for the administration of the institution or authority, as the case may be;

(b) a reference to the body administering a library or archives shall be read as a reference to the body (whether incorporated or not), or the person (including the Crown), having ultimate responsibility for the administration of the library or archives;

(c) a reference to a copy of a sound recording shall be read as a reference to a record embodying a sound recording or a substantial part of a sound recording being a record derived directly or indirectly from a record produced upon the making of a sound recording;

(d) a reference to the copying records of an educational institution, an institution assisting handicapped readers or an institution assisting intellectually handicapped persons shall be read as a reference to the collection of:

(i) the relevant records in respect of copies of articles and other works made by or on behalf of the body administering the institution in reliance on section 53B;

(ii) the relevant records in respect of copies of articles and other works made by or on behalf of the body administering the institution in reliance on section 53D; and

(iii) the relevant records in respect of copies, within the meaning of Part X, of eligible items, within the meaning of that Part, made by or on behalf of the body administering the institution in reliance on section 200A;

other than any such records as have been duly destroyed by, or by authority of, the body administering that institution;

(e) a reference to the Crown in right of a State shall be read as including a reference to the Crown in right of the Northern Territory and the Crown in right of Norfolk Island;

(f) a reference to the custodian in charge of the copying records of an educational institution, an institution assisting handicapped readers or an institution assisting intellectually handicapped persons shall be read as a reference to the person having responsibility for the day-to-day administration of the institution;

(g) a reference to the making, by reprographic reproduction, of a copy of a document, or of the whole or a part of a work, shall be read as a reference to the making of a facsimile copy of the document or the whole or that part of the work, being a facsimile copy of any size or form;

(h) a reference to a handicapped reader's copy of a work, or of a part of a work, shall be read as a reference to:

(i) a record embodying a sound recording of the work, or of the part of the work, being a record that was made by, or on behalf of, the body administering an institution assisting handicapped readers for use by a handicapped reader for the purpose of research or study that he is undertaking or proposes to undertake or for the purpose of instructing himself on any matter; or

(ii) a Braille version, large-print version or photographic version of the work, or of the part of the work, being a Braille version, large-print version or photographic version, as the case may be, made by, or on behalf of, the body administering the institution assisting handicapped readers for use by a handicapped reader for the purpose of research or study that he is undertaking or proposes to undertake or for the purpose of instructing himself on any matter;

(ha) a reference to an intellectually handicapped person's copy, in relation to the whole or a part of an eligible item within the meaning of Part X, shall be read as a reference to a copy, within the meaning of that Part, of an eligible item, or of a part of an eligible item, as the case may be, made by, or on behalf of, the body administering an institution assisting intellectually handicapped persons, being a copy that is made for the sole purpose of use in the provision, whether by the institution or otherwise, of assistance to an intellectually handicapped person or persons;

(j) a reference to a microform copy of the whole or a part of a work shall be read as a reference to a copy of the whole or a part of the work produced by miniaturizing the graphic symbols of which the work is composed;

(k) a reference to a periodical publication shall be read as a reference to an issue of a periodical publication and a reference to articles contained in the same periodical publication shall be read as a reference to articles contained in the same issue of that periodical publication;

(l) a reference to a record embodying a sound recording shall be read as a reference to:

(i) a record produced upon the making of a sound recording; or

(ii) another record embodying the sound recording directly or indirectly derived from a record so produced;

(m) a reference to a relevant record, or a relevant declaration, in relation to the making, in reliance on a particular section (other than section 49):

(i) of a copy, or a handicapped reader's copy, of the whole or a part of a work; or

(ia) of an intellectually handicapped person's copy of the whole or a part of an eligible item; or

(ii) of a copy of a sound recording or a cinematograph film;

shall be read as a reference to any record or declaration of a kind referred to in that section that is required by this Act to be made in relation to the making of that copy;

(ma) a reference to a relevant declaration, in relation to the making, in reliance on section 49, of a copy of the whole or a part of a work, shall be read as a reference to:

(i) in a case where the copy is made in reliance on subsection 49 (2)—a declaration of the kind referred to in subsection 49 (1) that is furnished in relation to the making of the copy;

(ii) in a case where the copy is made in reliance on subsection 49 (2C)—a declaration of the kind referred to in paragraph 49 (2C) (b) that is made in relation to the making of the copy; or

(iii) in any case—a declaration of the kind referred to in subsection 49 (5) that is made in relation to the making of the copy; and

(n) a reference to a State shall be read as including a reference to the Northern Territory and Norfolk Island and a reference to a Territory shall be read as not including a reference to the Northern Territory or Norfolk Island.

(4) Where:

(a) a collection of documents or other material of historical significance or public interest that is in the custody of a body, whether incorporated or unincorporated, is being maintained by the body for the purpose of conserving and preserving those documents or other material; and

(b) the body does not maintain and operate the collection for the purpose of deriving a profit;

paragraph (b) of the definition of **"archives"** in subsection (1) applies to that collection.

Declarations and notices relating to certain bodies and institutions

10A.[4] **(1)** The Attorney-General may, by notice in writing published in the *Gazette*:

(a) declare a body, whether incorporated or unincorporated, to be a central records authority for the purposes of this Act;

(b) declare an institution to be an educational institution for the purposes of this Act;

(c) declare an institution to be, for the purposes of this Act, an institution assisting handicapped readers; or

(d) declare an institution to be, for the purposes of this Act, an institution assisting intellectually handicapped persons.

(2) The Attorney-General may, by notice in writing published in the *Gazette*, revoke a declaration made under subsection (1).

(3) The Attorney-General shall cause a copy of a notice under subsection (1) or (2) to be laid before each House of the Parliament within 15 sitting days of that House after the notice is published in the *Gazette*.

(4) The body administering an institution may cause to be published in the *Gazette* a notice that:

(a) sets out full particulars of the name and address of the institution; and

(b) contains a statement to the effect that the notice is published for the purposes of this subsection.

(5) The body administering an institution may cause to be published in the *Gazette* a notice revoking a notice published under subsection (4) in relation to the institution.

(6) In this section, **"institution"** includes a school of nursing, an undertaking within a hospital, a teacher education centre and an undertaking within a body administering an educational institution.

Residence in a country not affected by temporary absence

11. For the purposes of this Act, a person who, at a material time, was ordinarily resident in a country (including Australia) but was temporarily absent from that country shall be treated as if he had been resident in that country at that time.

References to Parliament

12. A reference in this Act to a Parliament shall be read as a reference to the Parliament of the Commonwealth or of a State or a legislature of a Territory.

Acts comprised in copyright

13. (1) A reference in this Act to an act comprised in the copyright in a work or other subject-matter shall be read as a reference to any act that, under this Act, the owner of the copyright has the exclusive right to do.

(2) For the purposes of this Act, the exclusive right to do an act in relation to a work, an adaptation of a work or any other subject-matter includes the exclusive right to authorize a person to do that act in relation to that work, adaptation or other subject-matter.

Acts done in relation to substantial part of work or other subject-matter deemed to be done in relation to the whole

14. (1) In this Act, unless the contrary intention appears:

(a) a reference to the doing of an act in relation to a work or other subject-matter shall be read as including a reference to the doing of that act in relation to a substantial part of the work or other subject-matter; and

(b) a reference to a reproduction, adaptation or copy of a work shall be read as including a reference to a reproduction, adaptation or copy of a substantial part of the work, as the case may be.

(2) This section does not affect the interpretation of any reference in sections 32, 177, 180, 187 and 198 to the publication, or absence of publication, of a work.

References to acts done with licence of owner of copyright

15. For the purposes of this Act, an act shall be deemed to have been done with the licence of the owner of a copyright if the doing of the act was authorized by a licence binding the owner of the copyright.

References to partial assignment of copyright

16. A reference in this Act to a partial assignment of copyright shall be read as a reference to an assignment of copyright that is limited in any way.

Statutory employment

17. For the purposes of this Act, the employment of a person, or the employment of a person as an apprentice, under a law of the Commonwealth or of a State but otherwise than under a contract of service or contract of apprenticeship shall be treated as if that employment were employment under a contract of service or employment under a contract of apprenticeship, as the case may be.

Libraries established or conducted for profit

18. For the purposes of this Act, a library shall not be taken to be established or conducted for profit by reason only that the library is owned by a person carrying on business for profit.

References to Copyright Act, 1911

19. A reference in a provision of this Act to the Copyright Act, 1911, in relation to any time before the commencement of this Act, shall, for the purposes of the application of that provision in relation to a State or a Territory, be read as a reference to the Copyright Act, 1911 as it applied in that State or Territory at that time.

Names under which work is published

20. (1) A reference in this Act to the name or names under which a work was published shall be read as a reference to the name or names specified in the work as the name of the author or the names of the authors of the work.

(2) For the purposes of this Act, a publication of a work under two or more names shall not be taken to be pseudonymous unless all those names are pseudonyms.

Reproduction of works

21. (1) For the purposes of this Act, a literary, dramatic or musical work shall be deemed to have been reproduced in a material form if a sound recording or cinematograph film is made of the work, and any record embodying such a recording and any copy of such a film shall be deemed to be a reproduction of the work.

(2) The last preceding subsection applies in relation to an adaptation of a work in like manner as it applies in relation to a work.

(3) For the purposes of this Act, an artistic work shall be deemed to have been reproduced:

(a) in the case of a work in a two-dimensional form—if a version of the work is produced in a three-dimensional form; or

(b) in the case of a work in a three-dimensional form—if a version of the work is produced in a two-dimensional form;

and the version of the work so produced shall be deemed to be a reproduction of the work.

(4) The last preceding subsection has effect subject to Division 7 of Part III.

Provisions relating to the making of a work or other subject-matter

22. (1) A reference in this Act to the time when, or the period during which, a literary, dramatic, musical or artistic work was made shall be read as a reference to the time when, or the period during which, as the case may be, the work was first reduced to writing or to some other material form.

(2) For the purposes of this Act, a literary, dramatic or musical work that exists in the form of sounds embodied in an article or thing shall be deemed to have been reduced to a material form and to have been so reduced at the time when those sounds were embodied in that article or thing.

(3) For the purposes of this Act:

(a) a sound recording shall be deemed to have been made at the time when the first record embodying the recording was produced; and

(b) the maker of the sound recording is the person who owned that record at that time.

(4) For the purposes of this Act:

(a) a reference to the making of a cinematograph film shall be read as a reference to the doing of the things necessary for the production of the first copy of the film; and

(b) the maker of the cinematograph film is the person by whom the arrangements necessary for the making of the film were undertaken.

(5) For the purposes of this Act, a television broadcast or sound broadcast shall, subject to subsection (6), be deemed to have been made by the person by whom, at the time when, and from the place from which, the visual images or sounds constituting the broadcast, or both, as the case may be, were broadcast.

(6) Where a television broadcast or sound broadcast made by a person from a person from a satellite, wherever located, consists of material transmitted from the earth to the satellite (whether directly or by means of another satellite) the broadcast shall, for the purposes of

this Act, be deemed to have been made by the person at the time when, and from the place from which, the material was so transmitted from the earth.

Sound recordings and records

23. (1) For the purposes of this Act, sounds embodied in a sound-track associated with visual images forming part of cinematograph film shall be deemed not to be a sound recording.

(2) A reference in this Act to a record of a work or other subject-matter shall, unless the contrary intention appears, be read as a reference to a record by means of which the work or other subject-matter can be performed.

References to sounds and visual images embodied in an article

24. For the purposes of this Act, sounds or visual images shall be taken to have been embodied in an article or thing if the article or thing has been so treated in relation to those sounds or visual images that those sounds or visual images are capable, with or without the aid of some other device, of being reproduced from the article or thing.

Provisions relating to broadcasting

25. (1) A reference in this Act to broadcasting shall, unless the contrary intention appears, be read as a reference to broadcasting whether by way of sound broadcasting or of television.

(2) A reference in this Act to the doing of an act by the reception of a television broadcast or sound broadcast shall be read as a reference to the doing of that act by means of receiving a broadcast:

(a) from the transmission by which the broadcast is made; or

(b) from a transmission made otherwise than by way of broadcasting, but simultaneously with the transmission referred to in the last preceding paragraph;

whether the reception of the broadcast is directly from the transmission concerned or from a re-transmission made by any person from any place.

(3) Where a record embodying a sound recording or a copy of a cinematograph film is used for the purpose of making a broadcast (in this subsection referred to as **"the primary broadcast"**), a person who makes a broadcast (in this subsection referred to as **"the secondary broadcast"**) by receiving and simultaneously making a further transmission of:

(a) the transmission by which the primary broadcast was made; or

(b) a transmission made otherwise than by way of broadcasting but simultaneously with the transmission referred to in the last preceding paragraph;

shall, for the purposes of this Act, be deemed not to have used the record or copy for the purpose of making the secondary broadcast.

(4) In this Act:

(a) a reference to a cinematograph film of a television broadcast shall be read as including a reference to a cinematograph film, or a photograph, of any of the visual images comprised in the broadcast; and

(b) a reference to a copy of a cinematograph film of a television broadcast shall be read as including a reference to a copy of a cinematograph film, or a reproduction of a photograph, of any of those images.

(5) In this section, **"re-transmission"** means any re-transmission, whether over paths provided by a material substance or not, and includes a re-transmission made by making use of any article or thing in which the visual images or sounds constituting the broadcast, or both, as the case may be, have been embodied.

References to transmission to subscribers to a diffusion service

26. (1) A reference in this Act to the transmission of a work or other subject-matter to subscribers to a diffusion service shall be read as a reference to the transmission of the work or other subject-matter in the course of a service of distributing broadcast or other matter (whether provided by the person operating the service or by other persons) over wires, or over other paths provided by a material substance, to the premises of subscribers to the service.

(2) For the purposes of this Act, where a work or other subject-matter is so transmitted:

(a) the person operating the service shall be deemed to be the person causing the work or other subject-matter to be so transmitted; and

(b) no person other than the person operating the service shall be deemed to be causing the work or other subject-matter to be so transmitted, whether or not he provides any facilities for the transmission.

(3) For the purposes of the application of this section, a service of distributing broadcast or other matter shall be disregarded where the service is only incidental to a business of keeping or letting premises at which persons reside or sleep, and is operated as part of the amenities provided exclusively for residents or inmates of the premises or for those residents or inmates and their guests.

(4) A reference in this section to the person operating a service of distributing broadcast or other matter shall be read as a reference to the person who, in the agreements with subscribers to the service, undertakes to provide them with the service, whether he is the person who transmits the broadcast or other matter or not.

(5) Where a service of distributing matter over wires or over other paths provided by a material substance is only incidental to, or part of, a service of transmitting telegraphic or telephonic communications, a subscriber to the last-mentioned service shall be taken, for the purposes of this section, to be a subscriber to the first-mentioned service.

Performance

27. (1) Subject to this section, a reference in this Act to performance shall:

(a) be read as including a reference to any mode of visual or aural presentation, whether the presentation is by the operation of wireless telegraphy apparatus, by the exhibition of a cinematograph film, by the use of a record or by any other means; and

(b) in relation to a lecture, address, speech or sermon—be read as including a reference to delivery;

and a reference in this Act to performing a work or an adaptation of a work has a corresponding meaning.

(2) For the purposes of this Act, broadcasting, or the causing of a work or other subject-matter to be transmitted to subscribers to a diffusion service, shall be deemed not to constitute performance or to constitute causing visual images to be seen or sounds to be heard.

(3) Where visual images or sounds are displayed or emitted by any receiving apparatus to which they are conveyed by the transmission of electromagnetic signals (whether over paths provided by a material substance or not), the operation of any apparatus by which the signals are transmitted, directly or indirectly, to the receiving apparatus shall be deemed not to constitute performance or to constitute causing visual images to be seen or sounds to be heard but, in so far as the display or emission of the images or sounds constitutes a performance, or causes the images to be seen or the sounds to be heard, the performance, or the causing of the images to be seen or sounds to be heard, as the case may be, shall be deemed to be effected by the operation of the receiving apparatus.

(4) Without prejudice to the last two preceding subsections, where a work or an adaptation of a work is performed or visual images are caused to be seen or sounds to be heard by the operation of any apparatus referred to in the last preceding subsection or of any apparatus for reproducing sounds by the use of a record, being

apparatus provided by or with the consent of the occupier of the premises where the apparatus is situated, the occupier of those premises shall, for the purposes of this Act, be deemed to be the person giving the performance or causing the images to be seen or the sounds to be heard, whether he is the person operating the apparatus or not.

(5) This section does not apply to a performance within the meaning of Part XIA.

Performance of works or other subject-matter in the course of educational instruction

28. (1) Where a literary, dramatic or musical work:

(a) is performed in class, or otherwise in the presence of an audience; and

(b) is so performed by a teacher in the course of his giving educational instruction, not being instruction given for profit, or by a student in the course of his receiving such instruction;

the performance shall, for the purposes of this Act, be deemed not to be a performance in public if the audience is limited to persons who are taking part in the instruction or are otherwise directly connected with the place where the instruction is given.

(2) For the purposes of the last preceding subsection, educational instruction given by a teacher at a place of education that is not conducted for profit shall not be taken to be given for profit by reason only that the teacher receives remuneration for giving the instruction.

(3) For the purposes of subsection (1), a person shall not be taken to be directly connected with a place where instruction is given by reason only that he is a parent or guardian of a student who receives instruction at that place.

(4) The last three preceding subsections apply in relation to sound recordings and cinematograph films in like manner as they apply in relation to literary, dramatic and musical works but, in the application of those subsections in relation to such recordings or films, any reference to performance shall be read as a reference to the act of causing the sounds concerned to be heard or the visual images concerned to be seen.

Publication

29. (1) Subject to this section, for the purposes of this Act:

(a) a literary, dramatic, musical or artistic work, or an edition of such a work, shall be deemed to have been published if, but only if, reproductions of the work or edition have been supplied (whether by sale or otherwise) to the public;

(b) a cinematograph film shall be deemed to have been published if, but only if, copies of the film have been sold, let on hire, or offered or exposed for sale or hire, to the public; and

(c) a sound recording shall be deemed to have been published if, but only if, records embodying the recording or a part of the recording have been supplied (whether by sale or otherwise) to the public.

(2) In determining, for the purposes of paragraph (1) (a), whether reproductions of a work or edition have been supplied to the public, section 14 does not apply.

(3) For the purposes of this Act, the performance of a literary, dramatic or musical work, the supplying (whether by sale or otherwise) to the public of records of a literary, dramatic or musical work, the exhibition of an artistic work, the construction of a building or of a model of a building, or the supplying (whether by sale or otherwise) to the public of photographs or engravings of a building, of a model of a building or of a sculpture, does not constitute publication of the work.

(4) A publication that is merely colourable and is not intended to satisfy the reasonable requirements of the public shall be disregarded for the purposes of this Act except in so far as it may constitute an infringement of copyright or a breach of a duty under Part IX.

(5) For the purposes of this Act, a publication in Australia or in any other country shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere, if the two publications took place within a period of not more than thirty days.

(6) In determining, for the purposes of any provision of this Act:

(a) whether a work or other subject-matter has been published;

(b) whether a publication of a work or other subject-matter was the first publication of the work or other subject-matter; or

(c) whether a work or other subject-matter was published or otherwise dealt with in the life-time of a person;

any unauthorized publication or the doing of any other unauthorized act shall be disregarded.

(7) Subject to section 52, a publication or other act shall, for the purposes of the last preceding subsection, be taken to have been unauthorized if, but only if:

(a) copyright subsisted in the work or other subject-matter and the act concerned was done otherwise than by, or with the licence of, the owner of the copyright; or

(b) copyright did not subsist in the work or other subject-matter and the act concerned was done otherwise than by, or with the licence of:

(i) the author or, in the case of a sound recording, cinematograph film or edition of a work, the maker or publisher, as the case may be; or

(ii) persons lawfully claiming under the author, maker or publisher.

(8) Nothing in either of the last two preceding subsections affects any provisions of this Act relating to the acts comprised in a copyright or to acts constituting infringements of copyrights or any provisions of Part IX.

Ownership of copyright for particular purposes

30. In the case of a copyright of which (whether as a result of a partial assignment or otherwise) different persons are the owners in respect of its application to:

(a) the doing of different acts or classes of acts; or

(b) the doing of one or more acts or classes of acts in different countries or at different times;

the owner of the copyright, for any purpose of this Act, shall be deemed to be the person who is the owner of the copyright in respect of its application to the doing of the particular act or class of acts, or to the doing of the particular act or class of acts in the particular country or at the particular time, as the case may be, that is relevant to that purpose, and a reference in this Act to the prospective owner of a future copyright of which different persons are the prospective owners has a corresponding meaning.

PART III—COPYRIGHT IN ORIGINAL LITERARY, DRAMATIC, MUSICAL AND ARTISTIC WORKS

Division 1—Nature, Duration and Ownership of Copyright in Works

Nature of copyright in original works

31. (1) For the purposes of this Act, unless the contrary intention appears, copyright, in relation to a work, is the exclusive right:

(a) in the case of a literary, dramatic or musical work, to do all or any of the following acts:

(i) to reproduce the work in a material form;

(ii) to publish the work;

(iii) to perform the work in public;

(iv) to broadcast the work;

(v) to cause the work to be transmitted to subscribers to a diffusion service;

(vi) to make an adaptation of the work;

(vii) to do, in relation to a work that is an adaptation of the first-mentioned work, any of the acts specified in relation to the first-mentioned work in subparagraphs (i) to (v), inclusive; and

(b) in the case of an artistic work, to do all or any of the following acts:

(i) to reproduce the work in a material form;

(ii) to publish the work;

(iii) to include the work in a television broadcast;

(iv) to cause a television programme that includes the work to be transmitted to subscribers to a diffusion service.

(2) The generality of subparagraph (1) (a) (i) is not affected by subparagraph (1) (a) (vi).

Original works in which copyright subsists

32. (1) Subject to this Act, copyright subsists in an original literary, dramatic, musical or artistic work that is unpublished and of which the author:

(a) was a qualified person at the time when the work was made; or

(b) if the making of the work extended over a period—was a qualified person for a substantial part of that period.

(2) Subject to this Act, where an original literary, dramatic, musical or artistic work has been published:

(a) copyright subsists in the work; or

(b) if copyright in the work subsisted immediately before its first publication—copyright continues to subsist in the work;

if, but only if:

(c) the first publication of the work took place in Australia;

(d) the author of the work was a qualified person at the time when the work was first published; or

(e) the author died before that time but was a qualified person immediately before his death.

(3) Notwithstanding the last preceding subsection but subject to the remaining provisions of this Act, copyright subsists in:

(a) an original artistic work that is a building situated in Australia; or

(b) an original artistic work that is attached to, or forms part of, such a building.

(4) In this section, **"qualified person"** means an Australian citizen, an Australian protected person or a person resident in Australia.

Duration of copyright in original works

33. (1) This section has effect subject to subsection 32 (2) and to section 34.

(2) Subject to this section, where, by virtue of this Part, copyright subsists in a literary, dramatic or musical work, or in an artistic work other than a photograph, that copyright continues to subsist until the expiration of 50 years after the expiration of the calendar year in which the author of the work died.

(3) If, before the death of the author of a literary, dramatic or musical work:

(a) the work had not been published;

(b) the work had not been performed in public;

(c) the work had not been broadcast; and

(d) records of the work had not been offered or exposed for sale to the public;

the copyright in the work continues to subsist until the expiration of 50 years after the expiration of the calendar year in which the work is first published, performed in public, or broadcast, or records of the work are first offered or exposed for sale to the public, whichever is the earliest of those events to happen.

(4) A reference in the last preceding subsection to the doing of an act in relation to a work shall be read as including a reference to the doing of that act in relation to an adaptation of the work.

(5) If, before the death of the author of an engraving, the engraving had not been published, the copyright in the engraving continues to subsist until the expiration of 50 years after the expiration of the calendar year in which the engraving is first published.

(6) Copyright subsisting in a photograph by virtue of this Part continues to subsist until the expiration of 50 years after the expiration of the calendar year in which the photograph is first published.

Duration of copyright in anonymous and pseudonymous works

34. (1) Subject to the next succeeding subsection, where the first publication of a literary, dramatic or musical work, or of an artistic work other than a photograph, is anonymous or pseudonymous, the last preceding section does not apply in relation to the work but any copyright subsisting in the work by virtue of this Part continues to subsist until the expiration of the period of 50 years after the expiration of the calendar year in which the work was first published.

(2) The last preceding subsection does not apply in relation to a work if, at any time before the expiration of the period referred to in that subsection, the identity of the author of the work is generally known or can be ascertained by reasonable inquiry.

Ownership of copyright in original works

35. (1) This section has effect subject to Parts VII and X.

(2) Subject to this section, the author of a literary, dramatic, musical or artistic work is the owner of any copyright subsisting in the work by virtue of this Part.

(3) The operation of any of the next three succeeding subsections in relation to copyright in a particular work may be excluded or modified by agreement.

(4) Where a literary, dramatic or artistic work is made by the author in pursuance of the terms of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship and is so made for the purpose of publication in a newspaper, magazine or similar periodical, the proprietor is the owner of any copyright subsisting in the work by virtue of this Part in so far as the copyright relates to:

(a) publication of the work in any newspaper, magazine or similar periodical;

(b) broadcasting the work; or

(c) reproduction of the work for the purpose of its being so published or broadcast;

but not otherwise.

(5) Subject to the last preceding subsection, where:

(a) a person makes, for valuable consideration, an agreement with another person for the taking of a photograph, the painting or drawing of a portrait or the making of an engraving by the other person; and

(b) the work is made in pursuance of the agreement;

the first-mentioned person is the owner of any copyright subsisting in the work by virtue of this Part, but, if at the time the agreement was made that person made known, expressly or by implication, to the author of the work the purpose for which the work was required, the author is entitled to restrain the doing, otherwise than for that purpose, of any act comprised in the copyright in the work.

(6) Where a literary, dramatic or artistic work to which neither of the last two preceding subsections applies, or a musical work, is made by the author in pursuance of the terms of his employment by another person under a contract of service or apprenticeship, that other person is the owner of any copyright subsisting in the work by virtue of this Part.

Division 2—Infringement of Copyright in Works

Infringement by doing acts comprised in the copyright

36. (1) Subject to this Act, the copyright in a literary, dramatic, musical or artistic work is infringed by a person who, not being the owner of the copyright, and without the licence of the owner of the copyright, does in Australia, or authorizes the doing in Australia of, any act comprised in the copyright.

(2) The next three succeeding sections do not affect the generality of the last preceding subsection.

Infringement by importation for sale or hire

37. The copyright in a literary, dramatic, musical or artistic work is infringed by a person who, without the licence of the owner of the copyright, imports an article into Australia for the purpose of:

(a) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;

(b) distributing the article:

(i) for the purpose of trade; or

(ii) for any other purpose to an extent that will affect prejudicially the owner of the copyright; or

(c) by way of trade exhibiting the article in public;

where, to his knowledge, the making of the article would, if the article had been made in Australia by the importer, have constituted an infringement of the copyright.

Infringement by sale and other dealings

38. (1) The copyright in a literary, dramatic, musical or artistic work is infringed by a person who, in Australia, and without the licence of the owner of the copyright:

(a) sells, lets for hire, or by way of trade offers or exposes for sale or hire, an article; or

(b) by way of trade exhibits an article in public;

where, to his knowledge, the making of the article constituted an infringement of the copyright or, in the case of an imported article, would, if the article had been made in Australia by the importer, have constituted such an infringement.

(2) For the purposes of the last preceding subsection, the distribution of any articles:

(a) for the purpose of trade; or

(b) for any other purpose to an extent that affects prejudicially the owner of the copyright concerned;

shall be taken to be the sale of those articles.

Infringement by permitting place of public entertainment to be used for performance of work

39. (1) The copyright in a literary, dramatic or musical work is infringed by a person who permits a place of public entertainment to be used for the performance in public of the work, where the performance constitutes an infringement of the copyright in the work.

(2) This section does not apply where the person permitting the place to be so used establishes:

(a) that he was not aware, and had no reasonable grounds for suspecting, that the performance would be an infringement of the copyright; or

(b) that he gave the permission gratuitously, or for a consideration that was only nominal or, if more than nominal, did not exceed a reasonable estimate of the expenses to be incurred by him by reason of the use of the place for the performance.

(3) In this section, **"place of public entertainment"** includes any premises that are occupied principally for purposes other than public entertainment but are from time to time made available for hire for purposes of public entertainment.

Infringing copies made on machines installed in libraries and archives

39A. Where:

(a) a person makes an infringing copy of, or of part of, a work on a machine for the making, by reprographic reproduction, of copies of documents, being a machine installed by or with the approval of the body administering a library or archives on the premises of the library or archives, or outside those premises for the convenience of persons using the library or archives; and

(b) there is affixed to, or in close proximity to, the machine, in a place readily visible to persons using the machine, a notice of the prescribed dimensions and in accordance with the prescribed form;

neither the body administering the library or archives nor the officer in charge of the library or archives shall be taken to have authorized the making of the infringing copy by reason only that the copy was made on that machine.

Division 3—Acts not Constituting Infringements of Copyright in Works

Fair dealing for purpose of research or study

40.[4] **(1)** A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, for the purpose of research or study does not constitute an infringement of the copyright in the work.

(2) For the purposes of this Act, the matters to which regard shall be had, in determining whether a dealing with a literary, dramatic, musical or artistic work or with an adaptation of a literary, dramatic or musical work, being a dealing by way of copying the whole or a part of the work or adaptation, constitutes a fair dealing with the work or adaptation for the purpose of research or study include:

(a) the purpose and character of the dealing;

(b) the nature of the work or adaptation;

(c) the possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price;

(d) the effect of the dealing upon the potential market for, or value of, the work or adaptation; and

(e) in a case where part only of the work or adaptation is copied—the amount and substantiality of the part copied taken in relation to the whole work or adaptation.

(3) Notwithstanding subsection (2), a dealing with a literary, dramatic or musical work, or with an adaptation of such a work, being a dealing by way of the copying, for the purposes of research or study:

(a) if the work or adaptation comprises an article in a periodical publication—of the whole or a part of that work or adaptation; or

(b) in any other case—of not more than a reasonable portion of the work or adaptation;

shall be taken to be a fair dealing with that work or adaptation for the purpose of research or study.

(4) Subsection (3) does not apply to a dealing by way of the copying of the whole or a part of an article in a periodical publication if another article in that publication, being an article dealing with a different subject matter, is also copied.

Fair dealing for purpose of criticism or review

41. A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not constitute an infringement of the copyright in the work if it is for the purpose of criticism or review, whether of that work or of another work, and a sufficient acknowledgement of the work is made.

Fair dealing for purpose of reporting news

42. (1) A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not constitute an infringement of the copyright in the work if:

(a) it is for the purpose of, or is associated with, the reporting of news in a newspaper, magazine or similar periodical and a sufficient acknowledgement of the work is made; or

(b) it is for the purpose of, or is associated with, the reporting of news by means of broadcasting or in a cinematograph film.

(2) The playing of a musical work in the course of reporting news by means of broadcasting or in a cinematograph film is not a fair dealing with the work for the purposes of this section if the playing of the work does not form part of the news being reported.

(3) This section applies where a literary, dramatic, musical or artistic work, or an adaptation of a literary, dramatic or musical work, is caused to be transmitted to subscribers to a diffusion service in like manner as it applies where such a work or adaptation is broadcast.

Reproduction for purpose of judicial proceedings or professional advice

43. (1) The copyright in a literary, dramatic, musical or artistic work is not infringed by anything done for the purposes of a judicial proceeding or of a report of a judicial proceeding.

(2) A fair dealing with a literary, dramatic, musical or artistic work does not constitute an infringement of the copyright in the work if it is for the purpose of the giving of professional advice by a legal practitioner or patent attorney.

Back-up copy of computer program

43A. (1) Subject to subsection (2), the copyright in a literary work being a computer program is not infringed by the making of a reproduction of the work, or of a computer program being an adaptation of the work, if:

(a) the reproduction is made by, or on behalf of, the owner of the copy (in this section referred to as the **"original copy"**) from which the reproduction is made; and

(b) the reproduction is made for the purpose only of being used, by or on behalf of the owner of the original copy, in lieu of the original copy in the event that the original copy is lost, destroyed or rendered unusable.

(2) Subsection (1) does not apply to the making of a reproduction of a computer program, or of an adaptation of a computer program:

(a) from an infringing copy of the computer program; or

(b) contrary to an express direction by or on behalf of the owner of the copyright in the computer program given to the owner of the original copy not later than the time when the owner of the original copy acquired the original copy.

(3) For the purposes of this section:

(a) a reference to a copy of a computer program or of an adaptation of a computer program is a reference to any article in which the computer program or adaptation is reproduced in a material form; and

(b) a reference to an express direction, in relation to a copy of a computer program or of an adaptation of a computer program, includes a reference to a clearly legible direction printed on the copy or on a package in which the copy is supplied.

Inclusion of works in collections for use by places of education

44. (1) The copyright in a published literary, dramatic, musical or artistic work is not infringed by the inclusion of a short extract from the work, or, in the case of a published literary, dramatic or musical work, from an adaptation of the work, in a collection of literary, dramatic, musical or artistic works contained in a book, sound recording or cinematograph film and intended for use by places of education if:

(a) the collection is described in an appropriate place in the book, on the label of each record embodying the recording or of its container, or in the film, as being intended for use by places of education;

(b) the work or adaptation was not published for the purpose of being used by places of education;

(c) the collection consists principally of matter in which copyright does not subsist; and

(d) a sufficient acknowledgement of the work or adaptation is made.

(2) The last preceding subsection does not apply in relation to the copyright in a work if, in addition to the extract concerned, 2 or more other extracts from, or from adaptations of, works (being works in which copyright subsists at the time when the collection is published) by the author of the first-mentioned work are contained in that collection, or are contained in that collection taken together with every similar collection, if any, of works intended for use by places of education and published by the same publisher within the period of 5 years immediately preceding the publication of the first-mentioned collection.

Division 4—Acts not Constituting Infringements of Copyright in Literary, Dramatic and Musical Works

Reading or recitation in public or for a broadcast

45. The reading or recitation in public, or the inclusion in a sound broadcast or television broadcast of a reading or recitation, of an extract of reasonable length from a published literary or dramatic work, or from an adaptation of such a work, does not constitute an infringement of the copyright in the work if a sufficient acknowledgement of the work is made.

Performance at premises where persons reside or sleep

46. Where a literary, dramatic or musical work, or an adaptation of such a work, is performed in public, by the operation of wireless telegraphy apparatus or by the use of a record, at premises where persons reside or sleep, as part of the amenities provided exclusively for residents or inmates of the premises or for those residents or inmates and their guests, the performance does not constitute an infringement of the copyright in the work.

Reproduction for purpose of broadcasting

47. **(1)** Where the broadcasting by a person of a literary, dramatic or musical work, or of an adaptation of such a work, would not (whether by reason of an assignment or licence or of the operation of a provision of this Act) constitute an infringement of the copyright in the work, but the making by the person of a sound recording or a cinematograph film of the work or adaptation would, apart from this subsection, constitute such an infringement, the copyright in the work is not infringed by his making such a recording or film solely for the purpose of the broadcasting of the work or adaptation.

(2) The last preceding subsection does not apply in relation to a recording or film if a record embodying the recording or a copy of the film is used for a purpose other than:

(a) the broadcasting of the work or adaptation in circumstances that do not (whether by reason of an assignment or licence or of the operation of a provision of this Act) constitute an infringement of the copyright in the work; or

(b) the making of further records embodying the recording or further copies of the film for the purpose of the broadcasting of the work or adaptation in such circumstances.

(3) Subsection (1) does not apply in relation to a recording or film where a record embodying the recording or a copy of the film is used for the purpose of the broadcasting of the work or adaptation by a person who is not the maker of the recording or film unless the maker has paid to the owner of the copyright in the work such amount as they agree or, in default of agreement, has given an undertaking in writing to the owner to pay to him such amount as is determined by the Copyright Tribunal, on the application of either of them, to be equitable remuneration to the owner for the making of the recording or film.

(4) A person who has given an undertaking referred to in the last preceding subsection is liable, when the Copyright Tribunal has determined the amount to which the undertaking relates, to pay that amount to the owner of the copyright in the work and the owner may recover that amount in a court of competent jurisdiction from the person as a debt due to the owner.

(5) Subsection (1) of this section does not apply in relation to a recording or film unless, before the expiration of the period of 12 months commencing on the day on which any of the records embodying the recording or any of the copies of the film is first used for broadcasting the work or adaptation in accordance with that subsection, or before the expiration of such further period, if any, as is agreed between the maker of the recording or film and the owner of

the copyright in the work, all the records embodying the recording or all the copies of the film are destroyed or are delivered, with the consent of the Director-General of the Australian Archives, to the Australian Archives.

(6) The Director-General of the Australian Archives shall not consent to the delivery to the Australian Archives in accordance with subsection (5) of a record embodying a recording or of a copy of a film unless he has certified that the recording or film is of an exceptional documentary character.

Sound broadcasts by holders of print-handicapped radio licences

47A. (1) The making of a sound broadcast of, or of an adaptation of, a published literary or dramatic work does not constitute an infringement of copyright in the work if:

(a) the broadcast is made by a person being the holder of a print-handicapped radio licence and is made under the licence; and

(b) there is made by or on behalf of the person, as soon as practicable after the making of the broadcast, a record of the making of the broadcast that:

(i) sets out the time and date of the making of the broadcast;

(ii) identifies the work; and

(iii) contains particulars of such other matters in relation to the work or in relation to the broadcast as are prescribed.

(2) For the purposes of paragraph (1) (b), a record of the making of a broadcast:

(a) may be made in writing or in any other manner prescribed by the regulations; and

(b) if it is made in writing, shall be in accordance with the form prescribed by the regulations.

(3) Where, at any time before the expiration of the prescribed retention period after the making by a person of a sound broadcast of a literary or dramatic work in reliance on subsection (1), a record made for the purposes of paragraph (1) (b) in relation to the making of the sound broadcast is not retained by the person, the person is guilty of an offence punishable, upon conviction, by a fine not exceeding $500.

(4) It is a defence to a prosecution of a person under subsection (3) in relation to the retention of a record if the person satisfies the court that he or she took all reasonable precautions, and exercised due diligence, to ensure the retention of the record.

(5) A person is not liable to be convicted twice of an offence against subsection (3) in relation to the retention of the same record.

(6) The owner of the copyright in a literary or dramatic work, or the agent of such an owner, may notify in writing a person who holds or held a print-handicapped radio licence that the owner or agent wishes to inspect:

(a) all the records of the person made by or on behalf of the person for the purposes of paragraph (1) (b); or

(b) such of those records as relate to the works of a specified author;

on a day specified in the notice, being a day (other than a Saturday, Sunday or public holiday) not less than 7 days after the day on which the notice is given.

(7) Where a person who receives a notice under subsection (6) does not, without reasonable excuse, allow the owner or agent to inspect the records to which the notice relates during business hours on the day specified in the notice, the person is guilty of an offence punishable, upon conviction, by a fine not exceeding $500.

(8) Where:

(a) a sound broadcast of, or of an adaptation of, a literary or dramatic work is made by a person (in this subsection referred to as the **"licence holder"**) being the holder of a print-handicapped radio licence;

(b) by virtue of subsection (1), the making of the sound broadcast does not infringe copyright in the work; and

(c) the owner of the copyright in the work makes a request in writing at any time during the prescribed retention period after the making of the sound broadcast for payment for the making of the sound broadcast;

the licence holder shall pay to the owner of the copyright such an amount by way of equitable remuneration for the making of the sound broadcast as is agreed upon between the owner of the copyright and the licence holder or, in default of agreement, as is determined by the Copyright Tribunal on the applicaton of either the owner of the copyright or the licence holder.

(9) Where the Copyright Tribunal has under subsection (8) determined the amount of equitable remuneration payable by a person to the owner of the copyright in a work, the owner of the copyright may recover that amount from the person in a court of competent jurisdiction as a debt due to the owner of the copyright.

(10) Nothing in this section affects the right of the owner of the copyright in a literary or dramatic work to grant a licence authorising a person being the holder of a print-handicapped radio licence to make sound broadcasts of, or of adaptations of, the work without infringement of that copyright.

(11) In this section:

(a) **"prescribed retention period"** means the period prescribed by the regulations for the purposes of this paragraph; and

(b) **"print-handicapped radio licence"** means a licence in force under the *Broadcasting Act 1942*, the *Radiocommunications Act 1983* or the *Wireless Telegraphy Act 1905*, being a licence that was granted for the purpose of authorising the making of sound broadcasts to persons who by reason of old age, disability or literacy problems are unable to handle books or newspapers or to read or comprehend written material.

Division 5—Copying of Works in Libraries

Interpretation

48. In this Division, a reference to an article contained in a periodical publication shall be read as a reference to anything (other than an artistic work) appearing in such a publication.

Copying by Parliamentary libraries for members of Parliament

48A. The copyright in a work is not infringed by anything done, for the sole purpose of assisting a person who is a member of a Parliament in the performance of the person's duties as such a member, by an authorized officer of a library, being a library the principal purpose of which is to provide library services for members of that Parliament.

Copying by libraries and archives for users

49. (1) A person may furnish to the officer in charge of a library or archives:

(a) a request in writing to be supplied with a copy of an article, or a part of an article, contained in a periodical publication or of the whole or a part of a published work other than an article contained in a periodical publication; and

(b) a declaration signed by him stating:

(i) that he requires the copy for the purpose of research or study and will not use it for any other purpose; and

(ii) that he has not previously been supplied with a copy of the same article or other work, or the same part of the article or other work, as the case may be, by an authorized officer of the library or archives.

(2) Subject to this section, where a request and declaration referred to in subsection (1) are furnished to the officer in charge of a library or archives, an authorized officer of the library or archives may, unless the declaration contains a statement that to his knowledge is untrue in a material particular, make, or cause to be made, the copy to which the request relates and supply the copy to the person who made the request.

(2A) A person may make to an authorized officer of a library or archives:

(a) a request to be supplied with a copy of an article, or part of an article, contained in a periodical publication or of the whole or a part of a published work other than an article contained in a periodical publication; and

(b) a declaration to the effect that:

(i) the person requires the copy for the purpose of research or study and will not use it for any other purpose;

(ii) the person has not previously been supplied with a copy of the same article or other work, or the same part of the article or other work, as the case may be, by an authorized officer of the library or archives; and

(iii) by reason of the remoteness of the person's location, the person cannot conveniently furnish to the officer in charge of the library or archives a request and declaration referred to in subsection (1) in relation to the copy soon enough to enable the copy to be supplied to the person before the time by which the person requires it.

(2B) A request or declaration referred to in subsection (2A) is not required to be made in writing.

(2C) Subject to this section, where:

(a) a request and declaration referred to in subsection (2A) are made by a person to an authorized officer of a library or archives; and

(b) the authorized officer makes a declaration setting out particulars of the request and declaration made by the person and stating that:

(i) the declaration made by the person, so far as it relates to the matters specified in subparagraphs (2A) (b) (i) and (ii), does not contain a statement that, to the knowledge of the authorized officer, is untrue in a material particular; and

(ii) the authorized officer is satisfied that the declaration made by the person is true so far as it relates to the matter specified in subparagraph (2A) (b) (iii);

an authorized officer of the library or archives may make, or cause to be made, the copy to which the request relates and supply the copy to the person.

(3) Where a charge is made for making and supplying a copy to which a request under subsection (1) or (2A) relates, subsection (2) or (2C), as the case may be, does not apply in relation to the request if the amount of the charge exceeds the cost of making and supplying the copy.

(4) Subsection (2) or (2C) does not apply in relation to a request for a copy of, or parts of, 2 or more articles contained in the same periodical publication unless the articles relate to the same subject matter.

(5) Subsection (2) or (2C) does not apply to a request for a copy of the whole of a work (other than an article contained in a periodical publication), or to a copy of a part of such a work that contains more than a reasonable portion of the work unless:

(a) the work forms part of the library or archives collection; and

(b) before the copy is made, an authorized officer has, after reasonable investigation, made a declaration stating that he is satisfied that a copy (not being a second-hand copy) of the work cannot be obtained within a reasonable time at an ordinary commercial price.

(6) The copyright in an article contained in a periodical publication is not infringed by the making, in relation to a request under subsection (1) or (2A), of a copy of the article, or of a part of the article, in accordance with subsection (2) or (2C), as the case may be, unless the copy is supplied to a person other than the person who made the request.

(7) The copyright in a published work other than an article contained in a periodical publication is not infringed by the making, in relation to a request under subsection (1) or (2A), of a copy of the work, or of a part of the work, in accordance with subsection (2) or (2C), as the case may be, unless the copy is supplied to a person other than the person who made the request.

(8) The regulations may exclude the application of subsection (6) or (7) in such cases as are specified in the regulations.

(9) In this section, **"library"** does not include a library that is conducted for the profit, direct or indirect, of an individual or individuals.

Copying by libraries or archives for other libraries or archives

50. (1) The officer in charge of a library may request, or cause another person to request, the officer in charge of another library to supply the officer in charge of the first-mentioned library with a copy of an article, or a part of an article, contained in a periodical publication, or of the whole or a part of a published work other than an article contained in a periodical publication:

(a) for the purpose of including the copy in the collection of the first-mentioned library;

(aa) in a case where the principal purpose of the first-mentioned library is to provide library services for members of a Parliament—for the purpose of assisting a person who is a member of that Parliament in the performance of the person's duties as such a member; or

(b) for the purpose of supplying the copy to a person who has made a request for the copy under section 49.

(2) Subject to this section, where a request is made by or on behalf of the officer in charge of a library to the officer in charge of another library under subsection (1), an authorized officer of the last-mentioned library may make, or cause to be made, the copy to which the request relates and supply the copy to the officer in charge of the first-mentioned library.

(3) Where, under subsection (2), an authorized officer of a library makes, or causes to be made, a copy of the whole or a part of a work and supplies it to the officer in charge of another library in accordance with a request made under subsection (1):

(a) the copy shall, for all purposes of this Act, be deemed to have been made on behalf of an authorized officer of the other library for the purpose for which the copy was requested; and

(b) an action shall not be brought against the body administering that first-mentioned library, or against any officer or employee of that library, for infringement of copyright by reason of the making or supplying of that copy.

(4) Subject to this section, where a copy of the whole or a part of an article contained in a periodical publication, or of any other published work, is, by virtue of subsection (3), to be deemed to have

been made on behalf of an authorized officer of a library, the copyright in the article or other work is not infringed by the making of the copy.

(5) The regulations may exclude the application of subsection (4) in such cases as are specified in the regulations.

(6) Where a charge is made for making and supplying a copy to which a request under subsection (1) relates, subsection (4) does not apply in relation to the request if the amount of the charge exceeds the cost of making and supplying the copy.

(7) Where:

(a) a copy (in this subsection referred to as the **"relevant copy"**) of, or of a part of, an article, or of the whole or a part of another work, is supplied under subsection (2) to the officer in charge of a library; and

(b) a copy of the same article or other work, or of the same part of the article or other work, as the case may be, has previously been supplied under subsection (2) for the purpose of inclusion in the collection of the library;

subsection (4) does not apply to or in relation to the relevant copy unless, as soon as practicable after the request under subsection (1) relating to the relevant copy is made, an authorized officer of the library makes a declaration:

(c) setting out particulars of the request (including the purpose for which the relevant copy was requested); and

(d) stating that the copy referred to in paragraph (b) has been lost, destroyed or damaged, as the case requires.

(7A) Where a copy of the whole of a work (other than an article contained in a periodical publication), or of a part of such a work that contains more than a reasonable portion of the work, is supplied under subsection (2) to the officer in charge of a library, subsection (4) does not apply to or in relation to the copy unless:

(a) in a case where the principal purpose of the library is to provide library services for members of a Parliament—the copy is so supplied for the purpose of assisting a person who is a member of that Parliament in the performance of the person's duties as such a member; or

(b) as soon as practicable after the request under subsection (1) relating to the copy is made, an authorized officer of the library makes a declaration:

(i) setting out particulars of the request (including the purpose for which the copy was requested); and

(ii) stating that, after reasonable investigation, the authorized officer is satisfied that a copy (not being a second-hand copy) of the work cannot be obtained within a reasonable time at an ordinary commercial price.

(8) Subsection (4) does not apply to a copy of, or of parts of, 2 or more articles that are contained in the same periodical publication and that have been requested for the same purpose unless the articles relate to the same subject matter.

(9) In this section, a reference to a library shall be read as a reference to a library other than a library that is conducted for the profit, direct or indirect of an individual or individuals, and as including a reference to archives.

Copying of unpublished works in libraries or archives

51. (1) Where, at a time more than 50 years after the expiration of the calendar year in which the author of a literary, dramatic or musical work, or of an artistic work being a photograph or engraving, died, and more than 75 years after the time at which, or the expiration of the period during which, the work was made, copyright subsists in the work but:

(a) the work has not been published; and

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

the copyright in the work is not infringed:

(c) by the making of a copy of the work by a person for the purpose of research or study or with a view to publication; or

(d) by the making of a copy of the work by, or on behalf of, the officer in charge of that library or archives if the copy is supplied to a person who satisfies the officer in charge of that library or archives that he requires the copy for the purpose of research or study or with a view to publication and that he will not use it for any other purpose.

(2) Where a manuscript, or a copy, of a thesis or other similar literary work that has not been published is kept in a library of a university or other similar institution or in an archives, the copyright in the thesis or other work is not infringed by the making of a copy of the thesis or other work by or on behalf of the officer in charge of the

library or archives if the copy is supplied to a person who satisfies an authorized officer of the library or archives that he requires the copy for the purpose of research or study.

Copying of works in Australian Archives

51AA. (1) The copyright in a work that is kept in the collection of the Australian Archives, where it is open to public inspection, is not infringed by the making by, or on behalf of, the officer in charge of the Archives:

(a) of a single working copy of the work;

(b) of a single reference copy of the work for supply to the central office of the Archives;

(c) on the written request for a reference copy of the work by an officer of the Archives in a regional office of the Archives, where the officer in charge is satisfied that a reference copy of the work has not been previously supplied to that regional office—of a single reference copy of the work for supply to that regional office;

(d) where the officer in charge is satisfied that a reference copy of the work supplied to a regional office of the Archives is lost, damaged or destroyed and an officer of the Archives in that regional office makes a written request for a replacement copy of the work—of a single replacement copy of the work for supply to that regional office; or

(e) where the officer in charge is satisfied that a reference copy of the work supplied to the central office of the Archives is lost, damaged or destroyed—of a single replacement copy of the work for supply to that central office.

(2) In this section:

"reference copy" , in relation to a work, means a copy of the work made from a working copy for supply to the central office, or to a regional office, of the Australian Archives for use by that office in providing access to the work to members of the public;

"replacement copy" , in relation to a work, means a copy of the work made from a working copy for the purpose of replacing a reference copy of the work that is lost, damaged or destroyed;

"working copy" , in relation to a work, means a copy of the work made for the purpose of enabling the Australian Archives to retain the copy and use it for making reference copies and replacement copies of the work.

Copying of works for preservation and other purposes

51A. **(1)** Subject to subsection (4), the copyright in a work that forms, or formed, part of the collection of a library or archives is not infringed by the making, by or on behalf of the officer in charge of the library or archives, of a copy (including a microform copy) of the work:

(a) if the work is held in manuscript form or is an original artistic work—for the purpose of preserving the manuscript or original artistic work, as the case may be, against loss or deterioration or for the purpose of research that is being, or is to be, carried out at the library or archives in which the work is held or at another library or other archives;

(b) if the work is held in the collection in a published form but has been damaged or has deteriorated—for the purpose of replacing the work; or

(c) if the work has been held in the collection in a published form but has been lost or stolen—for the purpose of replacing the work.

(2) The copyright in a work that is held in the collection of a library or archives is not infringed by the making, by or on behalf of the officer in charge of the library or archives, for a purpose other than a purpose for which a copy may be made under subsection (1), of a single microform copy of the work so held.

(3) Subsection (2) does not apply in relation to the making of a microform copy of a work held in the collection of a library or archives unless, as soon as practicable after the copy is made, the work from which the copy is made is destroyed.

(4) Subsection (1) does not apply in relation to a work held in published form in the collection of a library or archives unless an authorized officer of the library or archives has, after reasonable investigation, made a declaration stating that he is satisfied that a copy (not being a second-hand copy) of the work cannot be obtained within a reasonable time at an ordinary commercial price.

(5) Where a copy (including a microform copy) of an unpublished work is made under subsection (1) by or on behalf of the officer in charge of a library or archives for the purpose of research that is being, or is to be, carried out at another library or archives, the supply of the copy by or on behalf of the officer to the other library or archives does not, for any purpose of this Act, constitute the publication of the work.

Publication of unpublished works kept in libraries

52. (1) Where:

(a) a published literary, dramatic or musical work (in this section referred to as **"the new work"**) incorporates the whole or a part of a work (in this section referred to as **"the old work"**) to which subsection 51 (1) applied immediately before the new work was published;

(b) before the new work was published, the prescribed notice of the intended publication of the work had been given; and

(c) immediately before the new work was published, the identity of the owner of the copyright in the old work was not known to the publishers of the new work;

then, for the purposes of this Act, the first publication of the new work, and any subsequent publication of the new work whether in the same or in an altered form, shall, in so far as it constitutes a publication of the old work, be deemed not to be an infringement of the copyright in the old work or an unauthorized publication of the old work.

(2) The last preceding subsection does not apply to a subsequent publication of the new work incorporating a part of the old work that was not included in the first publication of the new work unless:

(a) subsection 51 (1) would, but for this section, have applied to that part of the old work immediately before that subsequent publication;

(b) before that subsequent publication, the prescribed notice of the intended publication had been given; and

(c) immediately before that subsequent publication, the identity of the owner of the copyright in the old work was not known to the publisher of that subsequent publication.

(3) Where a work, or part of a work, has been published and, by virtue of this section, the publication is to be deemed not to be an infringement of the copyright in the work, the copyright in the work is not infringed by a person who, after that publication took place, broadcasts, causes to be transmitted to subscribers to a diffusion service, performs in public, or makes a record of, the work or that part of the work, as the case may be.

Application of Division to illustrations accompanying articles and other works

53. Where an article, thesis or literary, dramatic or musical work is accompanied by artistic works provided for the purpose of explaining or illustrating the article, thesis or other work (in this section referred to as **"the illustrations"**), the preceding sections of this Division apply as if:

(a) where any of those sections provides that the copyright in the article, thesis or work is not infringed—the reference to that copyright included a reference to any copyright in the illustrations;

(b) a reference in section 49, section 50, section 51 or 51A to a copy of the article, thesis or work included a reference to a copy of the article, thesis or work together with a copy of the illustrations;

(c) a reference in section 49 or section 50 to a copy of a part of the article or work included a reference to a copy of that part of the article or work together with a copy of the illustrations that were provided for the purpose of explaining or illustrating that part; and

(d) a reference in section 51A or section 52 to the doing of any act in relation to the work included a reference to the doing of that act in relation to the work together with the illustrations.

Division 5A—Copying of works in educational institutions [4]

Multiple copying of insubstantial portions of works

53A. (1) Subject to this section, copyright in a literary or dramatic work is not infringed by the making, on the premises of an educational institution, by any person, for the purposes of a course of education provided by the institution, of a copy or copies of a page or pages of the work in an edition of the work, or of works that include the work.

(2) Subsection (1) does not apply to:

(a) the making of a copy or copies of the whole of a work; or

(b) the making of a copy or copies of more than 2 of the pages of a work in an edition of the work, or of works that include the work, unless:

(i) 1% of the total number of pages in the edition exceeds 2 pages; and

(ii) the total number of pages so copied does not exceed 1% of the total number of pages in the edition.

(3) Where a person has made or caused to be made on an occasion a copy of a part of a work contained on a page or pages in an edition of the work, or of works that include the work, in reliance on this section, subsection (1) does not apply to the making, by or on behalf of that person, on a subsequent occasion less than 14 days after the day on which the previous copying took place, of a copy of any other part of that work.

Multiple copying under statutory licence by educational institutions

53B. (1) Subject to this section, the copyright in an article contained in a periodical publication is not infringed by the making of copies of the whole or a part of that article, by or on behalf of the body administering an educational institution, for the teaching purposes of that or another educational institution.

(2) Subject to this section, the copyright in a work (other than an article in a periodical publication) is not infringed by the making of copies of the whole or a part of that work, by or on behalf of the body administering an educational institution, for the teaching purposes of that or another educational institution.

(3) Without limiting the generality of subsection (1) or (2), a copy of the whole or a part of a work shall be taken to have been made for the teaching purposes of an educational institution if:

(a) it is made in connection with a particular course of instruction provided by that institution; or

(b) it is made for the purpose of inclusion in the collection of a library of that institution.

(4) Subsection (1) does not apply in relation to copies of, or of parts of, 2 or more articles contained in the same periodical publication unless the articles relate to the same subject matter.

(5) Subsection (2) does not apply in relation to copies of, or of more than a reasonable portion of, a work that has been separately published unless the person who makes the copies, or causes the copies to be made, for or on behalf of the body administering the educational institution, is satisfied, after reasonable investigation, that copies (not being second-hand copies) of the work cannot be obtained within a reasonable time at an ordinary commercial price.

(6) Subsection (1) does not apply to copies of the whole or a part of an article contained in a periodical publication, being copies made, by or on behalf of the body administering an educational institution, for the teaching purposes of an educational institution, unless there is made, by or on behalf of that body, as soon as practicable after the making of those copies, a record of the copying setting out:

(a) if the International Standard Serial Number in respect of the periodical publication is recorded in the periodical publication—that number;

(b) if the International Standard Serial Number in respect of the publication is not so recorded—the name of the periodical publication;

(c) the title or description of the article;

(d) the name of the author of the article (if that name is known);

(e) the volume, or volume and number, as the case requires, of the periodical publication containing the article;

(f) the page numbers of the pages in that volume, or in that number of that volume, that have been copied, or, in a case where a page so copied does not bear a page number, such description of the page as will enable it to be identified;

(g) the date on which those copies have been made;

(h) the number of copies made; and

(j) particulars of such other matters as are prescribed.

(7) Subsection (2) does not apply to copies of the whole or a part of a work (not being an article contained in a periodical publication), being copies made, by or on behalf of the body administering an educational institution, for the teaching purposes of an educational institution, unless there is made, by or on behalf of that body, as soon as practicable after the making of those copies, a record of the copying setting out:

(a) if the International Standard Book Number in respect of the work is recorded in the edition of the work copied—that number;

(b) if the International Standard Book Number in respect of the work is not so recorded:

(i) the title or description of the work;

(ii) the name of the publisher of the edition of the work; and

(iii) the name of the author of the work (if that name is known);

(c) the page numbers of the pages in the edition of the work that have been copied, or, in a case where a page so copied does not bear a page number, such description of the page as will enable it to be identified;

(d) the date on which those copies have been made;

(e) the number of copies made; and

(f) particulars of such other matters as are prescribed.

(8) For the purposes of subsections (6) and (7) a record of the copying of a work or a part of a work:

(a) may be kept in writing or in any other manner prescribed by the regulations; and

(b) if it is kept in writing, shall be in accordance with the prescribed form.

(9) Where copies of, or of part of, a work, other than an article in a periodical publication, made as provided in subsection (2) by or on behalf of an educational institution for the teaching purposes of an educational institution:

(a) are made for distribution to persons undertaking a correspondence course, or an external study course, provided by the educational institution for the teaching purposes of which those copies are made, otherwise than as a part of the lecture notes prepared in connection with that course; and

(b) do not contain more than a reasonable portion of the work;

the record made in relation to them in accordance with subsection (7) may state that they are copies to which this subsection applies.

(10) Where copies of, or of part of, a work consisting of an article in a periodical publication made, as provided in subsection (1), by or on behalf of the body administering an educational institution for the teaching purposes of an educational institution are made for distribution to persons undertaking a correspondence course, or an external study course, provided by the educational institution for the teaching purposes of which those copies are made, otherwise than as a part of the lecture notes prepared in connection with that course, the record made in relation to them in accordance with subsection (6) may state that they are copies to which this subsection applies.

(11) Where copies of the whole or a part of a work, not being copies stated in the record to be copies to which subsection (9) or (10) applies, are made by or on behalf of the body administering an educational institution and, by virtue of this section, the making of those copies does not infringe copyright in the work, that body shall, if the owner of the copyright in the work makes a request, in writing, at any time during the prescribed period after the making of the copies, for payment for the making of the copies, pay to the owner such an amount by way of equitable remuneration for the making of those copies as is agreed upon between the owner and the body or, in default of agreement, as is determined by the Copyright Tribunal on the application of either the owner or the body.

(12) Where the Copyright Tribunal has determined the amount of equitable remuneration payable to the owner of copyright in a work by the body administering an educational institution in relation to copies

of the whole or a part of that work that have been made by or on behalf of that body in reliance on this section, the owner may recover that amount from the body in a court of competent jurisdiction as a debt due to him.

(13) Nothing in this section affects the right of the owner of copyright in a work to grant a licence authorizing the body administering an educational institution to make, or cause to be made, copies of the whole or a part of the work without infringement of that copyright.

Application of Division to illustrations accompanying articles and other works

53C. Where an article or other literary, dramatic or musical work is accompanied by an artistic work or artistic works provided for the purpose of explaining or illustrating the article or other work, the preceding sections of this Division apply as if:

(a) where any of those sections provides that the copyright in the article or other work is not infringed—the reference to that copyright included a reference to any copyright in that artistic work or those artistic works;

(b) a reference in section 53A or 53B to a copy of an article or other work included a reference to a copy of the article or other work together with a copy of that artistic work or those artistic works;

(c) a reference in section 53A or 53B to a copy of a part of an article or other work included a reference to a copy of that part of the article or other work together with a copy of the artistic work or artistic works provided for the purpose of explaining or illustrating that part;

(d) a reference in section 53A to a copy of a page of a literary or dramatic work in an edition of the work or of works that include the work included a reference to a copy of a page in such an edition that contained that work and an artistic work or artistic works provided for the purpose of explaining or illustrating that part of that work; and

(e) a reference in section 53A to a copy of pages of a literary or dramatic work in an edition of that work or of works that include that work included a reference to a copy of pages in such an edition that contained a part of that work and an artistic work or artistic works provided for the purpose of explaining or illustrating that part of that work.

Division 5B—Copying of works in institutions assisting handicapped readers[4]

Multiple copying under statutory licence by institutions assisting handicapped readers

53D. **(1)** The copyright in a literary or dramatic work that has been published is not infringed by the making, by or on behalf of the body administering an institution assisting handicapped readers, of a record embodying a sound recording of the work or of a part of the work, for use by a handicapped reader for the purpose of research or study that he is undertaking or proposes to undertake, or for the purpose of otherwise instructing himself on any matter.

(2) The copyright in a literary or dramatic work that has been published is not infringed by the making, by or on behalf of the body administering an institution assisting handicapped readers, of a Braille version, a large-print version or a photographic version, of the work or of a part of the work, for use by a handicapped reader for the purpose of research or study that he is undertaking or proposes to undertake, or for the purpose of otherwise instructing himself on any matter.

(3) Where a sound recording of a work has been published, subsection (1) does not apply to the making of any record embodying a sound recording of the work (including a record that is a copy of that first-mentioned sound recording) for or on behalf of the body administering an institution assisting handicapped readers unless the person who makes that record, or causes that record to be made, is satisfied, after reasonable investigation, that no new record that embodies only a sound recording of the work can be obtained within a reasonable time at an ordinary commercial price.

(4) Where a Braille version of a work has been separately published, subsection (2) does not apply to the making of a Braille version of the work, or of a part of the work, unless the person who makes that version, or causes that version to be made, for or on behalf of the body administering an institution assisting handicapped readers is satisfied, after reasonable investigation, that no new copy of a Braille version of the work, being a version that has been separately published, can be obtained within a reasonable time at an ordinary commercial price.

(5) Where a large-print version of a work has been separately published, subsection (2) does not apply to the making of a large-print version of the work, or of a part of the work, unless the person who makes the version, or causes the version to be made, for or on behalf of the body administering an institution assisting handicapped readers is satisfied, after reasonable investigation, that no new copy of a

large-print version of the work, being a version that has been separately published, can be obtained within a reasonable time at an ordinary commercial price.

(6) Where a photographic version of a work has been separately published, subsection (2) does not apply to the making of a photographic version of the work, or of a part of the work, unless the person who makes the version, or causes the version to be made, for or on behalf of the body administering an institution assisting handicapped readers is satisfied, after reasonable investigation, that no new copy of a photographic version of the work, being a version that has been separately published, can be obtained within a reasonable time at an ordinary commercial price.

(7) Subsections (1) and (2) do not apply to the reproduction of the whole or a part of an article contained in a periodical publication by way of the making, by or on behalf of the body administering an institution assisting handicapped readers, of a handicapped reader's copy of the article or of that part of the article unless there is made, by or on behalf of that body, as soon as practicable after the making of that copy, a record of the copying setting out:

(a) if the International Standard Serial Number in respect of the periodical publication is recorded in the periodical publication—that number;

(b) if the International Standard Serial Number in respect of the publication is not so recorded—the name of the periodical publication;

(c) the title or description of the article;

(d) the name of the author of the article (if that name is known);

(e) the volume, or volume and number, as the case requires, of the periodical publication containing the article;

(f) the page numbers of the pages in that volume, or in that number of that volume, that have been copied, or, in a case where a page so copied does not bear a page number, such description of the page as will enable it to be identified;

(g) the date on which the copy has been made;

(h) the form in which the copy has been made; and

(j) particulars of such other matters as are prescribed.

(8) Subsections (1) and (2) do not apply to the reproduction of the whole or a part of a work (not being an article contained in a periodical publication) by way of the making, by or on behalf of the body administering an institution assisting handicapped readers, of a handicapped reader's copy of the work or of that part of the work

unless there is made, by or on behalf of that body, as soon as practicable after the making of that copy, a record of the copying setting out:

(a) if the International Standard Book Number in respect of the work is recorded in the edition of the work copied—that number;

(b) if the International Standard Book Number in respect of the work is not so recorded:

(i) the title or description of the work;

(ii) the name of the publisher of the edition of the work; and

(iii) the name of the author of the work (if that name is known);

(c) the page numbers of the pages in the edition of the work that have been reproduced, or, in a case where a page so reproduced does not bear a page number, such description of the page as will enable it to be identified;

(d) the date on which the copy has been made;

(e) the form in which the copy has been made; and

(f) particulars of such other matters as are prescribed.

(9) For the purposes of subsections (7) and (8), a record of the copying of a work or a part of a work:

(a) may be kept in writing or in any other manner prescribed by the regulations; and

(b) if it is kept in writing, shall be in accordance with the prescribed form.

(10) Where a handicapped reader's copy of the whole or a part of a work is made by or on behalf of the body administering an institution assisting handicapped readers and, by virtue of this section, the making of that copy does not infringe copyright in the work, that body shall, if the owner of the copyright in the work makes a request, in writing, at any time during the prescribed period after the making of the copy, for payment for the making of the copy, pay to the owner such an amount by way of equitable remuneration for the making of that copy as is agreed upon between the owner and the body, or, in default of agreement, such amount as is determined by the Copyright Tribunal on the application of either the owner or the body.

(11) Where the Copyright Tribunal has determined the amount of equitable remuneration payable to the owner of copyright in a work by the body administering an institution assisting handicapped readers in relation to a handicapped reader's copy of the whole or a part of that

work that has been made by or on behalf of that body in reliance on this section, the owner may recover that amount from the body in a court of competent jurisdiction as a debt due to him.

(11A) Subject to subsection (11B), the copyright in a literary or dramatic work that has been published is not infringed by the making, by or on behalf of the body administering an institution assisting handicapped readers, of a prescribed reproduction of the work, or of a part of the work, if the prescribed reproduction is so made in order to be used in the making, by or on behalf of that body, of a handicapped reader's copy of the work, or of the part of the work, as the case may be.

(11B) Where:

(a) a prescribed reproduction of a work, or of a part of a work, is made, by or on behalf of the body administering an institution assisting handicapped readers, in order to be used in the making, by or on behalf of that body, of a handicapped reader's copy of the work, or of the part of the work, as the case may be; and

(b) the prescribed reproduction:

(i) is used otherwise than as mentioned in paragraph (a); or

(ii) is not destroyed within 3 months after its making;

subsection (11A) does not apply, and shall be deemed never to have applied, in relation to the making of the prescribed reproduction.

(11C) In subsections (11A) and (11B), **"prescribed reproduction"**, in relation to a work, or a part of a work, means:

(a) a copy of the work, or of the part of the work;

(b) a record embodying a sound recording of the work, or of the part of the work; or

(c) a Braille version, a large-print version, or a photographic version, of the work, or of the part of the work.

(12) Notwithstanding any other provision of this Act, copyright shall not vest in the maker of the handicapped reader's copy by reason of his making that copy.

(13) Nothing in this section affects the right of the owner of copyright in a work to grant a licence authorizing the body administering an institution assisting handicapped readers to make, or cause to be made, sound recordings of, or Braille, large-print or photographic versions of, the whole or a part of the work without infringement of that copyright.

(14) For the purposes of this section, a record, or a Braille version, a large-print version or a photographic version, of a work shall be taken to be a new record, or a new Braille version, a new large-print version or a new photographic version, of the work, as the case may be, if it is not a second-hand record, or a second-hand Braille version, a second-hand large-print version or a second-hand photographic version, of the work, as the case may be.

(15) In this section, a reference to a photographic version of a work or a part of a work shall be read as a reference to a copy or copies of the work or a part of a work produced as a film-strip or series of separate transparencies designed to meet the needs of handicapped readers.

Division 6—Recording of Musical Works

Interpretation

54.[4] **(1)** For the purposes of this Division:

(a) a reference to a musical work shall be read as a reference to the work in its original form or to an adaptation of the work;

(b) a reference to the owner of the copyright in a literary, dramatic or musical work shall, unless the contrary intention appears, be read as a reference to the person who is entitled to authorize the making in, and the importation into, Australia of records of the work; and

(c) a reference to sale of a record by retail or to retail sale of a record shall be read as not including a reference to:

(i) sale for a consideration not consisting wholly of money; or

(ii) sale by a person not ordinarily carrying on the business of making or selling records.

(2) For the purposes of this Division, where a musical work is comprised partly in one record and partly in another record or other records, all the records shall be treated as if they constituted a single record.

(3) A reference in this Division to a record of a musical work does not include a reference to a sound-track associated with visual images forming part of a cinematograph film.

Conditions upon which manufacturer may make records of musical work

55.[4] **(1)** Subject to this Division, the copyright in a musical work is not infringed by a person (in this section referred to as **"the manufacturer"**) who makes, in Australia, a record of the work if:

(a) a record of the work:

(i) has previously been made in, or imported into, Australia for the purpose of retail sale and was so made or imported by, or with the licence of, the owner of the copyright in the work;

(ii) has previously been made in Australia for use in making other records for the purpose of retail sale and was so made by, or with the licence of, the owner of the copyright in the work;

(iii) has previously been made in, or imported into, a country other than Australia for the purpose of retail sale, being a country that, at the time of the previous making or importation, was specified in the regulations to be a country in relation to which this Division applies, and was so made or imported by, or with the licence of, the person who was, under the law of that country, the owner of the copyright in the work; or

(iv) has previously been made in a country other than Australia for use in making other records for the purpose of retail sale, being a country that, at the time of the previous making, was specified in the regulations to be a country in relation to which this Division applies, and was so made by, or with the licence of, the person who was, under the law of that country, the owner of the copyright in the work;

(b) before the making of the record, the prescribed notice of the intended making of the record was given to the owner of the copyright;

(c) the manufacturer intends to sell the record by retail, or to supply it for the purpose of its being sold by retail by a person other than the manufacturer, or intends to use it for making other records that are to be so sold or supplied; and

(d) where the record is so sold or supplied by the manufacturer:

(i) the sale or supply is made with the licence of the owner of the copyright; and

(ii) there is paid to the owner of the copyright, as prescribed by the regulations, a royalty ascertained in accordance with the succeeding sections of this Division.

(2) The last preceding subsection does not apply in relation to a record of an adaptation of a musical work if the adaptation debases the work.

(3) Subparagraph (1) (d) (i) does not apply in relation to a record of a work (other than a work that was made for the purpose of being performed, or has been performed, in association with a dramatic work or has been included in a cinematograph film) if the sale or supply is made after the expiration of the prescribed period after the earliest of the following dates:

(a) the date of the first making in, or the date of the first importation into, Australia of a previous record of the work in circumstances referred to in subparagraph (1) (a) (i) or (ii);

(b) the date of the first supplying (whether by sale or otherwise) to the public in a country referred to in subparagraph (1) (a) (iii) or (iv) of a previous record of the work made in, or imported into, that country in circumstances referred to in that subparagraph.

(4) Regulations prescribing a period for the purposes of the last preceding subsection may prescribe different periods in relation to different classes of records.

(5) Without limiting the generality of paragraph (1) (d), regulations made for the purposes of that paragraph may provide:

(a) that payment of the royalties in respect of records, or of an amount, ascertained in accordance with the regulations, in respect of the royalties in respect of records, is, or is in such classes of cases as are specified in the regulations, to be made before the records are sold or supplied by the manufacturer; and

(b) that the doing of such acts as are specified in the regulations, being such acts as the Governor-General considers convenient for ensuring the receipt by the owner of the copyright of the royalties in respect of records or, if the owner of the copyright cannot be found by reasonable inquiry, as the Governor-General considers reasonable in the circumstances, is to be deemed to constitute payment of the royalties.

Amount of royalty

56.[4] (1) Subject to this Division, the royalty payable in respect of a record is 5% of the retail selling price of the record.

(2) For the purposes of the last preceding subsection:

(a) if the selling price to the public of the record is marked by the maker of the record on the label of the record—the retail selling price of the record shall be taken to be that price;

(b) if the selling price to the public of the record is not so marked but is specified in the appropriate price list issued by the maker of the record—the retail selling price of the record shall be taken to be the price so specified; or

(c) if the selling price to the public of the record is not so marked or specified but other records embodying the same sound recording as, and bearing an identical label to, the record have been sold to the public—the retail selling price of the record shall be taken to be the highest price at which those other records are ordinarily sold to the public in the capital city of a State.

(3) A reference in the last preceding subsection to the label of a record shall be read as including a reference to the label on the container of the record.

(4) If the royalty payable in respect of a record under this section includes a fraction of a cent that is less than or more than one-half of a cent:

(a) where that fraction is less than one-half of a cent—that fraction shall be treated as one-half of a cent; and

(b) where that fraction is more than one-half of a cent—that fraction shall be treated as a whole cent.

(5) If, apart from this subsection, the royalty payable in respect of a record under this section would be less than One cent, that royalty is One cent.

Provisions relating to royalty where 2 or more works are on the one record

57. Where a record comprises 2 or more musical works, whether or not there is any other matter comprised in the record:

(a) if the record includes a work in which copyright does not subsist or works in which copyrights do not subsist the royalty payable in respect of the record is, subject to the next succeeding paragraph, the amount that bears to the amount that, but for this section, would be the amount of the royalty the same proportion as the number of works in the record in which copyrights subsist bears to the total number of works in the record; and

(b) if the record includes 2 or more works in which copyrights subsist:

(i) subject to this Division, the royalty payable in respect of the record shall not be less than One cent in respect of each work in the record in which copyright subsists; and

(ii) if the owners of the copyrights in the works in the record in which copyrights subsist are different persons there shall be paid to the owner of the copyright in each work, in respect of that work, an amount ascertained by dividing the amount of the royalty payable in respect of the record by the number of works in the record in which copyrights subsist.

Revision of royalty and minimum royalty

58.[4] **(1)** If at any time after the expiration of one year after the commencement of this Act it appears to the Attorney-General that the royalty, or the minimum royalty, payable in respect of records generally or in respect of records included in a particular class of records is not equitable, he may request the Copyright Tribunal to hold an inquiry into the matter and report the result of its inquiry to the Attorney-General.

(2) At any time after the Tribunal has made a report in relation to the royalty, or the minimum royalty, payable in respect of records generally or in respect of records included in a particular class of records, the regulations may provide that the relevant provision of this Act, in its application in respect of records generally or in respect of records included in that class of records, as the case may be, shall have effect as if it were subject to such variations as are provided by the regulations, being such variations as the Governor-General thinks equitable.

(3) Before making regulations for the purposes of the last preceding subsection, the Governor-General shall take into account the report of the Tribunal.

(4) Where the Tribunal has made a report in relation to the royalty, or the minimum royalty, payable in respect of records included in a particular class of records (whether the report related only to records included in that class or also related to other records), the Attorney-General shall not, before the expiration of 5 years after the report was made, request the Tribunal to hold an inquiry under this section in relation to the royalty, or the minimum royalty, as the case may be, payable in respect of records included in that class.

(5) In this section, **"the relevant provision of this Act"** means:

(a) in relation to the royalty payable in respect of any records—subsection 56 (1) or, if that subsection is affected by regulations made for the purposes of this section, that subsection as so affected; and

(b) in relation to the minimum royalty payable in respect of any records—subsection 56 (5) and subparagraph 57 (b) (i) or, if those provisions are affected by regulations made for the purposes of this section, those provisions as so affected.

Conditions upon which manufacturer may include part of a literary or dramatic work in a record of a musical work

59. (1) Where:

(a) a person makes in Australia a record comprising the performance of a musical work in which words are sung, or are spoken incidentally to or in association with the music, whether or not there is any other matter comprised in the record;

(b) copyright does not subsist in that work or, if copyright so subsists, the requirements specified in subsection 55 (1) are complied with in relation to that copyright;

(c) the words consist or form part of a literary or dramatic work in which copyright subsists;

(d) a record of the musical work in which those words, or words substantially the same as those words, were sung, or were spoken incidentally to or in association with the music:

(i) has previously been made in, or imported into, Australia for the purpose of retail sale and was so made or imported by, or with the licence of, the owner of the copyright in the literary or dramatic work;

(ii) has previously been made in Australia for use in making other records for the purpose of retail sale and was so made by, or with the licence of, the owner of the copyright in the literary or dramatic work;

(iii) has previously been made in, or imported into, a country other than Australia for the purpose of retail sale, being a country that, at the time of the previous making or importation, was specified in the regulations to be a country in relation to which this Division applies, and was so made or imported by, or with the licence of, the person who was, under the law of that country, the owner of the copyright in the literary or dramatic work; or

(iv) has previously been made in a country other than Australia for use in making other records for the purpose of retail sale, being a country that, at the time of the previous making, was specified in the regulations to be a country in relation to which this Division applies, and was so made by, or with the

licence of, the person who was, under the law of that country, the owner of the copyright in the literary or dramatic work; and

(e) the like notice was given to the owner of the copyright in the literary or dramatic work as is required by paragraph 55 (1) (b) to be given to the owner of the copyright (if any) in the musical work and there is paid to the owner of the copyright in the literary or dramatic work such amount (if any) as is ascertained in accordance with this section;

the making of the record does not constitute an infringement of the copyright in the literary or dramatic work.

(2) Where copyright does not subsist in the musical work, the amount to be paid in respect of the literary or dramatic work is an amount equal to the royalty that, but for this section, would have been payable in respect of the musical work if copyright had subsisted in the musical work.

(3) Where copyright subsists in the musical work as well as in the literary or dramatic work:

(a) if the copyrights in those works are owned by the same person—an amount is not payable in respect of the literary or dramatic work; or

(b) if the copyrights in those works are owned by different persons—the royalty that, but for this section, would have been payable in respect of the musical work shall be apportioned between them in such manner as they agree, or, in default of the agreement, as is determined by the Copyright Tribunal on the application of either of them.

(4) Where the owner of the copyright in a musical work and the owner of the copyright in a literary or dramatic work do not agree on the manner in which an amount is to be apportioned between them but the person who made the record gives an undertaking in writing to each owner to pay to him the portion of that amount that the Tribunal determines to be payable to him, then:

(a) paragraph 55 (1) (d) and paragraph (1) (e) of this section have effect as if the payments referred to in those paragraphs had been made; and

(b) the person who made the record is liable, when the amount to which an undertaking relates is determined, to pay that amount to the owner of the copyright to whom the undertaking was given and the owner may recover that amount in a court of competent jurisdiction from that person as a debt due to the owner.

(5) Regulations made for the purposes of paragraph 55 (1) (d) in relation to payments to the owner of the copyright in a musical work have the like effect, with any necessary modifications, for the purposes of paragraph (1) (e) of this section in relation to payments to the owner of the copyright in a literary or dramatic work.

Records made partly for retail sale and partly for gratuitous disposal

60. Where a person makes, in Australia, a number of records embodying the same sound recording, being a recording of a musical work or of a musical work and of words consisting or forming part of a literary or dramatic work, with the intention of:

(a) selling by retail, or supplying for sale by retail by another person, a substantial proportion of the records (in this section referred to as **"the records made for retail sale"**); and

(b) disposing gratuitously of the remainder of the records or supplying the remainder of the records for gratuitous disposal by another person;

this Division applies in relation to the records other than the records made for retail sale as if:

(c) those records had been made with the intention of selling them by retail or of supplying them for sale by retail by another person;

(d) the gratuitous disposal of those records by the maker of the records, or the supplying of those records by the maker of the records for gratuitous disposal by another person, were a sale of the records by retail; and

(e) the retail selling price of those records were the same as the retail selling price of the records made for retail sale.

Making inquiries in relation to previous records

61. Where:

(a) a person makes inquiries, as prescribed, for the purpose of ascertaining whether a record of a musical work, or a record of a musical work in which words consisting or forming part of a literary or dramatic work were sung or spoken, has previously been made in, or imported into, Australia by, or with the licence of, the owner of the copyright in the musical work or in the literary or dramatic work, as the case may be, for the purpose of retail sale or for use in making other records for the purpose of retail sale; and

(b) an answer to those inquiries is not received within the prescribed period;

a record of that musical work, or a record of that work in which those words were sung or spoken, as the case may be, shall, for the purposes of the application of this Division:

(c) in relation to the person who made the inquiries; or

(d) in relation to a person who makes records of the musical work, or records of that work in which those words or substantially the same words are sung or spoken, for the purpose of supplying those records to the person who made the inquiries in pursuance of an agreement entered into between those persons for the making of the records;

be taken to have been previously made in, or imported into, Australia with the licence of the owner of that copyright for the purpose of retail sale or for use in making other records for the purpose of retail sale, as the case may be.

Application of Division in relation to record of part of a work

62.[4] **(1)** Subject to the next succeeding subsection, the preceding sections of this Division apply in relation to a record of a part of a musical work in like manner as they apply in relation to a record of the whole of the work.

(2) Subsection 55 (1):

(a) does not apply in relation to a record of the whole of a work unless the previous record referred to in paragraph 55 (1) (a) was a record of the whole of the work; and

(b) does not apply in relation to a record of a part of a work unless that previous record was a record of, or comprising, that part of the work.

Application of Division in relation to musical works published before 1 July 1912

63.[4] **(1)** Subject to this section, the preceding sections of this Division apply in relation to musical works published before 1 July 1912, as if paragraph 55 (1) (a), subparagraph 55 (1) (d) (i), subsections 55 (3) and (4), paragraph 59 (1) (d), section 61 and subsection 62 (2) were omitted.

(2) This section does not extend the operation of section 59 to a record in respect of which a requirement specified in paragraph 59 (1) (d) has not been complied with unless the words comprised in the record, as well as the musical work, were published before 1 July 1912, and were so published as words to be sung to, or spoken incidentally to or in association with, the music.

(3) This section ceases to have effect at the expiration of 2 years after the commencement of this Act.

Sections 55 and 59 to be disregarded in determining whether an infringement has been committed by the importation of records

64. For the purpose of any provision of this Act relating to imported articles, in determining whether the making of a record made outside Australia would have constituted an infringement of copyright if the record had been made in Australia by the importer, sections 55 and 59 shall be disregarded.

Division 7—Acts not Constituting Infringements of Copyright in Artistic Works

Sculptures and certain other works in public places

65. (1) This section applies to sculptures and to works of artistic craftsmanship of the kind referred to in paragraph (c) of the definition of **"artistic work"** in section 10.

(2) The copyright in a work to which this section applies that is situated, otherwise than temporarily, in a public place, or in premises open to the public, is not infringed by the making of a painting, drawing, engraving or photograph of the work or by the inclusion of the work in a cinematograph film or in a television broadcast.

Buildings and models of buildings

66. The copyright in a building or a model of a building is not infringed by the making of a painting, drawing, engraving or photograph of the building or model or by the inclusion of the building or model in a cinematograph film or in a television broadcast.

Incidental filming or televising of artistic works

67. Without prejudice to the last two preceding sections, the copyright in an artistic work is not infringed by the inclusion of the work in a cinematograph film or in a television broadcast if its inclusion in the film or broadcast is only incidental to the principal matters represented in the film or broadcast.

Publication of artistic works

68. The copyright in an artistic work is not infringed by the publication of a painting, drawing, engraving, photograph or cinematograph film if, by virtue of section 65, section 66 or section 67, the making of that painting, drawing, engraving, photograph or film did not constitute an infringement of the copyright.

Artistic works transmitted to subscribers to a diffusion service

69. Sections 65, 66 and 67 apply in relation to a television programme that is caused to be transmitted to subscribers to a diffusion service in like manner as they apply in relation to a television broadcast.

Reproduction for purpose of including work in television broadcast

70. (1) Where the inclusion of an artistic work in a television broadcast made by a person would not (whether by reason of an assignment or licence or of the operation of a provision of this Act) constitute an infringement of copyright in the work but the making by the person of a cinematograph film of the work would, apart from this subsection, constitute such an infringement, the copyright in the work is not infringed by his making such a film solely for the purpose of the inclusion of the work in a television broadcast.

(2) The last preceding subsection does not apply in relation to a film if a copy of the film is used for a purpose other than:

(a) the inclusion of the work in a television broadcast in circumstances that do not (whether by reason of an assignment or licence or of the operation of a provision of this Act) constitute an infringement of the copyright in the work; or

(b) the making of further copies of the film for the purpose of the inclusion of the work in such a broadcast..

(3) Subsection (1) does not apply in relation to a film where a copy of the film is used for the purpose of the inclusion of the work in a television broadcast made by a person who is not the maker of the film unless the maker has paid to the owner of the copyright in the work such amount as they agree or, in default of agreement, has given an undertaking in writing to the owner to pay to him such amount as is determined by the Copyright Tribunal, on the application of either of them, to be equitable remuneration to the owner for the making of the film.

(4) A person who has given an undertaking referred to in the last preceding subsection is liable, when the Copyright Tribunal has determined the amount to which the undertaking relates, to pay that amount to the owner of the copyright in the work and the owner may recover that amount in a court of competent jurisdiction from the person as a debt due to the owner.

(5) Subsection (1) does not apply in relation to a film unless, before the expiration of the period of 12 months commencing on the day on which any of the copies of the film is first used for including the work in a television broadcast in accordance with that subsection, or before the expiration of such further period, if any, as is agreed

between the maker of the film and the owner of the copyright in the work, all the copies of the film are destroyed or are delivered, with the consent of the Director-General of the Australian Archives, to the Australian Archives.

(6) The Director-General of the Australian Archives shall not consent to the delivery to the Australian Archives in accordance with subsection (5) of a copy of a film unless he has certified that the film is of an exceptional documentary character.

Reproduction of work in different dimensions

71.[4] For the purposes of this Act:

(a) the making of an object of any kind that is in three dimensions does not infringe the copyright in an artistic work that is in two dimensions; and

(b) the making of an object of any kind that is in two dimensions does not infringe the copyright in an artistic work that is in three dimensions;

if the object would not appear to persons who are not experts in relation to objects of that kind to be a reproduction of the artistic work.

Reproduction of part of work in later work

72. (1) The copyright in an artistic work is not infringed by the making of a later artistic work by the same author if, in making the later work, the author does not repeat or imitate the main design of the earlier work.

(2) The last preceding subsection has effect notwithstanding that part of the earlier work is reproduced in the later work and that, in reproducing the later work, the author used a mould, cast, sketch, plan, model or study made for the purposes of the earlier work.

Reconstruction of buildings

73. (1) Where copyright subsists in a building, the copyright is not infringed by a reconstruction of that building.

(2) Where a building has been constructed in accordance with architectural drawings or plans in which copyright subsists and has been so constructed by, or with the licence of, the owner of that copyright, that copyright is not infringed by a later reconstruction of the building by reference to those drawings or plans.

Division 8—Designs

Interpretation

74.[4] **(1)** In this Division, **"corresponding design"** , in relation to an artistic work, means a design that, when applied to an article, results in a reproduction of that work.

(2) In this Division:

(a) a reference to the scope of the monopoly in a registered design is a reference to the aggregate of the things that, by virtue of the *Designs Act 1906*, the person registered as the owner, or all persons registered as owners, of the design has, or have, the exclusive right to do; and

(b) a reference to the scope of the monopoly in a registered design as extended to all associated designs and articles is a reference to the aggregate of the things that, by virtue of that Act, the person registered as the owner, or all persons registered as owners, of the design would have had the exclusive right to do if:

(i) when that design was registered, there had at the same time been registered every other related design capable of being registered by virtue of section 25D of that Act, and the person registered as the owner, or all persons registered as owners, of that design had been registered as the owner, or owners, of every such other related design; and

(ii) that design, and every other related design capable of being registered by virtue of section 25D of that Act, had been registered in respect of all the articles to which it was capable of being applied.

Copyright not infringed by doing things that are within the scope of registered design

75.[4] Subject to the next succeeding section, where copyright subsists in an artistic work and a corresponding design is registered under the *Designs Act 1906-1968*, it is not an infringement of the copyright in the work:

(a) to do anything, while the monopoly in the registered design subsists under the *Designs Act 1906-1968*, that is within the scope of the monopoly in the design; or

(b) to do anything, after the monopoly in the registered design has expired, that, if it had been done while the monopoly in the design subsisted, would have been within the scope of that monopoly as extended to all associated designs and articles.

False registration of industrial designs

76. (1) This section has effect where:

(a) copyright subsists in an artistic work and proceedings are brought under this Act in relation to that work;

(b) a corresponding design has been registered under the *Designs Act 1906-1968* and the monopoly in the design that subsisted by virtue of that registration had not expired by effluxion of time before the commencement of those proceedings; and

(c) it is established in those proceedings that the person registered as the owner of the design was not the owner of the design for the purposes of the *Designs Act 1906-1968* and was so registered without the knowledge of the owner of the copyright in the artistic work.

(2) Subject to the next succeeding subsection, for the purposes of the proceedings referred to in the last preceding subsection:

(a) the design shall be deemed never to have been registered under the *Designs Act 1906-1968*;

(b) the last preceding section does not apply in relation to anything done in respect of the design; and

(c) nothing in the *Designs Act 1906-1968* constitutes a defence.

(3) Notwithstanding anything in the last preceding subsection, if in the proceedings it is established that an act to which the proceedings relate:

(a) was done by an assignee of, or under a licence granted by, the person registered as the owner of the design; and

(b) was so done in good faith in reliance upon the registration and without notice of any proceedings for the cancellation of the registration or for rectifying the entry in the Register of Designs in relation to the design;

the last preceding section applies in relation to that act for the purposes of the first-mentioned proceedings.

Application of artistic works as industrial designs without registration of the designs

77.[4] (1) Where:

(a) copyright subsists in an artistic work;

(b) a corresponding design is applied industrially by, or with the licence of, the owner of the copyright in the work;

(c) articles to which the corresponding design has been so applied (in this section referred to as **"articles made to the corresponding design"**) are sold, let for hire or offered or exposed for sale or hire in Australia; and

(d) at the time when those articles are so sold, let for hire or offered or exposed for sale or hire, they are not articles in respect of which the corresponding design has been registered under the *Designs Act 1906-1968*;

the succeeding subsections of this section have effect.

(2) During the period of 16 years commencing on the date on which articles made to the corresponding design were first sold, let for hire or offered or exposed for sale or hire in the circumstances referred to in paragraph (1) (d), it is not an infringement of the copyright in the work to do anything that, at the time when it is done, would have been within the scope of the monopoly in the corresponding design if the corresponding design had, immediately before that time, been registered in respect of all articles made to the corresponding design that had, before that time, been sold, let for hire or offered or exposed for sale or hire in those circumstances.

(3) After the expiration of the period referred to in the last preceding subsection, it is not an infringement of the copyright in the work to do anything that, at the time when it is done, would, if the corresponding design had been registered immediately before that time, have been within the scope of the monopoly in that design as extended to all associated designs and articles.

(4) For the purposes of this section, account shall not be taken of any articles in respect of which, at the time when they were sold, let for hire or offered or exposed for sale or hire, the corresponding design concerned was excluded from registration under the *Designs Act 1906-1968* by regulations made under that Act for the purpose of excluding from registration designs for articles that are primarily literary or artistic in character and, for the purposes of any proceedings under this Act, a design shall be conclusively presumed to have been so excluded if:

(a) before the commencement of those proceedings, an application for the registration of the design under that Act in respect of those articles had been refused;

(b) the reason or one of the reasons given for the refusal was that the design was excluded from registration under that Act by regulations made under that Act for the purpose of excluding from registration designs for articles that are primarily literary or artistic in character; and

(c) no appeal against the refusal had been allowed before the date of commencement of the proceedings or was pending on that date.

(5) The regulations may make provision for determining the circumstances in which a design is, for the purposes of this section, to be deemed to be applied industrially.

Division 9—Works of Joint Authorship

References to all of joint authors

78. Subject to this Division, a reference in this Act to the author of a work shall, unless otherwise expressly provided by this Act, be read, in relation to a work of joint authorship, as a reference to all the authors of the work.

References to any one or more of joint authors

79. The references in section 32, and in subsection 34 (2) to the author of a work shall, in relation to a work of joint authorship, be read as references to any one or more of the authors of the work.

References to whichever of joint authors died last

80. The references in sections 33 and 51 to the author of a work shall, in relation to a work of joint authorship other than a work to which the next succeeding section applies, be read as references to the author who died last.

Works of joint authorship published under pseudonyms

81. (1) This section applies to a work of joint authorship that was first published under 2 or more names of which one was a pseudonym or 2 or more (but not all) were pseudonyms.

(2) This section also applies to a work of joint authorship that was first published under 2 or more names all of which were pseudonyms if, at any time within 50 years after the expiration of the calendar year in which the work was first published, the identity of one or more (but not all) of the authors was generally known or could be ascertained by reasonable inquiry.

(3) The references in sections 33 and 51 to the author of a work shall, in relation to a work to which this section applies, be read as references to the author whose identity was disclosed or, if the identity of 2 or more of the authors was disclosed, as references to whichever of those authors died last.

(4) For the purposes of this section, the identity of an author shall be deemed to have been disclosed if:

(a) one of the names under which the work was published was the name of that author; or

(b) the identity of that author is generally known or can be ascertained by reasonable inquiry.

Copyright to subsist in joint works without regard to any author who is an unqualified person

82. (1) Subsection 35 (2) has effect, in relation to a work of joint authorship of which one of the authors is an unqualified person, or 2 or more (but not all) of the authors are unqualified persons, as if the author or authors, other than unqualified persons, had alone been the author or authors, as the case may be, of the work.

(2) For the purposes of the last preceding subsection, a person is an unqualified person in relation to a work where, if he had alone been the author of the work, copyright would not have subsisted in the work by virtue of this Part.

Inclusion of joint works in collections for use in places of education

83. The reference in subsection 44 (2) to other extracts from, or from adaptations of, works by the author of the extract concerned:

(a) shall be read as including a reference to extracts from, or from adaptations of, works by the author of the extract concerned in collaboration with any other person; or

(b) if the extract concerned is from, or from an adaptation of, a work of joint authorship shall be read as including a reference to extracts from, or from adaptations of, works by any one or more of the authors of the extract concerned, or by any one or more of those authors in collaboration with any other person.

PART IV—COPYRIGHT IN SUBJECT-MATTER OTHER THAN WORKS

Division 1—Preliminary

Interpretation

84. In this Part, **"qualified person"** means:

(a) an Australian citizen, an Australian protected person or a person (other than a body corporate) resident in Australia; or

(b) a body corporate incorporated under a law of the Commonwealth or of a State.

Division 2—Nature of Copyright in Subject-Matter other than Works

Nature of copyright in sound recordings

85. For the purposes of this Act, unless the contrary intention appears, copyright, in relation to a sound recording, is the exclusive right to do all or any of the following acts:

(a) to make a copy of the sound recording;

(b) to cause the recording to be heard in public;

(c) to broadcast the recording.

Nature of copyright in cinematograph films

86. For the purposes of this Act, unless the contrary intention appears, copyright, in relation to a cinematograph film, is the exclusive right to do all or any of the following acts:

(a) to make a copy of the film;

(b) to cause the film, in so far as it consists of visual images, to be seen in public;

(c) to broadcast the film;

(d) to cause the film to be transmitted to subscribers to a diffusion service.

Nature of copyright in television broadcasts and sound broadcasts

87. For the purposes of this Act, unless the contrary intention appears, copyright, in relation to a television broadcast or sound broadcast, is the exclusive right:

(a) in the case of a television broadcast in so far as it consists of visual images—to make a cinematograph film of the broadcast, or a copy of such a film;

(b) in the case of a sound broadcast, or of a television broadcast in so far as it consists of sounds—to make a sound recording of the broadcast, or a copy of such a sound recording; and

(c) in the case of a television broadcast or of a sound broadcast—to re-broadcast it.

Nature of copyright in published editions of works

88. For the purposes of this Act, unless the contrary intention appears, copyright, in relation to a published edition of a literary, dramatic, musical or artistic work or of two or more literary, dramatic, musical or artistic works, is the exclusive right to make, by a means that includes a photographic process, a reproduction of the edition.

Division 3—Subject-Matter, other than Works, in which Copyright Subsists

Sound recordings in which copyright subsists

89. (1) Subject to this Act, copyright subsists in a sound recording of which the maker was a qualified person at the time when the recording was made.

(2) Without prejudice to the last preceding subsection, copyright subsists, subject to this Act, in a sound recording if the recording was made in Australia.

(3) Without prejudice to the last two preceding subsections, copyright subsists, subject to this Act, in a published sound recording if the first publication of the recording took place in Australia.

Cinematograph films in which copyright subsists

90. (1) Subject to this Act, copyright subsists in a cinematograph film of which the maker was a qualified person for the whole or a substantial part of the period during which the film was made.

(2) Without prejudice to the last preceding subsection, copyright subsists, subject to this Act, in a cinematograph film if the film was made in Australia.

(3) Without prejudice to the last two preceding subsections, copyright subsists, subject to this Act, in a published cinematograph film if the first publication of the film took place in Australia.

Television broadcasts and sound broadcasts in which copyright subsists

91. Subject to this Act, copyright subsists:

(a) in a television broadcast made from a place in Australia by:
  (i) the Australian Broadcasting Corporation;
  (ii) the Special Broadcasting Service; or
  (iii) any prescribed person, being a person who is, at the time when the broadcast is made, the holder of a transmitter licence or a temporary permit in force under the *Radiocommunications Act 1983*;

(b) in a television broadcast made from a place in Australia pursuant to a licence or permit granted under the *Broadcasting Act 1942* by the holder of the licence or permit;

(c) in a sound broadcast made from a place in Australia by:
  (i) the Australian Broadcasting Corporation;
  (ii) the Special Broadcasting Service; or

(iii) any prescribed person, being a person who is, at the time when the broadcast is made, the holder of a transmitter licence or a temporary permit in force under the *Radiocommunications Act 1983*; and

(d) in a sound broadcast made from a place in Australia pursuant to a licence or permit granted under the *Broadcasting Act 1942* by the holder of the licence or permit.

Published editions of works in which copyright subsists

92. (1) Subject to this Act, copyright subsists in a published edition of a literary, dramatic, musical or artistic work, or of 2 or more literary, dramatic, musical or artistic works, where:

(a) the first publication of the edition took place in Australia; or

(b) the publisher of the edition was a qualified person at the date of the first publication of the edition.

(2) The last preceding subsection does not apply to an edition that reproduces a previous edition of the same work or works.

Division 4—Duration of Copyright in Subject-Matter other than Works

Duration of copyright in sound recordings

93. Copyright subsisting in a sound recording by virtue of this Part continues to subsist until the expiration of 50 years after the expiration of the calendar year in which the recording is first published.

Duration of copyright in cinematograph films

94. (1) Copyright subsisting in a cinematograph film by virtue of subsection 90 (1) or (2) continues to subsist until the film is published and, after the publication of the film, until the expiration of 50 years after the expiration of the calendar year in which the film was first published.

(2) Copyright subsisting in a cinematograph film by virtue only of subsection 90 (3) continues to subsist until the expiration of 50 years after the expiration of the calendar year in which the film was first published.

Duration of copyright in television broadcasts and sound broadcasts

95. (1) Copyright subsisting in a television broadcast or sound broadcast by virtue of this Part continues to subsist until the expiration of 50 years after the expiration of the calendar year in which the broadcast was made.

(2) In so far as a television broadcast or sound broadcast is a repetition (whether the first or a subsequent repetition) of a previous television broadcast or sound broadcast to which section 91 applies, and is made by broadcasting visual images or sounds embodied in any article or thing:

(a) if it is made before the expiration of the period of 50 years after the expiration of the calendar year in which the previous broadcast was made—any copyright subsisting in it expires at the expiration of that period; and

(b) if it is made after the expiration of that period—copyright does not subsist in it by virtue of this Part.

Duration of copyright in published editions of works

96. Copyright subsisting in a published edition of a work or works by virtue of this Part continues to subsist until the expiration of 25 years after the expiration of the calendar year in which the edition was first published.

Division 5—Ownership of Copyright in Subject-Matter other than Works

Ownership of copyright in sound recordings

97. (1) This section has effect subject to Parts VII and X.

(2) Subject to the next succeeding subsection, the maker of a sound recording is the owner of any copyright subsisting in the recording by virtue of this Part.

(3) Where:

(a) a person makes, for valuable consideration, an agreement with another person for the making of a sound recording by the other person; and

(b) the recording is made in pursuance of the agreement;

the first-mentioned person is, in the absence of any agreement to the contrary, the owner of any copyright subsisting in the recording by virtue of this Part.

Ownership of copyright in cinematograph films

98. (1) This section has effect subject to Parts VII and X.

(2) Subject to the next succeeding subsection, the maker of a cinematograph film is the owner of any copyright subsisting in the film by virtue of this Part.

(3) Where:

(a) a person makes, for valuable consideration, an agreement with another person for the making of a cinematograph film by the other person; and

(b) the film is made in pursuance of the agreement;

the first-mentioned person is, in the absence of any agreement to the contrary, the owner of any copyright subsisting in the film by virtue of this Part.

Ownership of copyright in television broadcasts and sound broadcasts

99. Subject to Parts VII and X:

(a) the Australian Broadcasting Corporation is the owner of any copyright subsisting in a television broadcast or sound broadcast made by it;

(aa) the Special Broadcasting Service is the owner of any copyright subsisting in a television broadcast or sound broadcast made by it; and

(b) a person who is or has been a holder of a licence or permit granted under the *Broadcasting Act 1942* or a prescribed person for the purposes of subparagraph 91 (a) (iii) or 91 (c) (iii) is the owner of any copyright subsisting in a television broadcast or sound broadcast, as the case may be, made by that person.

Ownership of copyright in published editions of works

100. Subject to Parts VII and X, the publisher of an edition of a work or works is the owner of any copyright subsisting in the edition by virtue of this Part.

Division 6—Infringement of Copyright in Subject-Matter other than Works

Interpretation

100A. In this Division, **"audio-visual item"** means a sound recording, a cinematograph film, a sound broadcast or a television broadcast.

Infringement by doing acts comprised in copyright

101. (1) Subject to this Act, a copyright subsisting by virtue of this Part is infringed by a person who, not being the owner of the copyright, and without the licence of the owner of the copyright, does in Australia, or authorizes the doing in Australia of, any act comprised in the copyright.

(2) The next two succeeding sections do not affect the generality of the last preceding subsection.

(3) Subsection (1) applies in relation to an act done in relation to a sound recording whether the act is done by directly or indirectly making use of a record embodying the recording.

(4) Subsection (1) applies in relation to an act done in relation to a television broadcast or a sound broadcast whether the act is done by the reception of the broadcast or by making use of any article or thing in which the visual images and sounds comprised in the broadcast have been embodied.

Infringement by importation for sale or hire

102. A copyright subsisting by virtue of this Part is infringed by a person who, without the licence of the owner of the copyright, imports an article into Australia for the purpose of:

(a) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;

(b) distributing the article:

(i) for the purpose of trade; or

(ii) for any other purpose to an extent that will affect prejudicially the owner of the copyright; or

(c) by way of trade exhibiting the article in public;

where, to his knowledge, the making of the article would, if the article had been made in Australia by the importer, have constituted an infringement of the copyright.

Infringement by sale and other dealings

103. (1) A copyright subsisting by virtue of this Part is infringed by a person who, in Australia, and without the licence of the owner of the copyright:

(a) sells, lets for hire, or by way of trade offers or exposes for sale or hire, an article; or

(b) by way of trade exhibits an article in public;

where, to his knowledge, the making of the article constituted an infringement of the copyright or, in the case of an imported article, would, if the article had been made in Australia by the importer, have constituted an infringement of the copyright.

(2) For the purposes of the last preceding subsection, the distribution of any articles:

(a) for the purpose of trade; or

(b) for any other purpose to an extent that affects prejudicially the owner of the copyright concerned;

shall be taken to be the sale of those articles.

Fair dealing for purpose of criticism or review

103A. A fair dealing with an audio-visual item does not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if it is for the purpose of criticism or review, whether of the first-mentioned audio-visual item, another audio-visual item or a work, and a sufficient acknowledgement of the first-mentioned audio-visual item is made.

Fair dealing for purpose of reporting news

103B. (1) A fair dealing with an audio-visual item does not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if:

(a) it is for the purpose of, or is associated with, the reporting of news in a newspaper, magazine or similar periodical and a sufficient acknowledgement of the first-mentioned audio-visual item is made; or

(b) it is for the purpose of, or is associated with, the reporting of news by means of broadcasting or in a cinematograph film.

(2) This section applies where an audio-visual item being a cinematograph film is caused to be transmitted to subscribers to a diffusion service in like manner as it applies where such an item is broadcast.

Fair dealing for purpose of research or study

103C. (1) A fair dealing with an audio-visual item does not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if it is for the purpose of research or study.

(2) For the purposes of this Act, the matters to which regard shall be had in determining whether a dealing with an audio-visual item constitutes a fair dealing for the purpose of research or study include:

(a) the purpose and character of the dealing;

(b) the nature of the audio-visual item;

(c) the possibility of obtaining the audio-visual item within a reasonable time at an ordinary commercial price;

(d) the effect of the dealing upon the potential market for, or value of, the audio-visual item; and

(e) in a case where part only of the audio-visual item is copied—the amount and substantiality of the part copied taken in relation to the whole item.

Acts done for purposes of judicial proceeding

104. A copyright subsisting by virtue of this Part is not infringed by anything done:

(a) for the purpose of a judicial proceeding or a report of a judicial proceeding;

(b) for the purpose of seeking professional advice from a legal practitioner or patent attorney; or

(c) for the purpose of, or in the course of, the giving of professional advice by a legal practitioner or patent attorney.

Acts done by Parliamentary libraries for members of Parliament

104A. A copyright subsisting by virtue of this Part is not infringed by anything done, for the sole purpose of assisting a person who is a member of a Parliament in the performance of the person's duties as such a member, by an authorized officer of a library, being a library the principal purpose of which is to provide library services for members of that Parliament.

Copyright in certain recordings not infringed by causing recordings to be heard in public or broadcast

105. Copyright subsisting in a sound recording by virtue only of subsection 89 (3) is not infringed by the causing of the recording to be heard in public or by the broadcasting of the recording.

Causing sound recording to be heard at guest house or club

106. (1) Where a sound recording is caused to be heard in public:

(a) at premises where persons reside or sleep, as part of the amenities provided exclusively for residents or inmates of the premises or for those residents or inmates and their guests; or

(b) as part of the activities of, or for the benefit of, a club, society or other organization that is not established or conducted for profit and the principal objects of which are charitable or are otherwise concerned with the advancement of religion, education or social welfare;

the act of causing the recording to be so heard does not constitute an infringement of the copyright in the recording.

(2) The last preceding subsection does not apply:

(a) in relation to premises of a kind referred to in paragraph (a) of that subsection, if a specific charge is made for admission to the part of the premises where the recording is to be heard; or

(b) in relation to an organization of a kind referred to in paragraph (b) of that subsection, if a charge is made for admission to the place where the recording is to be heard and any of the proceeds of the charge are applied otherwise than for the purposes of the organization.

(3) A reference in the last preceding subsection to a specific charge, or a charge, made for admission includes a reference to a specific charge, or a charge, made partly for admission and partly for other purposes.

Making of a copy of the sound recording for purpose of broadcasting

107. (1) Where the broadcasting by a person of a sound recording would not (whether by reason of an assignment or licence or of the operation of a provision of this Act) constitute an infringement of the copyright in the recording but the making by the person of a copy of the sound recording would, apart from this subsection, constitute such an infringement, the copyright in the recording is not infringed by his making a copy of the sound recording in association with other matter solely for the purpose of the broadcasting of the recording in association with the other matter.

(2) The last preceding subsection does not apply in relation to a copy of a sound recording if the copy is used for a purpose other than:

(a) the broadcasting of the recording in circumstances that do not (whether by reason of an assignment or licence or of the operation of a provision of this Act) constitute an infringement of the copyright in the recording; or

(b) the making of further copies of the sound recording for the purpose of the broadcasting of the recording in such circumstances.

(3) Subsection (1) does not apply in relation to a copy of a sound recording where the copy is used for the purpose of the broadcasting of the recording by a person who is not the maker of the copy unless the maker has paid to the owner of the copyright in the recording such amount as they agree or, in default of agreement, has given an undertaking in writing to the owner to pay to him such amount as is determined by the Copyright Tribunal, on the application of either of them, to be equitable remuneration to the owner for the making of the copy.

(4) A person who has given an undertaking referred to in the last preceding subsection is liable, when the Copyright Tribunal has determined the amount to which the undertaking relates, to pay that amount to the owner of the copyright in the recording and the owner may recover that amount in a court of competent jurisdiction from the person as a debt due to the owner.

(5) Subsection (1) does not apply in relation to a copy of a sound recording unless, before the expiration of the period of 12 months commencing on the day on which any of the copies made in accordance with that subsection is first used for broadcasting the recording in accordance with that subsection, or before the expiration of such further period, if any, as is agreed between the maker of the copy and the owner of the copyright in the recording, all the copies made in accordance with that subsection are destroyed or are delivered, with the consent of the Director-General of the Australian Archives, to the Australian Archives.

(6) The Director-General of the Australian Archives shall not consent to the delivery to the Australian Archives in accordance with subsection (5) of a copy of a sound recording unless he has certified that the recording is of an exceptional documentary character.

Copyright in published recording not infringed by public performance if equitable remuneration paid

108. (1) The copyright in a sound recording that has been published is not infringed by a person who causes the recording to be heard in public if:

(a) the person has paid to the owner of the copyright in the recording such amount as they agree or, in default of agreement, has given an undertaking in writing to the owner to pay to him such amount as is determined by the Copyright Tribunal, on the application of either of them, to be equitable remuneration to the owner for the causing of the recording to be heard in public; and

(b) in the case of a recording that was first published outside Australia—the recording has been published in Australia or the prescribed period after the date of the first publication of the recording has expired.

(2) A person who has given an undertaking referred to in the last preceding subsection is liable, when the Copyright Tribunal has determined the amount to which the undertaking relates, to pay that amount to the owner of the copyright in the recording and the owner may recover that amount in a court of competent jurisdiction from the person as a debt due to the owner.

(3) Regulations prescribing a period for the purposes of paragraph (1) (b) may prescribe different periods in relation to different classes of sound recordings.

Copyright in published sound recording not infringed by broadcast in certain circumstances

109. (1) Subject to this section, the copyright in a published sound recording is not infringed by the making of a broadcast of that recording if:

(a) where there is no order of the Tribunal in force under section 152 applying to the maker of that broadcast in relation to the time when that broadcast was made—the maker of that broadcast has given an undertaking in writing to the person who is the owner of the copyright in that recording to pay to him such amounts (if any) as may be specified in, or determined in accordance with, an order of the Tribunal made under that section in respect of the broadcasting by the maker, during a period within which that broadcast was made, of published sound recordings in which the copyrights are owned by that person and which include that recording; or

(b) where there is an order of the Tribunal in force under that section applying to the maker of that broadcast in relation to the time when that broadcast was made:

(i) the copyright in that recording is owned by a person who is specified in the order as one of the persons among whom the amount specified in, or determined in accordance with, the order is to be divided and the maker of the broadcast makes payments to the person in accordance with the order; or

(ii) the copyright in that recording is owned by a person who is not so specified in the order.

(2) The last preceding subsection does not apply in relation to a broadcast of a sound recording if the broadcast was made in accordance with an agreement between the maker of the broadcast and the owner of the copyright in the recording.

(3) Subsection (1) does not apply in relation to a broadcast of a sound recording that has not been published in Australia if the broadcast was made before the expiration of the prescribed period after the date of the first publication of the recording.

(4) Regulations prescribing a period for the purposes of the last preceding subsection may prescribe different periods in relation to different classes of sound recordings.

(5) Subsection (1) does not apply in relation to a broadcast of a sound recording that has not been published in Australia if:

(a) the recording consists of, or includes, a musical work in which copyright subsists;

(b) the musical work was made for the purpose of being performed, or has been performed, in association with a dramatic work or has been included in a cinematograph film; and

(c) records of the musical work have not been supplied (whether by sale or otherwise) to the public in Australia.

(6) For the purposes of paragraph (5) (c), a supplying of records of a musical work shall be disregarded if the supplying was done otherwise than by, or with the licence of, the owner of the copyright in the work.

Provisions relating to cinematograph films

110. (1) Where the visual images forming part of a cinematograph film consist wholly or principally of images that, at the time when they were first embodied in an article or thing, were means of communicating news, the copyright in the film is not infringed by the causing of the film to be seen or heard, or to be both seen and heard, in public after the expiration of 50 years after the expiration of the calendar year in which the principal events depicted in the film occurred.

(2) Where, by virtue of this Part, copyright has subsisted in a cinematograph film, a person who, after that copyright has expired, causes the film to be seen or heard, or to be seen and heard, in public does not, by so doing, infringe any copyright subsisting by virtue of Part III in a literary, dramatic, musical or artistic work.

(3) Where the sounds that are embodied in a sound-track associated with the visual images forming part of a cinematograph film are also embodied in a record, other than such a sound-track or a record derived directly or indirectly from such a sound-track, the copyright in the cinematograph film is not infringed by any use made of that record.

Copying of unpublished sound recordings and cinematograph films in libraries or archives

110A. Where, at a time more than 50 years after the time at which, or the expiration of the period during which, a sound recording or cinematograph film was made, copyright subsists in the sound recording or cinematograph film but:

(a) the sound recording or cinematograph film has not been published; and

(b) a record embodying the sound recording, or a copy of the cinematograph film, is kept in the collection of a library or archives where it is, subject to any regulations governing that collection, accessible to the public;

the copyright in the sound recording or cinematograph film and in any work or other subject-matter included in the sound recording or cinematograph film is not infringed:

(c) by the making of a copy of the sound recording or cinematograph film by a person for the purpose of research or study or with a view to publication; or

(d) by the making of a copy of the sound recording or cinematograph film by or on behalf of the officer in charge of the library or archives, if the copy is supplied to a person who satisfies the officer that he or she requires the copy for the purpose of research or study or with a view to publication and that he or she will not use it for any other purpose.

Copying of sound recordings and cinematograph films for preservation and other purposes

110B. (1) Subject to subsection (3), where a copy of a sound recording, being a sound recording that forms, or formed, part of the collection of a library or archives, is made by or on behalf of the officer in charge of the library or archives:

(a) if the sound recording is held in the collection in the form of a first record—for the purpose of preserving the record against loss or deterioration or for the purpose of research that is being, or is to be, carried out at the library or archives in which the record is held or at another library or archives;

(b) if the sound recording is held in the collection in a published form but has been damaged or has deteriorated—for the purpose of replacing the sound recording; or

(c) if the sound recording has been held in the collection in a published form but has been lost or stolen—for the purpose of replacing the sound recording;

the making of the copy does not infringe copyright in the sound recording or in any work or other subject-matter included in the sound recording.

(2) Subject to subsection (3), where a copy of a cinematograph film, being a cinematograph film that forms, or formed, part of the collection of a library or archives, is made by or on behalf of the officer in charge of the library or archives:

(a) if the cinematograph film is held in the collection in the form of a first copy—for the purpose of preserving the copy against loss or deterioration or for the purpose of research that is being, or is to be, carried out at the library or archives in which the copy is held or at another library or archives;

(b) if the cinematograph film is held in the collection in a published form but has been damaged or has deteriorated—for the purpose of replacing the cinematograph film; or

(c) if the cinematograph film has been held in the collection in a published form but has been lost or stolen—for the purpose of replacing the cinematograph film;

the making of the copy does not infringe copyright in the cinematograph film or in any work or other subject-matter included in the cinematograph film.

(3) Subsection (1) does not apply in relation to a sound recording, and subsection (2) does not apply in relation to a cinematograph film, held in a published form in the collection of a library or archives unless an authorised officer of the library or archives has, after reasonable investigation, made a declaration stating that he or she is satisfied that a copy (not being a second-hand copy) of the sound recording or cinematograph film, as the case may be, cannot be obtained within a reasonable time at an ordinary commercial price.

(4) Where a copy of an unpublished sound recording or an unpublished cinematograph film is made under subsection (1) or (2) by or on behalf of the officer in charge of a library or archives for the purpose of research that is being, or is to be, carried out at another library or archives, the supply of the copy by or on behalf of the officer to the other library or archives does not, for any purpose of this Act, constitute the publication of the sound recording or cinematograph film or of any work or other subject-matter included in the sound recording or cinematograph film.

Filming or recording broadcasts for private and domestic use

111. (1) The copyright in a television broadcast in so far as it consists of visual images is not infringed by the making of a cinematograph film of the broadcast, or a copy of such a film, for the private and domestic use of the person by whom it is made.

(2) The copyright in a sound broadcast, or in a television broadcast in so far as it consists of sounds, is not infringed by the making of a sound recording of the broadcast, or a copy of such a sound recording, for the private and domestic use of the person by whom it is made.

(3) For the purposes of this section, a cinematograph film or a copy of such a film, or a sound recording or a copy of such a sound recording, shall be deemed to be made otherwise than for the private and domestic use of the person by whom it is made if it is made for the purpose of:

(a) selling a copy of the film or sound recording, letting it for hire, or by way of trade offering or exposing it for sale or hire;

(b) distributing a copy of the film or sound recording, whether for the purpose of trade or otherwise;

(c) by way of trade exhibiting a copy of the film or sound recording in public;

(d) broadcasting the film or recording; or

(e) causing the film or recording to be seen or heard in public.

Reproductions of editions of work

112.[4] The copyright in a published edition of a work or works is not infringed by the making of a reproduction of the whole or a part of that edition if that reproduction is made in the course of:

(a) where the edition contains one work only:

(i) a dealing with that work, being a dealing that does not, by virtue of section 40, 41, 42, 43 or 44, infringe copyright in that work; or

(ii) the making of a copy (including a handicapped reader's copy or an intellectually handicapped person's copy) of the whole or a part of that work, being a copy the making of which does not, by virtue of section 49, 50, 51A, 53A, 53B, 53D, 182A or 200A, infringe copyright in that work; or

(b) where the edition contains more than one work:

(i) a dealing with one of those works or dealings with some or all of those works, being a dealing that does not, or dealings that do not, by virtue of section 40, 41, 42, 43 or 44, infringe copyright in that work or those works; or

(ii) the making of a copy (including a handicapped reader's copy or an intellectually handicapped person's copy) of the whole or a part of one of those works or the making of copies (including handicapped readers' copies or intellectually handicapped persons' copies) of the whole or parts of some or all of those works, being a copy the making of which does not, or copies the making of which do not, by virtue of section 49, 50, 51A, 53A, 53B, 53D, 182A or 200A, infringe copyright in that work or in those works.

Division 7—Miscellaneous

Copyrights to subsist independently

113. (1) Subject to subsection 110 (2), where copyright subsists in any subject-matter by virtue of this Part, nothing in this Part shall be taken to affect the operation of Part III in relation to any literary, dramatic, musical or artistic work from which that subject-matter is wholly or partly derived, and any copyright subsisting by virtue of this Part is in addition to, and independent of, any copyright subsisting by virtue of Part III.

(2) The subsistence of copyright under any provision of this Part does not affect the operation of any other provision of this Part under which copyright can subsist.

PART V—REMEDIES FOR INFRINGEMENTS OF COPYRIGHT

Division 1—Preliminary

Interpretation

114. (1) In this Part, **"action"** means a proceeding of a civil nature between parties, and includes a counterclaim.

(2) In the application of this Part in relation to a counterclaim, references to the plaintiff and to the defendant shall be read as references to the defendant and to the plaintiff, respectively.

Division 2—Actions by Owner of Copyright

Actions for infringement

115. (1) Subject to this Act, the owner of a copyright may bring an action for an infringement of the copyright.

(2) Subject to this Act, the relief that a court may grant in an action for an infringement of copyright includes an injunction (subject to such terms, if any, as the court thinks fit) and either damages or an account of profits.

(3) Where, in an action for infringement of copyright, it is established that an infringement was committed but it is also established that, at the time of the infringement, the defendant was not aware, and had no reasonable grounds for suspecting, that the act constituting the infringement was an infringement of the copyright, the plaintiff is not entitled under this section to any damages against the

defendant in respect of the infringement, but is entitled to an account of profits in respect of the infringement whether any other relief is granted under this section or not.

(4) Where, in an action under this section:

(a) an infringement of copyright is established; and

(b) the court is satisfied that it is proper to do so, having regard to:

(i) the flagrancy of the infringement;

(ii) any benefit shown to have accrued to the defendant by reason of the infringement; and

(iii) all other relevant matters;

the court may, in assessing damages for the infringement, award such additional damages as it considers appropriate in the circumstances.

Rights of owner of copyright in respect of infringing copies

116. (1) Subject to this Act, the owner of the copyright in a work or other subject-matter is entitled in respect of any infringing copy, or of any plate used or intended to be used for making infringing copies, to the rights and remedies, by way of an action for conversion or detention, to which he would be entitled if he were the owner of the copy or plate and had been the owner of the copy or plate since the time when it was made.

(2) A plaintiff is not entitled by virtue of this section to any damages or to any other pecuniary remedy, other than costs, if it is established that, at the time of the conversion or detention:

(a) the defendant was not aware, and had no reasonable grounds for suspecting, that copyright subsisted in the work or other subject-matter to which the action relates;

(b) where the articles converted or detained were infringing copies—the defendant believed, and had reasonable grounds for believing, that they were not infringing copies; or

(c) where an article converted or detained was a plate used or intended to be used for making articles—the defendant believed, and had reasonable grounds for believing, that the articles so made or intended to be made were not or would not be, as the case may be, infringing copies.

Division 3—Proceedings where Copyright is subject to Exclusive Licence

Interpretation

117. In this Division:

"if the licence had been an assignment" means if, instead of the licence, there had been granted (subject to conditions corresponding as nearly as practicable with those subject to which the licence was granted) an assignment of the copyright in respect of its application to the doing, at the places and times authorized by the licence, of the acts so authorized;

"the other party" means:

(a) in relation to the owner of the copyright—the exclusive licensee; and

(b) in relation to the exclusive licensee—the owner of the copyright.

Application

118. This Division applies to proceedings in relation to a copyright in respect of which an exclusive licence has been granted and is in force at the time of the events to which the proceedings relate.

Rights of exclusive licensee

119. Subject to the succeeding sections of this Division:

(a) except against the owner of the copyright, the exclusive licensee has the same rights of action as he would have, and is entitled to the same remedies as he would be entitled to, by virtue of section 115 if the licence had been an assignment, and those rights and remedies are concurrent with the rights and remedies of the owner of the copyright under that section;

(b) except against the owner of the copyright, the exclusive licensee has the same rights of action as he would have, and is entitled to the same remedies as he would be entitled to, by virtue of section 116 if the licence had been an assignment; and

(c) the owner of the copyright does not have any rights of action that he would not have, and is not entitled to any remedies that he would not be entitled to, by virtue of section 116 if the licence had been an assignment.

Joinder of owner or exclusive licensee as a party

120. (1) Where:

(a) an action is brought by the owner of the copyright or by the exclusive licensee; and

(b) the action, in so far as it is brought under section 115, relates, in whole or in part, to an infringement in respect of which the owner and the licensee have concurrent rights of action under that section;

the owner or licensee, as the case may be, is not entitled, except with the leave of the court, to proceed with the action, in so far as it is brought under that section and relates to that infringement, unless the other party is joined as a plaintiff in the action or added as a defendant.

(2) This section does not affect the granting of an interlocutory injunction on the application of the owner of the copyright or of the exclusive licensee.

Defences available against exclusive licensee

121. In an action brought by the exclusive licensee by virtue of this Division, a defence under this Act that would have been available to a defendant in the action if the action had been brought by the owner of the copyright is available to that defendant as against the exclusive licensee.

Assessment of damages where exclusive licence granted

122. Where an action to which section 120 applies is brought and the owner of the copyright and the exclusive licensee are not both plaintiffs in the action, the court, in assessing damages in respect of an infringement of a kind referred to in that section, shall:

(a) if the plaintiff is the exclusive licensee—take into account any liabilities, in respect of royalties or otherwise, to which the licence is subject; and

(b) whether the plaintiff is the owner of the copyright or the exclusive licensee—take into account any pecuniary remedy already awarded to the other party under section 115 in respect of that infringement, or any right of action exercisable by the other party under that section in respect of that infringement, as the case requires.

Apportionment of profits between owner and exclusive licensee

123. Where:

(a) an action, in so far as it is brought under section 115, relates, in whole or in part, to an infringement in respect of which the owner of the copyright and the exclusive licensee have concurrent rights of action under that section; and

(b) in that action, whether the owner of the copyright and the exclusive licensee are both parties or not, an account of profits is directed to be taken in respect of that infringement;

then, subject to any agreement of which the court is aware by which the application of those profits is determined as between the owner of the copyright and the exclusive licensee, the court shall apportion the profits between them in such a manner as the court considers just and shall give such directions as the court considers appropriate for giving effect to that apportionment.

Separate actions in relation to the same infringement

124. In an action brought by the owner of the copyright or by the exclusive licensee:

(a) a judgment or order for the payment of damages in respect of an infringement of copyright shall not be given or made under section 115 if a final judgment or order has been given or made in favour of the other party directing an account of profits under that section in respect of the same infringement; and

(b) a judgment or order for an account of profits in respect of an infringement of copyright shall not be given or made under that section if a final judgment or order has been given or made in favour of the other party awarding damages or directing an account of profits under that section in respect of the same infringement.

Liability for costs

125. Where, in an action to which section 120 applies, whether brought by the owner of the copyright or by the exclusive licensee, the other party is not joined as a plaintiff (either at the commencement of the action or at a later time), but is added as a defendant, the other party is not liable for any costs in the action unless he enters an appearance and takes part in the proceedings.

Division 4—Proof of facts in civil actions

Presumptions as to subsistence and ownership of copyright

126. In an action brought by virtue of this Part:

(a) copyright shall be presumed to subsist in the work or other subject-matter to which the action relates if the defendant does not put in issue the question whether copyright subsists in the work or other subject-matter; and

(b) where the subsistence of the copyright is established—the plaintiff shall be presumed to be the owner of the copyright if he claims to be the owner of the copyright and the defendant does not put in issue the question of his ownership.

Presumptions in relation to authorship of work

127. (1) Where a name purporting to be that of the author of a literary, dramatic, musical or artistic work appeared on copies of the work as published or a name purporting to be that of the author of an artistic work appeared on the work when it was made, the person whose name so appeared, if it was his true name or a name by which he was commonly known, shall, in an action brought by virtue of this Part, be presumed, unless the contrary is established, to be the author of the work and to have made the work in circumstances to which subsections 35 (4), (5) and (6) do not apply.

(2) Where a work is alleged to be a work of joint authorship, the last preceding subsection applies in relation to each person alleged to be one of the authors of the work as if references in that subsection to the author were references to one of the authors.

(3) Where, in an action brought by virtue of this Part in relation to a photograph:

(a) it is established that, at the time when the photograph was taken, a person was the owner of the material on which the photograph was taken or, if the ownership of that material as at that time is not established, that a person was the owner of the apparatus by which the photograph was taken; or

(b) neither the ownership as at the time when the photograph was taken of the material on which it was taken nor the ownership as at that time of the apparatus by which it was taken is established but it is established that, at the time of the death of a person, the photograph was owned by the person or, if the ownership of the photograph as at that time is not established, was in the possession or custody of the person;

the person shall be presumed, unless the contrary is established, to have been the person who took the photograph.

Presumptions in relation to publisher of work

128. Where, in an action brought by virtue of this Part in relation to a literary, dramatic, musical or artistic work, the last preceding section does not apply, but it is established:

(a) that the work was first published in Australia and was so published during the period of 50 years that ended immediately before the commencement of the calendar year in which the action was brought; and

(b) that a name purporting to be that of the publisher appeared on copies of the work as first published;

then, unless the contrary is established, copyright shall be presumed to subsist in the work and the person whose name so appeared shall be presumed to have been the owner of that copyright at the time of the publication.

Presumptions where author has died

129. (1) Where, in an action brought by virtue of this Part in relation to a literary, dramatic, musical or artistic work, it is established that the author is dead:

(a) the work shall be presumed to be an original work unless the contrary is established; and

(b) if it is alleged by the plaintiff that a publication specified in the allegation was the first publication of the work, and that it took place in a country and on a date so specified—that publication shall be presumed, unless the contrary is established, to have been the first publication of the work, and to have taken place in that country and on that date.

(2) Where:

(a) a literary, dramatic, musical or artistic work has been published;

(b) the publication was anonymous or is alleged by the plaintiff to have been pseudonymous; and

(c) it is not established that the work has ever been published under the true name of the author, or under a name by which he was commonly known, or that the identity of the author is generally known or can be ascertained by reasonable inquiry;

paragraphs (1) (a) and (b) apply, in an action brought by virtue of this Part in relation to the work, in like manner as those paragraphs apply where it is established that the author is dead.

Evidence in relation to recordings

130. In an action brought by virtue of this Part in relation to copyright in a sound recording, if records embodying the recording or a part of the recording have been supplied (whether by sale or otherwise) to the public and, at the time when records embodying the recording or part of the recording were first so supplied, the records or their containers bore a label or other mark containing a statement:

(a) that a person specified on the label or mark was the maker of the recording;

(b) that the recording was first published in a year specified on the label or mark; or

(c) that the recording was first published in a country specified on the label or mark;

that label or mark is sufficient evidence of the facts so stated except in so far as the contrary is established.

Presumption in relation to maker of film

131. Where the name of a person appeared on copies of a cinematograph film as made available to the public in such a way as to imply that the person was the maker of the film and, in the case of a person other than a body corporate, that name was his true name or a name by which he was commonly known, that person shall, in an action brought by virtue of this Part, be presumed, unless the contrary is established, to be the maker of the film and to have made the film in circumstances to which subsection 98 (3) does not apply.

Division 4A—Jurisdiction and Appeals

Exercise of jurisdiction

131A. The jurisdiction of the Supreme Court of a State or Territory in an action under this Part shall be exercised by a single Judge of the Court.

Appeals

131B. (1) Subject to subsection (2), a decision of a court of a State or Territory (however constituted) under this Part is final and conclusive.

(2) An appeal lies from a decision of a court of a State or Territory under this Part:

(a) to the Federal Court of Australia; or

(b) by special leave of the High Court, to the High Court.

Jurisdiction of Federal Court of Australia

131C. Jurisdiction is conferred on the Federal Court of Australia with respect to actions under this Part.

Division 5—Offences and Summary Proceedings

Offences

132. (1) A person shall not, at a time when copyright subsists in a work:

(a) make an article for sale or hire;

(b) sell or let for hire, or by way of trade offer or expose for sale or hire, an article;

(c) by way of trade exhibit an article in public; or

(d) import an article into Australia for the purpose of:

(i) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;

(ii) distributing the article for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the owner of the copyright in the work; or

(iii) by way of trade exhibiting the article in public;

if the person knows, or ought reasonably to know, the article to be an infringing copy of the work.

(2) A person shall not, at a time when copyright subsists in a work, distribute:

(a) for the purpose of trade; or

(b) for any other purpose to an extent that affects prejudicially the owner of the copyright;

an article that the person knows, or ought reasonably to know, to be an infringing copy of the work.

(2A) A person shall not, at a time when copyright subsists in a work, have in his or her possession an article for the purpose of:

(a) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;

(b) distributing the article for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the owner of the copyright in the work; or

(c) by way of trade exhibiting the article in public;

if the person knows, or ought reasonably to know, the article to be an infringing copy of the work.

(3) A person shall not, at a time when copyright subsists in a work, make or have in his or her possession a plate that the person knows, or ought reasonably to know, is to be used for making infringing copies of the work.

(4) The preceding provisions of this section apply in relation to copyright subsisting in any subject-matter by virtue of Part IV in like manner as they apply in relation to copyright subsisting in a work by virtue of Part III.

(5) A person shall not cause a literary, dramatic or musical work to be performed in public at a place of public entertainment, if the person knows, or ought reasonably to know, that copyright subsists in the work and that the performance constitutes an infringement of the copyright.

(5AA) A person shall not cause:

(a) a sound recording to be heard in public at a place of public entertainment; or

(b) a cinematograph film, in so far as it consists of visual images, to be seen in public at a place of public entertainment or, in so far as it consists of sounds, to be heard in public at such a place;

if the person knows, or ought reasonably to know, that copyright subsists in the sound recording or the cinematograph film and that the copyright will thereby be infringed.

(5A) For the purposes of this section, a transmission by a person of a computer program that is received and recorded so as to result in the creation of an infringing copy of the computer program shall be deemed to be a distribution by the person of that infringing copy.

(6) This section applies only in respect of acts done in Australia.

(7) Prosecutions for offences against this section may be brought in the Federal Court of Australia or in any other court of competent jurisdiction.

(8) Jurisdiction is conferred on the Federal Court of Australia to hear and determine prosecutions for offences against this section.

(9) In this section, **"place of public entertainment"** includes any premises that are occupied principally for purposes other than public entertainment but are from time to time made available for hire for purposes of public entertainment.

Penalties

133. **(1)** A contravention by a person of subsection (1), (2) or (2A) of section 132 is an offence punishable on summary conviction by:

(a) if it is the first conviction of the person of an offence by reason of a contravention of that section and the article or each article to which the contravention relates is an infringing copy of a work or other subject-matter other than a cinematograph film—a fine not exceeding:

(i) if the person is a natural person—$500; or

(ii) if the person is a body corporate—$2,500;

for the article, or for each article, to which the offence relates;

(b) if it is the first conviction of the person of an offence by reason of a contravention of that section and the article or each article to which the contravention relates is an infringing copy of a cinematograph film;

(i) if the person is a natural person—a fine not exceeding $1,500 for the article, or for each article, to which the offence relates or imprisonment for a period not exceeding 2 years, or both; or

(ii) if the person is a body corporate—a fine not exceeding $7,500 for the article, or for each article, to which the offence relates;

(c) if it is not the first conviction of the person of an offence by reason of a contravention of that section and the article or each article to which the contravention relates is an infringing copy of a work or other subject-matter other than a cinematograph film:

(i) if the person is a natural person—a fine not exceeding $500 for the article, or for each article, to which the offence relates or imprisonment for a period not exceeding 6 months, or both; or

(ii) if the person is a body corporate—a fine not exceeding $5,000 for the article, or for each article, to which the offence relates; and

(d) if it is not the first conviction of the person of an offence by reason of a contravention of that section and the article or each article to which the contravention relates is an infringing copy of a cinematograph film:

(i) if the person is a natural person—a fine not exceeding $1,500 for the article, or for each article, to which the offence relates or imprisonment for a period not exceeding 5 years, or both; or

(ii) if the person is a body corporate—a fine not exceeding $15,000 for the article, or for each article, to which the offence relates.

(2) Where a fine is imposed upon a person by virtue of subsection (1) in relation to an offence committed by the person and there is more than one article to which the offence relates:

(a) where the person is prosecuted before the Federal Court of Australia—the fine imposed in respect of that offence shall not exceed:

(i) if the person is a natural person—$50,000; or

(ii) if the person is a body corporate—$250,000; and

(b) where the person is prosecuted before any other court—the fine imposed in respect of that offence shall not exceed:

(i) if the person is a natural person—$10,000; or

(ii) if the person is a body corporate—$50,000.

(3) A contravention by a person of subsection (3), (5) or (5AA) of section 132 is an offence punishable upon summary conviction by:

(a) where it is the first conviction of the person of an offence by reason of a contravention of that section—a fine not exceeding:

(i) if the person is a natural person—$1,500; or

(ii) if the person is a body corporate—$7,500; and

(b) in any other case:

(i) if the person is a natural person—a fine not exceeding $1,500 or imprisonment for a period not exceeding 6 months, or both; or

(ii) if the person is a body corporate—a fine not exceeding $15,000.

(4) The court before which a person is charged with an offence by reason of a contravention of section 132 may, whether the person is convicted of the offence or not, order that any article in the possession of the person that appears to the court to be an infringing copy, or to be a plate or recording equipment used or intended to be used for making infringing copies, be destroyed or delivered up to the owner of the copyright concerned or otherwise dealt with in such manner as the court thinks fit.

Advertisement for supply of infringing copies of computer programs

133A. (1) Where:

(a) a person, by any means, publishes, or causes to be published, in Australia an advertisement for the supply in Australia (whether from within or outside Australia) of a copy of a computer program; and

(b) the person knows, or ought reasonably to know, that the copy is, or will be, an infringing copy;

the person is guilty of an offence punishable upon conviction by:

(c) where it is the first conviction of the person of an offence against this subsection (including this subsection as in force before the commencement of section 17 of the *Copyright Amendment Act 1986*):

(i) if the person is a natural person—a fine not exceeding $1,500; or

(ii) if the person is a body corporate—a fine not exceeding $7,500; and

(d) in any other case:

(i) if the person is a natural person—a fine not exceeding $1,500 or imprisonment for a period not exceeding 6 months, or both; or

(ii) if the person is a body corporate—a fine not exceeding $15,000.

(2) For the purposes of this section, a transmission of a computer program that, when received and recorded, will result in the creation of a copy of the computer program shall be deemed to constitute the supply of a copy of the computer program at the place where the copy will be created.

(3) Prosecutions for offences against this section may be brought in the Federal Court of Australia or in any other court of competent jurisdiction.

Division 6—Miscellaneous

Limitation of actions in respect of infringement of copyright

134. An action shall not be brought for an infringement of copyright or in respect of the conversion or detention of an infringing copy, or of a plate used or intended to be used for making infringing copies, after the expiration of six years from the time when the infringement took place or the infringing copy or plate was made, as the case may be.

Affidavit evidence of subsistence and ownership of copyright

134A. (1) At the trial of a cause, being:

(a) an action brought by virtue of this Part; or

(b) a prosecution for an offence against this Act;

proof of either or both of the following matters:

(c) the subsistence, at a particular time, of copyright in the work or other subject-matter to which the action or prosecution relates;

(d) the ownership, at a particular time, of the copyright in that work or other subject-matter;

may, subject to subsection (2), be given by affidavit.

(2) If a party to a cause referred to in subsection (1) desires in good faith that the person who made an affidavit referred to in that subsection that is proposed to be used in the cause be cross-examined with respect to the matters in the affidavit, the affidavit may not be used in the cause unless the person appears as a witness for such cross-examination or the court in which the cause is being tried, in its discretion, permits the affidavit to be used without the person so appearing.

Restriction of importation of printed copies of works

135. (1) In this section:

(a) a reference to Australia does not include a reference to the external Territories; and

(b) a reference to importation into Australia does not include a reference to importation from such a Territory.

(2) The owner of the copyright in a published literary, dramatic or musical work may give notice in writing to the Comptroller-General of Customs (in this section referred to as "the Comptroller-General") stating:

(a) that he is the owner of the copyright in the work; and

(b) that he objects to the importation into Australia, during a period specified in the notice, of copies of the work to which this section applies.

(3) A notice under the last preceding subsection is of no effect unless the period specified in the notice does not exceed 5 years and does not extend beyond the end of the period for which the copyright in the work to which the notice relates is to subsist.

(4) This section applies, in relation to a work, to any printed copy of the work made outside Australia and the external Territories the making of which would, if it had been made in Australia by the person who imported it into Australia, have constituted an infringement of the copyright in the work.

(5) Where a notice has been given under this section in respect of a work and has not been withdrawn, the importation of copies of the work to which this section applies into Australia for the purpose of:

(a) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the copies;

(b) distributing the copies:

(i) for the purpose of trade; or

(ii) for any other purpose to an extent that will affect prejudicially the owner of the copyright in the work; or

(c) by way of trade exhibiting the copies in public;

is prohibited and any such copies, if imported into Australia for any such purpose, may be seized as forfeited to the Commonwealth.

(6) Subject to the regulations, the Comptroller-General, or on appeal from him the Minister for Industry, Technology and Commerce, may permit copies of a work that are liable to be or have been seized as forfeited under this section to be delivered to the owner or importer upon security being given to the satisfaction of the Comptroller-General that the copies will be forthwith exported from Australia.

(7) The provisions of the *Customs Act 1901-1968* apply to the seizure and forfeiture under this section of copies of a work to which this section applies as if the copies were prohibited imports for the purposes of that Act.

(8) The regulations may make provision for or in relation to:

(a) the forms of notices under this section;

(b) the times at which, and the manner in which, notices are to be given;

(c) the giving of information and evidence to the Comptroller-General;

(d) the payment of fees and the giving of security to the Comptroller-General in respect of any liability or expense that may be incurred by him as a result of the seizure of any copy of a work to which a notice under this section relates; and

(e) indemnifying the Comptroller-General against any such liability or expense.

(9) The regulations may contain provisions similar to the provisions of this section in relation to the importation into external Territories (other than importation from Australia or from another such Territory) of printed copies of published literary, dramatic or musical works.

PART VA—COPYING OF BROADCASTS BY EDUCATIONAL AND OTHER INSTITUTIONS

Division 1— Preliminary

Interpretation

135A. In this Part:

"administering body" means a body administering an institution;

"broadcast" means a sound broadcast or a television broadcast;

"collecting society" means the body that is, for the time being, declared to be the collecting society under section 135P;

"institution" means:

(a) an educational institution; or

(b) an institution assisting intellectually handicapped persons;

"notice holder" means the person who is, for the time being, appointed to be the notice holder under section 135T;

"preview copy" means a copy of a broadcast referred to in section 135F;

"records notice" means a remuneration notice specifying that the amount of equitable remuneration payable to the collecting society by the administering body giving the notice is to be assessed on the basis of a records system;

"relevant copyright owner" means the owner of the copyright in a work, a sound recording or a cinematograph film;

"remuneration notice" means a notice referred to in subsection 135G (1);

"rules" , in relation to the collecting society, means the provisions of the memorandum and articles of association of the society;

"sampling notice" means a remuneration notice specifying that the amount of equitable remuneration payable to the collecting society by the administering body giving the notice is to be assessed on the basis of a sampling system;

"student" , in relation to an institution, has the meaning given by section 135C.

Copies of broadcasts

135B. In this Part:

(a) a reference to a copy of a broadcast is a reference to a record embodying a sound recording of the broadcast or a copy of a cinematograph film of the broadcast; and

(b) a reference to the making of a copy of a broadcast is a reference to the making of a copy of the whole or a part of the broadcast.

Student of an institution

135C. In this Part, a reference to a student of an institution is:

(a) in the case of an educational institution—a reference to a student of the institution; and

(b) in the case of an institution assisting intellectually handicapped persons—a reference to an intellectually handicapped person to whom the institution provides assistance.

Operation of collecting society rules

135D. This Part applies to the collecting society despite anything in the rules of the society but nothing in this Part affects those rules so far as they can operate together with this Part.

Division 2—Copying of broadcasts

Copying of broadcasts by educational institutions etc.

135E. **(1)** The copyright in a broadcast, or in any work, sound recording or cinematograph film included in a broadcast, is not infringed by the making, by or on behalf of an administering body, of a copy of the broadcast if:

(a) a remuneration notice, given by or on behalf of the administering body to the collecting society, is in force;

(b) where the copy is made by, or on behalf of, a body administering an educational institution—the copy is made solely for the educational purposes of the institution or of another educational institution;

(c) where the copy is made by, or on behalf of, a body administering an institution assisting intellectually handicapped persons—the copy is made solely for the purposes of use in the provision of assistance to intellectually handicapped persons by the institution or by another similar institution; and

(d) the administering body complies with subsection 135K (1) or (3), as the case requires, in relation to the copy.

(2) Where a copy of a broadcast referred to in subsection (1):

(a) is used for a purpose other than a purpose referred to in paragraph (1) (b) or (c);

(b) is made, sold or otherwise supplied for a financial profit; or

(c) is given to an administering body when there is not in force a remuneration notice given by that body to the collecting society;

with the consent of the administering body by whom, or on whose behalf, it is made, subsection (1) does not apply, and shall be taken never to have applied, to the making of the copy.

Preview copies

135F. (1) The copyright in a broadcast, or in any work, sound recording or cinematograph film included in a broadcast, is not infringed by the making of a preview copy of the broadcast.

(2) A copy of a broadcast is a preview copy if:

(a) the copy is made by, or on behalf of, an administering body;

(b) a remuneration notice, given by, or on behalf of, the administering body to the collecting society, is in force; and

(c) the copy is made and used solely for the purpose of enabling that body to decide whether or not the copy should be retained for the educational purposes of the institution administered by it, or for use in the provision of assistance to intellectually handicapped persons by the institution administered by it, as the case may be.

(3) Subject to this section, a preview copy shall be destroyed within 14 days after the day on which it was made (in this section called **"the preview period"**).

(4) A preview copy may be retained after the end of the preview period if:

(a) where the relevant institution is an educational institution —the copy is retained solely for the educational purposes of the institution; or

(b) where the relevant institution is an institution assisting intellectually handicapped persons—the copy is retained solely for the purpose of use in the provision of assistance to such persons by the institution.

(5) Where a preview copy is retained under subsection (4), subsection 135E (1) applies in relation to the copy after the end of the preview period as if the copy had been made solely for a purpose referred to in paragraph 135E (1) (b) or (c).

(6) Where a preview copy is neither destroyed within the preview period nor retained under subsection (4), subsection (1) does not apply, and shall be taken never to have applied, to the making of the copy.

Remuneration notices

135G. (1) An administering body may, by notice in writing given to the collecting society by it or on its behalf, undertake to pay equitable remuneration to the society for copies of broadcasts made by it, or on its behalf, being copies made while the notice is in force.

(2) A remuneration notice shall specify whether the amount of equitable remuneration is to be assessed on the basis of a records system or a sampling system.

(3) A remuneration notice comes into force on the day on which it is given to the collecting society, or on such later day as is specified in the notice, and remains in force until it is revoked.

Records notices

135H. (1) Where a records notice is given by, or on behalf of, an administering body, the amount of equitable remuneration payable to the collecting society by the administering body for each copy of a broadcast made by, or on behalf of, the administering body while the notice is in force is such amount as is determined by agreement between the administering body and the collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.

(2) For the purposes of subsection (1), different amounts may be determined (whether by agreement or by the Copyright Tribunal) in relation to:

(a) different classes of works, sound recordings or cinematograph films included in broadcasts;

(b) different institutions administered by the administering body; or

(c) different classes of students of an institution administered by the administering body.

Sampling notices

135J. (1) Where a sampling notice is given by, or on behalf of, an administering body, the amount of equitable remuneration payable to the collecting society by the administering body for copies of broadcasts made by it, or on its behalf, while the notice is in force is such annual amount per student of the institution concerned as is deter-

mined by agreement between the administering body and the collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.

(2) The annual amount referred to in subsection (1) shall be determined (whether by agreement or by the Copyright Tribunal) having regard to the extent to which copies of broadcasts are made by, or on behalf of, the administering body in a particular period and to such other matters (if any) as are relevant in the circumstances.

(3) The extent of copying of broadcasts and any other matters that are necessary or convenient to be assessed by use of a sampling system, shall be assessed by use of a sampling system determined by agreement between the administering body and the collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.

(4) For the purposes of subsection (1), different annual amounts may be determined (whether by agreement or by the Copyright Tribunal) in relation to different institutions administered by the administering body and different classes of students of an institution administered by it.

(5) Where:

(a) a sampling notice is given by, or on behalf of, an administering body to the collecting society; and

(b) during any period, the administering body does not comply with one or more of the requirements of the sampling system determined under this section in relation to the notice;

subsections 135E (1) and 135F (1) do not apply to any copy of a broadcast made by, or on behalf of, the administering body during that period.

Marking and record keeping requirements

135K. (1) Where a records notice is given by, or on behalf of, an administering body, the body shall:

(a) mark, or cause to be marked, in accordance with the regulations, each copy of a broadcast made by it, or on its behalf, while the notice is in force, or any container in which such a copy is kept;

(b) make, or cause to be made, a record of each copying of a broadcast carried out by it, or on its behalf, while the notice is in force, being a record containing such particulars as are prescribed;

(c) retain that record for the prescribed retention period after the making of the copy to which it relates; and

(d) send copies of all such records to the collecting society in accordance with the regulations.

(2) For the purposes of subsection (1), a record of the copying of a broadcast:

(a) may be kept in writing or in any other manner prescribed in the regulations; and

(b) if it is kept in writing, shall be in accordance with the prescribed form.

(3) Where a sampling notice is given by, or on behalf of, an administering body, the body shall mark, or cause to be marked, in accordance with the regulations, each copy of a broadcast made by it, or on its behalf, while the notice is in force, or any container in which such a copy is kept.

Inspection of records etc.

135L. (1) Where a remuneration notice is or has been in force, the collecting society may, in writing, notify the administering body which gave the notice that the society wishes, on a day specified in the notice, being an ordinary working day of the institution specified in the notice not earlier than 7 days after the day on which the notice is given, to do such of the following things as are specified in the notice:

(a) assess the amount of copying of broadcasts carried out at the premises of the institution;

(b) inspect all the relevant records held at those premises that relate to the making of copies of broadcasts in reliance on section 135E;

(c) inspect such other records held at those premises as are relevant to the assessment of the amount of equitable remuneration payable by the administering body to the society.

(2) Where the collecting society gives a notice, a person authorised in writing by the society may, during the ordinary working hours of the relevant institution on the day specified in the notice (but not before 10 a.m. or after 3 p.m.), carry out the assessment, or inspect the records, to which the notice relates and, for that purpose, may enter the premises of the institution.

(3) An administering body shall take all reasonable precautions, and exercise reasonable diligence, to ensure that a person referred to in subsection (2) who attends at the premises of an institution administered by the body for the purpose of exercising the powers conferred by that subsection is provided with all reasonable and necessary facilities and assistance for the effective exercise of those powers.

(4) An administering body that contravenes subsection (3) is guilty of an offence punishable, on conviction, by a fine not exceeding $500.

Revocation of remuneration notice

135M. A remuneration notice may be revoked at any time by the relevant administering body by notice in writing given to the collecting society, and the revocation takes effect at the end of 3 months after the date of the notice or on such later day as is specified in the notice.

Request for payment of equitable remuneration

135N. **(1)** Subject to this section, where a remuneration notice is or has been in force, the collecting society may, by notice in writing given to the administering body which gave the notice, request the body to pay to the society, within a reasonable time after the date of the notice, the amount of equitable remuneration specified in the notice, being an amount payable under section 135H or 135J, as the case may be, for copies of broadcasts made by, or on behalf of, the body while the remuneration notice is or was in force.

(2) Where the remuneration notice is a sampling notice, the collecting society shall not make a request under this section more than once in each period of 12 months during which the notice is in force.

(3) If an amount specified in a request under subsection (1) is not paid in accordance with the request, it may be recovered from the relevant administering body by the collecting society in the Federal Court of Australia or any other court of competent jurisdiction as a debt due to the society.

(4) Jurisdiction is conferred on the Federal Court of Australia with respect to actions under subsection (3).

Division 3—The collecting society

The collecting society

135P. **(1)** Subject to this section, the Attorney-General may, by notice in the *Gazette*, declare a body named in the notice to be the collecting society.

(2) The Attorney-General shall not name more than one body in a declaration and shall not make a declaration while an earlier declaration is in force.

(3) The Attorney-General shall not declare a body to be the collecting society unless:

(a) it is a company limited by guarantee and incorporated under a law in force in a State or Territory relating to companies;

(b) all relevant copyright owners, or their agents, are entitled to become its members;

(c) its rules prohibit the payment of dividends to its members; and

(d) its rules contain such other provisions as are prescribed, being provisions necessary to ensure that the interests of the collecting society's members who are relevant copyright owners or their agents are protected adequately, including, in particular, provisions about:

(i) the collection of amounts of equitable remuneration payable by administrative bodies under section 135H or 135J;

(ii) the payment of the administrative costs of the society out of amounts collected by it;

(iii) the distribution of amounts collected by it;

(iv) the holding on trust by the society of amounts for relevant copyright owners who are not its members; and

(v) access to records of the society by its members.

Revocation of declaration

135Q. The Attorney-General may, by notice in the *Gazette*, revoke the declaration of a body as the collecting society if satisfied that the body:

(a) is not functioning adequately as the collecting society;

(b) is not acting in accordance with its rules or in the best interests of those of its members who are relevant copyright owners or their agents;

(c) has altered its rules so that they no longer comply with paragraphs 135P (3) (c) and (d); or

(d) has refused or failed, without reasonable excuse, to comply with section 135R or 135S.

Annual report and accounts

135R. (1) The collecting society shall, as soon as practicable after the end of each financial year, prepare a report of its operations during that financial year and send a copy of the report to the Attorney-General.

(2) The Attorney-General shall cause a copy of the report sent to the Attorney-General under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Attorney-General.

(3) The society shall keep accounting records correctly recording and explaining the transactions of the society (including any transactions as trustee) and the financial position of the society.

(4) The accounting records shall be kept in such a manner as will enable true and fair accounts of the society to be prepared from time to time and those accounts to be conveniently and properly audited.

(5) The society shall, as soon as practicable after the end of each financial year, cause its accounts to be audited by an auditor who is not a member of the society, and shall send to the Attorney-General a copy of its accounts as so audited.

(6) The society shall give its members reasonable access to copies of all reports and audited accounts prepared under this section.

(7) This section does not affect any obligations of the society relating to the preparation and lodging of annual returns or accounts under the law under which it is incorporated.

Amendment of rules

135S. The collecting society shall, within 21 days after it alters its rules, send a copy of the rules as so altered to the Attorney-General, together with a statement setting out the effect of the alteration and the reasons why it was made.

Division 4—Interim copying

Appointment of notice holder

135T. The Attorney-General may, by notice in the *Gazette*, appoint a person to be the notice holder for the purposes of this Division.

Copying before declaration of collecting society

135U. (1) The copyright in a broadcast, or in any work, sound recording or cinematograph film included in a broadcast, is not infringed by the making, by or on behalf of an administering body, of a copy of the broadcast if:

(a) at the time the copy is made, the first collecting society has not been declared;

(b) a notice given by the administering body to the notice holder under subsection 135W (1) is in force;

(c) where the copy is made by, or on behalf of, a body administering an educational institution—the copy is made solely for the educational purposes of the institution or of another educational institution;

(d) where the copy is made by, or on behalf of a body administering an institution assisting intellectually handicapped persons—the copy is made solely for the purposes of use in the provision of assistance to intellectually handicapped persons by the institution or by another similar institution; and

(e) the administering body complies with paragraphs 135K (1) (a), (b) and (c) or subsection 135K (3), in so far as those provisions apply.

(2) Where a copy of a broadcast referred to in subsection (1):

(a) is used for a purpose other than a purpose referred to in paragraph (1) (c) or (d);

(b) is made, sold or otherwise supplied for a financial profit; or

(c) is given to an administering body when there is not in force a notice given by that body to the notice holder under subsection 135W (1);

with the consent of the administering body by whom, or on whose behalf, it is made, subsection (1) does not apply, and shall be taken never to have applied, to the making of the copy.

Preview copies

135V. Section 135F applies to the making of preview copies of broadcasts before the first collecting society is declared as if:

(a) the reference in paragraph 135F (2) (b) to a remuneration notice given by an administering body to the collecting society were a reference to a notice under subsection 135W (1) given by the administering body to the notice holder; and

(b) the references in subsection 135F (5) to subsection 135E (1), and paragraphs 135E (1) (b) and (c), were references to subsection 135U (1), and paragraphs 135U (1) (c) and (d), respectively.

Notices by administering bodies

135W. (1) An administering body may at any time before the declaration of the first collecting society, by notice in writing given to the notice holder, undertake to pay equitable remuneration to the collecting society, when it is declared, for copies of broadcasts made by, or on behalf of, the administering body while the notice is in force.

(2) A notice shall specify whether the amount of equitable remuneration is to be assessed on the basis of a records system or a sampling system.

(3) A notice comes into force on the day on which it is given to the notice holder, or on such later day as is specified in the notice, and remains in force until it is revoked.

(4) A notice may be revoked at any time by the relevant administering body by notice in writing given to the notice holder, and the revocation takes effect on the date of the notice of revocation or on such later date as is specified in it.

Marking and record keeping requirements

135X. (1) Where an administering body gives a notice under subsection 135W (1) that specifies that the amount of equitable remuneration is to be assessed on the basis of a records system, paragraphs 135K (1) (a), (b) and (d) and subsection 135K (2) apply as if:

(a) the reference to the collecting society were a reference to the notice holder; and

(b) references to a records notice were references to the notice under subsection 135W (1).

(2) Where an administering body gives a notice under subsection 135W (1) that specifies that the amount of equitable remuneration is to be assessed on the basis of a sampling system, subsection 135K (3) applies as if:

(a) the reference to the collecting society were a reference to the notice holder; and

(b) references to a sampling notice were references to the notice under subsection 135W (1).

Effect of declaration of collecting society

135Y. (1) Where the first collecting society is declared, a notice given by an administering body to the notice holder under subsection 135W (1) and in force immediately before that declaration shall, on and after that declaration, be taken, for the purposes of this Part, to be a records notice or a sampling notice, as the case may be, given by that body to the collecting society, being a records notice or sampling notice that came into force on the day on which the notice came into force.

(2) Where a notice is to be taken under this section to be a records notice, the relevant administering body shall cause copies of all records made under paragraph 135K (1) (b) on or after the day on

which the notice is taken to have come into force to be sent to the collecting society within 21 days after the declaration of the collecting society.

Division 5—Miscellaneous

Relevant copyright owner may authorise copying

135Z. Nothing in this Part affects the right of the owner of the copyright in a broadcast, or in a work, sound recording or cinematograph film included in a broadcast, to grant a licence authorising an administering body to make, or cause to be made, a copy of the broadcast, work, sound recording or film without infringing that copyright.

Copyright not to vest in copier

135ZA. Despite any other provision of this Act, the making of a copy of a broadcast by, or on behalf of, an administering body that is not an infringement of copyright under this Part, does not vest copyright in any work or other subject-matter in any person.

PART VB—(sections 135ZB-135ZZ, 135ZZA-135ZZH)[4]

PART VC—USE OF BLANK TAPES FOR PRIVATE AND DOMESTIC COPYING

Division 1—Preliminary

Interpretation

135ZZJ. In this Part:

"blank tape" means a tape, other than an exempt tape, that is of a kind ordinarily purchased or hired for use for making copies of sound recordings, whether or not any sounds are embodied in the tape;

"collecting society" means the body that is, for the time being, declared to be the collecting society under section 135ZZU;

"distribute" means distribute by way of trade;

"eligible foreign country" means a foreign country declared by the regulations to be an eligible foreign country for the purposes of this Part;

"eligible sound recording" means a sound recording the maker of which was, at the time the recording was made:

(a) an Australian citizen, an Australian protected person, or a person resident in Australia;

(b) a body corporate incorporated under a law in force in a State or Territory relating to companies; or

(c) a citizen, national or resident of a foreign country, or a body corporate incorporated under a law of a foreign country, being a foreign country that was at that time, or afterwards became, an eligible foreign country;

"eligible work" means a literary, dramatic or musical work the author of which was, at the time the work was made:

(a) an Australian citizen, an Australian protected person or a person resident in Australia; or

(b) a citizen, national or resident of a foreign country, being a foreign country that was at that time, or afterwards became, an eligible foreign country;

"exempt body" means a body or organisation in respect of which a declaration is in force under section 135ZZT;

"exempt tape" means:

(a) a tape that has a normal playing time of 30 minutes or less;

(b) a second-hand tape;

(c) a microcassette of a kind ordinarily used for making sound recordings of dictated material;

(d) a tape of a kind known as open reel tape or reel-to-reel tape;

(e) a video tape; or

(f) a tape of a kind ordinarily used for storing computer data or programs;

"exemption number" means the number issued to an exempt body or a prescribed organisation under section 135ZZT;

"proclaimed day" means the day fixed by Proclamation for the purposes of this Part, being a day not earlier than the day on which the Copyright Tribunal first makes an order determining the amount referred to in subsection 135ZZN (2);

"quarter" means a quarter of a calendar year, being a quarter beginning on 1 January, 1 April, 1 July or 1 October;

"relevant copyright owner" means the owner of the copyright in an eligible sound recording or an eligible work;

"royalty" means the royalty payable for a blank tape under this Part;

"rules" , in relation to the collecting society, means the provisions of the memorandum and articles of association of the society;

"sell" means sell by wholesale or retail;

"vendor" means a person who, in the usual course of his or her business, sells, hires or otherwise distributes blank tapes.

Private and domestic use

135ZZK. For the purposes of this Part, a copy of a sound recording shall be taken not to have been made for the private and domestic use of the person who made it if it is made for the purpose of:

(a) selling the copy, letting it for hire, or by way of trade offering or exposing it for sale or hire;
(b) distributing the copy, whether for the purpose of trade or otherwise;
(c) by way of trade exhibiting the copy in public;
(d) broadcasting the recording; or
(e) causing the recording to be heard in public.

Operation of collecting society rules

135ZZL. This Part applies to the collecting society despite anything in the rules of the society but nothing in this Part affects those rules so far as they can operate together with this Part.

Division 2—Copying with blank tapes

Copying with blank tapes

135ZZM. **(1)** Copyright subsisting in a published sound recording, or in any work included in a published sound recording, is not infringed by making on private premises a copy of the sound recording if the copy is made on or after the proclaimed day on a blank tape for the private and domestic use of the person who makes it.

(2) Subsection (1) applies whether the blank tape was first sold, hired or otherwise distributed in Australia before or after the commencement of this section.

(3) Where a copy of a sound recording made in reliance on subsection (1) is used otherwise than for the private and domestic use of the person who made it, subsection (1) does not apply, and shall be taken never to have applied, to the making of the copy.

Division 3—Blank tape royalty

Blank tape royalty

135ZZN. **(1)** Subject to this Part, a royalty is payable for each blank tape first sold, let for hire or otherwise distributed in Australia on or after the proclaimed day.

(2) The amount of the royalty payable for a blank tape is an amount worked out using the formula:

$$A \times NM$$

where:

A is the amount per minute determined by the Copyright Tribunal under section 153E; and

NM is the number of minutes of normal playing time of the tape.

Royalty payable by vendor

135ZZP. (1) The royalty for a blank tape is payable by the vendor who first sells, lets for hire or otherwise distributes the tape in Australia.

(2) A vendor shall, within 21 days after the end of the quarter in which this Part commences and within 21 days after the end of each succeeding quarter, pay to the collecting society an amount equal to the sum of the amounts of royalty payable by the vendor for blank tapes first sold, let for hire or distributed by the vendor during that quarter.

Recovery of amounts of royalty

135ZZQ. (1) An amount payable to the collecting society by a vendor under section 135ZZP is recoverable from the vendor by the society in the Federal Court of Australia or any other court of competent jurisdiction as a debt due to the society.

(2) Jurisdiction is conferred on the Federal Court of Australia with respect to actions under subsection (1).

Royalty not payable in certain cases

135ZZR. A vendor who sells blank tapes to a prescribed organisation or to an exempt body is not liable to pay the royalty in respect of any blank tape so sold by the vendor to that organisation or body if the vendor gives the collecting society:

(a) particulars of the normal playing time of the tape, together with such other particulars (if any) of the tape and the sale as are prescribed; and

(b) the exemption number of the organisation or body.

Payment of amounts by collecting society to prescribed organisations etc.

135ZZS. (1) Where a prescribed organisation or an exempt body:

(a) purchases a blank tape from a vendor; and

(b) gives the collecting society particulars of the normal playing time of the tape, together with such other particulars (if any) of the tape and the purchase as are prescribed and a receipt for the purchase;

the collecting society shall pay to the organisation or body an amount equal to the amount of the royalty payable for the tape, whether or not that amount of royalty has been paid.

(2) Subsection (1) does not apply where the prescribed organisation or exempt body purchases the blank tape from a vendor who is not liable under section 135ZZR to pay the royalty in respect of that blank tape.

(3) Where a person or body (other than a prescribed organisation or an exempt body):

(a) purchases a blank tape from a vendor; and

(b) gives the collecting society a receipt for the purchase of the tape together with a statutory declaration made by the person, or by an officer or member of the body, as the case may be:

(i) containing particulars of the normal playing time of the tape, together with such other particulars (if any) of the tape and the purchase as are prescribed; and

(ii) declaring that the person or body will not use the tape, or cause or permit it to be used, or make it available to any person for use, for the purpose of making a copy of a sound recording in which copyright subsists unless the person or body is the owner or licensee of the right to make a copy of the sound recording;

the collecting society shall pay to the person or body an amount equal to the amount of the royalty payable for the tape, whether or not that amount of royalty has been paid.

Exempt bodies and exemption number

135ZZT. (1) A body or organisation, other than a prescribed organisation, may apply in writing to the collecting society to be declared an exempt body.

(2) Where the collecting society is satisfied that a body or organisation which has applied to the society does not use blank tapes, or make blank tapes available to any of its members, for the purpose

of making copies of sound recordings in which copyright subsists unless the body, organisation or member, as the case may be, is the owner or licensee of the right to make such copies, the collecting society shall, by notice in writing to the body or organisation, declare the body or organisation to be an exempt body and issue an exemption number to it.

(3) Where the collecting society is satisfied that an exempt body uses blank tapes, or makes blank tapes available to its members for use, for the purpose referred to in subsection (2), the collecting society may, by notice in writing given to the body, revoke the declaration of the body as an exempt body and withdraw the exemption number issued to it.

(4) The collecting society shall, on the request of a prescribed organisation, issue an exemption number to the organisation.

Division 4—The collecting society

The collecting society

135ZZU. (1) Subject to this section, the Attorney-General may, by notice in the *Gazette*, declare the body named in the notice to be the collecting society.

(2) The Attorney-General shall not name more than one body in a declaration and shall not make a declaration while an earlier declaration is in force.

(3) The Attorney-General shall not declare a body to be the collecting society unless:

(a) it is a company limited by guarantee and incorporated under a law in force in a State or Territory relating to companies;

(b) all relevant copyright owners, or their agents, are entitled to become its members;

(c) its rules prohibit the payment of dividends to its members; and

(d) its rules contain such other provisions as are prescribed, being provisions necessary to ensure that the interests of the collecting society's members who are relevant copyright owners or their agents are protected adequately, including, in particular, provisions about:

  (i) the collection of amounts of royalty from vendors;

  (ii) the payment of the administrative costs of the society out of amounts collected by it;

(iii) the distribution of amounts collected by it;

(iv) the holding on trust of amounts for relevant copyright owners who are not its members; and

(v) access to records of the society by its members.

Revocation of declaration

135ZZV. The Attorney-General may, by notice in the *Gazette*, revoke the declaration of a body as the collecting society if satisfied that the body:

(a) is not functioning adequately as the collecting society;

(b) is not acting in accordance with its rules or in the best interests of those of its members who are relevant copyright owners, or their agents;

(c) has altered its rules so that they no longer comply with paragraphs 135ZZU (3) (c) and (d); or

(d) has refused or failed, without reasonable excuse, to comply with section 135ZZW or 135ZZX.

Annual report and accounts

135ZZW. (1) The collecting society shall, as soon as practicable after the end of each financial year, prepare a report of its operations during that financial year and send a copy of the report to the Attorney-General.

(2) The Attorney-General shall cause a copy of the report sent to the Attorney-General under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Attorney-General.

(3) The society shall keep accounting records correctly recording and explaining the transactions of the society (including any transactions as trustee) and the financial position of the society.

(4) The accounting records shall be kept in such a manner as will enable true and fair accounts of the society to be prepared from time to time and those accounts to be conveniently and properly audited.

(5) The society shall, as soon as practicable after the end of each financial year, cause its accounts to be audited by an auditor who is not a member of the society, and shall send to the Attorney-General a copy of its accounts as so audited.

(6) The society shall give its members reasonable access to copies of all reports and audited accounts prepared under this section.

(7) This section does not affect any obligations of the society relating to the preparation and lodging of annual returns or accounts under the law under which it is incorporated.

Amendment of rules

135ZZX. The collecting society shall, within 21 days after it alters its rules, send a copy of the rules as so altered to the Attorney-General, together with a statement setting out the effect of the alteration and the reasons why it was made.

Inspection of records etc.

135ZZY. (1) The collecting society may, in writing, notify a vendor who is liable to pay royalty that the society wishes, on a day specified in the notice, being an ordinary working day not earlier than 7 days after the day on which the notice is given, to inspect all records held by the vendor at the premises specified in the notice, being records that relate to the sale, letting for hire or distribution of blank tapes by the vendor and such other records held at those premises as are relevant to the assessment of the amount of royalty payable by the vendor to the society.

(2) Where the collecting society gives a notice, a person authorised in writing by the society may, during ordinary working hours on the day specified in the notice, inspect the records to which the notice relates and, for that purpose, may enter the premises specified in the notice.

(3) A person who hinders or obstructs a person in the exercise of the powers conferred by subsection (2) is guilty of an offence punishable, on conviction, by a fine not exceeding $500.

(4) A person who, whether directly or indirectly, makes a record of, or discloses or communicates to a person any prescribed information, except for the purpose of ensuring compliance with a provision of this Part, is guilty of an offence punishable, on conviction, by a fine not exceeding $500.

(5) In this section:

"prescribed information" means information obtained as a result of an inspection carried out under this section.

Division 5—Miscellaneous

Copyright owners may authorise copying

135ZZZ. Nothing in this Part affects the right of the owner of the copyright in a work or other subject-matter to grant a licence authorising a person to make or cause to be made, a sound recording, or a copy of a sound recording, of the work or other subject-matter without infringing that copyright.

Copyright not to vest in copier

135ZZZA. Despite any other provision of this Act, the making of a copy of a sound recording that is not an infringement of copyright under this Part, does not vest copyright in any work or other subject-matter in any person.

Eligible foreign countries

135ZZZB. A foreign country shall not be declared by the regulations to be an eligible foreign country for the purposes of this Part unless the Governor-General is satisfied that adequate payments are, or will be, made to owners of copyright under this Act in sound recordings and in literary, dramatic or musical works as part of a blank tape royalty scheme operating in that country.

PART VI—THE COPYRIGHT TRIBUNAL

Division 1—Preliminary

Interpretation

136. (1) In this Part, unless the contrary intention appears:

"Judge" means:

(a) a Judge of a federal court or of the Supreme Court of a State or Territory; or

(b) a person who has the same designation and status as a Judge of a federal court;

"licence" means a licence granted by or on behalf of the owner or prospective owner of the copyright in a literary, dramatic or musical work, or of the copyright in a sound recording, being:

(a) in the case of a literary, dramatic or musical work—a licence to perform the work or an adaptation of the work in public, to broadcast the work or an adaptation of the work, to make a sound recording or cinematograph film of the work or of an

adaptation of the work for the purpose of broadcasting the work or adaptation or to cause the work or an adaptation of the work to be transmitted to subscribers to a diffusion service; or

(b) in the case of a sound recording—a licence to cause the recording to be heard in public or to make a copy of the sound recording for the purpose of broadcasting the recording;

"licence scheme" means a scheme (including anything in the nature of a scheme, whether called a scheme or tariff or called by any other name) formulated by a licensor or licensors and setting out the classes of cases in which the licensor or each of the licensors is willing, or the persons on whose behalf the licensor or each of the licensors acts are willing, to grant licences and the charges (if any) subject to payment of which, and the conditions subject to which, licences would be granted in those classes of cases;

"licensor" means:

(a) in relation to licences in respect of a literary, dramatic or musical work—the owner or prospective owner of the copyright in the work or any body of persons (whether corporate or unincorporate) acting as agent for the owner or prospective owner in relation to the negotiation or granting of such licences; and

(b) in relation to licences in respect of a sound recording—the owner or prospective owner of the copyright in the recording or any body of persons (whether corporate or unincorporate) acting as agent for the owner or prospective owner in relation to the negotiation or granting of such licences;

"member" means a member of the Tribunal, and includes the President and the Deputy President;

"order" includes an interim order;

"organization" means an organization or association of persons whether corporate or unincorporate;

"party" includes a person making representations to the Tribunal at an inquiry under section 148;

"proceeding" , in relation to the Tribunal, includes an inquiry by the Tribunal under section 148;

"the Deputy President" means the Deputy President of the Tribunal;

"the President" means the President of the Tribunal.

(2) In this Part:

(a) a reference to conditions is a reference to any conditions other than conditions relating to the payment of a charge;

(b) a reference to giving an opportunity to a person or organization of presenting a case is a reference to giving the person or organization an opportunity, at the option of the person or organization, of submitting representations in writing, or of being heard, or of submitting representations in writing and being heard;

(c) a reference to a person who requires a licence of a particular kind includes a reference to a person who holds a licence of that kind if the person will, at the expiration of the period for which the licence was granted, require a renewal of that licence or a grant of a further licence of the same kind; and

(d) a reference to proceedings for infringement of copyright includes a reference to proceedings brought in respect of an alleged contravention of subsection 132 (5) or (5AA).

(3) For the purposes of this Part, a person shall not be taken not to require a licence to cause a sound recording to be heard in public by reason only of the operation of section 108.

Cases to which licence schemes apply

137. (1) For the purposes of this Part, a case shall, subject to the next succeeding subsection, be deemed to be a case to which a licence scheme applies if, in accordance with a licence scheme for the time being in operation, a licence would be granted in that case.

(2) For the purposes of this Part, where, in accordance with a licence scheme:

(a) the licences that would be granted would be subject to conditions by virtue of which particular matters would be excepted from the licences; and

(b) a case relates to one or more matters falling within such an exception;

that case shall be deemed not to be a case to which the scheme applies.

Division 2—Constitution of the Tribunal

Constitution of Tribunal

138. The Copyright Tribunal established by the section for which this section was substituted by section 138 of the *Statute Law (Miscellaneous Amendments) Act (No. 1) 1982* continues in existence but shall consist of a President, a Deputy President and such other members as are appointed in accordance with this Division.

Appointment of members of Tribunal

139. A member of the Tribunal shall be appointed by the Governor-General.

Qualifications of members

140. (1) A person shall not be appointed as the President or as the Deputy President unless he is a Judge of the Federal Court of Australia.

(2) A person shall not be appointed as a member (other than the President or the Deputy President) unless:

(a) he is or has been a Judge;

(b) he is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory and has been so enrolled for not less than 5 years;

(c) he has had experience, for not less than 5 years, at a high level in industry, commerce, business, public administration, education or the practice of a profession;

(d) he has obtained a degree of a university, or an educational qualification of a similar standing, after studies in the field of law, economics or public administration; or

(e) he has, in the opinion of the Governor-General, special knowledge or skill relevant to the duties of a member.

Tenure of office

141. (1) Subject to this section, a member holds office for such period, not exceeding 7 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

(2) Where a member who is a Judge ceases to be a Judge, he ceases to hold office as a member, but he is eligible for appointment as a member (other than the President or the Deputy President).

(3) The Governor-General may terminate the appointment of a member (other than a member who is a Judge) for physical or mental incapacity.

(4) The Governor-General shall terminate the appointment of a member (other than a member who is a Judge) if:

(a) the member is guilty of misbehaviour; or

(b) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit.

Acting President

142.

(2) The Deputy President shall act as President of the Tribunal during any vacancy in the office, or suspension, illness or absence, of the President and while the Deputy President is acting as President, he has and may exercise all the powers, and shall perform all the functions and duties, conferred or imposed by this Act on the President.

Remuneration and allowances

143. (1) Subject to this section, a member shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

(2) A member shall be paid such allowances as are prescribed.

(3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunals Act 1973*.

(4) A member who is a Judge is not, while he receives salary or annual allowance as a Judge, entitled to remuneration under this Act.

Oath or affirmation of office

144. (1) A member shall, before proceeding to discharge the duties of his office, take an oath or make an affirmation in accordance with the form of oath or affirmation in the Schedule to this Act.

(2) An oath or affirmation shall be taken or made before a justice or judge of a federal court or of the Supreme Court of a State.

Disclosure of interests by members

144A. (1) Where a member is, or is to be, the Tribunal, or a member of the Tribunal, as constituted for the purposes of a proceeding and he has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of his functions in relation to that proceeding:

(a) he shall disclose the interest to the parties to the proceeding; and

(b) except with the consent of all the parties to the proceeding, he shall not take part in the proceeding.

(2) Where the President becomes aware that a member is, or is to be, the Tribunal, or a member of the Tribunal, as constituted for the purposes of a proceeding and that the member has, in relation to that proceeding, such an interest as is mentioned under subsection (1):

(a) if the President considers that the member should not take part, or should not continue to take part, in the proceeding—he shall give a direction to the member accordingly; or

(b) in any other case—he shall cause the interest of the member to be disclosed to the parties to the proceeding.

(3) In this section:

(a) a reference to a proceeding shall be read as a reference to a proceeding by way of an inquiry by, or an application or reference to, the Tribunal under this Act; and

(b) a reference to a party to a proceeding, being an inquiry conducted by the Tribunal in pursuance of section 148, shall be read as a reference to a person or organization recognized by the Tribunal as a party to the inquiry.

Removal from office for failure to disclose interest

144B. Where the Governor-General is satisfied that a member (other than a member who is a Judge) has failed, without reasonable excuse, to make a disclosure that he is, under subsection 144A (1), required to make, the Governor-General shall remove that member from office.

Resignation

145. A member may resign his office by writing signed by him and delivered to the Governor-General.

Sittings of the Tribunal

146. (1) Sittings of the Tribunal shall be held at such places and times as the President determines.

(2) Subject to the next succeeding subsection, the Tribunal shall be constituted by a single member.

(3) Where:

(a) the Tribunal holds an inquiry under section 148; or

(b) any party to an application or reference requests that the Tribunal be constituted by more than one member for the purposes of that application or reference;

the Tribunal shall, for the purposes of the inquiry, application or reference, be constituted by not less than 2 members of whom one shall be the President or the Deputy President, but nothing in this subsection prevents a single member exercising the powers of the Tribunal in relation to matters of procedure.

(4) At a proceeding before the Tribunal constituted by more than one member:

(a) if the President is one of the members constituting the Tribunal—he shall preside; and

(b) in any other case—the Deputy President shall preside.

(5) Where the Tribunal constituted by more than one member is divided in opinion on a question, the question shall be decided according to the decision of the majority, if there is a majority, but if the Tribunal as so constituted is equally divided in opinion, the question shall be decided according to the opinion of the President or, if he is not one of the members constituting the Tribunal, according to the opinion of the Deputy President.

(6) The Tribunal constituted by a member or members may sit and exercise the powers of the Tribunal notwithstanding that the Tribunal constituted by another member or other members is at the same time sitting and exercising those powers.

(7) The exercise of the powers of the Tribunal is not affected by a vacancy or vacancies in the membership of the Tribunal.

(8) Where the hearing of any proceeding has been commenced before the Tribunal constituted by 2 or more members and one or more of those members has ceased to be a member or has ceased to be available for the purposes of the proceeding, the remaining member or members may continue the hearing of the proceeding if the remaining member, or one of the remaining members, is the President or the Deputy President.

President to arrange business of Tribunal

147. The President may give directions as to the arrangement of the business of the Tribunal and, subject to subsection 146 (2) or (3), as to the constitution of the Tribunal for the purposes of particular proceedings.

Division 3—Inquiries by, and Applications and References to, the Tribunal

Inquiries into royalty payable in respect of records of musical works

148.[4] **(1)** This section applies where the Attorney-General requests the Tribunal in pursuance of section 58 to hold an inquiry in relation to the royalty, or the minimum royalty, payable in respect of records generally, or in respect of records included in a particular class of records.

(2) Where such a request is made, the Tribunal shall hold the inquiry and shall give every person or organization that the Tribunal is satisfied has a substantial interest in the matter to which the inquiry relates an opportunity of presenting a case to the Tribunal.

(3) As soon as practicable after the completion of the inquiry, the Tribunal shall make a report in writing to the Attorney-General setting out the result of the inquiry.

Applications to Tribunal for determination of remuneration payable for making recording or film of a work

149. (1) This section applies where an application is made to the Tribunal in pursuance of subsection 47 (3) or 70 (3) for the determination of an equitable remuneration to be paid to the owner of the copyright in a work for the making of a sound recording or cinematograph film of the work or of an adaptation of the work.

(2) The parties to an application in relation to which this section applies are:

(a) the owner of the copyright in the work; and

(b) the maker of the recording or film.

(3) Where an application in relation to which this section applies is made to the Tribunal, the Tribunal shall consider the application and, after giving to the parties to the application an opportunity of presenting their cases, shall make an order determining the amount that it considers to be equitable remuneration to the owner of the copyright for the making of the recording or film.

Applications to Tribunal under sections 47A, 53B, 53D and 200A

149A.[4] **(1)** This section applies to any application made to the Tribunal under subsection 47A (8), 53B (11), 53D (10) or 200A (5) for the determining of an amount payable by a person or body by way of equitable remuneration to an owner of copyright for the making of a sound broadcast, copy, handicapped reader's copy or intellectually handicapped person's copy.

(2) The parties to an application to which this section applies are the person or body, and the owner of the copyright, referred to in subsection (1).

(3) Where an application to which this section applies is made to the Tribunal, the Tribunal shall consider the application and, after giving the parties to the application opportunities of presenting their cases, shall make an order determining the amount that it considers to be payable by the person or body by way of equitable remuneration to

the owner of the copyright for the making of the sound broadcast, copy, handicapped reader's copy, or intellectually handicapped person's copy, as the case requires.

Applications to Tribunal for determination of remuneration payable to owner of copyright in recording for making of a copy of the sound recording

150. (1) This section applies where an application is made to the Tribunal in pursuance of subsection 107 (3) for the determination of an equitable remuneration to be paid to the owner of the copyright in a sound recording for the making of a copy of the sound recording.

(2) The parties to an application in relation to which this section applies are:

(a) the owner of the copyright in the sound recording; and

(b) the maker of the copy of the sound recording.

(3) Where an application in relation to which this section applies is made to the Tribunal, the Tribunal shall consider the application and, after giving to the parties to the application an opportunity of presenting their cases, shall make an order determining the amount that it considers to be equitable remuneration to the owner of the copyright for the making of the copy of the sound recording.

Applications to Tribunal for determination of remuneration payable to owner of copyright in recording in respect of public playing of the recording

151. (1) This section applies where an application is made to the Tribunal in pursuance of subsection 108 (1) for the determination of an equitable remuneration to be paid to the owner of the copyright in a sound recording for the causing of the recording to be heard in public.

(2) The parties to an application in relation to which this section applies are:

(a) the owner of the copyright in the recording; and

(b) the person who caused the recording to be heard in public.

(3) Where an application in relation to which this section applies is made to the Tribunal, the Tribunal shall consider the application and, after giving to the parties to the application an opportunity of presenting their cases, shall make an order determining the amount that it considers to be equitable remuneration to the owner of the copyright for the causing of the recording to be heard in public.

Applications to Tribunal for determination of amounts payable for broadcasting published sound recordings

152. (1) In this section, unless the contrary intention appears:

"Australia" does not include the external Territories;

"broadcaster" means:

(a) the Australian Broadcasting Corporation;

(aa) the Special Broadcasting Service;

(b) the holder of a licence or permit granted under the *Broadcasting Act 1942*; or

(d) a person prescribed for the purposes of subparagraph 91 (a) (iii) or 91 (c) (iii).

(1A) For the purposes of the application of this section in relation to a period before the commencement of this subsection, this section has effect as if any act or thing done during that period by the Australian Broadcasting Commission had been done by the Australian Broadcasting Corporation and any earnings of the Australian Broadcasting Commission during that period were earnings of the Australian Broadcasting Corporation.

(2) Subject to this section, an application may be made to the Tribunal for an order determining, or making provision for determining, the amount payable by a broadcaster to the owners of copyrights in published sound recordings in respect of the broadcasting, during a period specified in the application, of those recordings by that broadcaster.

(3) An application under the last preceding subsection may be made by the broadcaster or by the owner of a copyright in a published sound recording.

(4) The parties to an application under subsection (2) are:

(a) the person making the application; and

(b) such organizations or persons as apply to the Tribunal to be made parties to the application and, in accordance with the next succeeding subsection, are made parties to the application.

(5) Where an organization (whether claiming to be representative of broadcasters or of the owners of copyrights in published sound recordings or not) or a person (whether a broadcaster or the owner of a copyright in a published sound recording or not) applies to the Tribunal to be made a party to an application under this section, and the Tribunal is satisfied that the organization or person has a substantial interest in the matter that is the subject of the application, the Tribunal may, if it thinks fit, make that organization or person a party to the application.

(6) The Tribunal shall consider an application under subsection (2) and, after giving the parties to the application an opportunity of presenting their cases, shall make an order:

(a) determining, or making provision for determining, the amount payable by the broadcaster to the owners of copyrights in published sound recordings in respect of the broadcasting, during the period to which the order applies, by the broadcaster of those recordings;

(b) specifying as the persons among whom that amount is to be divided such of the persons who were, or were represented by, parties to the application as the Tribunal is satisfied are the owners of copyrights in published sound recordings; and

(c) specifying as the respective shares in that amount of the persons among whom that amount is to be divided and as the times at which those shares are to be paid such shares and times as those persons agree or, in default of agreement, as the Tribunal thinks equitable.

(7) In so making an order in relation to a broadcaster, the Tribunal shall take into account all relevant matters, including the extent to which the broadcaster uses, for the purposes of broadcasting, records embodying sound recordings (other than recordings in relation to which section 105 applies) in which copyrights subsist, being copyrights owned by persons who are, or are represented by, parties to the application.

(8) The Tribunal shall not make an order that would require a broadcaster being the holder of a radio licence granted under the *Broadcasting Act 1942* to pay, in respect of the broadcasting of published sound recordings during the period in relation to which the order applies, an amount exceeding 1% of the amount determined by the Tribunal to be the gross earnings of the broadcaster during the period equal to the period in relation to which the order applies that ended on 30 June last preceding the date of commencement of the period in relation to which the order applies.

(9) Where a broadcaster being the holder of a radio licence granted under the *Broadcasting Act 1942* has, with the leave of the Australian Broadcasting Tribunal under section 123 of the that Act, adopted an accounting period ending on a day other than 30 June, the reference in subsection (8) of this section to 30 June shall, in relation to that broadcaster, be read as a reference to that other day.

(10) Subsection (8) does not apply to an order in relation to a broadcaster unless:

(a) the broadcaster establishes to the satisfaction of the Tribunal the amount of the gross earnings of the broadcaster during the period in respect of which those earnings are to be determined; and

(b) the broadcaster carried on the transmission of programmes by way of sound broadcasting throughout the whole of that period.

(11) Where an application is made to the Tribunal under subsection (2) in relation to the Australian Broadcasting Corporation, the Tribunal:

(a) shall make separate orders in respect of sound broadcasts by the Corporation of published sound recordings and in respect of television broadcasts by the Corporation of such recordings; and

(b) shall not make an order that would require the Corporation to pay, in respect of sound broadcasts of published sound recordings during the period in relation to which the order applies, an amount exceeding the sum of:

(i) in respect of each complete year included in that period the amount ascertained by multiplying one-half of One cent by the number equal to the number of persons comprised in the estimated population of Australia as last set out in statistics published by the Commonwealth Statistician before the making of the order; and

(ii) in respect of each part of a year included in that period—the amount that bears to the amount ascertained in accordance with the last preceding subparagraph in relation to a complete year the same proportion as that part of a year bears to a complete year.

(12) A person who is not specified in an order in force under subsection (6) as one of the persons among whom the amount specified in, or determined in accordance with, the order is to be divided may, before the expiration of the period to which the order applies, apply to the Tribunal for an amendment of the order so as to specify him as one of those persons.

(13) The parties to an application under the last preceding subsection for an amendment of an order are:

(a) the person making the application;

(b) the broadcaster in relation to whom the order applies;

(c) the persons specified in the order as the persons among whom the amount specified in, or determined in accordance with, the order is to be divided; and

(d) such organizations or persons as apply to the Tribunal to be made parties to the application and, in accordance with subsection (5), are made parties to the application.

(14) The Tribunal shall consider an application under subsection (12) for an amendment of an order in force under subsection (6) (in this subsection referred to as "the principal order") and, after giving the parties to the application an opportunity of presenting their cases, shall, if it is satisfied that the applicant is the owner of the copyright or copyrights in one or more published sound recordings, make an order amending the principal order so as to:

(a) specify the applicant as one of the persons among whom the amount specified in, or determined in accordance with, the principal order is to be divided; and

(b) specify as the share of the applicant in that amount and as the times at which that share is to be paid such share and times as the applicant and the other persons among whom that amount is to be divided agree or, in default of agreement, as the Tribunal thinks equitable and make any consequential alterations in respect of the shares of those other persons.

(15) An order of the Tribunal made under subsection (6) in relation to a broadcaster applies in relation to the period commencing on the date specified in the order and ending on 30 June next succeeding the date of making of the order.

(16) The date that may be so specified in an order of the Tribunal made under subsection (6) in relation to a broadcaster may be a date before the date of making of the order or before the date of making of the application but shall not be a date before the date of expiration of the period in relation to which the last preceding order (if any) of the Tribunal made under that subsection in relation to that broadcaster applied or before the date of commencement of this Act.

(17) An order of the Tribunal made under subsection (14) amending an order of the Tribunal made under subsection (6) applies in relation to the period commencing on the date of making of the amending order and ending on the date of expiration of the period in relation to which the order that is being amended applies.

(18) Where an order of the Tribunal is in force under this section, the broadcaster in relation to whom the order applies is liable to pay to each of the persons specified in the order as the persons among whom the amount specified in, or determined in accordance with, the order is to be divided the share so specified in relation to that person

and is so liable to pay that share at the times so specified and that person may recover any amount that is not paid in accordance with the order in a court of competent jurisdiction from the broadcaster as a debt due to the person.

(19) For the purposes of this section, the gross earnings of a broadcaster in respect of a period are the gross earnings of the broadcaster during that period in respect of the broadcasting by him of advertisements or other matter, including the gross earnings of the broadcaster during that period in respect of the provision by him of, or otherwise in respect of, matter broadcast by him.

(20) Where, in connexion with a transaction, any consideration is paid or given otherwise than in cash, the money value of that consideration shall, for the purposes of the last preceding subsection, be deemed to have been paid or given.

(21) Where the Tribunal is of the opinion that:

(a) an amount, or part of an amount, earned during any period by a person other than a broadcaster would, if the broadcaster and that person were the same person, form part of the gross earnings of the broadcaster in respect of that period for the purposes of this section; and

(b) a relationship exists between the broadcaster and the other person (whether by reason of any shareholding or of any agreement or arrangement, or for any other reason) of such a kind that the amount or the part of the amount, as the case may be, should, for the purposes of this section, be treated as part of the gross earnings of the broadcaster in respect of that period;

the Tribunal may so treat the amount or the part of the amount, as the case may be.

152A and 152B.[4] * * * * * *

Applications to Tribunal for apportionment of royalty in respect of a record

153. (1) This section applies where an application is made to the Tribunal in pursuance of paragraph 59 (3) (b) for an apportionment of an amount payable in respect of a record between the owner of the copyright in a musical work and the owner of the copyright in a literary or dramatic work.

(2) The parties to an application in relation to which this section applies are:

(a) the owner of the copyright in the musical work; and

(b) the owner of the copyright in the literary or dramatic work.

(3) Where an application in relation to which this section applies is made to the Tribunal, the Tribunal shall consider the application and, after giving to the parties to the application an opportunity of presenting their cases, shall make an order apportioning the amount to which the application relates between the parties in such manner as it thinks equitable.

Applications to Tribunal under section 135H or subsection 135J (1)

153A. (1) The parties to an application to the Tribunal under section 135H or subsection 135J (1) for the determination of the amount of equitable remuneration payable to the collecting society by an administering body for the making, by or on behalf of that body, of a copy of a television broadcast are the society and the body.

(2) Where an application is made to the Tribunal under section 135H or subsection 135J (1), the Tribunal shall consider the application and, after giving the parties to the application the opportunity of presenting their cases, shall make an order determining the amount per copy or per student of the relevant institution, as the case may be, that it considers to be equitable remuneration for the making of copies of television broadcasts.

(3) In making an order, the Tribunal:

(a) shall have regard to the extent to which copies of television broadcasts are made by, or on behalf of, the administering body solely for the purpose of enabling the material included in the broadcasts to be seen and heard at times more convenient than the times when the broadcasts were made; and

(b) may have regard to such other matters (if any) as are prescribed.

(4) An order may be expressed to have effect in relation to copies of television broadcasts made in reliance on section 135E before the day on which the order is made.

(5) In this section, **"administering body"** , **"collecting society"** , **"institution"** and **"student"** have the same meanings as in Part VA.

Applications to Tribunal under subsection 135J (3)

153B. (1) The parties to an application to the Tribunal under subsection 135J (3) for the determination of a sampling system are the collecting society and the administering body concerned.

(2) Where an application is made to the Tribunal under subsection 135J (3), the Tribunal shall consider the application and, after giving the parties to the application an opportunity of presenting their cases, shall make an order determining the sampling system.

(3) In this section, **"administering body"** and **"collecting society"** have the same meanings as in Part VA.

153C and 153D.[4] * * * * * *

Determination of amount of blank tape royalty by Tribunal

153E. (1) Expressions used in this section that are also used in Part VC have the same meanings as they have in that Part.

(2) An application may be made to the Tribunal for an order determining, or making provision for determining, the amount per minute of normal playing time of a blank tape that is payable under Part VC by way of royalty for the blank tape.

(3) An application may be made by any person who has an interest in the matter that is the subject of the application, including the collecting society, a vendor or a relevant copyright owner.

(4) The parties to an application are:

(a) the applicant; and

(b) such persons or organisations as are made parties to the application under subsection (5).

(5) Where a person or an organisation applies to the Tribunal to be made party to an application and the Tribunal is satisfied that the person or organisation has an interest in the matter that is the subject of the application, the Tribunal may, if it thinks fit, make that person or organisation a party to the application.

(6) Subject to subsection (9), the Tribunal shall consider an application under subsection (2) and, after giving the parties to the application an opportunity of presenting their cases, shall make an order determining, or making provision for determining, the amount per minute of normal playing time of a blank tape that is payable under Part VC by way of royalty for the blank tape.

(7) In making an order, the Tribunal shall take into account all relevant matters including the extent to which blank tapes are used for the purposes of making copies of eligible sound recordings and eligible works for private and domestic use.

(8) An order shall remain in force until:

(a) it is revoked; or

(b) where the order specifies a period during which it is to remain in force—the end of that period;

whichever happens first.

(9) The Tribunal may refuse to consider an application under subsection (1) made less than 2 years after the making of the last order under this section unless the Tribunal is satisfied that there has been a substantial change in any of the matters relevant to the determination of the amount of the royalty.

Reference of proposed licence schemes to Tribunal

154. (1) Where a licensor proposes to bring a licence scheme into operation, he may refer the scheme to the Tribunal.

(2) The parties to a reference under this section are:

(a) the licensor referring the scheme; and

(b) such organizations or persons (if any) as apply to the Tribunal to be made parties to the reference and, in accordance with the next succeeding subsection, are made parties to the reference.

(3) Where an organization (whether claiming to be representative of persons requiring licences or not) or a person (whether requiring a licence or not) applies to the Tribunal to be made a party to a reference, and the Tribunal is satisfied that the organization or person has a substantial interest in the operation of the scheme to which the reference relates, the Tribunal may, if it thinks fit, make that organization or person a party to the reference.

(4) The Tribunal shall consider a scheme referred under this section and, after giving to the parties to the reference an opportunity of presenting their cases, shall make such order, either confirming or varying the scheme, as the Tribunal considers reasonable in the circumstances.

(5) An order (other than an interim order) of the Tribunal under this section may, notwithstanding anything contained in the licence scheme to which it relates, be made so as to be in force either indefinitely or for such period as the Tribunal thinks fit.

(6) Where a licence scheme has been referred to the Tribunal under this section, the licensor may do either or both of the following things:

(a) bring the scheme into operation before the Tribunal makes an order in pursuance of the reference;

(b) withdraw the reference at any time before the Tribunal makes an order in pursuance of the reference, whether the scheme has been brought into operation or not.

(7) If the scheme is not brought into operation before an order is made in pursuance of the reference, the scheme as confirmed or varied by the order comes into operation, notwithstanding anything contained in the scheme, forthwith upon the making of the order.

(8) After the making of an order in pursuance of the reference, the scheme as confirmed or varied by the order remains in operation, notwithstanding anything contained in the scheme, so long as the order remains in force.

Reference of existing licence schemes to Tribunal

155. **(1)** Where, at any time while a licence scheme is in operation, a dispute arises with respect to the terms of the scheme between the licensor operating the scheme and:

(a) an organization claiming to be representative of persons requiring licences in cases included in a class of cases to which the scheme applies; or

(b) any person claiming that he requires a licence in a case included in a class of cases to which the scheme applies;

the licensor, organization or person concerned may refer the scheme to the Tribunal in so far as the scheme relates to cases included in that class.

(2) The parties to a reference under this section are:

(a) the licensor, organization or person referring the scheme;

(b) if the reference is not made by the licensor operating the scheme—that licensor; and

(c) such other organizations or persons (if any) as apply to the Tribunal to be made parties to the reference and, in accordance with the next succeeding subsection, are made parties to the reference.

(3) Where an organization (whether claiming to be representative of persons requiring licences or not) or a person (whether requiring a licence or not) applies to the Tribunal to be made a party to a reference, and the Tribunal is satisfied that the organization or person has a substantial interest in the matter in dispute, the Tribunal may, if it thinks fit, make that organization or person a party to the reference.

(4) The Tribunal shall not begin to consider a reference under this section by an organization unless the Tribunal is satisfied that the organization is reasonably representative of the class of persons that it claims to represent.

(5) Subject to the last preceding subsection, where a licence scheme is referred to the Tribunal under this section, the Tribunal shall consider the matter in dispute and, after giving to the parties to

the reference an opportunity of presenting their cases, shall make such order, either confirming or varying the scheme, in so far as it relates to cases included in the class of cases to which the reference relates, as the Tribunal considers reasonable in the circumstances.

(6) An order (other than an interim order) of the Tribunal under this section may, notwithstanding anything contained in the licence scheme to which it relates, be made so as to be in force either indefinitely or for such period as the Tribunal thinks fit.

(7) A reference of a licence scheme to the Tribunal under this section may be withdrawn at any time before an order is made in pursuance of the reference.

(8) Where a licence scheme has been referred to the Tribunal under this section, the scheme remains in operation, notwithstanding anything contained in the scheme, until the Tribunal makes an order in pursuance of the reference.

(9) The last preceding subsection does not apply in relation to a reference with respect to any period after the reference has been withdrawn or after the Tribunal has refused to begin to consider the reference in pursuance of subsection (4).

(10) After the making of an order in pursuance of the reference, the scheme as confirmed or varied by the order remains in operation, notwithstanding anything contained in the scheme, so long as the order remains in force.

Further reference of licence schemes to Tribunal

156. **(1)** Where the Tribunal has made an order (other than an interim order) under either of the last two preceding sections with respect to a licence scheme, then, subject to the next succeeding subsection, at any time while the order remains in force:

(a) the licensor operating the scheme;

(b) any organization claiming to be representative of persons requiring licences in cases included in the class of cases to which the order applies; or

(c) any person claiming that he requires a licence in a case included in that class;

may refer the scheme again to the Tribunal in so far as it relates to cases included in that class.

(2) A licence scheme shall not, except with the leave of the Tribunal, be referred again to the Tribunal under the last preceding subsection at a time earlier than:

(a) where the order concerned was made so as to be in force indefinitely or for a period exceeding 15 months—the expiration of the period of 12 months commencing on the date on which the order was made; or

(b) where the order concerned was made so as to be in force for a period not exceeding 15 months—the commencement of the period of 3 months ending on the date of expiration of the order.

(3) The parties to a reference under this section are:

(a) the licensor, organization or person referring the scheme;

(b) if the reference is not made by the licensor operating the scheme—that licensor; and

(c) such other organizations or persons (if any) as apply to the Tribunal to be made parties to the reference and, in accordance with the provisions applicable in that behalf by virtue of subsection (5), are made parties to the reference.

(4) Subject to the next succeeding subsection, where a licence scheme is referred to the Tribunal under this section, the Tribunal shall consider the matter in dispute and, after giving to the parties to the reference an opportunity of presenting their cases, shall make such order in relation to the scheme as previously confirmed or varied, in so far as it relates to cases included in the class of cases to which the reference relates, whether by way of confirming, varying or further varying the scheme, as the Tribunal considers reasonable in the circumstances.

(5) Subsections 155 (3), (4), and (6) to (10) inclusive apply for the purposes of this section.

(6) The preceding subsections of this section have effect in relation to orders made under this section in like manner as they have effect in relation to orders made under either of the last two preceding sections.

(7) Nothing in this section prevents a licence scheme in respect of which an order has been made under either of the last two preceding sections from being again referred to the Tribunal under that section:

(a) in so far as the scheme relates to cases included in a class of cases to which the order does not apply—at any time; and

(b) in so far as the scheme relates to cases included in the class of cases to which the order applied while it was in force—after the expiration of the order.

Application to Tribunal in relation to licences

157. (1) A person who claims, in a case to which a licence scheme applies, that the licensor operating the scheme has refused or failed to grant him a licence in accordance with the scheme, or to procure the grant to him of such a licence, may apply to the Tribunal under this section.

(2) A person who claims, in a case to which a licence scheme applies, that he requires a licence but that the grant of a licence in accordance with the scheme would, in that case, be subject to the payment of charges, or to conditions, that are not reasonable in the circumstances of the case may apply to the Tribunal under this section.

(3) A person who claims that he requires a licence in a case to which a licence scheme does not apply (including a case where a licence scheme has not been formulated or is not in operation) and:

(a) that a licensor has refused or failed to grant the licence, or to procure the grant of the licence, and that in the circumstances it is unreasonable that the licence should not be granted; or

(b) that a licensor proposes that the licence should be granted subject to the payment of charges, or to conditions, that are unreasonable;

may apply to the Tribunal under this section.

(4) An organization that claims that it is representative of persons requiring licences in cases to which a licence scheme does not apply (including cases where a licence scheme has not been formulated or is not in operation) and:

(a) that a licensor has refused or failed to grant the licences, or to procure the grant of the licences, and that in the circumstances it is unreasonable that the licences should not be granted; or

(b) that a licensor proposes that the licences should be granted subject to the payment of charges, or to conditions, that are unreasonable;

may apply to the Tribunal under this section.

(5) Where an organization (whether claiming to be representative of persons requiring licences or not) or a person (whether requiring a licence or not) applies to the Tribunal to be made a party to an application under any of the preceding subsections of this section, and the Tribunal is satisfied that the organization or person has a substantial interest in the matter in dispute, the Tribunal may, if it thinks fit, make that organization or person a party to the application.

(6) Where an application is made to the Tribunal under subsection (1), (2), (3) or (4), the Tribunal shall give to the applicant, to the licensor concerned and to every other party (if any) to the application

an opportunity of presenting their cases and, if the Tribunal is satisfied that the claim of the applicant is well-founded, the Tribunal shall make an order specifying, in respect of the matters specified in the order:

(a) in the case of an application under subsection (1)—the charges, if any, and the conditions, that the Tribunal considers to be applicable in accordance with the licence scheme in relation to the applicant;

(b) in the case of an application under subsection (2) or subsection (3)—the charges, if any, and the conditions, that the Tribunal considers reasonable in the circumstances in relation to the applicant; or

(c) in the case of an application under subsection (4)—the charges, if any, and the conditions, that the Tribunal considers reasonable in the circumstances in relation to persons, or to persons included in classes of persons, specified in the order, being persons who were represented by the applicant or were parties to the application.

(7) A reference in this section to a failure to grant a licence, or to procure the grant of a licence, shall be read as a reference to a failure to grant the licence, or to procure the grant of the licence, as the case may be, within a reasonable time after a request to do so.

Effect of licence scheme being continued in operation pending order of the Tribunal

158. (1) Where a licence scheme is in operation by virtue of this Part pending the making of an order on a reference under this Part and a person, in a case to which the scheme applies, does anything that, apart from this subsection, would be an infringement of a copyright but would not be such an infringement if he were the holder of a licence granted in accordance with the scheme in so far as the scheme relates to cases to which the reference relates, that person shall, if he has complied with the relevant requirements, be in the like position, in any proceedings for infringement of that copyright, as if he had at the material time been the holder of such a licence.

(2) For the purposes of the last preceding subsection, the relevant requirements are:

(a) that, at all material times, the person concerned has complied with the conditions that, in accordance with the licence scheme, would be applicable to a licence in respect of the case concerned; and

(b) where, in accordance with the scheme, any charges are payable in respect of such a licence—that, at the material time, he had paid those charges to the licensor operating the scheme, or, if

at that time the amount payable could not be ascertained, he had given an undertaking in writing to the licensor to pay the charges when ascertained.

(3) A person who does anything in relation to which subsection (1) applies is liable to pay to the licensor operating the licence scheme concerned the amount of any charges that would be payable if he were the holder of a licence granted in accordance with the scheme in so far as the scheme relates to the doing of that thing and the licensor may recover that amount in a court of competent jurisdiction from the person as a debt due to the licensor.

Effect of order of Tribunal in relation to licences

159. (1) Where an order made on a reference under this Part with respect to a licence scheme is for the time being in force and a person, in a case to which the scheme as confirmed or varied by the order applies, does anything that, apart from this subsection, would be an infringement of copyright but would not be such an infringement if he were the holder of a licence granted in accordance with the scheme, as confirmed or varied by the order, in so far as the scheme relates to cases to which the order applies, that person shall, if he has complied with the relevant requirements, be in the like position, in any proceedings for infringement of that copyright, as if he had at the material time been the holder of such a licence.

(2) For the purposes of the last preceding subsection, the relevant requirements are:

(a) that, at all material times, the person concerned has complied with the conditions that, in accordance with the licence scheme as confirmed or varied by the order, would be applicable to a licence in respect of the case concerned; and

(b) where, in accordance with the scheme as so confirmed or varied, any charges are payable in respect of such a licence—that, at the material time, he had paid those charges to the licensor operating the scheme, or, if at that time the amount payable could not be ascertained, he had given an undertaking in writing to the licensor to pay the charges when ascertained.

(3) A person who does anything in relation to which subsection (1) applies is liable to pay to the licensor operating the licence scheme concerned the amount of any charges that would be payable if he were the holder of a licence granted in accordance with the scheme, as confirmed or varied by the order, in so far as the scheme relates to the doing of that thing and the licensor may recover that amount in a court of competent jurisdiction from the person as a debt due to the licensor.

(4) Where the Tribunal has made an order on an application under subsection 157 (1), (2) or (3) specifying charges, if any, and conditions, in relation to the applicant, in respect of the matters specified in the order, then if:

(a) the applicant has complied with the conditions specified in the order; and

(b) in a case where the order specifies any charges—he has paid those charges to the licensor or, if the amount payable could not be ascertained, has given to the licensor an undertaking in writing to pay the charges when ascertained;

the applicant shall be in the like position, in any proceedings for infringement of copyright relating to any of those matters, as if he had at all material times been the holder of a licence granted by the owner of the copyright concerned on the conditions, and subject to payment of the charges (if any), specified in the order.

(5) Where the Tribunal has made an order on an application under subsection 157 (4) specifying charges (if any) and conditions, in relation to the persons, or to persons included in the classes of persons, specified in the order, in respect of matters specified in the order, then, if:

(a) any such person has complied with the conditions specified in the order; and

(b) in the case where the order specifies any charges—the person has paid those charges to the licensor or, if the amount payable could not be ascertained, has given to the licensor an undertaking in writing to pay the charges when ascertained;

that person shall be in the like position, in any proceedings for infringement of copyright relating to any of those matters, as if he had at all material times been the holder of a licence granted by the owner of the copyright concerned on the conditions, and subject to payment of the charges (if any), specified in the order.

(6) Where a person in relation to whom an order referred to in subsection (4) or subsection (5) applies does, in relation to any of the matters specified in that order, anything that, apart from that subsection, would be an infringement of copyright but would not be such an infringement if he were the holder of a licence in respect of the doing of that thing granted by the owner of the copyright concerned on the conditions and subject to payment of the charges (if any) specified in the order, that person is liable to pay to the owner of the copyright the amount of any charges that would be payable if he were the holder of such a licence and the owner of the copyright may recover that amount in a court of competent jurisdiction from the person as a debt due to the owner of the copyright.

Attorney-General may make application for suspension order

159A.[4] **(1)** Subject to subsection (2), upon application made to it by the Attorney-General, the Tribunal may, in its discretion, make an order suspending the application of subsections 53B (1) and (2) in relation to the body administering an educational institution, being a body that has been convicted of 2 or more offences against subsection 203A (2) in relation to the retention of records relating to copies of the whole or parts of works made in reliance on section 53B.

(2) The Tribunal shall not make an order under subsection (1) if it is satisfied that the body in relation to which the order is sought has taken all reasonable steps to ensure that no further contravention of subsection 203A (2) will occur in relation to the retention of records relating to copies made or to be made by or on behalf of the body.

(3) For the purposes of subsection (1), a conviction of the custodian in charge of the copying records of an educational institution for a contravention of subsection 203A (2), not being a conviction for a contravention in relation to which the body administering the educational institution has also been convicted, shall be taken to be a conviction of the body administering the educational institution.

(4) The parties to an application under subsection (1) in relation to a body administering an educational institution are:

(a) the Attorney-General; and

(b) that body.

Application to revoke suspension orders

159B.[4] **(1)** The body administering an educational institution may, at any time, make application to the Tribunal for the revocation of an order under section 159A suspending the application of subsections 53B (1) and (2) in relation to it.

(2) Where the Tribunal is satisfied, upon application made under subsection (1), that the body making the application has taken all reasonable steps to ensure that no further contravention of subsection 203A (2) will occur in relation to the retention of records relating to copies made or to be made in reliance on section 53B, the Tribunal may revoke the order to which the application relates.

(3) The parties to an application under subsection (1) for the revocation of an order made in relation to the body administering an institution are:

(a) that body; and

(b) the Attorney-General.

Interim orders

160. Where an application or reference is made to the Tribunal under this Act, the Tribunal may make an interim order having effect until the final decision of the Tribunal on the application or reference.

Reference of questions of law to Federal Court of Australia

161. (1) The Tribunal may, of its own motion or at the request of a party, refer a question of law arising in proceedings before it for determination by the Federal Court of Australia.

(2) A question shall not be referred to the Federal Court of Australia by virtue of the last preceding subsection in pursuance of a request made after the date on which the Tribunal gave its decision in the proceedings unless the request is made before the expiration of such period as is prescribed.

(3) If the Tribunal, after giving its decision in any proceedings, refuses a request to refer a question to the Federal Court of Australia, the party by whom the request was made may, within such period as is prescribed, apply to the Federal Court of Australia for an order directing the Tribunal to refer the question to the Federal Court of Australia.

(4) Where a reference is made to the Federal Court of Australia under this section with respect to any proceedings before the Tribunal, and where an application is made under the last preceding subsection with respect to any such proceedings, every party to the proceedings before the Tribunal is entitled to appear and to be heard.

(5) Where, after the Tribunal has given its decision in any proceedings, the Tribunal refers to the Federal Court of Australia under this section a question of law that arose in the course of the proceedings, and the Federal Court of Australia decides that the question was erroneously determined by the Tribunal;

(a) the Tribunal shall reconsider the matter in dispute and, if it considers it necessary to do so for the purpose of giving effect to the decision of the Federal Court of Australia, shall give to the parties to the proceedings a further opportunity of presenting their cases; and

(b) if it appears to the Tribunal to be appropriate, and in conformity with the decision of the Federal Court of Australia, to do so, the Tribunal shall make such order revoking or modifying any order previously made by it in the proceedings, or, in the case of proceedings under section 157 where the Tribunal refused to make an order, shall make such order under that section, as the Tribunal considers to be appropriate.

(6) A reference of a question by the Tribunal to the Federal Court of Australia under this section shall be by way of stating a case for the opinion of the Federal Court of Australia.

(7) Jurisdiction is conferred on the Federal Court of Australia to hear and determine a question of law referred to it under this section.

(8) For the purposes of this section, a question of law does not include a question whether there is sufficient evidence to justify a finding of fact by the Tribunal.

(9) This section does not apply in relation to an inquiry by the Tribunal under section 148.

Agreements or awards not affected

162. Nothing in this Part affects the operation of any agreement or of any award made by an arbitrator, whether the agreement or award was made before, or is made after, the commencement of this Act.

Division 4—Procedure and Evidence

Proceedings to be in public except in special circumstances

163. (1) Subject to this section, the hearing of proceedings before the Tribunal shall be in public.

(2) Where the Tribunal is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, the Tribunal may:

(a) direct that a hearing or part of a hearing shall take place in private and give directions as to the persons who may be present; or

(b) give directions prohibiting or restricting the publication of evidence given before the Tribunal (whether in public or in private) or of matters contained in documents produced to the Tribunal.

Application may be made to Tribunal by the agent of the copyright owner

163A. (1) An owner of copyright may make an application to the Tribunal under this Act by his agent.

(2) Two or more owners of copyright may jointly make a single application to the Tribunal by the same agent against the same person or body.

Procedure

164. In proceedings before the Tribunal:

(a) the procedure of the Tribunal is, subject to this Act and the regulations, within the discretion of the Tribunal;

(b) the Tribunal is not bound by the rules of evidence; and

(c) the proceedings shall be conducted with as little formality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Tribunal permit.

Mistakes or errors in orders of the Tribunal

165. The Tribunal may correct, in any order of the Tribunal, a clerical mistake or an error arising from an accidental slip or omission.

Regulations as to procedure

166. (1) The regulations may make provision for or in relation to the procedure in connexion with the making of references and applications to the Tribunal and the regulation of proceedings before the Tribunal and may prescribe the fees payable in respect of those references and applications and the fees and expenses of witnesses in those proceedings.

(2) The regulations may include provision:

(a) for requiring notice of an intended inquiry by the Tribunal under section 148 or an intended reference to the Tribunal under section 154, section 155 or section 156 to be advertised in accordance with the regulations;

(b) for requiring notice of an intended application to the Federal Court of Australia under subsection 161 (3) to be given to the Tribunal and to the other parties to the proceedings, and for limiting the time within which any such notice is to be given;

(c) for suspending, or authorizing or requiring the Tribunal to suspend, the operation of orders of the Tribunal in cases where, after giving its decision, the Tribunal refers a question of law to the Federal Court of Australia;

(d) for modifying, in relation to orders of the Tribunal the operation of which is suspended, the operation of any provisions of this Part as to the effect of orders made under this Part;

(e) for the publication of notices, or the doing of any other things, to ensure that persons affected by the suspension of an order of the Tribunal will be informed of its suspension; and

(f) for regulating or prescribing any other matters incidental to or consequential upon any request, application, order or decision under section 161.

Power to take evidence on oath

167. (1) The Tribunal may take evidence on oath or affirmation, and for that purpose a member may administer an oath or affirmation.

(2) A member may summon a person to appear before the Tribunal to give evidence and to produce such documents and articles (if any) as are referred to in the summons.

Evidence in form of written statement

168. The Tribunal may, if it thinks fit, permit a person appearing as a witness before the Tribunal to give evidence by tendering, and verifying by oath or affirmation, a written statement, which shall be filed with the Secretary to the Tribunal.

Representation

169. In proceedings before the Tribunal:

(a) a party other than a body corporate or an unincorporated body of persons may appear in person or be represented by an employee of the party approved by the Tribunal;

(b) a party being a body corporate may be represented by a director or other officer, or by an employee, of the party approved by the Tribunal;

(c) a party being an unincorporated body of persons or a member of such a body may be represented by a member, or by an officer or employee, of the body approved by the Tribunal; and

(d) any party may be represented by a barrister or solicitor of the High Court or of the Supreme Court of a State or of a Territory.

Division 5—Miscellaneous

Secretary and other staff

170. (1) There shall be a Secretary to the Tribunal, who shall be appointed by the Attorney-General.

(2) The Secretary, and any other staff necessary to assist the Tribunal, shall be persons employed under, or whose services are made available in accordance with arrangements made under, the *Public Service Act 1922-1968*.

Protection of members, barristers and witnesses

171. (1) A member has, in the performance of his duty as a member, the same protection and immunity as a Justice of the High Court.

(2) A barrister, solicitor or other person appearing before the Tribunal on behalf of a party has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(3) A person summoned to appear before the Tribunal as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, in any civil or criminal proceedings as a witness in proceedings in the High Court.

Disobedience to summons etc.

172. (1) A person who has been summoned to appear as a witness before the Tribunal shall not, without lawful excuse, and after tender of reasonable expenses, fail to appear in obedience to the summons.

(2) A person who has been summoned to produce a document or article to the Tribunal shall not, without lawful excuse, and after tender of reasonable expenses, fail to produce the document or article.

(3) A person who appears before the Tribunal shall not, without lawful excuse, refuse to be sworn or to make an affirmation, or to produce documents or articles, or to answer questions, that he is required by the Tribunal to produce or answer.

Penalty: $1,000 or imprisonment for 3 months.

Contempt of Tribunal etc.

173. A person shall not:

(a) insult or disturb a member in the exercise of his powers or functions as a member;

(b) interrupt the proceedings of the Tribunal;

(c) use insulting language towards a member;

(d) create a disturbance or take part in creating or continuing a disturbance in or near a place where the Tribunal is sitting;

(e) contravene or fail to comply with a direction of the Tribunal given under paragraph 163 (2) (b); or

(f) do any other act or thing that would, if the Tribunal were a court of record, constitute a contempt of that court.

Penalty: $1,000 or imprisonment for 3 months.

Costs of proceedings

174. (1) The Tribunal may order that the costs of any proceedings before it incurred by any party, or a part of those costs, shall be paid by any other party and may tax or settle the amount of the costs to be so paid, or specify the manner in which they are to be taxed.

(1A) In taxing or settling under subsection (1) the amount of the costs, or of a part of the costs, of any proceedings before the Tribunal incurred by a party, the Tribunal or the person or persons taxing or settling those costs, as the case may be, shall allow so much only of the amount as in the opinion of the Tribunal or the person or persons, as the case may be, would be allowed if the proceedings were proceedings before the Federal Court of Australia and the costs were taxed under the Federal Court Rules.

(2) Costs directed by the Tribunal to be paid to a party may be recovered by that party in any court of competent jurisdiction.

(2A) In any proceedings before a court under subsection (2) for the recovery of costs directed by the Tribunal to be paid to a party, a certificate signed by the Secretary to the Tribunal that states that the costs have been taxed or the amount of the costs has been settled and sets out the amount of the costs as so taxed or settled is *prima facie* evidence of the matters stated in the certificate.

(3) This section does not apply in relation to an inquiry by the Tribunal under section 148.

Proof of orders of Tribunal

175. Without prejudice to any other method available by law for the proof of orders of the Tribunal, a document purporting to be a copy of such an order, and to be certified by the Secretary to the Tribunal to be a true copy of the order, is, in any proceeding, evidence of the order.

PART VII—THE CROWN

Crown copyright in original works made under direction of Crown

176. (1) Where, apart from this section, copyright would not subsist in an original literary, dramatic, musical or artistic work made by, or under the direction or control of, the Commonwealth or a State, copyright subsists in the work by virtue of this subsection.

(2) The Commonwealth or a State is, subject to this Part and to Part X, the owner of the copyright in an original literary, dramatic, musical or artistic work made by, or under the direction or control of, the Commonwealth or the State, as the case may be.

Crown copyright in original works first published in Australia under direction of Crown

177. Subject to this Part and to Part X, the Commonwealth or a State is the owner of the copyright in an original literary, dramatic, musical or artistic work first published in Australia if first published by, or under the direction or control of, the Commonwealth or the State, as the case may be.

Crown copyright in recordings and films made under direction of Crown

178. (1) Where, apart from this section, copyright would not subsist in a sound recording or cinematograph film made by, or under the direction or control of, the Commonwealth or a State, copyright subsists in the recording or film by virtue of this subsection.

(2) The Commonwealth or a State is, subject to this Part and to Part X, the owner of the copyright in a sound recording or cinematograph film made by, or under the direction or control of, the Commonwealth or the State, as the case may be.

Provisions relating to ownership of copyright may be modified by agreement

179. The last three preceding sections have effect subject to any agreement made by, or on behalf of, the Commonwealth or a State with the author of the work or with the maker of the sound recording or cinematograph film, as the case may be, by which it is agreed that the copyright in the work, recording or film is to vest in the author or maker, or in another person specified in the agreement.

Duration of Crown copyright in original works

180. (1) Copyright in a literary, dramatic or musical work of which the Commonwealth or a State is the owner, or would, but for an agreement to which the last preceding section applies, be the owner:

(a) where the work is unpublished—continues to subsist so long as the work remains unpublished; and

(b) where the work is published—subsists, or, if copyright in the work subsisted immediately before its first publication, continues to subsist, until the expiration of 50 years after the expiration of the calendar year in which the work was first published.

(2) Subject to the next succeeding subsection, copyright in an artistic work of which the Commonwealth or a State is the owner, or would, but for an agreement to which the last preceding section applies, be the owner, continues to subsist until the expiration of 50 years after the expiration of the calendar year in which the work was made.

(3) Copyright in an engraving or photograph of which the Commonwealth or a State is the owner, or would, but for an agreement to which the last preceding section applies, be the owner, continues to subsist until the expiration of 50 years after the expiration of the calendar year in which the engraving or photograph is first published.

Duration of Crown copyright in recordings and films

181. Copyright in a sound recording or cinematograph film of which the Commonwealth or a State is the owner, or would, but for the operation of an agreement to which section 179 applies, be the owner, subsists until the expiration of 50 years after the expiration of the calendar year in which the recording or film is first published.

Application of Parts III and IV to copyright subsisting by virtue of this Part

182. **(1)** Part III (other than the provisions of that Part relating to the subsistence, duration or ownership of copyright) applies in relation to copyright subsisting by virtue of this Part in a literary, dramatic, musical or artistic work in like manner as it applies in relation to copyright subsisting in such a work by virtue of that Part.

(2) Part IV (other than the provisions of that Part relating to the subsistence, duration or ownership of copyright) applies in relation to copyright subsisting by virtue of this Part in a sound recording or cinematograph film in like manner as it applies in relation to copyright subsisting in such a recording or film by virtue of that Part.

Copyright in statutory instruments and judgments etc.

182A. **(1)** The copyright, including any prerogative right or privilege of the Crown in the nature of copyright, in a prescribed work is not infringed by the making, by reprographic reproduction, of one copy of the whole or of a part of that work by or on behalf of a person and for a particular purpose.

(2) Subsection (1) does not apply to the making, by reprographic reproduction, of a copy of the whole or a part of the work, where a charge is made for making and supplying that copy, unless the amount of the charge does not exceed the cost of making and supplying that copy.

(3) In subsection (1), **"a prescribed work"** means:

(a) an Act or State Act, an enactment of the legislature of a Territory or an instrument (including an Ordinance or a rule, regulation or by-law) made under an Act, a State Act or such an enactment;

(b) a judgment, order or award of a Federal court or of a court of a State or Territory;

(c) a judgment, order or award of a Tribunal (not being a court) established by or under an Act or other enactment of the Commonwealth, a State or a Territory;

(d) reasons for a decision of a court referred to in paragraph (b), or of a Tribunal referred to in paragraph (c), given by the court or by the Tribunal; or

(e) reasons given by a Justice, Judge or other member of a court referred to in paragraph (b), or of a member of a Tribunal referred to in paragraph (c), for a decision given by him either as the sole member, or as one of the members, of the court or Tribunal.

Use of copyright material for the services of the Crown

183.[2] **(1)** The copyright in a literary, dramatic, musical or artistic work or a published edition of such a work, or in a sound recording, cinematograph film, television broadcast or sound broadcast, is not infringed by the Commonwealth or a State, or by a person authorized in writing by the Commonwealth or a State, doing any acts comprised in the copyright if the acts are done for the services of the Commonwealth or State.

(2) Where the Government of the Commonwealth has made an agreement or arrangement with the Government of some other country for the supply to that country of goods required for the defence of that country:

(a) the doing of any act in connexion with the supply of those goods in pursuance of the agreement or arrangement; and

(b) the sale to any person of such of those goods as are not required for the purposes of the agreement or arrangement;

shall, for the purposes of the last preceding subsection, be each deemed to be for the services of the Commonwealth.

(3) Authority may be given under subsection (1) before or after the acts in respect of which the authority is given have been done, and may be given to a person notwithstanding that he has a licence granted by, or binding on, the owner of the copyright to do the acts.

(4) Where an act comprised in a copyright has been done under subsection (1), the Commonwealth or State shall, as soon as possible, unless it appears to the Commonwealth or State that it would be contrary to the public interest to do so, inform the owner of the copyright, as prescribed, of the doing of the act and shall furnish him with such information as to the doing of the act as he from time to time reasonably requires.

(5) Where an act comprised in a copyright has been done under subsection (1), the terms for the doing of the act are such terms as are, whether before or after the act is done, agreed between the Commonwealth or the State and the owner of the copyright or, in default of agreement, as are fixed by the Copyright Tribunal.

(6) An agreement or licence (whether made or granted before or after the commencement of this Act) fixing the terms upon which a person other than the Commonwealth or a State may do acts comprised in a copyright is inoperative with respect to the doing of those acts, after the commencement of this Act, under subsection (1), unless the agreement or licence has been approved by the Attorney-General of the Commonwealth or the Attorney-General of the State.

(7) Where an article is sold and the sale is not, by virtue of subsection (1), an infringement of a copyright, the purchaser of the article, and a person claiming through him, is entitled to deal with the article as if the Commonwealth or State were the owner of that copyright.

(8) An act done under subsection (1) does not constitute publication of a work or other subject-matter and shall not be taken into account in the application of any provision of this Act relating to the duration of any copyright.

(9) Where an exclusive licence is in force in relation to any copyright, the preceding subsections of this section have effect as if any reference in those subsections to the owner of the copyright were a reference to the exclusive licensee.

(11) The copying of the whole or a part of a work or other subject-matter for the educational purposes of an educational institution of, or under the control of, the Commonwealth, a State or the Northern Territory shall, for the purposes of this section, be deemed not to be an act done for the services of the Commonwealth, that State or the Northern Territory.

PART VIII—EXTENSION OR RESTRICTION OF OPERATION OF ACT

Application of Act to countries other than Australia

184. (1) Subject to this section, the regulations may make provision applying any of the provisions of this Act (other than those of Part XIA) specified in the regulations, in relation to a country (other than Australia) so specified, in any one or more of the following ways:

(a) so that the provisions apply in relation to literary, dramatic, musical or artistic works or editions first published, or sound recordings or cinematograph films made or first published, in that country in like manner as those provisions apply in relation to literary, dramatic, musical or artistic works or editions first published, or sound recordings or cinematograph films made or first published, in Australia;

(b) so that the provisions apply in relation to artistic works that are buildings situated in that country or are attached to, or form part of, buildings situated in that country in like manner as those provisions apply in relation to artistic works that are buildings situated in Australia or are attached to, or form part of, buildings situated in Australia;

(c) so that the provisions apply in relation to persons who, at a material time, are citizens or nationals of that country in like manner as those provisions apply in relation to persons who, at such a time, are Australian citizens;

(d) so that the provisions apply in relation to persons who, at a material time, are resident in that country in like manner as those provisions apply in relation to persons who, at such a time, are resident in Australia;

(e) so that the provisions apply in relation to bodies incorporated under the law of that country in like manner as those provisions apply in relation to bodies incorporated under a law of the Commonwealth or of a State;

(f) so that the provisions apply in relation to television broadcasts and sound broadcasts made from places in that country by persons entitled under the law of that country to make such broadcasts in like manner as those provisions apply in relation to television broadcasts and sound broadcasts made from places in Australia by the Australian Broadcasting Corporation, by the Special Broadcasting Service, by a holder of a licence or permit granted under the *Broadcasting Act 1942* or by a person prescribed for the purposes of subparagraph 91 (a) (iii) or 91 (c) (iii).

(2) Regulations applying a provision of this Act in relation to a country other than Australia in accordance with the last preceding subsection:

(a) may apply the provision without exception or modification or subject to such exceptions or modifications as are specified in the regulations; and

(b) may apply the provision either generally or in relation to such classes of works or other subject-matter, or other classes of cases, as are specified in the regulations.

(3) Regulations applying any of the provisions of this Act in relation to a country, not being a country that is a party to a Convention relating to copyright to which Australia is also a party, shall not be made unless the Governor-General is satisfied that, in respect of the class of works or other subject-matter to which those provisions relate, provision has been or will be made under the law of that country by virtue of which adequate protection is or will be given to owners of copyright under this Act.

(4) Where:

(a) the identity of the author of an unpublished work is unknown but there are reasonable grounds for believing that the author of the work was, at the time when, or for a substantial part of the period during which, the work was made, a citizen or national of a country other than Australia;

(b) under the law of that country, a person is authorized to represent the author, or to protect and enforce the rights of the author, in relation to that work; and

(c) provision is made by the regulations applying any of the provisions of this Act in relation to works made by citizens or nationals of that country;

that person shall, for the purposes of those provisions as so applying, be treated as if he were the author of the work.

Denial of copyright to citizens of countries not giving adequate protection to Australian works

185. (1) If it appears to the Governor-General that the law of a country does not give adequate protection to Australian works, or does not give adequate protection in relation to a class or classes of such works (whether the lack of protection relates to the nature of the work or the nationality, citizenship or country of residence of its author, or all of those matters), the regulations may make provision in relation to that country in accordance with the next succeeding subsection.

(2) Regulations made for the purposes of this section may provide, either generally or in such classes of cases as are specified in the regulations, that copyright under this Act does not subsist in works first published after a date specified in the regulations (which may be a date before the commencement of the regulations or before the commencement of this Act) if, at the time of the first publication of those works, the authors of the works were or are:

(a) citizens or nationals of a country specified in the regulations, not being at that time persons resident in Australia; or

(b) in the case of works being sound recordings or cinematograph films—bodies incorporated under the law of a country specified in the regulations.

(3) In making regulations for the purposes of this section, the Governor-General shall have regard to the nature and extent of the lack of protection for Australian works by reason of which the regulations are made.

(4) In this section:

"Australian work" means a work the author of which was, at the time when the work was made, a qualified person for the purposes of the relevant provision of this Act;

"author" , in relation to a sound recording or a cinematograph film, means the maker of the recording or film;

"the relevant provision of this Act" means:

(a) in relation to a literary, dramatic, musical or artistic work—section 32; and

(b) in relation to a sound recording or a cinematograph film—Part IV;

"work" means a literary, dramatic, musical or artistic work, a sound recording or a cinematograph film.

Application of Act to international organizations

186. (1) Where it appears to the Governor-General that it is desirable that this Act should apply in relation to an organization:

(a) of which 2 or more countries, or the Governments of 2 or more countries, are members; or

(b) that is constituted by persons representing 2 or more countries, or representing the Governments of 2 or more countries;

the regulations may declare that organization to be an international organization to which this Act applies.

(2) An international organization to which this Act applies that otherwise does not have, or at some material time otherwise did not have, the legal capacities of a body corporate has, and shall be deemed

at all material times to have had, the legal capacities of a body corporate for the purpose of holding, dealing with and enforcing copyright and for the purposes of all legal proceedings relating to copyright.

Original works made or first published by international organizations

187. (1) Where an original literary, dramatic, musical or artistic work is made by, or under the direction or control of, an international organization to which this Act applies in such circumstances that copyright would not, apart from this subsection, subsist in the work:

(a) copyright subsists in the work;

(b) that copyright subsists so long as the work remains unpublished; and

(c) the organization is, subject to Part X, the owner of that copyright.

(2) Where an original literary, dramatic, musical or artistic work is first published by, or under the direction or control of, an international organization to which this Act applies in such circumstances that copyright would not, apart from this subsection, subsist in the work immediately after the first publication of the work:

(a) copyright subsists in the work, or, if copyright in the work subsisted immediately before its first publication, continues to subsist in the work;

(b) that copyright subsists until the expiration of 50 years after the expiration of the calendar year in which the work was first published; and

(c) the organization is, subject to Part X, the owner of that copyright.

(3) Part III, other than the provisions of that Part relating to the subsistence, duration or ownership of copyright, applies in relation to copyright subsisting by virtue of this section in like manner as it applies in relation to copyright subsisting by virtue of that Part.

Subject-matter, other than original works, made or first published by international organizations

188. (1) Where a sound recording or a cinematograph film is made by, or under the direction or control of, an international organization to which this Act applies in such circumstances that copyright would not, apart from this subsection, subsist in the recording or film:

(a) copyright subsists in the recording or film;

(b) that copyright subsists so long as the recording or film remains unpublished; and

(c) the organization is, subject to Part X, the owner of that copyright.

(2) Where a sound recording or a cinematograph film is first published by, or under the direction or control of, an international organization to which this Act applies in such circumstances that copyright would not, apart from this subsection, subsist in the recording or film immediately after the first publication of the recording or film:

(a) copyright subsists in the recording or film, or, if copyright in the recording or film subsisted immediately before its first publication, continues to subsist in the recording or film;

(b) that copyright subsists until the expiration of 50 years after the expiration of the calendar year in which the recording or film was first published; and

(c) the organization is, subject to Part X, the owner of that copyright.

(3) Where an edition of a literary, dramatic, musical or artistic work or of 2 or more literary, dramatic, musical or artistic works, other than an edition that reproduces a previous edition of the same work or works, is published by, or under the direction or control of, an international organization to which this Act applies in such circumstances that copyright would not, apart from this subsection, subsist in the edition immediately after the first publication of the edition:

(a) copyright subsists in the edition;

(b) that copyright subsists until the expiration of 25 years after the expiration of the calendar year in which the edition was first published; and

(c) the organization is, subject to Part X, the owner of that copyright.

(4) Part IV, other than the provisions of that Part relating to the subsistence, duration or ownership of copyright, applies in relation to copyright subsisting by virtue of this section in like manner as it applies in relation to copyright subsisting by virtue of that Part.

PART IX—FALSE ATTRIBUTION OF AUTHORSHIP

Interpretation

189. In this Part, **"name"** includes initials or a monogram.

Duty not to attribute falsely the authorship of a work

190. **(1)** A person (in this subsection referred to as "the offender") is, by virtue of this section, under a duty to the author of a work not to:

(a) insert or affix another person's name in or on the work, or in or on a reproduction of the work, in such a way as to imply that the other person is the author of the work;

(b) publish, sell or let for hire, by way of trade offer or expose for sale or hire, or by way of trade exhibit in public, the work with another person's name so inserted or affixed, if the offender knows that the other person is not the author of the work;

(c) do any of the acts mentioned in the last preceding paragraph in relation to, or distribute, reproductions of the work, being reproductions in or on which another person's name has been so inserted or affixed, if the offender knows that the other person is not the author of the work; or

(d) perform in public or broadcast the work as being a work of which another person is the author, if the offender knows that the other person is not the author of the work.

(2) The last preceding subsection applies where, contrary to the fact, a work is represented as being an adaptation of the work of another person in like manner as it applies where a work is represented as being the work of another person.

(3) After the death of the author of a work, a person is, by virtue of this section, under a duty to the legal personal representative of the author not to do in relation to, or to a reproduction of, the work or an adaptation of the work any act that, but for the death of the author, the person would, by reason of either of the last two preceding subsections, have been under a duty to the author not to do.

(4) In this section, **"work"** means a work in which copyright subsists.

Duty not to attribute falsely the authorship of altered work

191. Where a work in which copyright subsists has been altered by a person other than the author of the work, a person is, by virtue of this section, under a duty to the author of the work not to:

(a) publish, sell or let for hire, or by way of trade offer or expose for sale or hire, the work as so altered, as being the unaltered work of the author; or

(b) publish, sell or let for hire, or by way of trade offer or expose for sale or hire, a reproduction of the work as so altered, as being a reproduction of the unaltered work of the author;

if, to his knowledge, it is not the unaltered work or a reproduction of the unaltered work, as the case may be, of the author.

Duty not to attribute falsely the authorship of reproduction of artistic work

192. A person is, by virtue of this section, under a duty to the author of an artistic work in which copyright subsists not to:

(a) publish, sell or let for hire, by way of trade offer or expose for sale or hire, or by way of trade exhibit in public, a reproduction of the work, as being a reproduction made by the author of the work; or

(b) distribute reproductions of the work as being reproductions made by the author of the work;

where the reproduction was, or the reproductions were, to his knowledge, not made by the author.

Breach of duty not committed if act done outside Australia or done with permission

193. The doing of an act by a person is not a breach of a duty owed by that person to another person by virtue of this Part if the act was done outside Australia or was done with the permission, whether express or implied, of that other person.

Action for breach of duty

194. (1) Where a person commits a breach of a duty owed by him to another person by virtue of this Part, the breach is not an offence against this Part but the other person may bring an action in respect of the breach.

(2) Subject to section 203, the relief that a court may grant in an action under the last preceding subsection includes an injunction (subject to such terms, if any, as the court thinks fit) and damages.

(3) Where, in respect of an act done in relation to, or to a reproduction of, a work or an adaptation of a work after the death of the author of the work, damages are recovered under this section by the legal personal representative of the author, those damages devolve

as if they formed part of the estate of the author and as if the right of action in respect of the doing of that act had subsisted, and had been vested in the author, immediately before his death.

Saving of other rights and remedies

195. (1) Subject to this section, this Part does not affect any right of action or other remedy, whether civil or criminal, in proceedings instituted otherwise than by virtue of this Part.

(2) Any damages recovered in proceedings instituted by virtue of this Part shall be taken into account in assessing damages in proceedings instituted otherwise than by virtue of this Part and arising out of the same operation or transaction.

(3) Any damages recovered in proceedings instituted otherwise than by virtue of this Part shall be taken into account in assessing damages in proceedings instituted by virtue of this Part and arising out of the same operation or transaction.

Jurisdiction of Federal Court of Australia

195AA. Jurisdiction is conferred on the Federal Court of Australia with respect to actions under section 194.

PART X—MISCELLANEOUS

Interpretation

195A.[4] (1) In this Part (other than subsection 203H (5)), **"officer in charge"** means:

(a) in relation to archives—the person holding, or performing the duties of, the office or position in the service of the body administering the archives the duties of which involve that person having direct responsibility for the maintenance of, and the provision of services in relation to, the collection comprising the archives;

(b) in relation to a central records authority—the person holding, or performing the duties of, the office in the service of the body administering the authority the duties of which involve that person having direct responsibility for the maintenance of, and the provision of services in relation to, the records deposited with the authority; and

(c) in relation to a library—the officer holding, or performing the duties of, the office or position in the service of the body administering the library the duties of which involve that

person having direct responsibility for the maintenance of, and the provision of services in relation to, the collection comprising the library.

(2) In this Part, a reference to the prescribed retention period after the making of a copy of the whole or a part of a work, an eligible item or another subject-matter that was made in reliance on section 49, 50, 51A, 53B, 53D, 110B or 200A shall be read as a reference to such period as is declared by the regulations to be the prescribed retention period for the purposes of this Part.

(3) A reference in this Part to an educational institution, to an institution assisting handicapped readers or to an institution assisting intellectually handicapped persons includes a reference to an institution that has at any time been an educational institution, an institution assisting handicapped readers or an institution assisting intellectually handicapped persons, as the case may be.

(4) A reference in this Part to an institution includes a reference to a school of nursing, an undertaking within a hospital, a teacher education centre and an undertaking within a body administering an educational institution.

(5) In this Part:

(a) a reference to an eligible item is a reference to:

(i) a published literary, dramatic, musical or artistic work;

(ii) a published sound recording or cinematograph film; or

(iii) a sound broadcast or television broadcast;

(b) a reference to a copy of an eligible item being a literary, dramatic or musical work is a reference to any of the following:

(i) a reproduction in a material form;

(ii) an adaptation;

(iii) a reproduction in a material form of an adaptation, of the work;

(c) a reference to a copy of an eligible item being an artistic work is a reference to a reproduction in a material form of the work;

(d) a reference to a copy of an eligible item being a sound recording or a cinematograph film is a reference to a copy of the sound recording or cinematograph film; and

(e) a reference to a copy of an eligible item being a television broadcast or a sound broadcast is a reference to a copy of a cinematograph film of the broadcast or to a record embodying a sound recording of the broadcast.

Review of certain decisions

195B. (1) For the purposes of this section, the following decisions are reviewable decisions:

(a) a decision of the Attorney-General refusing to make a declaration in respect of a body or institution under subsection 10A (1), 135P (1), 135ZZB (1) or 135ZZU (1);

(b) a decision of the Attorney-General revoking a declaration made in respect of a body or institution under subsection 10A (1), 135P (1), 135ZZB (1) or 135ZZU (1);

(c) a decision of the Comptroller-General of Customs not to grant permission under subsection 135 (6).

(2) Where the Attorney-General makes a reviewable decision referred to in paragraph (1) (a) or (b), the Attorney-General shall cause to be sent to the body or institution concerned a written notice containing:

(a) the terms of the decision;

(b) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision; and

(c) except where subsection 28 (4) of that Act applies—a statement to the effect that the body or institution may request a statement under section 28 of that Act.

(3) Where the Comptroller-General of Customs makes a reviewable decision referred to in paragraph (1) (c), the Comptroller-General shall cause to be sent to the owner or importer whose interests are affected by the decision a notice containing:

(a) the terms of the decision;

(b) a statement to the effect that where no appeal under subsection 135 (6) has been made to the Minister for Industry, Technology and Commerce against the decision, the owner or importer may, subject to the *Administrative Appeals Tribunal Act 1975*, apply to the Administrative Appeals Tribunal for review of the decision; and

(c) except where subsection 28 (4) of that Act applies—a statement to the effect that the owner or importer may request a statement under section 28 of that Act.

(4) Failure to include in a notice under subsection (2) or (3) a statement of the kind referred to in paragraph (2) (b) or (c) or (3) (b) or (c), as the case requires, does not affect the validity of the decision to which the notice relates.

(5) Subject to subsection (6), application may be made to the Administrative Appeals Tribunal for review of a reviewable decision.

(6) Application may not be made to the Administrative Appeals Tribunal for review of a reviewable decision referred to in paragraph (1) (c) if a person has appealed to the Minister for Industry, Technology and Commerce against the decision under subsection 135 (6).

(7) Where an application is made to the Administrative Appeals Tribunal for review of a reviewable decision referred to in paragraph (1) (c), a person is not entitled to appeal to the Minister for Industry, Technology and Commerce against that decision under subsection 135 (6).

(8) In this section:

"decision" has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Assignments and licences in respect of copyright

196. **(1)** Copyright is personal property and, subject to this section, is transmissible by assignment, by will and by devolution by operation of law.

(2) An assignment of copyright may be limited in any way, including any one or more of the following ways:

(a) so as to apply to one or more of the classes of acts that, by virtue of this Act, the owner of the copyright has the exclusive right to do (including a class of acts that is not separately specified in this Act as being comprised in the copyright but falls within a class of acts that is so specified);

(b) so as to apply to a place in or part of Australia;

(c) so as to apply to part of the period for which the copyright is to subsist.

(3) An assignment of copyright (whether total or partial) does not have effect unless it is in writing signed by or on behalf of the assignor.

(4) A licence granted in respect of a copyright by the owner of the copyright binds every successor in title to the interest in the copyright of the grantor of the licence to the same extent as the licence was binding on the grantor.

Prospective ownership of copyright

197. (1) Where, by an agreement made in relation to a future copyright and signed by or on behalf of the person who would, apart from this section, be the owner of the copyright on its coming into existence, that person purports to assign the future copyright (wholly or partially) to another person (in this subsection referred to as **"the assignee"**), then if, on the coming into existence of the copyright, the assignee or a person claiming under him would, apart from this subsection, be entitled as against all other persons to have the copyright vested in him (wholly or partially, as the case may be), the copyright, on its coming into existence, vests in the assignee or his successor in title by force of this subsection.

(2) Where, at the time when a copyright comes into existence, the person who, if he were then living, would be entitled to the copyright is dead, the copyright devolves as if it had subsisted immediately before his death and he had then been the owner of the copyright.

(3) A licence granted in respect of a future copyright by the prospective owner of the copyright binds every successor in title to the prospective interest in the copyright of the grantor of the licence to the same extent as the licence was binding on the grantor.

Copyright to pass under will with unpublished work

198. Where under a bequest, whether specific or general, a person is entitled, beneficially or otherwise, to the manuscript of a literary, dramatic or musical work, or to an artistic work, and the work was not published before the death of the testator, the bequest shall, unless a contrary intention appears in the testator's will, be read as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

Reception of broadcasts

199. (1) Where the inclusion in a television broadcast or sound broadcast of a reading or recitation of an extract from a published literary or dramatic work, or from an adaptation of such a work, does not constitute an infringement of the copyright in the work, a person who, by the reception of the broadcast, causes the work or adaptation to be performed in public does not, by doing so, infringe the copyright in the work.

(2) A person who, by the reception of a television broadcast or sound broadcast, causes a sound recording to be heard in public does not, by doing so, infringe the copyright, if any, in that recording under Part IV.

(3) A person who, by the reception of an authorized television broadcast, causes a cinematograph film to be seen or heard in public shall be treated, in any proceedings for infringement of the copyright, if any, in the film under Part IV, as if he had been the holder of a licence granted by the owner of that copyright to cause the film to be seen or heard in public by the reception of the broadcast.

(4) A person who, by the reception of an authorized television broadcast or sound broadcast, causes a literary, dramatic or musical work or an adaptation of such a work, an artistic work or a cinematograph film to be transmitted to subscribers to a diffusion service shall be treated, in any proceedings for infringement of the copyright, if any, in the work or film, as if he had been the holder of a licence granted by the owner of that copyright to cause the work, adaptation or film to be transmitted by him to subscribers to that service by the reception of the broadcast.

(5) If, in the circumstances mentioned in either of the last two preceding subsections, the person causing the cinematograph film to be seen or heard, or the work, adaptation or cinematograph film to be transmitted, as the case may be, infringed the copyright concerned by reason that the broadcast was not an authorized broadcast, proceedings shall not be brought against that person under this Act in respect of his infringement of that copyright but the infringement shall be taken into account in assessing damages in any proceedings against the maker of the broadcast in respect of that copyright, in so far as that copyright was infringed by the making of the broadcast.

(6) For the purposes of this section, a broadcast, in relation to a work, an adaptation of a work or a cinematograph film, is an authorized broadcast if, but only if, it is made by, or with the licence of, the owner of the copyright in the work or film.

(7) A reference in this section to a broadcast shall:

(a) in the case of a television broadcast—be read as a reference to such a broadcast made by the Australian Broadcasting Corporation, by the Special Broadcasting Service, by any person with the use of facilities provided by that Service, by the holder of a licence or permit granted under the *Broadcasting Act 1942* or by a person prescribed for the purposes of subparagraph 91 (a) (iii); and

(b) in the case of a sound broadcast—be read as a reference to such a broadcast made by the Australian Broadcasting Corporation, by the Special Broadcasting Service, by any person with the use of facilities provided by that Service, by the holder of a licence or permit granted under the *Broadcasting Act 1942* or by a person prescribed for the purposes of subparagraph 91 (c) (iii).

Use of works and broadcasts for educational purposes

200. (1) The copyright in a literary, dramatic, musical or artistic work is not infringed by reason only that the work is reproduced or, in the case of a literary, dramatic or musical work, an adaptation of the work is made or reproduced:

(a) in the course of educational instruction, where the work is reproduced or the adaptation is made or reproduced by a teacher or student otherwise than by the use of an appliance adapted for the production of multiple copies or an appliance capable of producing a copy or copies by a process of reprographic reproduction; or

(b) as part of the questions to be answered in an examination, or in an answer to such a question.

(2) The making of a record of a sound broadcast, being a broadcast that was intended to be used for educational purposes, does not constitute an infringement of copyright in a work or sound recording included in the broadcast if:

(a) the record is made by, or on behalf of, the person or authority in charge of a place of education that is not conducted for profit; and

(b) the record is not used except in the course of instruction at that place.

(2A) The making of a record of a sound broadcast is not an infringement of copyright in the broadcast if the record is made by, or on behalf of, the body administering an educational institution and is not used except for the educational purposes of that institution or another educational institution.

(3) For the purposes of sections 38 and 103, in determining whether the making of an article constituted an infringement of copyright, subsections (1), (2) and (2A) shall be disregarded.

(4) For the purposes of any provision of this Act relating to imported articles, in determining whether the making of an article made outside Australia would, if the article had been made in Australia by the importer of the article, have constituted an infringement of copyright, subsections (1), (2) and (2A) shall be disregarded.

200AA.[4] * * * * * *

Copying of eligible items by institutions assisting intellectually handicapped persons

200A. (1) The copyright in an eligible item or in any work or other subject-matter included in the eligible item is not infringed by the making, by or on behalf of the body administering an institution

assisting intellectually handicapped persons, of a copy of the whole or a part of the eligible item, if the copy is made for the sole purpose of use in the provision, whether by the institution or otherwise, of assistance to an intellectually handicapped person or persons.

(2) Subsection (1) does not apply to the making of a copy of the whole or a part of:

(a) an eligible item being a work that has been separately published in a form that would be suitable for use in the provision of the assistance referred to in that subsection; or

(b) an eligible item not being a work;

unless the person who makes the copy or causes the copy to be made is satisfied after reasonable investigation that:

(c) in the case of an eligible item to which paragraph (a) applies—no copy (not being a second-hand copy) of the eligible item in a form suitable for use in the provision of the assistance referred to in subsection (1) can be obtained within a reasonable time at an ordinary commercial price; or

(d) in the case of an eligible item to which paragraph (b) applies—no copy (not being a second-hand copy) of the eligible item alone can be obtained within a reasonable time at an ordinary commercial price.

(3) Subsection (1) does not apply to the making of a copy of the whole or a part of an eligible item by or on behalf of a body administering an institution, unless there is made, by or on behalf of that body, as soon as practicable after the making of the copy, a record of the making of the copy setting out:

(a) if the copy is a copy of the whole or a part of an article contained in a periodical publication:

(i) if the International Standard Serial Number in respect of the periodical publication is recorded in the periodical publication—that number;

(ii) if the International Standard Serial Number in respect of the publication is not so recorded—the name of the periodical publication;

(iii) the title or description of the article;

(iv) the name of the author of the article (if that name is known);

(v) the volume, or volume and number, as the case requires, of the periodical publication containing the article;

(vi) the page numbers of the pages in that volume, or in that number of that volume, that have been copied or, in a case where a page so copied does not bear a page number, such description of the page as will enable it to be identified;

(vii) the date on which the copy was made;

(viii) the form in which the copy was made; and

(ix) particulars of such other matters as are prescribed;

(b) if the copy is a copy of the whole or a part of a work other than an article contained in a periodical publication:

(i) if the International Standard Book Number in respect of the work is recorded in the edition of the work copied—that number;

(ii) if the International Standard Book Number in respect of the work is not so recorded:

(A) the title or description of the work;

(B) the name of the publisher of the edition of the work; and

(C) the name of the author of the work (if that name is known);

(iii) the page numbers of the pages in the edition of the work that have been copied or, in the case where a page so copied does not bear a page number, such description of the page as will enable it to be identified;

(iv) the date on which the copy was made;

(v) the form in which the copy was made; and

(vi) particulars of such other matters as are prescribed; and

(c) in any other case—particulars of such matters as are prescribed.

(4) For the purposes of subsection (3), a record of the making of a copy of the whole or a part of an eligible item:

(a) may be kept in writing or in any other manner prescribed by the regulations; and

(b) if it is kept in writing shall be in accordance with the prescribed form.

(5) Where a copy of the whole or a part of an eligible item is made by or on behalf of the body administering an institution and, by virtue of this section, the making of the copy does not infringe copyright in the eligible item, the body shall, if the owner of the copyright in the eligible item makes a request in writing, at any time during the prescribed retention period after the making of the copy,

for payment for the making of the copy, pay to the owner such an amount by way of equitable remuneration for the making of the copy as is agreed upon between the owner and the body, or in default of agreement, such an amount as is determined by the Copyright Tribunal on the application of either the owner or the body.

(6) Where the Copyright Tribunal has determined the amount of equitable remuneration payable under this section to the owner of the copyright in an eligible item by the body administering an institution, the owner may recover that amount from the body in a court of competent jurisdiction as a debt due to the owner.

(7) Subject to subsection (8), the copyright in an eligible item is not infringed by the making, by or on behalf of the body administering an institution assisting intellectually handicapped persons, of a copy of the whole or a part of the eligible item, if the copy is so made in order to be used in the making, by or on behalf of that body, of an intellectually handicapped person's copy of the whole or the part, as the case may be, of the eligible item.

(8) Where:

(a) a copy of the whole or a part of an eligible item is made in order to be used in the making of an intellectually handicapped person's copy of the whole or the part of the eligible item, as the case may be; and

(b) the copy:

(i) is used otherwise than as mentioned in paragraph (a); or

(ii) is not destroyed within 3 months after its making;

subsection (7) does not apply, and shall be deemed never to have applied, in relation to the making of the copy.

(9) Notwithstanding any other provision of this Act, copyright shall not vest in the maker of an intellectually handicapped person's copy of the whole or a part of an eligible item by reason of the making of the copy.

(10) Nothing in this section affects the right of the owner of copyright in an eligible item to grant a licence authorising the body administering an institution assisting intellectually handicapped persons to make, or cause to be made, a copy of the whole or a part of the eligible item without infringement of that copyright.

Delivery of library material to the National Library

201. (1) The publisher of any library material that is published in Australia and in which copyright subsists under this Act shall, within one month after the publication, cause a copy of the material to be delivered at his own expense to the National Library.

Penalty: $100.

(2) The copy of any library material delivered to the National Library in accordance with this section shall be a copy of the whole material (including any illustrations), be finished and coloured, and bound, sewed, stitched or otherwise fastened together, in the same manner as the best copies of that material are published and be on the best paper on which that material is printed.

(3) When any library material is delivered to the National Library in accordance with this section, the National Librarian shall cause a written receipt for the material to be given to the publisher of the material.

(4) This section is not intended to exclude or limit the operation of any law of a State or Territory (whether made before or after the commencement of this Act) that makes provision for or in relation to the delivery to a specified public or other library in or of the State or Territory of copies of library material published in the State or Territory.

(5) In this section:

"illustrations" includes drawings, engravings and photographs;

"library material" means a book, periodical, newspaper, pamphlet, sheet of letter-press, sheet of music, map, plan, chart or table, being a literary, dramatic, musical or artistic work or an edition of such a work, but does not include a second or later edition of any material unless that edition contains additions or alterations in the letter-press or in the illustrations.

Groundless threats of legal proceedings

202. (1) Where a person, by means of circulars, advertisements or otherwise, threatens a person with an action or proceeding in respect of an infringement of copyright, then, whether the person making the threats is or is not the owner of the copyright or an exclusive licensee, a person aggrieved may bring an action against the first-mentioned person and may obtain a declaration to the effect that the threats are unjustifiable, and an injunction against the continuance of the threats, and may recover such damages (if any) as he has sustained, unless the

first-mentioned person satisfies the court that the acts in respect of which the action or proceeding was threatened constituted, or, if done, would constitute, an infringement of copyright.

(2) The mere notification of the existence of a copyright does not constitute a threat of an action or proceeding within the meaning of this section.

(3) Nothing in this section renders a barrister or solicitor of the High Court, or of the Supreme Court of a State or Territory, liable to an action under this section in respect of an act done by him in his professional capacity on behalf of a client.

(4) The defendant in an action under this section may apply, by way of counterclaim, for relief to which he would be entitled in a separate action in respect of an infringement by the plaintiff of the copyright to which the threats relate and, in any such case, the provisions of this Act with respect to an action for infringement of a copyright are, *mutatis mutandis*, applicable in relation to the action.

(5) A reference in this section to an action in respect of an infringement of copyright shall be read as including a reference to an action in respect of the conversion or detention of an infringing copy or of a plate used or intended to be used for making infringing copies.

Limitation on power of courts to grant relief in proceedings under this Act

203. Nothing in this Act authorizes a State court or a court of a Territory to grant relief by way of injunction or account of profits if that court would not, apart from this Act, have power to grant such relief.

Retention of records and declarations in relation to copies made by libraries, archives or institutions

203A.[4] **(1)** Where, at any time before the expiration of the prescribed retention period after the making of a copy of the whole or a part of a work or other subject-matter in reliance on section 49, 50, 51A or 110B by an authorized officer of a library or archives, a relevant declaration in relation to the making of the copy is not retained in the records of the library or archives:

(a) the body administering the library or archives concerned; and

(b) the officer in charge of the library or archives concerned;

are each guilty of an offence punishable, upon conviction, by a fine not exceeding $500.

(2) Subject to subsection (3), where, at any time before the expiration of the prescribed retention period after:

(a) the making of a copy of the whole or a part of the work in reliance on section 53B by or on behalf of the body administering an educational institution; or

(b) the making of a handicapped reader's copy of the whole or a part of a work in reliance on section 53D by or on behalf of the body administering an institution assisting handicapped readers; or

(c) the making of an intellectually handicapped person's copy of the whole or a part of an eligible item in reliance on section 200A by or on behalf of the body administering an institution assisting intellectually handicapped persons;

a relevant record in relation to the making of the copy is not retained in the records of the institution concerned:

(c) the body administering the institution concerned; and

(d) the custodian in charge of the copying records of the institution concerned;

are each guilty of an offence punishable, upon conviction, by a fine not exceeding $500.

(3) Subsection (2) does not apply to a relevant record relating to the making of a copy of the whole or a part of a work or of an eligible item by or on behalf of the body administering an institution at any time while:

(a) the record is being conveyed from the institution to a central records authority of the institution for deposit with that authority;

(b) the record is deposited with a central records authority of the institution; or

(c) the record is being conveyed from a central records authority of the institution to the institution or to another central records authority of the institution.

(4) A body or person is not liable to be convicted twice of an offence against subsection (1) with respect to the retention of the same declaration or against subsection (2) with respect to the retention of the same record.

(5) It is a defence to a prosecution of the body administering, or of the officer in charge of, a library or archives for an offence against subsection (1) in relation to the retention of a declaration, or to a prosecution of the body administering, or of the custodian in charge of the copying records of, an institution for an offence against subsection

(2) in relation to the retention of a record, if the body or person prosecuted (in this subsection referred to as the **"defendant"**) satisfies the court that:

(a) in the case of a prosecution of the officer in charge of a library or archives, or a prosecution of the custodian in charge of the copying records of an institution—the declaration or record relates to the making of a copy, a handicapped reader's copy or an intellectually handicapped person's copy of a work, an eligible item or another subject-matter, or of a part of a work or of an eligible item, before the date on which the defendant became the officer in charge of the library or archives, or the custodian in charge of the copying records of the institution, as the case requires, and was not in the possession of the body administering the library, archives or institution, as the case requires, at that date; or

(b) in any case—the defendant took all reasonable precautions, and exercised due diligence, to ensure the retention of the declaration or record in the records of the library, archives or institution, as the case requires.

Certain institutions may elect to deposit copying records with central records authorities

203B.[4] **(1)** The body administering an institution may, by notice in writing given to the Attorney-General, elect to deposit the records of the institution relating to any copying done in reliance on sections 53B, 53D and 200A with the central records authority specified in the notice and, upon the making of that election, the central records authority so specified becomes, for the purposes of this Act, the central records authority of the institution.

(2) An election made by notice under subsection (1) is of no effect unless the central records authority specified in the notice is a body corporate or, if it is not a body corporate, is administered by the body making the election.

(4) Where the body administering an institution is the Crown in right of the Commonwealth or of a State, an election under subsection (1) may be signed on behalf of the Crown by the Minister of the Commonwealth or of the State responsible for the institution, or by a person authorized by that Minister to sign elections under this section.

(5) Where the body administering an institution makes an election under subsection (1) to deposit the records of the institution relating to copying done in reliance on sections 53B, 53D and 200A with a central records authority:

(a) the custodian in charge of the copying records of the institution shall:

(i) cause any such copying records that were in the possession of the institution or of another central records authority immediately before the election is made to be deposited with the officer in charge of the first-mentioned central records authority as soon as practicable after the election is made; and

(ii) cause the relevant record in respect of each copy of the whole or a part of a work or of an eligible item made by or on behalf of that body after the election is made to be deposited with the first-mentioned central records authority as soon as practicable after the making of the copy and before the expiration of the period prescribed for the purposes of this subsection after the making of the copy; and

(b) the body administering the institution shall:

(i) if there were relevant records of the institution in existence immediately before the election is made—as soon as practicable after paragraph (a) has been complied with in respect of those records; or

(ii) in any other case—as soon as practicable after the election is made;

cause a copy of the election to be published in the *Gazette*.

(6) If the custodian in charge of the copying records of an institution fails to comply with subsection (5) in relation to a relevant record of copying done in reliance on section 53B, 53D or 200A after the making of the election, the custodian and the body administering the institution are each guilty of an offence against this subsection punishable, upon conviction, by a fine not exceeding $500.

(6A) It is a defence to a prosecution of the custodian in charge of the copying records of an institution for an offence against subsection (6) constituted by a failure to comply with subsection (5) in relation to a record if the custodian satisfies the court that the custodian took all reasonable precautions, and exercised due diligence, in attempting to comply with subsection (5) in relation to the record.

(6B) It is a defence to a prosecution of the body administering an institution for an offence against subsection (6) constituted by a failure by the custodian in charge of the copying records of the institution to comply with subsection (5) in relation to a record if the body satisfies the court that it took all reasonable precautions, and exercised due diligence, to ensure that the custodian complied with subsection (5) in relation to the record.

(7) Where a central records authority is the central records authority of an institution, an election by the body administering the institution to deposit the relevant records of the institution relating to copying done in reliance on section 53B, 53D and 200A with another central records authority is of no effect unless:

(a) the body administering the institution has delivered to the body administering the first-mentioned central records authority a notice under subsection 203G (1) revoking the election made by it in respect of that central records authority;

(b) the body administering the first-mentioned central records authority has delivered to the body administering the institution a notice under subsection 203G (2) of its intention to return the copying records of that institution to that institution; or

(c) the Attorney-General has delivered to the body administering the institution a copy of a notice under subsection 203G (6) requiring the return to that institution of the copying records of that institution.

Retention of copying records by central records authorities

203C.[4] (1) Subject to subsection (2), where, at any time after the relevant record of an institution in respect of the making of a copy (including a handicapped reader's copy) of the whole or a part of a work in reliance on section 53B or 53D, or in respect of the making of an intellectually handicapped person's copy of an eligible item in reliance on section 200A, has been deposited with a central records authority of the institution under section 203B or 203G but before the expiration of the prescribed retention period after the making of that copy, that record is not in the possession of the central records authority:

(a) the body administering the central records authority; and

(b) the officer in charge of the central records authority;

are each guilty of an offence punishable, upon conviction, by a fine not exceeding $500.

(2) Subsection (1) does not apply in relation to the retention, by a central records authority, of a relevant record relating to the making of a copy of the whole or a part of a work or of an eligible item by or on behalf of the body administering an institution if the relevant record has been forwarded by the central records authority to that institution or to another central records authority in pursuance of subsection 203G (5) or (9).

(3) A body or person is not liable to be convicted twice of an offence against subsection (1) with respect to the retention of the same record.

(4) It is a defence to a prosecution of the body administering, or of the officer in charge of, a central records authority for an offence against subsection (1) in relation to the retention of a record deposited with the central records authority if the body or person prosecuted (in this subsection referred to as the **"defendant"**) satisfies the court that:

(a) in the case of a prosecution of the officer in charge of a central records authority—the record was so deposited before the date on which the defendant became the officer in charge of the central records authority and was not in the possession of the central records authority at that date; or

(b) in any case—the defendant took all reasonable precautions, and exercised due diligence, to ensure the retention of the record in the possession of the central records authority.

Arrangement of declarations and records

203D.[4] **(1)** Where the declarations that relate to the making of copies of the whole or parts of works or other subject-matter by an authorized officer of a library or archives in reliance on any of the following sections, namely, sections 49, 50, 51A and 110B, and that are retained in the records of the body administering the library or archives are not arranged in chronological order according to the dates on which the declarations were made:

(a) the body administering the library or archives, as the case may be; and

(b) the officer in charge of the library or archives, as the case may be;

are each guilty of an offence punishable, upon conviction, by a fine not exceeding $500.

(2) Where the copying records of an educational institution, an institution assisting handicapped readers or an institution assisting intellectually handicapped persons are not arranged in such a manner as to allow a person to inspect all of those records that relate to any works and eligible items by the same author or maker without having to inspect any such records that relate to any works and eligible items by another author or maker, the body administering the institution and the custodian in charge of the copying records of the institution are each guilty of an offence, punishable, upon conviction, by a fine not exceeding $500.

(3) Subsection (2) does not apply to or in relation to an institution that is required by this Act to deposit the copying records of the institution with a central records authority.

(4) Where the copying records of an educational institution, an institution assisting handicapped readers or an institution assisting intellectually handicapped persons, being copying records that are deposited with a central records authority, are not arranged in such a manner as to allow a person to inspect all the records of the institution that relate to any works and eligible items by the same author or maker without having to inspect any records of the institution that relate to any works and eligible items by another author or maker, or any copying records of another institution that are deposited with the authority, the body administering the central records authority and the officer-in-charge of the central records authority are each guilty of an offence, punishable upon conviction, by a fine not exceeding $500.

(5) It is a defence to a prosecution of a body or person for an offence against subsection (1), (2) or (4) in relation to the arrangement of declarations or copying records if the body or person satisfies the court that the body or person took all reasonable precautions, and exercised due diligence, to ensure that the declarations or copying records, as the case may be, were arranged as mentioned in that subsection.

Inspection of records and declarations retained by libraries, archives or institutions

203E. **(1)** The owner of the copyright in a work, sound recording or cinematograph film, or the agent of such an owner:

(a) may notify the officer in charge of a library or archives, in writing, that he wishes to inspect:

(i) all the relevant declarations retained in the records of the library or archives that relate to the making, in reliance on section 49, 50, 51A or 110B, of copies of works or parts of works or of copies of other subject-matter; or

(ii) such of those declarations as relate to the making, in reliance on section 49, 50, 51A or 110B, of copies of works or parts of works or of copies of other subject-matter and were made during a period specified in the notice;

on a day specified in the notice, being an ordinary working day of the library, archives or institution not less than 7 days after the date of the giving of the notice; and

(b) may, if the notice related to the making of copies of works or parts of works or of copies of other subject-matter in reliance on section 51A or 110B, state in the notice that he also wishes to inspect, on the day so specified, the collection of the library or archives.

(2) The owner of the copyright in a work or in an eligible item to which section 200A applies, or the agent of such an owner, may notify the custodian in charge of the copying records of an educational institution, an institution assisting handicapped readers or an institution assisting intellectually handicapped persons, in writing, that the owner or agent, as the case may be, wishes to inspect:

(a) all the relevant records of the institution that relate to the making, in reliance on section 53B, 53D or 200A, of:

(i) copies, or handicapped readers' copies, of works or parts of works; or

(ii) intellectually handicapped persons' copies of eligible items to which section 200A applies, or parts of such eligible items; or

(b) such of those records as relate to any works and eligible items to which section 200A applies by a specified author or maker;

on a day specified in the notice, being an ordinary working day of the institution not less than 7 days after the date of the giving of the notice.

(4) Where a person gives notice, under subsection (1), to the officer in charge of a library or archives that he wishes to inspect certain declarations on a particular day, that person may, during the ordinary working hours of the library or archives, on that day, but not earlier than 10 a.m. or later than 3 p.m., inspect the declarations to which the notice relates and, where the notice relates also to the inspection of the collection of the library or archives, may also during those hours on that day inspect that collection, and, for that purpose, may enter the premises of the library or archives.

(5) Where a person gives notice under subsection (2) to the custodian in charge of the copying records of an institution that the person wishes to inspect certain records on a particular day, that person may, during the ordinary working hours of the institution on that day (but not before 10 a.m. or after 3 p.m.) inspect the records to which the notice relates and, for that purpose, may enter the premises of the institution at which the copying records of the institution are kept.

(6) Where a person who attends at the premises of a library or archives for the purpose of exercising the powers conferred on him by subsection (4) is not provided with all reasonable facilities and assistance for the effective exercise of those powers:

(a) the body administering the library or archives, as the case may be; and

(b) the officer in charge of the library or archives, as the case may be, are each guilty of an offence punishable, upon conviction, by a fine not exceeding $500.

(7) Where a person who attends at the premises of an institution for the purpose of exercising the powers conferred on him by subsection (5) is not provided with all reasonable facilities and assistance for the effective exercise of those powers:

(a) the body administering the institution; and

(b) the custodian in charge of the copying records of the institution, are each guilty of an offence, punishable, upon conviction, by a fine not exceeding $500.

(8) It is a defence to a prosecution of the officer in charge of a library or archives for an offence against subsection (6), or to a prosecution of the custodian in charge of the copying records of an institution for an offence against subsection (7), if the person prosecuted satisfies the court that the person prosecuted believed, on reasonable grounds, that the person who attended the premises of the library, archives or institution, as the case may be, as mentioned in that subsection, was provided with all reasonable facilities and assistance for the effective exercise of the powers conferred on the last-mentioned person by subsection (4) or (5), as the case may be.

(9) It is a defence to a prosecution of the body administering a library or archives for an offence against subsection (6), or to a prosecution of the body administering an institution for an offence against subsection (7), if the body satisfies the court that it took all reasonable precautions, and exercised due diligence, to ensure that the person who attended the premises of the library, archives or institution, as the case may be, as mentioned in that subsection, was provided with all reasonable facilities and assistance for the effective exercise of the powers conferred on the last-mentioned person by subsection (4) or (5), as the case may be.

(10) A person who, either directly or indirectly, except for the purpose of:

(a) informing the owner of the copyright in a work or other subject-matter that a copy (including a microform copy) has been made of the work or other subject-matter;

(b) enforcing a right that a person has under this Act in connection with a work or other subject-matter in which copyright subsists; or

(c) ensuring compliance with a provision of Division 5 of Part III or with a provision of this Part;

makes a record of, or divulges or communicates to a person, information in relation to which subsection (11) applies in relation to the first-mentioned person is guilty of an offence punishable, upon conviction, by a fine not exceeding $500.

(11) This subsection applies in relation to information in relation to a person if, and only if:

(a) the information was acquired by the person in the course of an inspection conducted by the person under subsection (4); or

(b) the information was divulged or communicated to the person by another person and this subsection applies in relation to the information in relation to the other person.

Additional offences in relation to the making and retention of records and declarations

203F.[4] **(1)** A person shall not, under section 49, 50, 51A, ~~53B, 53D, 110B or 200A~~ or 110B, make a declaration or record that the person knows, or ought reasonably to know, is false or misleading in a material particular.

Penalty:

(a) in a case where the person knows that the declaration or record is false or misleading in a material particular—$500; or

(b) in any other case—$250.

(2) A person shall not wilfully dispose of or destroy, or cause to be disposed of or destroyed, any relevant declaration or record in relation to the making of a copy of the whole or a part of a work or other subject-matter in reliance on section 49, 50, 51A, 53B or 110B, in relation to the making of a handicapped reader's copy of the whole or a part of a work in reliance on section 53D or in relation to the making of a copy of the whole or a part of an eligible item in reliance on section 200A, being a declaration or record in respect of which the prescribed retention period has not expired, if the person knows, or ought reasonably to know, that the prescribed retention period in respect of the declaration or record has not expired.

Penalty:

(a) in a case where the person knows that the prescribed retention period in respect of the declaration or record has not expired—$500; or

(b) in any other case—$250.

(3) Where the body administering an institution fails to publish in the *Gazette* a copy of an election made by it under section 203B in accordance with the requirements of subsection (5) of that section, the body administering that institution is guilty of an offence, punishable, upon conviction, by a fine not exceeding $500.

(4) Where the body administering a central records authority causes a notice to be published in the *Gazette* under subsection 203G (9) that a member of the body, or a person holding, or performing the duties of, an office in the service of the body, knows, or ought reasonably to know, is false or misleading in a material particular, the body administering the central records authority is guilty of an offence, punishable, upon conviction, by a fine not exceeding:

(a) in a case where such a member or person knows that the notice is false or misleading in a material particular—$500; or

(b) in any other case—$250.

Return of copying records deposited with a central records authority

203G.[4] **(1)** A body that has made an election under subsection 203B (1) to deposit its copying records with a central records authority may, at any time, by notice in writing furnished to the body administering the central records authority, revoke the election on a date specified in the notice, being a date not less than 30 days after delivery of the notice to the body administering the central records authority.

(2) The body administering the central records authority of an institution may, at any time, by notice in writing furnished to the body administering the institution, inform the body administering the institution that as soon as practicable after a date specified in the notice, being a date not less than 30 days after delivery of the notice to the body administering the institution, it intends to cause the copying records of the institution retained by the authority to be returned to the institution.

(3) A body shall, as soon as practicable after it causes a notice to be delivered to another body under subsection (1) or (2), cause a copy of the notice to be delivered to the Attorney-General.

Penalty: $500.

(4) Where the body administering an institution is the Crown in right of the Commonwealth or of a State, a notice under subsection (1) or (2) may be signed on behalf of the Crown by the Minister of the Commonwealth or of the State responsible for the institution, or by a person authorized by that Minister to sign elections under this section.

(5) Where:

(a) the body administering an institution, by notice in writing furnished to the body administering a central records authority, revokes an election made under section 203B in relation to that central records authority; or

(b) the body administering a central records authority of an institution, by notice in writing furnished to the body administering the institution, informs the body administering the institution that it intends to cause the copying record of the institution deposited with the authority to be returned to the institution;

the body administering the central records authority shall, as soon as practicable after the revocation of the election under subsection (1) or the date specified in the notice given under subsection (2), cause the copying records of the institution deposited with it:

(c) unless paragraph (b) applies—to be returned to the custodian in charge of the copying records of the institution; or

(d) if the body administering the institution informs the body administering the central records authority, by notice in writing, that it has made an election to deposit the copying records of the institution with another central records authority—to be forwarded to the officer in charge of that other central records authority.

Penalty: $500.

(6) If, at any time, the Attorney-General is satisfied that a central records authority is not being administered in a manner consistent with the requirements of this Act, the Attorney-General may, by notice in writing furnished to the body administering the central records authority, require the body to cause the copying records of each institution of which it is the central records authority to be returned to the custodian of the copying records of that institution on or before a date specified in the notice.

(7) Application may be made to the Administrative Appeals Tribunal for the review of a decision by the Attorney-General, under subsection (6), to require the body administering a central records authority to cause the copying records of each institution of which it is the central records authority to be returned to the custodian of the copying records of that institution.

(8) As soon as practicable after a notice is delivered to the body administering a central records authority under subsection (6), the Attorney-General shall cause a copy of the notice to be delivered to the body administering each institution of which the authority is the central records authority.

(9) The body administering a central records authority shall:

(a) as soon as practicable after receipt of a notice under subsection (6), cause the copying records of each institution deposited with it:

(i) unless subparagraph (ii) applies—to be returned to the custodian in charge of the copying records of the institution, or, if the institution is no longer in existence, to be deposited with such person or body as is nominated by the Attorney-General; or

(ii) if the body administering the institution informs the body administering the central records authority, by notice in writing, that it has made an election to deposit the copying records of the institution with another central records authority—to be forwarded to the officer in charge of that other central records authority; and

(b) as soon as practicable after it has complied with paragraph (a), cause a notice to be published in the *Gazette* stating that it has complied with that paragraph on a specified day and setting out the manner in which it has complied with that paragraph.

Penalty: $500.

(10) Upon the publication, by the body administering a central records authority that is the central records authority of an institution, of a notice of the kind referred to in paragraph (9) (b) in relation to the copying records of that institution, that central records authority shall, by force of this subsection, be deemed to have ceased to be the central records authority of that institution.

(11) Where:

(a) the body administering an institution gives a notice under subsection (1) to the body administering a central records authority;

(b) the body administering an institution receives a notice under subsection (2) given by the body administering a central records authority; or

(c) the body administering an institution receives a copy of a notice furnished by the Attorney-General, under subsection (6), to the body administering the central records authority of that institution;

nothing in section 203B shall be taken to require the custodian in charge of the copying records of the institution to deposit with that central records authority any relevant records relating to copying done by or on behalf of the body administering that institution.

(12) Where:

(a) under subsection (9), the Attorney-General causes the copying records of an institution that is no longer in existence to be deposited with such person or body as is nominated by the Attorney-General for the purpose; and

(b) a relevant record that is so deposited ceases to be in the possession of that person or body at any time before the expiration of the prescribed retention period after the making of the copy to which the record relates;

the person or body is guilty of an offence, punishable, upon conviction, by a fine not exceeding $500.

(13) It is a defence to a prosecution of a body or person for an offence against subsection (12) in relation to the retention of a record if the body or person satisfies the court that the body or person took all reasonable precautions, and exercised due diligence, to ensure the retention of the record in the possession of the body or person.

Notation of certain copies etc.

203H.[4] **(1)** In proceedings against a person or body for infringement of copyright in a work in connection with the making, by or on behalf of an institution, of a copy of the work, or of a part of the work, the person or body is not entitled to rely on section 49, 50, 51A, 53B or 53D as justification for the making of the copy unless, at or about the time the copy was made, there was made on the copy a notation:

(a) stating that the copy was made on behalf of that institution and setting out the date on which the copy was made; and

(b) in the case of a copy that was made in reliance on subsection 53D (11A)—stating that the copy is a prescribed reproduction made in reliance on that subsection.

(2) In proceedings against a person or body for infringement of copyright in a sound recording, a cinematograph film or an eligible item in connection with the making, by or on behalf of an institution, of a copy of the sound recording, cinematograph film or eligible item, or a part of the eligible item, the person or body is not entitled to rely on section 110B or 200A as justification for the making of the copy unless, at or about the time the copy was made, there was made on, or attached to, the copy a notation:

(a) stating that the copy was made on behalf of that institution and setting out the date on which the copy was made; and

(b) in the case of a copy that was made in reliance on subsection 200A (7)—stating that the copy was made in reliance on that subsection.

(3) In proceedings against a person or body for infringement of copyright in a work in connection with the making, on behalf of an institution assisting handicapped readers, of a record embodying a sound recording of the work, or of a part of the work, the person or body is not entitled to rely on subsection 53D (1) unless, at the time the record was made, there was embodied on the record, immediately before the commencement of that sound recording, a sound recording of the following message:

> "This record, embodying a sound recording of (*name of work*) was made in reliance on subsection 53D (1) of the *Copyright Act 1968* on (*date on which record made*) by (*name of person who made the record*) on behalf of (*name of institution assisting handicapped readers on behalf of which the record was made*). Copyright may subsist in that work and, if it does, the making of a record embodying this sound recording, otherwise than with the permission of the owner of the copyright in the work or in reliance on a provision of the *Copyright Act 1968*, constitutes an infringement of copyright in the work." .

(3A) In proceedings against a person or body for infringement of copyright in a work in connection with the making, on behalf of an institution assisting handicapped readers, of a record embodying a sound recording of the work, or of a part of the work, the person or body is not entitled to rely on subsection 53D (11A) unless, at the time the record was made, there was embodied on the record, immediately before the commencement of that sound recording, a sound recording of the following message:

> "This record, embodying a sound recording of (*name of work*), is a prescribed reproduction made in reliance on subsection 53D (11A) of the *Copyright Act 1968* on (*date on which record made*) by (*name of person who made the record*) on behalf of (*name of institution assisting handicapped readers, on behalf of which the record was made*). " .

(4) A person who:

(a) makes a copy of a work, or of a part of a work, a notation of the kind referred to in subsection (1);

(aa) makes on, or attaches to, a copy of a sound recording, a cinematograph film or an eligible item, or of a part of an eligible item, a notation of the kind referred to in subsection (2); or

(b) causes to be embodied on a record embodying a sound recording a message of a kind referred to in subsection (3) or (3A);

being a notation or message that contains a statement that the person knows, or ought reasonably to know, is false or misleading in a material particular, is guilty of an offence, punishable, upon conviction, by a fine not exceeding:

(c) in a case where the person knows that the statement is false or misleading in a material particular—$500; or

(d) in any other case—$250.

(5) For the purposes of subsections (1), (2), (3) and (3A):

(a) where a copy of a work, a sound recording, a cinematograph film of an eligible item, or of a part of a work or an eligible item:

(i) is made, or caused to be made, by an authorized officer of a library; or

(ii) is made by or on behalf of the officer in charge of a library;

being a library of an institution, the copy shall be deemed to have been made on behalf of the institution;

(b) where a copy of a work, a sound recording, a cinematograph film or an eligible item, or of a part of a work or an eligible item:

(i) is made, or caused to be made, by an authorized officer of a library; or

(ii) is made by or on behalf of the officer in charge of a library, being a library that is not a library of an institution:

(iii) the copy shall be deemed to have been made on behalf of the person or body administering the library; and

(iv) those subsections apply as if a reference in those subsections to an institution included a reference to that person or body;

(c) where a copy of a work, a sound recording, a cinematograph film or an eligible item, or of a part of a work or an eligible item:

(i) is made, or caused to be made, by an authorized officer of archives; or

(ii) is made by or on behalf of the officer in charge of archives;

then:

(iii) the copy shall be deemed to have been made on behalf of the person or body administering the archives; and

(iv) those subsections apply as if a reference in those subsections to an institution included a reference to that person or body;

(d) where a copy, or a record embodying a sound recording, of a work, or of a part of a work, is made by or on behalf of the body administering an institution, the copy or record, as the case may be, shall be deemed to have been made on behalf of the institution; and

(e) where a copy of a sound recording, a cinematograph film or an eligible item, or of a part of an eligible item, is made by or on behalf of the body administering an institution, the copy shall be deemed to have been made on behalf of the institution.

(6) The production, in any proceedings:

(a) for infringement of copyright in a work;

(b) before the Copyright Tribunal on application made under subsection 53B (11) or 53D (10); or

(c) for a contravention of a provision of this Act;

of a copy of a work, or of a part of a work, bearing a notation or mark of the kind referred to in subsection (1), 135K (1), 135ZY (1), 135ZQ (4) or 135ZT (4) is *prima facie* evidence of the matters stated in the notation or mark.

(7) For the purposes of subsection (6), where a copy of a work or a part of a work, bears a notation or mark of a kind referred to in subsection (1), 135K (1), 135ZX (1), 135ZQ (4) or 135ZT (4) the notation or mark shall, unless the contrary is proved, be deemed to have been made on the copy at or about the time the copy was made.

(8) The production, in any proceedings of a kind referred to in subsection (6), of a record embodying a sound recording of a work or a part of a work, being a record that also embodies a sound recording of a message of a kind referred to in subsection (3) or (3A), is *prima facie* evidence of the matters stated in the message.

(9) For the purposes of subsection (8), where a record embodying a sound recording of a work or a part of a work, also embodies a sound recording of a message of a kind referred to in subsection (3) or (3A), the message shall, unless the contrary is proved, be deemed to have been embodied on the record at the time the record was made.

(9A) The production, in any proceedings:

(a) for infringement of copyright in a sound recording, a cinematograph film or an eligible item;

(b) before the Copyright Tribunal on application made under subsection 200A (5); or

(c) for a contravention of this Act;

of a copy of a sound recording or a cinematograph film bearing, or to which there is attached, a notation or mark of the kind referred to in subsection (2), 135K (1), 135ZX (1), 135ZQ (4) or 135ZT (4), is *prima facie* evidence of the matters stated in the notation or mark.

(9B) For the purposes of subsection (9A), where a copy of a sound recording or a cinematograph film bears, or where there is attached to such a copy, a notation or mark of the kind referred to in subsection (2), 135K (1), 135ZX (1), 135ZQ (4) or 135ZT (4), the notation or mark shall, unless the contrary is proved, be deemed to have been made on or attached to the copy at or about the time the copy was made.

(10) In this section, **"copy"** , in relation to a work, or a part of a work, includes a microform copy, a Braille version, a large-print version, or a photographic version, of the work, or of the part of the work.

PART XI—TRANSITIONAL

Division 1—Preliminary

Interpretation

204. (1) In this Part, the expression **"photograph"** has, in lieu of the meaning given to that expression by section 10, the meaning given by the next succeeding subsection.

(2) For the purposes of any provision of this Part that provides that an expression is to have the meaning given to that expression by this section or that refers to an expression as defined by this section:

"collective work" means:

(a) an encyclopaedia, dictionary, year book or similar work;

(b) a newspaper, review, magazine or similar periodical; or

(c) a work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated;

"deliver" , in relation to a lecture, includes deliver by means of a mechanical instrument;

"dramatic work" includes a piece for recitation, a choreographic work or entertainment in dumb show the scenic arrangement or acting form of which is fixed in writing or otherwise, and a cinematograph production where the arrangement, the acting form or the combination of incidents represented gives the work an original character;

"lecture" includes an address, speech and sermon;

"literary work" includes a map, chart, plan, table and compilation;

"perform" , in relation to a dramatic work as defined by this section or a musical work, means make an acoustic representation of the work or a visual representation of a dramatic action in the work, and includes make such a representation by means of a mechanical instrument;

"photograph" includes photo-lithograph and a work produced by a process similar to photography.

References to making of works, recordings and films

205. For the purposes of any reference in this Part to works, sound recordings or cinematograph films made before the commencement of this Act, a work, sound recording or cinematograph film the making of which extended over a period shall be deemed not to have been made before the commencement of this Act unless the making of it was completed before the commencement of this Act.

References in other laws or instruments to copyright

206. (1) Without prejudice to the operation of the succeeding sections of this Part:

(a) a reference in any other law of the Commonwealth or in any contract, agreement or other instrument to a provision of the Copyright Act, 1911 shall be read as a reference, or as including a reference, to the corresponding provision of this Act;

(b) a reference in any other law of the Commonwealth or in any contract, agreement or other instrument to copyright or to works in which copyright subsists shall, if apart from this Act it would be read as a reference to copyright under the Copyright Act, 1911 or to works in which copyright subsisted under that Act, be read as a reference, or as including a reference, to copyright under this Act or to works or any other subject-matter in which copyright subsists under this Act, as the case may be; and

(c) a reference in any other law of the Commonwealth or in any contract, agreement or other instrument to the grant of an interest in copyright by licence shall be read, in relation to copyright under this Act, as a reference to the grant of a licence in respect of that copyright.

(2) This section has effect unless the contrary intention appears in the other law of the Commonwealth or in the contract, agreement or other instrument, as the case may be.

(3) In this section, **"law of the Commonwealth "** means:

(a) an Act;

(b) an instrument (including regulations or rules) having effect by virtue of an Act;

(c) an Ordinance of a Territory and any other law in force in a Territory;

(d) an instrument (including regulations or rules) having effect by virtue of such an Ordinance or law; and

(e) an instrument having effect by virtue of any such regulations or rules as are mentioned in paragraph (b) or paragraph (d).

Application

207. Except in so far as this Part otherwise expressly provides, this Act applies in relation to things existing at the commencement of this Act in like manner as it applies in relation to things coming into existence after the commencement of this Act.

Authorship of photographs

208. A reference in this Act to the author of a photograph shall, in relation to a photograph taken before the commencement of this Act, be read as a reference to the person who, at the time when the photograph was taken, was the owner of the material on which the photograph was taken.

Publication

209. (1) For the purposes of the application of subsection 29 (5) in determining whether a publication that took place before the commencement of this Act was the first publication, the reference in that subsection to a period of not more than 30 days shall be read as a reference to a period of not more than 14 days.

(2) For the purposes of the application of subsection 29 (7) in relation to an act done before the commencement of this Act:

(a) a reference in that subsection to copyright includes a reference to copyright under the *Copyright Act 1905* and to copyright under the Copyright Act, 1911; and

(b) a reference in that subsection to the licence of the owner of copyright shall:

(i) in relation to copyright under the *Copyright Act 1905*—be read as a reference to the privity of the owner; and

(ii) in relation to copyright under the Copyright Act, 1911—be read as a reference to the consent or acquiescence of the owner.

Division 2—Original Works

Expired copyright not to revive

210. (1) Notwithstanding anything in Part III, copyright does not subsist by virtue of that Part in a work first published before the commencement of this Act unless copyright subsisted in the work under the Copyright Act, 1911 immediately before the commencement of this Act.

(2) The last preceding subsection does not apply in relation to a work to which Division 5 applies.

Original works in which copyright subsists

211. (1) Subsection 32 (1) applies to works made before the commencement of this Act as if each reference in that subsection to a qualified person included a reference to a British subject and to a person domiciled in any part of the Queen's dominions to which the Copyright Act, 1911 extended.

(2) Subsection 32 (2) applies to works first published before the commencement of this Act as if paragraphs (d) and (e) of that subsection were omitted.

(3) Subsection 32 (2) applies to works that are first published after the commencement of this Act and the author of which died before the commencement of the *Nationality and Citizenship Act 1948* as if the reference in paragraph 32 (2) (e) to a qualified person included a reference to a person who would have been an Australian citizen if that Act had been in force immediately before his death.

(4) Subsection 32 (3) does not apply to or in relation to a building that was constructed before the commencement of this Act.

(5) This section has effect subject to the last preceding section.

Duration of copyright in photographs

212. Subsection 33 (6) does not apply in relation to a photograph taken before the commencement of this Act but, subject to subsection 32 (2) as affected by the last preceding section, copyright subsisting in such a photograph by virtue of Part III continues to subsist until the expiration of 50 years after the expiration of the calendar year in which the photograph was taken.

Ownership of copyright

213. (1) Subsections 35 (4) and (6) do not apply in relation to works made before the commencement of this Act.

(2) Subsection 35 (5) does not apply in relation to a work that was or is made in pursuance of an agreement made before the commencement of this Act.

(3) Where a work is excluded from the application of subsection 35 (4), (5) or (6) by reason of either of the last two preceding subsections, subsection 35 (2) has effect in relation to the work subject to the succeeding subsections of this section.

(4) The operation of any of the next three succeeding subsections in relation to a particular work may be excluded or modified by agreement.

(5) Where, in the case of a work being a photograph, portrait or engraving:

(a) a person made, for valuable consideration, an agreement with another person for the taking of the photograph, the painting or drawing of the portrait or the making of the engraving by the other person; and

(b) the work was made in pursuance of the agreement;

the first-mentioned person is the owner of any copyright subsisting in the work by virtue of Part III.

(6) Where the work was made by the author in pursuance of the terms of his employment by another person under a contract of service or apprenticeship, that other person is the owner of any copyright subsisting in the work by virtue of Part III.

(7) Where the work is a literary, dramatic or artistic work that was made by the author in pursuance of the terms of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship and was so made for the purpose of publication in a newspaper, magazine or similar periodical, the author is entitled to restrain the publication of the work otherwise than in a newspaper, magazine or similar periodical.

(8) In the last three preceding subsections, expressions that are defined by section 204 have the meanings respectively given to those expressions by that section and do not have the meanings, if any, respectively given to those expressions by Part II.

Infringement by importation, sale and other dealings

214. For the purposes of sections 37 and 38, the fact that, to the knowledge of a person, the making of an article constituted, or, in the case of an imported article, would, if the article had been made in Australia by the importer of the article, have constituted, an infringement of copyright under the Copyright Act, 1911 has the like effect as if, to the knowledge of that person, the making of the article had constituted, or would, if the article had been made in Australia by the importer, have constituted, as the case may be, an infringement of copyright under this Act.

Recording of musical works

215. (1) Where a record of a work has, before the commencement of this Act, been made by, or with the consent or acquiescence of, the owner of the copyright in the work under the Copyright Act, 1911, Division 6 of Part III has the like effect as if the record had been made in Australia for the purpose of retail sale and had been so made by, or with the licence of, the person who is entitled, by virtue of this Act, to authorize the making in Australia of records of the work.

(2) Notwithstanding subsection 5 (1) of this Act, subsections 19 (2) to (7), inclusive, of the Copyright Act, 1911 as in force immediately before the commencement of this Act continue to apply in relation to records made before the commencement of this Act and, subject to those subsections, any regulations made for the purposes of those subsections and in force immediately before the commencement of this Act continue to apply in relation to those records.

Publication of artistic works

216. Section 68 does not apply in relation to a painting, drawing, engraving, photograph or cinematograph film made before the date of commencement of this Act, but the copyright in an artistic work is not infringed by the publication of a painting, drawing, engraving, photograph or cinematograph film made before that date if, by virtue of section 65 or section 66, the making of the painting, drawing, engraving, photograph or film would not have constituted an infringement of the copyright under this Act if this Act had been in operation at the time when it was made.

Reconstruction of buildings

217. The reference in subsection 73 (2) to construction of a building by, or with the licence of, the owner of the copyright in architectural drawings or plans shall be read as including a reference to construction by, or with the licence of, the person who, at the time

of the construction, was the owner of the copyright in the drawings or plans under the law relating to copyright that was in force at that time in the State or Territory in which the building was constructed.

Industrial designs

218. (1) Division 8 of Part III does not apply to artistic works made before the commencement of this Act.

(2) Copyright does not subsist by virtue of this Act in an artistic work made before the commencement of this Act which, at the time when the work was made, constituted a design capable of being registered under the *Designs Act 1906*, or under that Act as amended and in force at that time, and was used, or intended to be used, as a model or pattern to be multiplied by an industrial process.

Reproduction of work upon payment of royalties

219. (1) The copyright in a literary, dramatic, musical or artistic work that has been published before the commencement of this Act is not infringed by the reproduction of the work for sale if:

(a) the reproduction takes place at a time after the expiration of twenty-five years, or, in the case of a work in which copyright subsisted at the commencement of the Copyright Act, 1911, after the expiration of thirty years, after the date of the death of the author; and

(b) the person reproducing the work establishes:

(i) that, before the commencement of this Act, he gave the notice in writing of his intention to reproduce the work that was prescribed for the purposes of the proviso to section 3 of the Copyright Act, 1911; and

(ii) that he has paid, in the manner that was prescribed for the purposes of that proviso, or is prescribed for the purposes of this section, as the case may be, to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of ten per centum of the price at which he published the reproduction.

(2) The regulations may make provision for or in relation to the manner in which, and the times at which, payment of royalties is to be made for the purposes of subparagraph (ii) of paragraph (b) of the last preceding subsection and may include provision requiring payment in advance, or otherwise securing the payment of the royalties.

(3) Regulations 38 to 42, inclusive, of the Copyright Regulations as in force under the *Copyright Act 1912-1966* immediately before the commencement of this Act continue in force for the purposes of this section as if they had been made under this Act, but may be amended or repealed by regulations made under this Act.

(4) A reference in paragraph (1) (a) to a time after the expiration of a specified number of years from the date of the death of the author of a work shall, in the case of a work of joint authorship, be read as a reference to a time after:

(a) the expiration of the same number of years from the date of the death of the author who died first; or

(b) the date of the death of the author who died last;

whichever is the later.

(5) Where a literary, dramatic or musical work, or an engraving, in which copyright subsisted at the date of the death of the author or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who died last:

(a) had not been published;

(b) in the case of a dramatic or musical work—had not been performed in public; and

(c) in the case of a lecture—had not been delivered in public;

before that date, subsection (1) applies as if the author had died on the date on which:

(d) in the case of a literary work (other than a lecture) or an engraving—the work was first published;

(e) in the case of a dramatic or musical work—the work was first published or first performed in public, whichever first happened; or

(f) in the case of a lecture—the lecture was first published or first delivered in public, whichever first happened.

(6) In this section, expressions that are defined by section 204 have the meanings respectively given to those expressions by that section and do not have the meanings, if any, respectively given to those expressions by Part II.

Division 3—Subject-Matter other than Works

Sound recordings

220. (1) Subsection 89 (1) applies in relation to sound recordings made before the commencement of this Act as if the reference in that subsection to a qualified person included a reference to a British subject and to a person domiciled in any part of the Queen's dominions to which the Copyright Act, 1911 extended.

(2) Subsection 89 (2) does not apply in relation to a sound recording made before the commencement of this Act.

(3) Section 93 does not apply in relation to a sound recording made before the commencement of this Act but copyright subsisting in such a recording by virtue of subsection (1) or subsection (3) of section 89 continues to subsist until the expiration of 50 years after the expiration of the calendar year in which the recording was made.

Cinematograph films

221. Copyright does not subsist by virtue of section 90 in a cinematograph film made before the commencement of this Act.

Application of Act to dramatic works and photographs comprised in cinematograph films

222. (1) Where a cinematograph film made before the commencement of this Act was an original dramatic work as defined by section 204, this Act (other than this subsection) has effect in relation to the film as if the film had been an original dramatic work as defined by section 10 and the person who was the author of the work for the purposes of the Copyright Act, 1911 shall be deemed to be the author of the work for the purposes of this Act as having effect by virtue of this subsection.

(2) This Act has effect in relation to photographs forming part of a cinematograph film made before the commencement of this Act in like manner as it has effect in relation to photographs not forming part of a cinematograph film.

Television broadcasts and sound broadcasts

223. Copyright does not subsist by virtue of section 91 in:

(a) a television broadcast or a sound broadcast made before the commencement of this Act; or

(b) a television broadcast or a sound broadcast made after the commencement of this Act that is a repetition of a television broadcast or a sound broadcast made before the commencement of this Act.

Published editions of works

224. Copyright does not subsist by virtue of section 92 in a published edition of a work or works where the first publication of the edition took place before the commencement of this Act.

Infringement by importation, sale and other dealings

225. For the purposes of sections 102 and 103, the fact that, to the knowledge of a person, the making of an article constituted, or, in the case of an imported article, would, if the article had been made in Australia by the importer of the article, have constituted, an infringement of copyright under the Copyright Act, 1911 has the like effect as if, to the knowledge of that person, the making of the article had constituted, or would, if the article had been made in Australia by the importer, have constituted, as the case may be, an infringement of copyright under this Act.

Division 4—Miscellaneous

Actions for infringement

226. Section 115 does not apply to an infringement of copyright under the Copyright Act, 1911 and does not affect any proceedings under that Act, whether instituted before or after the commencement of this Act.

Infringing copies

227. Section 116 of this Act does not apply in relation to an article made, or imported into Australia, before the commencement of this Act, but, notwithstanding subsection 5 (1) of this Act, proceedings may, subject to the Copyright Act, 1911, be brought or continued by virtue of section 7 of that Act in relation to such an article and may be so brought or continued although the proceedings relate to the conversion or detention of the article after the commencement of this Act.

Actions where copyright subject to exclusive licence

228. Division 3 of Part V does not apply in relation to a licence granted before the commencement of this Act and does not affect any proceedings under the Copyright Act, 1911, whether instituted before or after the commencement of this Act.

Offences and summary proceedings

229. For the purposes of Division 5 of Part V, the definition of **"infringing copy"** in section 10 applies as if any reference in that definition to copyright included a reference to copyright under the Copyright Act, 1911.

Limitation of actions

230. Section 134 of this Act does not apply in relation to an infringement of copyright under the Copyright Act, 1911 or to an article made, or imported into Australia, before the commencement of this Act.

Restriction of importation of printed copies of works

231. Where:

(a) before the date of commencement of this Act, a notice had been given in respect of a work under section 10 of the *Copyright Act 1912* or of that Act as amended; and

(b) that notice had not been withdrawn, and had not otherwise ceased to have effect, before that date;

the notice has, during the period of six months commencing on that date, such effect (if any) as it would have if it had been duly given in accordance with section 135 of this Act.

References and applications to Tribunal in relation to licence schemes

232. (1) Part VI applies in relation to licence schemes formulated before the date of commencement of this Act in like manner as it applies in relation to licence schemes formulated on or after that date, but, for the purposes of the application of that Part in relation to licence schemes formulated before that date, any reference in that Part to copyright includes a reference to copyright under the Copyright Act, 1911.

(2) Any reference in section 157 to a refusal or failure to grant or procure the grant of a licence, or to a proposal that a licence should be granted, does not include a reference to a refusal or failure that occurred, or a proposal that was made, before the commencement of this Act.

Duration of Crown copyright in photographs

233. Subsection 180 (2) applies in relation to photographs taken before the commencement of this Act as if subsection 180 (3) were omitted.

Duration of Crown copyright in recordings

234. Section 181 applies in relation to sound recordings made before the commencement of this Act as if the reference in that section to the expiration of the calendar year in which the recording is first published were a reference to the expiration of the calendar year in which the recording was made.

Crown copyright in films

235. (1) Sections 178 and 181 do not apply in relation to cinematograph films made before the commencement of this Act.

(2) Where sections 178 and 181 do not apply in relation to a cinematograph film by reason of the last preceding subsection:

(a) if the film was an original dramatic work as defined by section 204—sections 176 and 177, and subsection 180 (1), apply in relation to that work in accordance with subsection 222 (1); and

(b) sections 176 and 177, and subsection 180 (2) as modified by section 233, apply in relation to photographs forming part of the film in like manner as they apply in relation to photographs not forming part of a cinematograph film.

Works made or published by international organizations

236. (1) Subsection 187 (1) does not apply in relation to works made before the commencement of this Act.

(2) Subsection 187 (2) does not apply in relation to works first published before the commencement of this Act.

Subject-matter, other than original works, made or published by international organizations

237. (1) Subsection 188 (1) does not apply in relation to sound recordings or cinematograph films made before the commencement of this Act.

(2) Subsection 188 (2) does not apply in relation to sound recordings or cinematograph films first published before the commencement of this Act.

(3) Subsection 188 (3) does not apply in relation to an edition published before the commencement of this Act.

False attribution of authorship of work

238. (1) It is a breach of the duty imposed on a person by section 190 if the person does, on or after the date of commencement of this Act, any of the acts mentioned in paragraphs 190 (1) (b) and (c) notwithstanding that the name concerned was inserted or affixed before that date.

(2) Subject to the last preceding subsection, Part IX does not apply in relation to acts done before the commencement of this Act.

(3) In this section, **"name"** includes initials or a monogram.

Assignments and licences

239. (1) Subject to this section, where copyright subsists in a work by virtue of this Act, any document that was made, or event that occurred, before the commencement of this Act, being a document or event that had any operation affecting the ownership of, or creating, transferring or terminating an interest, right or licence in respect of, copyright in the work under the Copyright Act, 1911 or would have had such an operation if that Act had continued in force, has the like operation in relation to the copyright in the work under this Act.

(2) If the operation of a document to which the last preceding subsection applies was or would have been limited to a period specified in the document, the document does not have any operation in relation to the copyright under this Act, except in so far as that period extends after the commencement of this Act.

(3) For the purposes of the operation of a document in accordance with this section:

(a) expressions used in the document have the same respective meanings as they had immediately before the commencement of this Act, whether or not those expressions have different meanings for the purposes of this Act; and

(b) subsection 197 (1) does not apply.

(4) Without prejudice to the generality of subsection (1), where the author of a work that was made before the commencement of this Act was the first owner of the copyright in the work:

(a) any assignment of the copyright, or any grant of an interest in the copyright, made by the author (otherwise than by will) after the commencement of the Copyright Act, 1911 and before the commencement of this Act, being an assignment or grant that has effect in relation to copyright in the work under this Act by virtue of subsection (1), does not operate to vest in

the assignee or grantee any rights with respect to the copyright in the work after the expiration of 25 years after the date of the death of the author;

(b) on the death of the author, the reversionary interest in the copyright expectant on the termination of that period devolves, notwithstanding any agreement to the contrary, on his legal personal representative as part of his estate; and

(c) any agreement entered into by the author as to the disposition of that reversionary interest is of no force or effect;

but nothing in this subsection shall be taken to apply to the assignment of the copyright in a collective work or a licence to publish a work or a part of a work as part of a collective work.

(5) In the last preceding subsection, expressions that are defined by section 204 have the meanings respectively given to those expressions by that section and do not have the meanings, if any, respectively given to those expressions by Part II.

(6) The preceding subsections of this section apply in relation to copyright under this Act in a sound recording or in a cinematograph film in like manner as they apply in relation to copyright in a work but a reference in those subsections to the copyright under the Copyright Act, 1911 shall:

(a) in the application of those subsections in relation to a sound recording—be read as a reference to the copyright under that Act in records embodying the recording; and

(b) in the application of those subsections in relation to a cinematograph film—be read as a reference to any copyright under that Act in the film (in so far as it constituted a dramatic work for the purposes of that Act) or in photographs forming part of the film.

Bequests

240. (1) Section 198 does not apply in relation to a bequest contained in the will of a testator who died before the commencement of this Act.

(2) Where:

(a) an author has died before the commencement of this Act;

(b) a person has acquired, under the will of the author, the ownership of a manuscript of a work by the author; and

(c) the work:

(i) has not been published;

(ii) in the case of a dramatic or musical work—has not been performed in public; and

(iii) in the case of a lecture—has not been delivered in public;

the ownership by that person of the manuscript is evidence that that person is the owner of the copyright in the work.

(3) In the last preceding subsection, expressions that are defined by section 204 have the meanings respectively given to those expressions by that section and do not have the meanings, if any, respectively given to those expressions by Part II.

Delivery of library material to National Library

241. Section 201 does not apply in relation to library material published before the commencement of this Act.

Groundless threats of legal proceedings

242. Section 202 of this Act does not apply in relation to threats made after the commencement of this Act in respect of acts that took place before the commencement of this Act and, notwithstanding section 6 of this Act, section 41A of the *Copyright Act 1912-1966* continues to apply in relation to any such threats in like manner as it continues to apply in relation to threats made before the commencement of this Act.

Division 5—Works Made before 1 July, 1912

Interpretation

243. In this Division, **"right conferred by the Copyright Act, 1911"** , in relation to a work, means a right that, by virtue of section 24 of the Copyright Act, 1911, was conferred in place of a right that subsisted immediately before the commencement of that Act.

Application

244. This Division applies to works made before 1 July 1912.

Rights conferred by Copyright Act, 1911

245. Notwithstanding anything in Division 2, section 32 of this Act does not apply to a work to which this Division applies unless a right conferred by the Copyright Act, 1911 subsisted in the work immediately before the commencement of this Act.

Performing rights

246. (1) Where the right conferred by the Copyright Act, 1911 in relation to a dramatic or musical work to which this Division applies did not include the sole right to perform the work in public, then, copyright, in so far as it subsists in the work by virtue of this Act, does not include the performing rights in relation to the work.

(2) Where the right conferred by the Copyright Act, 1911 in relation to a dramatic or musical work to which this Division applies consisted only of the sole right to perform the work in public, then, copyright, in so far as it subsists in the work by virtue of this Act, consists only of the performing rights in relation to the work.

(3) For the purposes of this section, the performing rights, in relation to a work, are:

(a) the exclusive right to perform the work, or an adaptation of the work, in public;

(b) the exclusive right to broadcast the work or an adaptation of the work; and

(c) the exclusive right to cause the work, or an adaptation of the work, to be transmitted to subscribers to a diffusion service.

Contributions to periodicals

247. Where:

(a) a work to which this Division applies (in this section referred to as **"the relevant work"**) consists of an essay, article or item forming part of, and first published in, a review, magazine or other periodical or work of a like nature; and

(b) immediately before the commencement of this Act, a right of publishing the relevant work in a separate form subsisted by virtue of the note to the First Schedule to the Copyright Act, 1911;

copyright subsisting in the relevant work by virtue of this Act is subject to that right of publishing the relevant work in a separate form.

Assignments and licences

248. (1) Without prejudice to the generality of subsection 239 (1) of this Act, where:

(a) the author of a work to which this Division applies had, before the commencement of the Copyright Act, 1911, made an assignment or grant of a kind referred to in paragraph (a) of the proviso to subsection 24 (1) of that Act (in this section referred to as **"the proviso"**); and

(b) copyright subsists in the work by virtue of this Act;

the succeeding subsections of this section have effect.

(2) If, before the commencement of this Act, an event occurred or a notice was given, being an event or notice that, in accordance with paragraph (a) of the proviso, had any operation affecting the ownership of the right conferred by the Copyright Act, 1911 in relation to the work or creating, transferring or terminating an interest, right or licence in respect of that right, that event or notice has the like operation in relation to the copyright in the work under this Act.

(3) Any right that, at a time after the commencement of this Act, would, by virtue of paragraph (a) of the proviso, have been exercisable in relation to the work or in relation to the right conferred by the Copyright Act, 1911, if this Act had not been enacted, is exercisable in relation to the work or in relation to the copyright subsisting in the work under this Act, as the case may be.

(4) If, in accordance with paragraph (a) of the proviso, the right conferred by the Copyright Act, 1911 would have reverted to the author or his personal representatives on the date referred to in that paragraph, and that date occurs after the commencement of this Act, then on that date:

(a) the copyright in the work under this Act reverts to the author or his personal representatives, as the case may be; and

(b) any interest of any other person in that copyright that subsists on that date by virtue of any document made before the commencement of the Copyright Act, 1911 ceases.

PART XIA—PERFORMERS' PROTECTION

Division 1—Preliminary

Interpretation

248A. **(1)** In this Part:

"action" means a proceeding of a civil nature between parties and includes a counterclaim;

"authorised" , in relation to a recording of a performance, means made with the authority of the performer;

"cinematograph film" includes an article in which visual images are embodied and which is capable of being used to show those images as a moving picture, and a sound-track associated with those images;

"direct" , in relation to a sound recording or cinematograph film of a performance, means made directly from the live performance;

"exempt recording" means:

(a) an indirect sound recording or an indirect cinematograph film of a performance, being a sound recording or film made solely for the purpose of the private and domestic use of the person who made it;

(b) an indirect sound recording or an indirect cinematograph film of a performance, being a sound recording or film made solely for the purpose of use in scientific research;

(c) an indirect sound recording or an indirect cinematograph film of a performance, being a sound recording or film made by, or on behalf of, the body administering an educational institution solely for the educational purposes of that institution or of another educational institution;

(d) an indirect sound recording or an indirect cinematograph film of a performance, being a sound recording or film made by, or on behalf of, the body administering an institution assisting handicapped readers solely for the purpose of the provision, whether by the institution or otherwise, of assistance to handicapped readers;

(e) an indirect sound recording or an indirect cinematograph film of a performance, being a sound recording or film made by, or on behalf of, the body administering an institution assisting intellectually handicapped persons solely for the purpose of the provision, whether by the institution or otherwise, of assistance to intellectually handicapped persons;

(f) a direct or indirect sound recording or cinematograph film of a performance made:

(i) for the purpose of, or associated with, the reporting of news or current affairs; or

(ii) for the purpose of criticism or review;

(g) a direct or indirect sound recording or cinematograph film of a performance made solely for the purpose of a judicial proceeding or the giving of professional advice by a legal practitioner;

(h) a direct sound recording or cinematograph film of a performance made by a broadcaster who has the authority of the performer to broadcast the performance, being a recording or film made solely for the purpose of making that broadcast;

(j) a direct or indirect sound recording or cinematograph film of a performance made by a person who reasonably believes, due to a fraudulent or innocent misrepresentation made to the person, that the performer has authorised the making of the recording or film by the person;

(k) a copy of a sound recording or cinematograph film referred to in paragraph (a), (b), (c), (d), (e), (f) or (g), being a copy made solely for a purpose referred to in any of those paragraphs;

(m) a copy of a sound recording or cinematograph film referred to in paragraph (h), being a copy made solely for the purpose referred to in that paragraph;

(n) a copy of a sound recording or cinematograph film referred to in paragraph (j), being a copy made:

(i) by a person who believes, due to a fraudulent or innocent representation made to the person, that the performer has authorised the making of the copy; or

(ii) solely for a purpose referred to in paragraph (a), (b), (c), (d), (e), (f) or (g); or

(p) a copy of an authorised recording of a performance, other than a copy of an authorised sound recording where the copy was made for use in a sound-track but the making of the sound recording was not authorised for the purpose of use in a sound-track;

"indirect" , in relation to a sound recording or cinematograph film of a performance, means made from a broadcast, or a re-broadcast, of the performance or from a transmission of the performance to subscribers to a diffusion service;

"performance" means:

(a) a performance (including an improvisation) of a dramatic work, or part of such a work, including such a performance given with the use of puppets;

(b) a performance (including an improvisation) of a musical work or part of such a work;

(c) the reading, recitation or delivery of a literary work, or part of such a work, or the recitation or delivery of an improvised literary work;

(d) a performance of a dance; or

(e) a performance of a circus act or a variety act or any similar presentation or show;

being a live performance given in Australia by one or more qualified persons, whether in the presence of an audience or otherwise;

"protection period" , in relation to a performance, means the period beginning on the day when the performance is given and ending at the end of the period of 20 calendar years after the calendar year in which the performance is given;

"qualified person" means an Australian citizen, an Australian protected person or a person resident in Australia;

"recording" means a sound recording or cinematograph film, other than an exempt recording;

"sound recording" includes an article in which sounds are embodied;

"unauthorised" , in relation to a recording of a performance, means made without the authority of the performer;

"unauthorised use" has the meaning given by section 248G.

(2) The following shall be taken not to be performances for the purposes of this Part:

(a) a performance referred to in subsection 28 (1);

(b) a reading, recital or delivery of any item of news and information;

(c) a performance of a sporting activity; or

(d) a participation in a performance as a member of an audience.

(3) In this Part:

(a) a reference to the doing of an act in relation to a performance includes a reference to the doing of that act in relation to a substantial part of the performance;

(b) a reference to the doing of an act in relation to a performance, or a recording of a performance, with the authority of the performer is, in the case of 2 or more performers, a reference to the doing of the act where each of the performers has authorised the doing of the act;

(c) a reference to the doing of an act in relation to a performance, or a recording of a performance, without the authority of the performer is, in the case of 2 or more performers, a reference to the doing of the act where at least one of the performers has not authorised the doing of the act; and

(d) a reference to a sound-track is a reference to a sound-track associated with visual images forming part of a cinematograph film.

Educational purposes

248B. Without limiting the meaning of the expression **"educational purposes"** in paragraph (c) of the definition of **"exempt recording"** in subsection 248A (1), a sound recording or cinematograph film of a performance shall be taken to have been made for the educational purposes of an educational institution if it is made:

(a) for use in connection with a particular course of instruction provided by the institution; or

(b) for inclusion in the collection of a library of the institution.

Exempt recordings cease to be exempt recordings in certain circumstances

248C. (1) If any copies of a sound recording or a cinematograph film of a performance, being a sound recording or film that is an exempt recording under paragraph (h) of the definition of **"exempt recording"** in subsection 248A (1), are not destroyed before the end of the period of 12 months beginning on the day on which any of those copies is first used for broadcasting the performance, the sound recording or film shall, at the end of that period, cease to be an exempt recording.

(2) A sound recording or cinematograph film, or a copy of such a recording or film, that is an exempt recording because it was made for a purpose referred to in paragraph (a), (b), (c), (d), (e) or (f) of the definition of **"exempt recording"** in subsection 248A (1) ceases to be an exempt recording if it is used for any other purpose without the authority of the performer.

Private and domestic use

248D. For the purposes of this Part, a sound recording or cinematograph film shall be taken not to have been made for the private and domestic use of the person who made it if it is made for the purpose of:

(a) selling it, letting it for hire, or by way of trade offering or exposing it for sale or hire;
(b) distributing it, whether for the purpose of trade or otherwise;
(c) by way of trade exhibiting it in public;
(d) broadcasting the film or recording; or
(e) causing the film or recording to be seen or heard in public.

References to transmission to subscribers to a diffusion service

248E. (1) A reference in this Part to the transmission of a performance to subscribers to a diffusion service is a reference to the transmission of the performance in the course of a service of distributing broadcast or other matter (whether provided by the person operating the service or by other persons) over wires, or over other paths provided by a material substance, to the premises of subscribers to the service.

(2) For the purposes of this Part, where a performance is so transmitted:

(a) the person operating the service shall be taken to be the person causing the performance to be so transmitted; and

(b) no person other than the person operating the service shall be taken to be causing the performance to be so transmitted, whether or not he or she provides any facilities for the transmission.

(3) In applying this section, a service of distributing broadcast or other matter shall be disregarded where the service is only incidental to a business of keeping or letting premises at which persons reside or sleep, and is operated as part of the amenities provided exclusively for residents or inmates of the premises or for those residents or inmates and their guests.

(4) A reference in this section to the person operating a service of distributing broadcast or other matter is a reference to the person who, in the agreements with subscribers to the service, undertakes to provide them with the service, whether he or she is the person who transmits the broadcast or other matter or not.

(5) Where a service of distributing matter over wires or over other paths provided by a material substance is only incidental to, or part of, a service of transmitting telegraphic or telephonic communications, a subscriber to the last-mentioned service shall be taken, for the purposes of this section, to be a subscriber to the first-mentioned service.

Application

248F. **(1)** This Part applies to an act done on or after the commencement of this Part in relation to a performance given on or after that commencement.

(2) Nothing in this Part affects any copyright subsisting in a work that is performed or in any sound recording, cinematograph film or broadcast of a performance, or any other right or obligation arising otherwise than under this Part.

(3) In the application of this Part to a counterclaim, the reference in section 248J to the defendant shall be read as a reference to the plaintiff.

Division 2—Actions by performers

What constitutes unauthorised use

248G. **(1)** A person makes an unauthorised use of a performance if the person, at any time during the protection period of the performance and without the authority of the performer:

(a) makes a direct or indirect recording of the performance;

(b) broadcasts or re-broadcasts the performance, either directly from the live performance or from an unauthorised recording of it; or

(c) causes the live performance, or an unauthorised recording of it, to be transmitted to subscribers to a diffusion service.

(2) A person makes an unauthorised use of a performance if the person, at any time during the protection period of the performance and without the authority of the performer:

(a) makes a copy of a recording of the performance that the person knows, or ought reasonably to know, is an unauthorised recording;

(b) makes a copy of an exempt recording of the performance, being a copy that the person knows, or ought reasonably to know, is not itself an exempt recording;

(c) makes, for use in a sound-track, a copy of an authorised sound recording of the performance and the person knows, or ought reasonably to know, that the making of the sound recording was not authorised for the purpose of use in that or any other sound-track;

(d) has in his or her possession a recording of the performance that the person knows, or ought reasonably to know, is an unauthorised recording;

(e) sells, lets on hire, or by way of trade exhibits in public or offers or exposes for sale or hire, a recording of the performance that the person knows, or ought reasonably to know, is an unauthorised recording;

(f) distributes a recording of the performance for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the financial interests of the performer or performers in the performance, being a recording that the person knows, or ought reasonably to know, is an unauthorised recording;

(g) imports a recording of the performance into Australia for the purpose of:

(i) selling it, letting it for hire, or by way of trade exhibiting it in public or offering or exposing it for sale or hire; or

(ii) distributing it for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the financial interests of the performer or performers in the performance;

being a recording that the person knows, or ought reasonably to know, is an unauthorised recording; or

(h) causes a recording of the performance to be heard or seen in public, being a recording that the person knows, or ought reasonably to know, is an unauthorised recording.

(3) A person who broadcasts or re-broadcasts an authorised recording of a performance, or causes an authorised recording of a performance to be transmitted to subscribers to a diffusion service, without the authority of the performer does not, by so doing, make an unauthorised use of the performance.

(4) This section applies only to acts done in Australia.

Copying sound recordings for broadcasting

248H. (1) Despite paragraph 248G (2) (c), where the making of a copy of a sound recording of a performance for use in a sound-track would, but for this subsection, be an unauthorised use of the performance under that paragraph, the making by a person of such a copy solely for the purpose of use in a broadcast by that person is not an unauthorised use of the performance.

(2) Subsection (1) does not apply to a copy if it is used for a purpose other than:

(a) a broadcast by the person who made the copy; or

(b) the making of further copies by that person for the purpose of broadcasting by that person.

(3) Subsection (1) does not apply to a copy unless all the copies made in accordance with that subsection are:

(a) destroyed; or

(b) delivered, with the consent of the Director-General of the Australian Archives, to the Australian Archives;

before the end of the period of 12 months beginning on the day on which any of those copies is first used for the purpose of a broadcast in accordance with that subsection, or before the end of such further period (if any) as is agreed between the maker of the copy and the performer, or all of the performers.

(4) The Director-General of the Australian Archives shall not consent to the delivery of a copy of a sound recording to the Australian Archives unless the Director-General has certified that the sound recording is of an exceptional documentary character.

Actions for unauthorised use

248J. (1) A performer may bring an action for an unauthorised use of his or her performance.

(2) The relief that a court may grant in an action for an unauthorised use of a performance includes an injunction (subject to such terms, if any, as the court thinks fit) and damages.

(3) Where, in an action for an unauthorised use of a performance:

(a) the unauthorised use is established; and

(b) the court is satisfied that it is proper to do so, having regard to:

(i) the flagrancy of the use;

(ii) any benefit shown to have accrued to the defendant by reason of the use; and

(iii) all other relevant matters;

the court may, in assessing damages, award such additional damages as it considers appropriate in the circumstances.

Exercise of jurisdiction

248K. The jurisdiction of the Supreme Court of a State or Territory in an action under section 248J shall be exercised by a single Judge of the Court.

Appeals

248L. (1) Subject to subsection (2), a decision of a court of a State or Territory (however constituted) in an action under section 248J is final and conclusive.

(2) An appeal lies from a decision of a court of a State or Territory in an action under section 248J:

(a) to the Federal Court of Australia; or

(b) by special leave of the High Court, to the High Court.

Jurisdiction of Federal Court

248M. Jurisdiction is conferred on the Federal Court of Australia with respect to actions under section 248J.

Right to bring an action not assignable

248N. The right of a performer to bring an action under section 248J is not assignable.

Division 3—Offences

Offences involving unauthorised recording, broadcasting etc. of performances

248P. (1) A person shall not, at any time during the protection period of a performance, make a direct recording of the performance without the authority of the performer.

(2) A person shall not, at any time during the protection period of a performance, make an indirect recording of the performance without the authority of the performer.

(3) A person shall not, at any time during the protection period of a performance, broadcast or re-broadcast the performance, either directly from the live performance or from an unauthorised recording of it, without the authority of the performer.

(4) A person shall not, at any time during the protection period of a performance, cause the live performance, or an unauthorised recording of it, to be transmitted to subscribers to a diffusion service without the authority of the performer.

(5) A person shall not, at any time during the protection period of a performance, cause a recording of the performance to be heard or seen in public if the person knows, or ought reasonably to know, that the recording is an unauthorised recording.

(6) A person shall not, at any time during the protection period of a performance, have in his or her possession any plate or recording equipment that the person knows, or ought reasonably to know, is to be used for making an unauthorised recording of the performance or a copy of such a recording.

(7) This section applies only to acts done in Australia.

(8) A person who broadcasts or re-broadcasts an authorised recording of a performance, or causes an authorised recording of a performance to be transmitted to subscribers to a diffusion service, without the authority of the performer does not, by doing so, contravene subsection (3) or (4).

Other offences in relation to performances

248Q. (1) A person shall not, at any time during the protection period of a performance, make a copy of a recording of the performance if the person knows, or ought reasonably to know, that the recording is an unauthorised recording.

(2) A person shall not, at any time during the protection period of a performance, make a copy of an exempt recording of the performance without the authority of the performer if the person knows, or ought reasonably to know, that the copy is not itself an exempt recording.

(3) A person shall not, at any time during the protection period of a performance, make a copy of an authorised sound recording of the performance without the authority of the performer if:

(a) the copy is made for use in a sound-track and the person knows, or ought reasonably to know, that the making of the sound recording was not authorised for the purpose of use in that or any other sound-track; and

(b) the making of the copy is an unauthorised use of the performance under subsection 248G (2).

(4) A person shall not, at any time during the protection period of a performance, have in his or her possession a recording of the performance if the person knows, or ought reasonably to know, that the recording is an unauthorised recording.

(5) A person shall not, at any time during the protection period of a performance:

(a) sell, let for hire, or by way of trade offer or expose for sale or hire a recording of the performance;

(b) distribute a recording of the performance for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the financial interests of the performer or performers in the performance; or

(c) import a recording of the performance into Australia for the purpose of:

(i) selling it, letting it for hire, or by way of trade offering or exposing it for sale or hire; or

(ii) distributing it for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the financial interests of the performer or performers in the performance;

if the person knows, or ought reasonably to know, that the recording is an unauthorised recording.

(6) A person shall not, at any time during the protection period of a performance:

(a) by way of trade exhibit in public a recording of the performance; or

(b) import a recording of the performance into Australia for the purpose of exhibiting the recording in public by way of trade;

if the person knows, or ought reasonably to know, that the recording is an unauthorised recording.

(7) This section applies only to acts done in Australia.

Penalties

248R. (1) A person who contravenes subsection 248P (1) or (2) is guilty of an offence punishable on conviction by:

(a) if it is the person's first conviction for a contravention of that subsection and the recording to which the contravention relates is a sound recording:

(i) if the person is a natural person—a fine not exceeding $500; or

(ii) if the person is a body corporate—a fine not exceeding $2,500;

(b) if it is the person's first conviction for a contravention of that subsection and the recording to which the contravention relates is a cinematograph film:

(i) if the person is a natural person—a fine not exceeding $1,500 or imprisonment for a term not exceeding 2 years, or both; or

(ii) if the person is a body corporate—a fine not exceeding $7,500;

(c) if it is not the person's first conviction for a contravention of that subsection and the recording to which the contravention relates is a sound recording:

(i) if the person is a natural person—a fine not exceeding $500 or imprisonment for a term not exceeding 6 months, or both; or

(ii) if the person is a body corporate—a fine not exceeding $5,000; or

(d) if it is not the person's first conviction for a contravention of that subsection and the recording to which the contravention relates is a cinematograph film:

(i) if the person is a natural person—a fine not exceeding $1,500 or imprisonment for a term not exceeding 5 years, or both; or

(ii) if the person is a body corporate—a fine not exceeding $15,000.

(2) A person who contravenes subsection 248P (3), (4), (5) or (6) is guilty of an offence punishable on conviction by:

(a) if it is the person's first conviction for a contravention of that subsection:

(i) if the person is a natural person—a fine not exceeding $1,500; or

(ii) if the person is a body corporate—a fine not exceeding $7,500; or

(b) in any other case:

(i) if the person is a natural person—a fine not exceeding $1,500 or imprisonment for a term not exceeding 6 months, or both; or

(ii) if the person is a body corporate—a fine not exceeding $15,000.

(3) A person who contravenes subsection 248Q (1), (2), (3), (4), (5) or (6) is guilty of an offence punishable on conviction by:

(a) if it is the person's first conviction for a contravention of that subsection and the recording to which the contravention relates is a sound recording:

(i) if the person is a natural person—a fine not exceeding $500 for each sound recording or copy to which the offence relates; or

(ii) if the person is a body corporate—a fine not exceeding $2,500 for each sound recording or copy to which the offence relates;

(b) if it is the person's first conviction for a contravention of that subsection and the recording to which the contravention relates is a cinematograph film:

(i) if the person is a natural person—a fine not exceeding $1,500 for each cinematograph film or copy to which the offence relates or imprisonment for a term not exceeding 2 years, or both; or

(ii) if the person is a body corporate—a fine not exceeding $7,500 for each cinematograph film or copy to which the offence relates;

(c) if it is not the person's first conviction for a contravention of that subsection and the recording to which the contravention relates is a sound recording:

(i) if the person is a natural person—a fine not exceeding $500 for each sound recording or copy to which the offence relates or imprisonment for a term not exceeding 6 months, or both; or

(ii) if the person is a body corporate—a fine not exceeding $5,000 for each sound recording or copy to which the offence relates; or

(d) if it is not the person's first conviction for a contravention of that subsection and the recording to which the contravention relates is a cinematograph film:

(i) if the person is a natural person—a fine not exceeding $1,500 for each cinematograph film or copy to which the offence relates or imprisonment for a term not exceeding 5 years, or both; or

(ii) if the person is a body corporate—a fine not exceeding $15,000 for each cinematograph film or copy to which the offence relates.

(4) Where a fine is imposed on a person under subsection (3) in relation to an offence committed by the person and there is more than one recording or copy to which the offence relates:

(a) if the person is prosecuted before the Federal Court of Australia—the fine imposed in respect of the offence shall not exceed $50,000 if the person is a natural person or $250,000 if the person is a body corporate; and

(b) if the person is prosecuted before any other court—the fine imposed in respect of the offence shall not exceed $10,000 if the person is a natural person or $50,000 if the person is a body corporate.

Prosecutions for offences

248S. (1) Prosecutions for offences against this Part may be brought in the Federal Court of Australia or in any other court of competent jurisdiction.

(2) Jurisdiction is conferred on the Federal Court of Australia to hear and determine prosecutions for offences against this Part.

Destruction or delivery up of unauthorised recordings

248T. The court before which a person is charged with an offence against this Part may, whether the person is convicted of the offence or not, order that any article in the possession of the person that appears to the court to be:

(a) an unauthorised recording of a performance, or a copy of such a recording; or

(b) a plate or recording equipment used, or intended to be used, for making an unauthorised recording of a performance, or copies of such a recording;

be destroyed or delivered up to the performer or performers concerned or otherwise dealt with in such manner as the court thinks fit.

Division 4—Extension of protection to foreign countries

Application to foreign countries

248U. (1) Subject to this section, the regulations may apply any of the provisions of this Part specified in the regulations, in relation to a foreign country so specified, in any one or more of the following ways:

(a) so that the provisions apply in relation to performances given in that country in like manner as those provisions apply in relation to performances given in Australia;

(b) so that the provisions apply in relation to persons who are citizens or nationals of that country in like manner as those provisions apply in relation to persons who are Australian citizens;

(c) so that the provisions apply in relation to persons who are resident in that country in like manner as those provisions apply in relation to persons who are resident in Australia.

(2) Regulations applying a provision of this Part in relation to a foreign country:

(a) may apply the provision without exception or modification or subject to such exceptions or modifications as are specified in the regulations; and

(b) may apply the provision either generally or in relation to such classes of performances, or other classes of cases, as are specified in the regulations.

(3) Regulations shall not be made applying any of the provisions of this Part in relation to a foreign country that is not a party to a Convention relating to the protection of performers to which Australia is also a party unless the Governor-General is satisfied that, in respect of the performances to which those provisions relate, provision has been or will be made under the law of that country under which adequate protection is or will be given to performers whose performances are protected under this Act.

Denial of protection to citizens of countries not giving adequate protection to Australian performances

248V. (1) If it appears to the Governor-General that the law of a foreign country does not give adequate protection to Australian performances (whether the lack of protection relates to the nature of the performance or the nationality, citizenship or country of residence of its performer, or all of those matters), the Governor-General may,

having regard to the nature and extent of the lack of protection involved, make regulations in relation to that country in accordance with this section.

(2) Regulations made for the purposes of this section may provide, either generally or in such cases as are specified in the regulations, that this Part does not apply to performances given after a day specified in the regulations (which may be a day before the commencement of the regulations or of this Part) if, at the time the performances were or are given, the performers were or are citizens or nationals of a foreign country specified in the regulations, other than persons resident in Australia.

PART XII—REGULATIONS

Regulations

249. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, prescribing penalties not exceeding a fine of $100 for offences against the regulations.

THE SCHEDULE

Section 144

OATH

I, , do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her in the office of and that I will faithfully and impartially perform the duties of that office.

SO HELP ME GOD!

AFFIRMATION

I, , do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her in the office of and that I will faithfully and impartially perform the duties of that office.

NOTES

1. The *Copyright Act 1968* as shown in this reprint comprises Act No. 63, 1968 amended as indicated in the Tables below.
The *Copyright Act 1968* was modified by the A.C.T. Self-Government (Consequential Provisions) Regulations as amended. (*See* Note 2.)

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Copyright Act 1968	63, 1968	27 June1968	1 May 1969 (*see Gazette* 1969, p. 2543)	
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9 (1) and 10
Administrative Changes (Consequential Provisions) Act 1976	91, 1976	20 Sept 1976	S. 3: (*a*)	S. 4
Broadcasting and Television Amendment Act 1977	160, 1977	10 Nov 1977	1 Jan 1978 (*see Gazette* 1977, No. S259)	—
Jurisdiction of Courts (Miscellaneous Amendments) Act 1979	19, 1979	28 Mar 1979	Parts II-XVII (ss. 3-123): 15 May 1979 (*see Gazette* 1979, No. S86) Remainder: 19 Mar 1979	Ss. 9 and 124
Copyright Amendment Act 1980	154, 1980	19 Sept 1980	Ss. 17-19: 29 Sept 1980 Remainder: 1 Aug 1981 (*see Gazette* 1981, No. S124)	—
Designs Amendment Act 1981	42, 1981	13 May 1981	Ss. 1 and 2: 13 Mar 1981 S. 31, Part IV (ss. 34 and 35) and s. 36 (2): 1 Apr 1982 (*see Gazette* 1982, No. G12, p. 4) Remainder: 1 Apr 1982 (*see Gazette* 1982, No. G12, p. 4)	S. 36
Statute Law Revision Act 1981	61, 1981	12 June 1981	S. 115: Royal Assent (*b*)	—
Broadcasting and Television Amendment Act 1981	113, 1981	24 June 1981	S. 30: 10 Aug 1981 (*see Gazette* 1981, No. S158) Remainder: 24 June 1981	—

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Statute Law (Miscellaneous Amendments) Act (No. 1) 1982	26, 1982	7 May 1982	Part XVIII (ss.136-145): 4 June 1982 (c)	S. 138 (2)
Statute Law (Miscellaneous Amendments) Act (No. 2) 1982	80, 1982	22 Sept 1982	Part LXXVII (s. 280): Royal Assent (d)	S. 280 (2) and (3)
Broadcasting and Television Amendment Act 1982	154, 1982	31 Dec 1982	31 Dec 1982	—
Australian Broadcasting Corporation (Transitional Provisions and Consequential Amendments) Act 1983	7, 1983	1 June 1983	Ss. 1, 2, 15 (1) and 24: 1 June 1983 Remainder: 1 July 1983 (see s. 2 (2) and *Gazette* 1983, No. S124)	S. 60 (2)
Copyright Amendment Act 1983	80, 1983	3 Nov 1983	6 June 1984 (see *Gazette* 1984, No. S203)	—
Statute Law (Miscellaneous Provisions) Act (No. 2) 1983	91, 1983	22 Nov 1983	S. 3: 20 Dec 1983 (e)	S. 6
Radiocommunications (Transitional Provisions and Consequential Amendments) Act 1983	136, 1983	22 Dec 1983	27 Aug 1985 (see s. 2 and *Gazette* 1985, No. S322)	—
Copyright Amendment Act 1984	43, 1984	15 June 1984	15 June 1984	S. 7
Statute Law (Miscellaneous Provisions) Act (No. 2) 1984	165, 1984	25 Oct 1984	S. 3: 22 Nov 1984 (f)	Ss. 6 (1) and 7
Statute Law (Miscellaneous Provisions) Act (No. 1) 1985	65, 1985	5 June 1985	S. 3: 3 July 1985 (g)	—
Broadcasting and Television (Consequential Amendments) Act 1985	67, 1985	5 June 1985	1 Jan 1986	S. 4
Copyright Amendment Act 1986	78, 1986	24 June 1986	Ss. 14-19: 22 July 1986 Remainder: 30 Apr 1987 (see *Gazette* 1987, No. S68, p. 6)	Ss. 20 (2) and 28 (2)

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Statute Law (Miscellaneous Provisions) Act (No. 2) 1986	168, 1986	18 Dec 1986	S. 3: 30 Apr 1987 (*see Gazette* 1987, No. S68, p. 6) (*h*)	S. 5 (1)
Jurisdiction of Courts (Miscellaneous Amendments) Act 1987	23, 1987	26 May 1987	S. 3: 1 Sept 1987 (*see Gazette* 1987, No. S217) (*j*)	S. 5
Broadcasting Legislation Amendment Act 1988	146, 1988	26 Dec 1988	S. 49: 1 Mar 1989 (*k*)	—
Circuit Layouts Act 1989	28, 1989	22 May 1989	Ss. 1 and 2: Royal Assent Remainder: (*see* Note 3)	—
Copyright Amendment Act 1989	32, 1989	24 May 1989	Ss. 1 and 2: 24 May 1989 Ss. 3, 5, 7, 12, 13, 21, 22, 28 and the Schedule (in part): 1 Oct 1989 (*see Gazette* 1989, No. S316) Ss. 4, 14, 16, 18, 20, 23, 25, 27, 29 and the Schedule (in part): 29 Jan 1990 (*see Gazette* 1990, No. S15) Remainder: (*see* Note 4)	Ss. 25 (1)-(3), 27 (2), (3) and 29

(*a*) The *Copyright Act 1968* was amended by section 3 only of the *Administrative Changes (Consequential Provisions) Act 1976*, subsection 2 (7) of which provides as follows:

"(7) The amendments of each other Act specified in the Schedule made by this Act shall be deemed to have come into operation on 22 December 1975."

(*b*) The *Copyright Act 1968* was amended by section 115 only of the *Statute Law Revision Act 1981*, subsection 2 (1) of which provides as follows:

"(1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent."

(*c*) The *Copyright Act 1968* was amended by Part XVIII (sections 136-145) only of the *Statute Law (Miscellaneous Amendments) Act (No. 1) 1982*, subsection 2 (12) of which provides as follows:

"(12) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent."

NOTES—continued

Table of Acts—continued

(*d*) The *Copyright Act 1968* was amended by Part LXXVII (section 280) only of the *Statute Law (Miscellaneous Amendments) Act (No. 2) 1982*, subsection 2 (1) of which provides as follows:

"(1) Sections 1, 2, 166 and 195 and Parts III, VI, VII, XVI, XXXVI, XLIV, LI, LIII, LIV, LXI and LXXVII shall come into operation on the day on which this Act receives the Royal Assent."

(*e*) The *Copyright Act 1968* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1983*, subsection 2 (1) of which provides as follows:

"(1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent."

(*f*) The *Copyright Act 1968* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984*, subsection 2 (1) of which provides as follows:

"(1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent."

(*g*) The *Copyright Act 1968* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2 (1) of which provides as follows:

"(1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent."

(*h*) The *Copyright Act 1968* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1986*, subsection 2 (3) of which provides as follows:

"(3) The amendments of the *Copyright Act 1968* made by this Act shall come into operation immediately after the commencement of section 3 of the *Copyright Amendment Act 1986*."

(*i*) The *Copyright Act 1968* was amended by section 3 only of the *Jurisdiction of Courts (Miscellaneous Amendments) Act 1987*, subsection 2 (2) of which provides as follows:

"(2) The amendments made by this Act to an Act specified in the Schedule shall come into operation on such day as is fixed by Proclamation in relation to those amendments."

(*k*) The *Copyright Act 1968* was amended by section 49 only of the *Broadcasting Legislation Amendment Act 1988*, subsection 2 (3) of which provides as follows:

"(3) Sections 15, 16 and 36, subsection 48 (2), section 49 and Schedules 2, 4 and 5 commence on 1 March 1989."

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Title	am. No. 32, 1989
S. 3	rep. No. 216, 1973
S. 4	rs. No. 216, 1973
S. 8	am. No. 154, 1980; No. 42, 1981 rs. No. 165, 1984
S. 8A	ad. No. 154, 1980
S. 9	am. No. 67, 1985
S. 10	am. No. 216, 1973; No. 160, 1977; No. 154, 1980; No. 113, 1981; No. 154, 1982; Nos. 7 and 136, 1983; Nos. 43 and 165, 1984; No. 67, 1985; Nos. 78 and 168, 1986; No. 146, 1988; No. 32, 1989
S. 10A	ad. No. 165, 1984 am. No. 78, 1986
S. 12	am. No. 216, 1973

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 14	am. No. 154, 1980
S. 19	am. No. 216, 1973
S. 22	am. No. 78, 1986; No. 32, 1989
S. 27	am. No. 32, 1989
Ss. 28, 29	am. No. 154, 1980
S. 31	am. No. 154, 1980
Ss. 33, 34	am. No. 154, 1980
S. 39A	ad. No. 154, 1980
S. 40	am. No. 154, 1980
S. 43	am. No. 154, 1980
S. 43A	ad. No. 43, 1984
S. 44	am. No. 154, 1980
S. 47	am. No. 154, 1980; No. 80, 1983
S. 47A	ad. No. 78, 1986
S. 48	rs. No. 154, 1980
S. 48A	ad. No. 165, 1984
Ss. 49, 50	rs. No. 154, 1980 am. No. 165, 1984
S. 51	am. No. 154, 1980
S. 51A	ad. No. 154, 1980 am. No. 78, 1986
S. 51AA	ad. No. 32, 1989
S. 52	am. No. 91, 1983
S. 53	am. No. 154, 1980
Div. 5A of Part III (ss. 53A-53C)	ad. No. 154, 1980
S. 53A	ad. No. 154, 1980
S. 53B	ad. No. 154, 1980 am. No. 165, 1984
S. 53C	ad. No. 154, 1980 am. No. 91, 1983
Div. 5B of Part III (s. 53D)	ad. No. 154, 1980
S. 53D	ad. No. 154, 1980 am. No. 165, 1984
S. 55	am. No. 154, 1980; No. 61, 1981
Ss. 56-59	am. No. 154, 1980
Ss. 62-65	am. No. 154, 1980
Ss. 68, 69	am. No. 154, 1980
S. 70	am. No. 154, 1980; No. 80, 1983
Heading to Div. 8 of Part III	am. No. 42, 1981
S. 74	am. No. 216, 1973; No. 42, 1981

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 75, 76	am. No. 42, 1981
S. 77	am. No. 154, 1980; No. 42, 1981
Ss. 79-83	am. No. 154, 1980
S. 85	am. No. 154, 1980
S. 87	am. No. 154, 1980
S. 91	am. No. 160, 1977; Nos. 7 and 136, 1983; No. 78, 1986 rs. No. 146, 1988
Ss. 92-96	am. No. 154, 1980
S. 99	am. No. 160, 1977; No. 154, 1980; No. 7, 1983; No. 78,1986; No. 146, 1988
S. 100A	ad. No. 78, 1986
S. 101	am. No. 154, 1980
Ss. 103A, 103B	ad. No. 78, 1986
S. 103C	ad. No. 32, 1989
S. 104	rs. No. 154, 1980
S. 104A	ad. No. 165, 1984
S. 105	am. No. 154, 1980
S. 107	am. No. 154, 1980; No. 80, 1983
Ss. 108-110	am. No. 154, 1980
Ss. 110A, 110B	ad. No. 78, 1986
S. 111	am. No. 154, 1980; No. 32, 1989
S. 112	rs. No. 154, 1980 am. No. 78, 1986
S. 113	am. No. 154, 1980
Ss. 119, 120	am. No. 154, 1980
Ss. 122-125	am. No. 154, 1980
Heading to Div. 4 of Part V	rs. No. 78, 1986
Ss. 127-129	am. No. 154, 1980
S. 131	am. No. 154, 1980
Heading to Div. 4A of Part V	rs. No. 23, 1987
Div. 4A of Part V (ss. 131A, 131B)	ad. No. 19, 1979
S. 131A	ad. No. 19, 1979
S. 131B	ad. No. 19, 1979 am. No. 23, 1987
S. 131C	ad. No. 23, 1987
S. 132	am. No. 154, 1980; No. 43, 1984; No. 78, 1986
S. 133	am. No. 154, 1980; No. 91, 1983; No. 78, 1986
S. 133A	ad. No. 43, 1984 am. No. 78, 1986
S. 134A	ad. No. 78, 1986

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 135	am. No. 216, 1973; No. 91, 1976; No. 19, 1979; No. 154, 1980; No. 80, 1982; No. 65, 1985; No. 32, 1989
Part VA (ss.135A-135Z, 135ZA)	ad. No. 32, 1989
Ss. 135A-135Z, 135ZA	ad. No. 32, 1989
Part VC (ss. 135ZZJ-135ZZZ, 135ZZZA, 135ZZZB)	ad. No. 32, 1989
Ss. 135ZZJ-135ZZZ, 135ZZZA, 135ZZZB	ad. No. 32, 1989
S. 136	am. No. 154, 1980; No. 26, 1982; No. 78, 1986
S. 138	am. No. 154, 1980 rs. No. 26, 1982
S. 140	am. No. 216, 1973; No. 154, 1980 rs. No. 26, 1982
S. 141	am. No. 154, 1980; No. 26, 1982
S. 142	am. No. 26, 1982
S. 143	rs. No. 26, 1982
S. 144A	ad. No. 154, 1980
S. 144B	ad. No. 154, 1980 am. No. 26, 1982
Ss. 146, 147	am. No. 154, 1980; No. 26, 1982
Ss. 148, 149	am. No. 154, 1980
S. 149A	ad. No. 154, 1980 rs. No. 78, 1986
Ss. 150, 151	am. No. 154, 1980
S. 152	am. No. 216, 1973; No. 160, 1977; No. 154, 1980; No. 7, 1983; No. 67, 1985; No. 78, 1986; No. 146, 1988
S. 153	am. No. 154, 1980
Ss. 153A, 153B	ad. No. 32, 1989
S. 153E	ad. No. 32, 1989
Ss. 155-159	am. No. 154, 1980
Ss. 159A, 159B	ad. No. 154, 1980 am. No. 91, 1983
S. 161	am. No. 19, 1979; No. 154, 1980
S. 163A	ad. No. 154, 1980
S. 166	am. No. 19, 1979; No. 154, 1980
S. 169	am. No. 216, 1973
Ss. 172, 173	am. No. 154, 1980
S. 174	am. No. 154, 1980; No. 78, 1986
Ss. 180, 181	am. No. 154, 1980
S. 182A	ad. No. 154, 1980
S. 183	am. No. 19, 1979; No. 154, 1980; No. 32, 1989

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 184	am. No. 160, 1977; No. 154, 1980; No. 7, 1983; No. 78, 1986; No. 146, 1988; No. 32, 1989
Ss. 185-188	am. No. 154, 1980
S. 194	am. No. 154, 1980
S. 195AA	ad. No. 32, 1989
S. 195A	ad. No. 154, 1980 am. No. 165, 1984; No. 78, 1986
S. 195B	ad. No. 32, 1989
S. 199	am. No. 160, 1977; No. 154, 1980; No. 7, 1983; No. 78, 1986; No. 146, 1988
S. 200	am. No. 154, 1980; No. 32, 1989
S. 200A	ad. No. 78, 1986
S. 201	am. No. 216, 1973; No. 154, 1980
S. 202	am. No. 216, 1973
S. 203A	ad. No. 154, 1980 am. No. 91, 1983; No. 165, 1984; No. 78, 1986; No. 32, 1989
Ss. 203B-203D	ad. No. 154, 1980 am. No. 165, 1984; No. 78, 1986
S. 203E	ad. No. 154, 1980 am. No. 165, 1984; No. 78, 1986; No. 32, 1989
S. 203F	ad. No. 154, 1980 am. No. 91, 1983; No. 165, 1984; No. 78, 1986
S. 203G	ad. No. 154, 1980 am. No. 165, 1984; No. 78, 1986
S. 203H	ad. No. 154, 1980 am. No. 165, 1984; No. 78, 1986; No. 32, 1989
S. 204	am. No. 154, 1980
S. 206	am. No. 216, 1973; No. 61, 1981
Ss. 209-216	am. No. 154, 1980
S. 217	am. No. 216, 1973; No. 154, 1980
Ss. 219-227	am. No. 154, 1980
S. 229	am. No. 154, 1980
Ss. 232-241	am. No. 154, 1980
Ss. 244, 245	am. No. 154, 1980
S. 248	am. No. 154, 1980
Part XIA (ss. 248A-248V)	ad. No. 32, 1989
Ss. 248A-248V	ad. No. 32, 1989
S. 249	am. No. 154, 1980

NOTES—continued

2. Sections 10 and 183—The *Copyright Act 1968* was modified by regulation 2 and Schedule 1 of the A.C.T. Self-Government (Consequential Provisions) Regulations as amended. The provisions of Schedule 1 applicable to the abovementioned Act quoted below are not incorporated in this reprint.

"Subsection 10 (1) (definition of 'the Crown'):

Before 'the Northern Territory' (first occurring) insert 'the Australian Capital Territory and '.

"Paragraph 10 (3) (e):

Before 'the Northern Territory' insert 'the Australian Capital Territory and '.

"Paragraph 10 (3) (n):

(a) Before 'the Northern Territory' (first occurring) insert 'the Australian Capital Territory and';

(b) Before 'the Northern Terrritory' (second occurring) insert 'the Australian Capital Territory or'.

"subsection 183 (11):

Omit 'State or ' (twice occurring), substitute 'State, the Australian Capital Territory or'."

Regulation 1 of the A.C.T. Self-Government (Consequential Provisions) Regulations as amended provides as follows:

"These Regulations are to be taken to have commenced on 11 May 1989."

3. Section 10 is amended by section 49 and Schedule 5 only of the *Circuit Layouts Act 1989*. The provision of Schedule 5 applicable to section 10 provides as follows:

"Subsection 10 (1) (definition of 'artistic work'):

Add at the end of the definition after paragraph (c) 'but does not include a circuit layout within the meaning of the *Circuit Layouts Act 1989*'."

Subsection 2 (2) of the *Circuit Layouts Act 1989* provides as follows:

"(2) The remaining provisions of this Act commence on a day or days to be fixed by Proclamation."

As at 30 June 1990 no date had been fixed and the amendment is not incorporated in this reprint.

4. Sections 10, 10A, 40, Divisions 5A and 5B (sections 53A-53D), 54-56, 58, 62, 63, 71, 74, 75, 77, 112, Part VB (sections 135ZB-135ZZ, 135ZZA-135ZH), 148, 149A, 152A, 152B, 153C, 153D, 159A, 159B, 195A, 200AA, 203A-203D and 203F-203H are amended by sections 6, 8-11, 15, 17, 19, 24, 26 and the Schedule (in part) of the *Copyright Amendment Act 1989*, subsection 2 (2) of which provides as follows:

"(2) The remaining provisions of this Act (including the items, and paragraphs of the items, in the Schedule) commence on a day or days to be fixed by Proclamation."

As at 30 June 1990 no date had been fixed and the amendments are not incorporated in this reprint. They are set out below under the heading "EXTRACTS FROM COPYRIGHT AMENDMENT ACT 1989."

EXTRACTS FROM COPYRIGHT AMENDMENT ACT 1989

Fair dealing for purpose of research or study

6. After subsection 40 (1) of the Principal Act the following new subsections are inserted:

"(1A) A fair dealing with a literary work (other than lecture notes) does not constitute an infringement of the copyright in the work if it is for the purpose of, or associated with, an approved course of study or research by an enrolled external student of an educational institution.

"(1B) In subsection (1A) the expression **'lecture notes'** means any literary work produced for the purpose of the course of study or research by a person lecturing or teaching in or in connection with the course of study or research.".

Interpretation

8. Section 54 of the Principal Act is amended by adding at the end the following subsections:

"(4) Subject to subsection (5), this Division applies to a record of a part of a musical work as it applies to a record of the whole work.

NOTES—continued

EXTRACTS FROM COPYRIGHT AMENDMENT ACT 1989—continued

"(5) Section 55:

(a) does not apply to a record of a whole work unless the previous record referred to in paragraph 55 (1) (a) was a record of the whole work; and

(b) does not apply to a record of a part of a work unless that previous record was a record of that part of the work." .

Conditions upon which manufacturer may make records of musical work

9. Section 55 of the Principal Act is amended:

(a) by omitting subparagraph (1) (d) (ii) and substituting the following subparagraph:

"(ii) the prescribed royalty is paid to the owner of the copyright:

(A) in the manner agreed between the manufacturer and the owner of the copyright or, failing such agreement, determined by the Copyright Tribunal under section 152B; or

(B) if no such agreement or determination is in force—in the manner prescribed by the regulations." ;

(b) by omitting subsection (5) and substituting the following subsections:

"(5) If, apart from this subsection, the amount of royalty payable in respect of a record under this section would be less than one cent, that amount of royalty is one cent.

"(6) In this section: 'prescribed royalty' , in relation to a record of a musical work, means:

(a) such amount of royalty as is agreed between the manufacturer and the owner of the copyright in the work or, failing such agreement, as is determined by the Copyright Tribunal under section 152A; or

(b) if no such agreement or determination is in force—an amount equal to 6.25% of the retail selling price of the record." .

10. Sections 74 and 75 of the Principal Act are repealed and the following sections are substituted:

Corresponding design

"74. In this Division:

"corresponding design" , in relation to an artistic work, means a design that, when applied to an article, results in a reproduction of that work, but does not include a design consisting solely of features of two-dimensional pattern or ornament applicable to a surface of an article.

Copyright protection where corresponding design registered

"75. Subject to section 76, where copyright subsists in an artistic work (whether made before the commencement of this section or otherwise) and a corresponding design is or has been registered under the *Designs Act 1906* on or after that commencement, it is not an infringement of that copyright to reproduce the work by applying that, or any other, corresponding design to an article." .

11. Section 77 of the Principal Act is repealed and the following section is substituted:

Application of artistic works as industrial designs without registration of the designs

"77. (1) This section applies where:

(a) copyright subsists in an artistic work (other than a building or a model of a building, or a work of artistic craftsmanship) whether made before the commencement of this section or otherwise;

(b) a corresponding design is applied industrially, whether in Australia or elsewhere, by or with the licence of the owner of the copyright in the work in the place where the industrial application happens;

NOTES—continued

EXTRACTS FROM COPYRIGHT AMENDMENT ACT 1989—continued

(c) at any time on or after the commencement of this section, articles to which the corresponding design has been so applied (in this section called "articles made to the corresponding design") are sold, let for hire or offered or exposed for sale or hire, whether in Australia or elsewhere; and

(d) at that time, the corresponding design is not registrable under the *Designs Act 1906* or has not been registered under that Act.

"(2) It is not an infringement of the copyright in the artistic work to reproduce the work, on or after the day on which articles made to the corresponding design are first so sold, let for hire or offered or exposed for sale or hire, by applying that, or any other, corresponding design to an article.

"(3) This section does not apply in relation to any articles in respect of which, at the time when they were sold, let for hire or offered or exposed for sale or hire, the corresponding design concerned was excluded from registration by regulations made under the *Designs Act 1906*, and, for the purposes of any proceedings under this Act, a design shall be conclusively presumed to have been so excluded if:

(a) before the commencement of the proceedings, an application for the registration of the design under that Act in respect of those articles had been refused;

(b) the reason, or one of the reasons, given for the refusal was that the design was excluded from registration under that Act by regulations made under that Act; and

(c) when the proceedings were commenced, no appeal against the refusal had been allowed or was pending.

"(4) The regulations may specify the circumstances in which a design is, for the purposes of this section, to be taken to be applied industrially." .

15. The following Part is inserted in the Principal Act after Part V of that Act or, if Part VA of that Act (as amended by this Act) has commenced, after Part VA:

"PART VB—COPYING OF WORKS ETC. BY EDUCATIONAL AND OTHER INSTITUTIONS

"Division 1—Preliminary

Interpretation

"135ZB. In this Part:

'administering body' means a body administering an institution;

'collecting society' means a body that is, for the time being, declared to be a collecting society under section 135ZZB;

'eligible item' has the meaning given by section 135ZC;

'institution' means:

(a) an educational institution;

(b) an institution assisting handicapped readers; or

(c) an institution assisting intellectually handicapped persons;

'licensed copy' means:

(a) a copy of the whole or a part of a work, being a copy made by, or on behalf of, a body administering an educational institution in reliance on section 135ZJ, 135ZK or 135ZL;

NOTES—continued

EXTRACTS FROM COPYRIGHT AMENDMENT ACT 1989—continued

(b) a record embodying a sound recording of the whole or a part of a literary or dramatic work, or a Braille version, a large-print version or a photographic version of the whole or a part of such a work, being a record or version made by, or on behalf of, a body administering an institution assisting handicapped readers in reliance on section 135ZP; or

(c) a copy of the whole or a part of an eligible item, being a copy made by, or on behalf of, a body administering an institution assisting intellectually handicapped persons in reliance on section 135ZS;

'records notice' means a remuneration notice specifying that the amount of equitable remuneration payable to the collecting society by the administering body giving the notice is to be assessed on the basis of a records system;

'relevant collecting society', in relation to a remuneration notice, means the collecting society for the owners of the copyright in works, or other subject-matter, of the same kind as that to which the remuneration notice relates;

'relevant copyright owner' means the owner of the copyright in a work or an eligible item other than a work;

'remuneration notice' means a notice referred to in subsection 135ZU (1);

'rules', in relation to a collecting society, means the provisions of the memorandum and articles of association of the society;

'sampling notice' means a remuneration notice specifying that the amount of equitable remuneration payable to the collecting society by the administering body giving the notice is to be assessed on the basis of a sampling system;

'student', in relation to an institution, has the meaning given by section 135ZD.

Eligible items and photographic versions

"135ZC. In this Part:

(a) a reference to an eligible item is a reference to:

(i) a published literary, dramatic, musical or artistic work;

(ii) a published sound recording or cinematograph film; or

(iii) a work referred to in subparagraph (i) that is included in a sound broadcast;

(b) a reference to a copy of an eligible item, being a literary, dramatic or musical work, is a reference to any of the following:

(i) a reproduction of the work in a material form;

(ii) an adaptation of the work;

(iii) a reproduction in a material form of an adaptation of the work;

(c) a reference to a copy of an eligible item, being an artistic work, is a reference to a reproduction in a material form of the work;

(d) a reference to a copy of an eligible item, being a sound recording or a cinematograph film, is a reference to a copy of the sound recording or cinematograph film; and

(e) a reference to a photographic version of a work or a part of a work is a reference to a copy of the work or part of the work produced as a film-strip, or series of separate transparencies, designed to meet the needs of handicapped readers.

Student of an institution

"135ZD. In this Part, a reference to a student of an institution is:

(a) in the case of an educational institution—a reference to a student of the institution;

(b) in the case of an institution assisting handicapped readers—a reference to a handicapped reader to whom the institution provides assistance;

(c) in the case of an institution assisting intellectually handicapped persons—a reference to an intellectually handicapped person to whom the institution provides assistance.

Part does not apply to computer programs

"135ZE. Nothing in this Part applies in relation to a literary work, being a computer program or a compilation of computer programs.

NOTES—continued

EXTRACTS FROM COPYRIGHT AMENDMENT ACT 1989—continued

Operation of collecting society rules

"135ZF. This Part applies to a collecting society despite anything in the rules of the society but nothing in this Part affects those rules so far as they can operate together with this Part.

"Division 2—Copying of works by educational institutions

Multiple copying of insubstantial portions of works

"135ZG. (1) Subject to this section, copyright in a literary or dramatic work is not infringed by the making of one or more copies of a page or pages of the work in an edition of the work if the copying is carried out on the premises of an educational institution for the purposes of a course of education provided by it.

"(2) Subsection (1) does not apply to the making of a copy of the whole of a work.

"(3) Subsection (1) does not apply to the making of a copy of more than 2 of the pages of a work in an edition of the work unless:

(a) there are more than 200 pages in the edition; and

(b) the total number of pages so copied does not exceed 1% of the total number of pages in the edition.

"(4) Where:

(a) a person makes, or causes to be made, a copy of a part of a work contained on a page or pages in an edition; and

(b) subsection (1) applies to the making of that copy;

that subsection does not apply to the making, by or on behalf of that person, of a copy of any other part of that work within 14 days after the day on which the previous copy was made.

"(5) In this section, a reference to an edition of a work includes a reference to an edition of works that include that work.

Copying of published editions by educational institutions

"135ZH. The copyright in a published edition of a work (being a work in which copyright does not subsist) is not infringed by the making of one or more reproductions of the whole or a part of the edition if the reproduction, or each of the reproductions, is made in the course of the making of a copy of the whole or a part of the work by, or on behalf of, a body administering an educational institution for the educational purposes of that institution or of another educational institution.

Multiple copying of periodical articles by educational institutions

"135ZJ. (1) Subject to this section, the copyright in an article contained in a periodical publication is not infringed by the making of one or more copies of the whole or a part of that article by, or on behalf of, a body administering an educational institution if:

(a) a remuneration notice, given by or on behalf of the body to the relevant collecting society, is in force;

(b) the copy is made solely for the educational purposes of the institution or of another educational institution; and

(c) the body complies with subsection 135ZX (1) or (3), as the case requires, in relation to the copy.

"(2) This section does not apply in relation to copies of, or of parts of, 2 or more articles contained in the same periodical publication unless the articles relate to the same subject-matter.

Multiple copying of works published in anthologies

"135ZK. The copyright in a literary or dramatic work, being a work contained in a published anthology of works and comprising not more than 15 pages in that anthology, is not infringed by the making of one or more copies of the whole or a part of that work by, or on behalf of, a body administering an educational institution if:

(a) a remuneration notice, given by or on behalf of the body to the relevant collecting society, is in force;

NOTES—continued

EXTRACTS FROM COPYRIGHT AMENDMENT ACT 1989—continued

(b) the copy is made solely for the educational purposes of the institution or of another educational institution; and

(c) the body complies with subsection 135ZX (1) or (3), as the case requires, in relation to the copy.

Multiple copying of works by educational institutions

"135ZL. (1) Subject to this section, the copyright in a literary, dramatic, musical or artistic work (other than an article contained in a periodical publication) is not infringed by the making of one or more copies of the whole or a part of the work by, or on behalf of, a body administering an educational institution if:

(a) a remuneration notice, given by or on behalf of the body to the relevant collecting society, is in force;

(b) the copy is made solely for the educational purposes of the institution or of another educational institution; and

(c) the body complies with subsection 135ZX (1) or (3), as the case requires, in relation to the copy.

"(2) This section does not apply in relation to copies of the whole, or of more than a reasonable portion, of a work that has been separately published unless the person who makes the copies, or causes the copies to be made, for, or on behalf of, the body is satisfied, after reasonable investigation, that copies (other than second-hand copies) of the work cannot be obtained within a reasonable time at an ordinary commercial price.

Application of Division to certain illustrations

"135ZM. Where an article or other literary, dramatic or musical work is accompanied by an artistic work or artistic works provided for the purpose of explaining or illustrating the article or other work, the preceding sections of this Division apply as if:

(a) where any of those sections provides that the copyright in the article or other work is not infringed—the reference to that copyright included a reference to any copyright in that artistic work or those artistic works;

(b) a reference to a copy of an article or other work included a reference to a copy of the article or other work together with a copy of that artistic work or those artistic works;

(c) a reference to a copy of a part of an article or other work included a reference to a copy of that part of the article or other work together with a copy of the artistic work or artistic works provided for the purpose of explaining or illustrating that part;

(d) a reference to a copy of a page of a literary or dramatic work in an edition of the work included a reference to a copy of a page in such an edition that contained that work and an artistic work or artistic works provided for the purpose of explaining or illustrating that part of that work; and

(e) a reference to a copy of pages of a literary or dramatic work in an edition of the work included a reference to a copy of pages in such an edition that contained a part of that work and an artistic work or artistic works provided for the purpose of explaining or illustrating that part of that work.

"Division 3—Copying of works by institutions assisting handicapped readers

Copying of published editions by institutions assisting handicapped readers

"135ZN. The copyright in a published edition of a work (being a work in which copyright does not subsist) is not infringed by the making of one or more reproductions of the whole or a part of the edition if the reproduction, or each of the reproductions, is made in the course of the making of a copy of the whole or a part of the work by, or on behalf of, a body administering an institution assisting handicapped readers for use in the provision, whether by the institution or otherwise, of assistance to handicapped readers.

NOTES—continued

EXTRACTS FROM COPYRIGHT AMENDMENT ACT 1989—continued

Multiple copying of works by institutions assisting handicapped readers

"135ZP. (1) The copyright in a literary or dramatic work is not infringed by the making by, or on behalf of, a body administering an institution assisting handicapped readers of one or more records embodying a sound recording of the work or of a part of the work if:

(a) a remuneration notice, given by or on behalf of the body to the relevant collecting society, is in force;

(b) each record is made solely for use by a handicapped reader for the purpose of research or study that he or she is undertaking or proposes to undertake, or for the purpose of otherwise instructing himself or herself on any matter; and

(c) the body complies with subsection 135ZX (1) or (3), as the case requires, in relation to each copy.

"(2) The copyright in a published literary or dramatic work is not infringed by the making by, or on behalf of, a body administering an institution assisting handicapped readers, of one or more Braille versions, large-print versions or photographic versions of the work or of a part of the work if:

(a) a remuneration notice, given by or on behalf of the body to the relevant collecting society, is in force;

(b) each version is made solely for use by a handicapped reader for the purpose of research or study that he or she is undertaking or proposes to undertake, or for the purpose of otherwise instructing himself or herself on any matter; and

(c) the body complies with subsection 135ZX (1) or (3), as the case requires, in relation to each version.

"(3) Where a sound recording of a work has been published, subsection (1) does not apply to the making of any record embodying a sound recording of the work (including a record that is a copy of that first-mentioned sound recording) for, or on behalf of, a body administering an institution assisting handicapped readers unless the person who makes that record, or causes that record to be made, is satisfied, after reasonable investigation, that no new record that embodies only a sound recording of the work can be obtained within a reasonable time at an ordinary commercial price.

"(4) Where a Braille version of a work has been separately published, subsection (2) does not apply to the making of a Braille version of the work, or of a part of the work, unless the person who makes that version, or causes that version to be made, for, or on behalf of, a body administering an institution assisting handicapped readers is satisfied, after reasonable investigation, that no new copy of a Braille version of the work, being a version that has been separately published, can be obtained within a reasonable time at an ordinary commercial price.

"(5) Where a large-print version of a work has been separately published, subsection (2) does not apply to the making of a large-print version of the work, or of a part of the work, unless the person who makes the version, or causes the version to be made, for, or on behalf of, a body administering an institution assisting handicapped readers is satisfied, after reasonable investigation, that no new copy of a large-print version of the work, being a version that has been separately published, can be obtained within a reasonable time at an ordinary commercial price.

"(6) Where a photographic version of a work has been separately published, subsection (2) does not apply to the making of a photographic version of the work, or of a part of the work, unless the person who makes the version, or causes the version to be made, for, or on behalf of, a body administering an institution assisting handicapped readers is satisfied, after reasonable investigation, that no new copy of a photographic version of the work, being a version that has been separately published, can be obtained within a reasonable time at an ordinary commercial price.

"(7) For the purposes of this section, a record or a version shall be taken to be a new record or version if it is not second-hand.

NOTES—continued

EXTRACTS FROM COPYRIGHT AMENDMENT ACT 1989—continued

Making of relevant reproductions by institutions assisting handicapped readers

"135ZQ. (1) Subject to this section, the copyright in a published literary or dramatic work is not infringed by the making by, or on behalf of, a body administering an institution assisting handicapped readers, of a relevant reproduction of the work, or of a part of the work, if the relevant reproduction is made solely for use in the making by, or on behalf of, that body, of a handicapped reader's copy of the work, or of a part of the work, as the case may be.

"(2) Where:

(a) a relevant reproduction of a work, or of a part of a work, is made by, or on behalf of, a body administering an institution assisting handicapped readers; and

(b) the relevant reproduction:

(i) is used otherwise than in the making by, or on behalf of, that body, of a handicapped reader's copy of the work, or of a part of the work, as the case may be; or

(ii) is not destroyed within 3 months after the day on which it was made;

subsection (1) does not apply, and shall be taken never to have applied, to the making of the relevant reproduction.

"(3) Subsection (1) does not apply to the making of a relevant reproduction, being a record embodying a sound recording, of a work, or of a part of a work, unless, at the time the record was made, there was embodied on the record, immediately before the beginning of that sound recording, a sound recording of the prescribed message.

"(4) Subsection (1) does not apply to the making of a relevant reproduction of a work, or of a part of a work, unless the body by whom, or on whose behalf, the relevant reproduction is made marks it, or causes it to be marked, in accordance with the regulations.

(5) In this section:

'relevant reproduction', in relation to a work, or a part of a work, means:

(a) a copy of the work, or of a part of the work; or

(b) a record embodying a sound recording of the work, or of a part of the work; or

(c) a Braille version, a large-print version, or a photographic version, of the work, or of a part of the work.

"Division 4—Copying of works etc. by institutions assisting intellectually handicapped persons

Copying of published editions by institutions assisting intellectually handicapped persons

"135ZR. The copyright in a published edition of a work (being a work in which copyright does not subsist) is not infringed by the making of one or more reproductions of the whole or a part of the edition in the course of making one or more copies of the whole or a part of the work by, or on behalf of, a body administering an institution assisting intellectually handicapped persons for use in the provision, whether by the institution or otherwise, of assistance to intellectually handicapped persons.

Copying of eligible items by institutions assisting intellectually handicapped persons

"135ZS. (1) The copyright in an eligible item, or in any work or other subject-matter included in an eligible item, is not infringed by the making by, or on behalf of, a body administering an institution assisting intellectually handicapped persons of a copy of the whole or a part of the eligible item if:

(a) a remuneration notice, given by or on behalf of the body to the relevant collecting society, is in force;

NOTES—continued

EXTRACTS FROM COPYRIGHT AMENDMENT ACT 1989—continued

(b) the copy is made solely for the purpose of use in the provision, whether by the institution or otherwise, of assistance to intellectually handicapped persons; and

(c) the body complies with subsection 135ZX (1) or (3), as the case requires, in relation to the copy.

"(2) Subsection (1) does not apply to the making of a copy of the whole or a part of:

(a) an eligible item, being a work that has been separately published in a form that would be suitable for use in the provision of the assistance referred to in that subsection; or

(b) an eligible item that is not a work;

unless the person who makes the copy, or causes the copy to be made, is satisfied after reasonable investigation that:

(c) in the case of an eligible item referred to in paragraph (a)—no new copy of the eligible item in a form suitable for use in the provision of that assistance can be obtained within a reasonable time at an ordinary commercial price; or

(d) in the case of an eligible item referred to in paragraph (b)— no new copy of the eligible item alone can be obtained within a reasonable time at an ordinary commercial price.

"(3) For the purposes of this section, a copy shall be taken to be new if it is not second-hand.

Making of copies for use in making intellectually handicapped person's copies

"135ZT. (1) Subject to this section, the copyright in an eligible item or in a television broadcast is not infringed by the making by, or on behalf of, a body administering an institution assisting intellectually handicapped persons of a copy of the whole or a part of the eligible item or broadcast, if the copy is made solely for use in the making by, or on behalf of, that body of an intellectually handicapped person's copy of the whole or the part of the eligible item or broadcast, as the case may be.

"(2) Where:

(a) a copy of the whole or a part of an eligible item or a television broadcast is made by, or on behalf of, a body administering an institution assisting intellectually handicapped persons; and

(b) the copy:

(i) is used otherwise than in the making by, or on behalf of, that body of an intellectually handicapped person's copy of the whole or the part of the eligible item or broadcast, as the case may be; or

(ii) is not destroyed within 3 months after the day on which it was made;

subsection (1) does not apply, and shall be taken never to have applied, to the making of the copy.

"(3) Subsection (1) does not apply to the making of a record embodying a sound recording of the whole or part of an eligible item unless, at the time the record was made, there was embodied on the record, immediately before the beginning of that sound recording, a sound recording of the prescribed message.

"(4) Subsection (1) does not apply to the making of a copy of the whole or part of an eligible item or a television broadcast unless the body by whom, or on whose behalf, the copy is made, marks it, or causes it to be marked, in accordance with the regulations.

"Division 5—Equitable remuneration

Remuneration notices

"135ZU. (1) An administering body may, by notice in writing given to the relevant collecting society, undertake to pay equitable remuneration to the society for licensed copies made by it, or on its behalf, being copies made while the notice is in force.

"(2) A remuneration notice shall specify whether the amount of equitable remuneration is to be assessed on the basis of a records system or a sampling system.

"(3) A remuneration notice comes into force on the day on which it is given to the collecting society, or on such later day as is specified in the notice, and remains in force until it is revoked.

NOTES—continued

EXTRACTS FROM COPYRIGHT AMENDMENT ACT 1989—continued

Records notices

"135ZV. (1) Where a records notice is given by, or on behalf of, an administering body, the amount of equitable remuneration payable to the relevant collecting society by the administering body for each licensed copy made by it, or on its behalf, while the notice is in force is such amount as is determined by agreement between the administering body and that collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.

"(2) For the purposes of subsection (1), different amounts may be determined (whether by agreement or by the Copyright Tribunal) in relation to different institutions administered by the administering body and different classes of students of an institution administered by it.

Sampling notices

"135ZW. (1) Where a sampling notice is given by, or on behalf of, an administering body, the amount of equitable remuneration payable to the relevant collecting society by the administering body for licensed copies made by it, or on its behalf, while the notice is in force is such annual amount per student of the institution concerned as is determined by agreement between the administering body and that collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.

"(2) The annual amount referred to in subsection (1) shall be determined (whether by agreement or by the Copyright Tribunal) having regard to the number of licensed copies made by, or on behalf of, the administering body in a particular period and to such other matters (if any) as are relevant in the circumstances.

"(3) The number of copies referred to in subsection (2), and any other matters that are necessary or convenient to be assessed by use of a sampling system, shall be assessed by use of a sampling system determined by agreement between the administering body and the relevant collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.

"(4) For the purposes of subsection (1), different annual amounts may be determined (whether by agreement or by the Copyright Tribunal) in relation to different institutions administered by the administering body and different classes of students of an institution administered by it.

"(5) Where:

(a) a sampling notice is given by, or on behalf of, an administering body to a collecting society; and

(b) during any period, the administering body does not comply with one or more of the requirements of the sampling system determined under this section in relation to that notice;

sections 135ZJ, 135ZK, 135ZL, 135ZP and 135ZS do not apply to any copy of a work or other subject-matter by, or on behalf of, the administering body during that period.

Marking and record keeping requirements

"135ZX. (1) Where a records notice is given by, or on behalf of, an administering body to a collecting society, the administering body shall:

(a) mark, or cause to be marked, in accordance with the regulations, each licensed copy made by it, or on its behalf, while the notice is in force, or any container in which such a copy is kept;

(b) make, or cause to be made, a record of the making of each licensed copy that is carried out by it, or on its behalf, while the notice is in force, being a record containing such particulars as are prescribed;

(c) retain that record for the prescribed retention period after the making of the copy to which it relates; and

(d) send copies of all such records to the collecting society in accordance with the regulations.

"(2) For the purposes of subsection (1), a record of the making of a licensed copy:

(a) may be kept in writing or in any other manner prescribed; and

(b) if it is kept in writing, shall be in accordance with the prescribed form.

NOTES—continued

EXTRACTS FROM COPYRIGHT AMENDMENT ACT 1989—continued

"(3) Where a sampling notice is given by, or on behalf of, an administering body to a collecting society, the administering body shall mark, or cause to be marked, in accordance with the regulations, each licensed copy made by it, or on its behalf, while the notice is in force, or any container in which such a copy is kept.

"(4) Regulations made for the purposes of paragraph (1) (a) or (b) or subsection (3) may prescribe different marks or particulars, and impose different requirements, in relation to different kinds of licensed copies or different kinds of works or eligible items.

Inspection of records etc.

"135ZY. (1) Where a remuneration notice is or has been in force, the relevant collecting society to which the notice was given may, in writing, notify the administering body which gave the notice that the society wishes, on a day specified in the notice, being an ordinary working day of the institution specified in the notice not earlier than 7 days after the day on which the notice is given to do such of the following things as are specified in the notice:

(a) assess the amount of licensed copying carried out at the premises of the institution;

(b) inspect all the relevant records held at those premises that relate to the making of licensed copies;

(c) inspect such other records held at those premises as are relevant to the assessment of the amount of equitable remuneration payable by the administering body to the society.

"(2) Where a collecting society gives a notice, a person authorised in writing by the society may, during the ordinary working hours of the relevant institution on the day specified in the notice (but not before 10 a.m. or after 3 p.m.), carry out the assessment, or inspect the records, to which the notice relates and, for that purpose, may enter the premises of the institution.

"(3) An administering body shall take all reasonable precautions, and exercise reasonable diligence, to ensure that a person referred to in subsection (2) who attends at the premises of an institution administered by the body for the purpose of exercising the powers conferred by that subsection is provided with all reasonable and necessary facilities and assistance for the effective exercise of those powers.

"(4) An administering body that contravenes subsection (3) is guilty of an offence punishable, on conviction, by a fine not exceeding $500.

Revocation of remuneration notice

"135ZZ. A remuneration notice may be revoked at any time by the relevant administering body by notice in writing given to the relevant collecting society and the revocation takes effect at the end of 3 months after the date of the notice or on such later day as is specified in the notice.

Request for payment of equitable remuneration

"135ZZA. (1) Subject to this section, where a remuneration notice is or has been in force, the relevant collecting society may, by notice in writing given to the administering body which gave the notice, request the body to pay to the society, within a reasonable time after the date of the notice, the amount of equitable remuneration specified in the notice, being an amount payable under section 135ZV or 135ZW, as the case may be, for licensed copies made by, or on behalf of, the body while the remuneration notice is or was in force.

"(2) Where the remuneration notice is a sampling notice, a collecting society shall not make a request under this section more than once in each period of 12 months during which the notice is in force.

"(3) If an amount specified in a request is not paid in accordance with the request, it may be recovered from the relevant administering body by the relevant collecting society in the Federal Court of Australia or in any other court of competent jurisdiction as a debt due to the society.

"(4) Jurisdiction is conferred on the Federal Court of Australia with respect to actions under subsection (3).

NOTES—continued

EXTRACTS FROM COPYRIGHT AMENDMENT ACT 1989—continued

"Division 6—Collecting societies

Collecting societies

"135ZZB. (1) Subject to this section, the Attorney-General may, by notice in the *Gazette*, declare the body named in the notice to be the collecting society for all relevant copyright owners or for such classes of relevant copyright owners as are specified in the notice.

"(2) Where the Attorney-General declares a body to be the collecting society for a specified class of copyright owners and subsequently declares another body to be the collecting society for that class of copyright owners:

(a) the first-mentioned collecting society ceases to be the collecting society for that class of copyright owners on the day on which the subsequent declaration is made; and

(b) any remuneration notice given to that collecting society ceases to be in force to the extent to which it relates to licensed copies of works or other subject-matter the copyright owners of which are included in that class of copyright owners.

"(3) The Attorney-General shall not declare the body to be a collecting society unless:

(a) it is a company limited by guarantee and incorporated under a law in force in a State or Territory relating to companies;

(b) all persons who are included in a class of relevant copyright owners to be specified in the declaration, or their agents, are entitled to become its members;

(c) its rules prohibit the payment of dividends to its members; and

(d) its rules contain such other provisions as are prescribed, being provisions necessary to ensure that the interests of members of a collecting society who are relevant copyright owners or their agents are protected adequately, including, in particular, provisions about:

(i) the collection of amounts of equitable remuneration payable by administering bodies under section 135ZV or 135ZW;

(ii) the payment of the administrative costs of a collecting society out of amounts collected by it;

(iii) the distribution of amounts collected by a collecting society;

(iv) the holding on trust by a collecting society of amounts for relevant copyright owners who are not its members; and

(v) access to records of a collecting society by its members.

"(4) Where the Attorney-General has declared a body to be the collecting society for a specified class of copyright owners, the Attorney- General may refuse to declare another body to be the collecting society for that class of copyright owners unless satisfied that to do so would be in the interests of those copyright owners, having regard to the number of members of the first-mentioned society, the scope of its activities and such other considerations as are relevant.

Revocation of declaration

"135ZZC. The Attorney-General may, by notice in the *Gazette*, revoke the declaration of a body as a collecting society if satisfied that the body:

(a) is not functioning adequately as a collecting society;

(b) is not acting in accordance with its rules or in the best interests of those of its members who are relevant copyright owners, or their agents;

(c) has altered its rules so that they no longer comply with paragraphs 135ZZB (3) (c) and (d); or

(d) has refused or failed, without reasonable excuse, to comply with section 135ZZD or 135ZZE.

Annual report and accounts

"135ZZD. (1) A collecting society shall, as soon as practicable after the end of each financial year, prepare a report of its operations during that financial year and send a copy of the report to the Attorney-General.

NOTES—continued

EXTRACTS FROM COPYRIGHT AMENDMENT ACT 1989—continued

"(2) The Attorney-General shall cause a copy of the report sent to the Attorney-General under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Attorney-General.

"(3) A collecting society shall keep accounting records correctly recording and explaining the transactions of the society (including any transactions as trustee) and the financial position of the society.

"(4) The accounting records shall be kept in such a manner as will enable true and fair accounts of the society to be prepared from time to time and those accounts to be conveniently and properly audited.

"(5) A collecting society shall, as soon as practicable after the end of each financial year, cause its accounts to be audited by an auditor who is not a member of the society, and shall send to the Attorney-General a copy of its accounts as so audited.

"(6) A collecting society shall give its members reasonable access to copies of all reports and audited accounts prepared by it under this section.

"(7) This section does not affect any obligations of a collecting society relating to the preparation and lodging of annual returns or accounts under the law under which it is incorporated.

Amendment of rules

"135ZZE. A collecting society shall, within 21 days after it alters its rules, send a copy of the rules as so altered to the Attorney-General, together with a statement setting out the effect of the alteration and the reasons why it was made.

"Division 7—Miscellaneous

Rights of copyright owners

"135ZZF. (1) Nothing in this Part affects the right of the owner of the copyright in a work to grant a licence authorising the body administering an educational institution to make, or cause to be made, copies of the whole or a part of the work without infringement of that copyright.

"(2) Nothing in this Part affects the right of the owner of the copyright in a work to grant a licence authorising the body administering an institution assisting handicapped readers to make, or cause to be made, sound recordings of, or Braille, large-print or photographic versions of, the whole or a part of the work without infringement of that copyright.

"(3) Nothing in this Part affects the right of the owner of the copyright in an eligible item to grant a licence authorising the body administering an institution assisting intellectually handicapped persons to make, or cause to be made, a copy of the whole or a part of the eligible item without infringement of that copyright.

Copyright not to vest in copier

"135ZZG. Despite any other provision of this Act, copyright does not vest in the maker of a handicapped reader's copy of the whole or part of a work, or of an intellectually handicapped person's copy of the whole or part of an eligible item, merely because of the making of the copy.

Unauthorised use of copies

"135ZZH. (1) Where a copy, record or version of a work, a sound recording or a cinematograph film, being a copy, record or version referred to in a prescribed provision of this Part:

(a) is sold or otherwise supplied for a financial profit;

(b) is used for a purpose other than the purpose specified in the prescribed provision; or

(c) is given to an administering body when there is not in force a remuneration notice given by that body to the relevant collecting society;

with the consent of the administering body by whom, or on whose behalf, it is made, the prescribed provision does not apply, and shall be taken never to have applied, to the making of the copy.

"(2) For the purposes of this section, subsection 135ZG (1), subsection 135ZJ (1), section 135ZK and subsections 135ZL (1), 135ZP (1) and (2) and 135ZS (1) are prescribed provisions."

NOTES—continued

EXTRACTS FROM COPYRIGHT AMENDMENT ACT 1989—continued

17. After section 152 of the Principal Act the following sections are inserted:

Applications to Tribunal for determination of amount of royalty payable for recording musical works

"152A. (1) In this section:

'manufacturer' has the same meaning as in section 55.

"(2) Subject to this section, an application may be made to the Tribunal for an order determining, or making provision for determining, the amount of royalty payable by the manufacturer of a record of a musical work to the owner of the copyright in the work during a period specified in the application.

"(3) An application may be made by the manufacturer or the owner of the copyright in the musical work recorded by the manufacturer.

"(4) The parties to an application are:

(a) the manufacturer and the owner of the copyright in the musical work; and

(b) any organisations or persons who are made parties to the application.

"(5) Where an application is made under subsection (2), the Tribunal shall consider the application and, after giving the parties an opportunity of presenting their cases, make an order determining, or making provision for determining, an equitable amount of royalty payable by the manufacturer of the record of the musical work to the owner of the copyright in the work during the period specified in the order.

"(6) Where an organisation (whether claiming to represent manufacturers or the owners of copyrights in musical works or not) or a person (whether a manufacturer or the owner of the copyright in a musical work or not) applies to the Tribunal to be made a party to an application under this section, the Tribunal may, if it thinks fit, make that organisation or person a party to the application if the Tribunal is satisfied that the organisation or person has a substantial interest in the application.

"(7) The period that may be specified in an order under subsection (5) in relation to a manufacturer may be a period beginning before the date of making of the order or before the date of making of the application but shall not be a period beginning before:

(a) the end of the period specified in the last preceding order (if any) made under that subsection in relation to that manufacturer; or

(b) the commencement of this section.

"(8) Where an order is in force under this section, the manufacturer in relation to whom the order applies is liable to pay to the person specified in the order the amount of royalty so specified at the times so specified and that person may recover the amount, if it is not paid in accordance with the order, in a court of competent jurisdiction from the manufacturer as a debt due to the person.

Applications to Tribunal for determination of manner of paying royalty

"152B. (1) In this section:

'manufacturer' has the same meaning as in section 55.

"(2) An application may be made to the Tribunal for an order determining the manner in which amounts of royalty payable by the manufacturer of a record of a musical work to the owner of the copyright in the work are to be paid.

"(3) An application may be made by the manufacturer or the owner of the copyright in the musical work recorded by the manufacturer.

"(4) The parties to an application are:

(a) the manufacturer and the owner of the copyright in the musical work; and

(b) any organisations or persons who are made parties to the application.

NOTES—continued

EXTRACTS FROM COPYRIGHT AMENDMENT ACT 1989—continued

"(5) Where an organisation (whether claiming to represent manufacturers or the owners of copyrights in musical works or not) or a person (whether a manufacturer or the owner of the copyright in a musical work or not) applies to the Tribunal to be made a party to an application under this section, the Tribunal may, if it thinks fit, make that organisation or person a party to the application if the Tribunal is satisfied that the organisation or person has a substantial interest in the application.

"(6) Where an application is made under subsection (2), the Tribunal shall consider the application and, after giving the parties an opportunity of presenting their cases, make an order determining the manner in which amounts of royalty payable by the manufacturer of the record of the musical work to the owner of the copyright in the work are to be paid." .

19. The following sections are inserted in the Principal Act after section 153 or, if section 153B of that Act (as amended by this Act) has commenced, after section 153B:

Applications to Tribunal under section 135ZV or subsection 135ZW (1)

"153C. (1) The parties to an application to the Tribunal under section 135ZV or subsection 135ZW (1) for the determination of the amount of equitable remuneration payable to a collecting society by an administering body for the making, by or on behalf of that body, of licensed copies are the society and the body.

"(2) Where an application is made to the Tribunal under section 135ZV or subsection 135ZW (1), the Tribunal shall consider the application and, after giving the parties to the application the opportunity of presenting their cases, shall make an order determining the amount per licensed copy, or per student of the relevant institution, as the case may be, that it considers to be equitable remuneration for the making of a licensed copy.

"(3) In making an order, the Tribunal may have regard to such matters (if any) as are prescribed.

"(4) An order may be expressed to have effect in relation to licensed copies made before the day on which the order is made.

"(5) In this section, 'administering body', 'collecting society', 'institution', 'licensed copy' and 'student' have the same meanings as in Part VB.

Applications to Tribunal under subsection 135ZW (3)

"153D. (1) The parties to an application to the Tribunal under subsection 135ZW (3) for the determination of a sampling system to be used for the purpose of assessing the number of licensed copies made by, or on behalf of, an administering body, or any other relevant matters, are the relevant collecting society and the body.

"(2) Where an application is made to the Tribunal under subsection 135ZW (3), the Tribunal shall consider the application and, after giving the parties to the application an opportunity of presenting their cases, shall make an order determining the sampling process.

"(3) In this section, 'administering body', 'collecting society' and 'licensed copy' have the same meanings as in Part VB." .

24. After section 200 of the Principal Act the following section is inserted:

Use of broadcasts by institutions assisting intellectually handicapped persons

"200AA. The making of a record of a sound broadcast is not an infringement of copyright in the broadcast if the record is made by, or on behalf of, the body administering an institution assisting intellectually handicapped persons and is used only for the purpose of the provision of that assistance by that institution." .

Retention of declarations in relation to copies made by libraries, archives or institutions

26. Section 203A of the Principal Act is amended:

(a) by omitting paragraphs (2) (a) and (b) or, if paragraph (2) (c) has been omitted, by omitting subsection (2);

(b) by omitting paragraph (2) (c) or, if paragraphs (2) (a) and (b) have been omitted, by omitting subsection (2);

(c) by omitting subsection (3);

NOTES—continued

EXTRACTS FROM COPYRIGHT AMENDMENT ACT 1989—continued

(d) by omitting from subsection (4) "or against subsection (2) with respect to the retention of the same record" ;

(e) by omitting from subsection (5) ", or to a prosecution of the body administering, or of the custodian in charge of the copying records of, an institution for an offence against subsection (2) in relation to the retention of a record," ;

(f) by omitting paragraphs (5) (a) and (b) and substituting the following paragraphs:

(a) in the case of a prosecution of the officer in charge of a library or archives—the declaration relates to the making of a copy of the whole or a part of a work, a sound recording or a cinematograph film before the day on which the defendant became the officer in charge of the library or archives and was not in the possession of the body administering the library or archives at that day; or

(b) in any case—the defendant took all reasonable precautions, and exercised due diligence, to ensure the retention of the declaration in the records of the library or archives, as the case requires." .

"SCHEDULE

2. Subsection 10 (1) (definition of 'officer in charge'):

(a) Add at the end of paragraph (a) of the definition "and" .

(b) Omit paragraph (b) of the definition.

3. Subsection 10 (1) (definition of "central records authority"):

Omit the definition.

5. Subsection 10 (1) (definitions of "the royalty" and "the minimum royalty"):

Omit the definitions.

6. Paragraph 10 (3) (a):

Omit "or a central records authority" .

7. Subparagraph 10 (3) (a) (i):

Omit "or authority" and "or authority, as the case may be" .

8. Subparagraph 10 (3) (a) (ii):

Omit "or authority, as the case may be" .

9. Paragraph 10 (3) (d):

Omit the paragraph.

11. Paragraph 10 (3) (ha):

Omit "Part X" , substitute "Part VB" .

13. Paragraph 10A (1) (a):

Omit the paragraph.

15. Divisions 5A and 5B of Part III:

Repeal the Divisions.

16. Sections 56 and 58:

Repeal the sections.

17. Sections 62, 63 and 71:

Repeal the sections.

18. Subparagraphs 112 (a) (ii) and (b) (ii):

(a) Omit "53A, 53B, 53D" , substitute "135ZG, 135ZJ, 135ZK, 135ZL, 135ZM, 135ZN, 135ZP, 135ZQ, 135ZR, 135ZS, 135ZT or" .

(b) Omit "or 200A" .

NOTES—continued

EXTRACTS FROM COPYRIGHT AMENDMENT ACT 1989—continued

20. Section 148:

Repeal the section.

21. Subsection 149A (1):

(a) Omit ", 53B (11), 53D (10)" .

(b) Omit "or 200A (5)" .

(c) Omit "for the making of a sound broadcast, copy, handicapped reader's copy or intellectually handicapped person's copy" .

22. Subsection 149A (3):

Omit "for the making of the sound broadcast, copy, handicapped person's copy, or intellectually handicapped person's copy, as the case requires" .

23. Section 159A:

Repeal the section.

24. Section 159B:

Repeal the section.

27. Subsection 195A (2):

(a) Omit "53B, 53D," .

(b) Omit "110B or 200A" , substitute "or 110B " .

28. Section 203B:

Repeal the section.

29. Section 203C:

Repeal the section.

30. Subsections 203D (2), (3) and (4):

Omit the subsections.

31. Subsection 203D (5):

(a) Omit ", (2) or (4) in relation to the arrangement of declarations or copying records" .

(b) Omit "or copying records, as the case may be, " .

32. Subsection 203F (1):

(a) Omit "53B, 53D," .

(b) Omit ", 110B or 200A" , substitute "or 110B" .

(c) Omit "or record" (wherever occurring).

33. Subsection 203F (2):

(a) Omit ", 53B" .

(b) Omit ", in relation to the making of a handicapped reader's copy of the whole or a part of a work in reliance on section 53D" .

(c) Omit "or in relation to the making of a copy of the whole or a part of an eligible item in reliance on section 200A" .

(d) Omit "or record" (wherever occurring).

34. Subsections 203F (3) and (4):

Omit the subsections.

35. Section 203G:

Repeal the section.

36. Subsection 203H (1):

(a) Omit ", 51A, 53B or 53D" , substitute "or 51A" .

(b) Omit all the words from and including "notation" , substitute "notation stating that the copy was made on behalf of that institution and specifying the date on which the copy was made." .

NOTES—continued

EXTRACTS FROM COPYRIGHT AMENDMENT ACT 1989—continued

37. Subsection 203H (2):

(a) Omit", a cinematograph film or an eligible item" , substitute "or a cinematograph film" .

(b) Omit", cinematograph film or eligible item, or a part of the eligible item" , substitute "or cinematograph film" .

(c) Omit "or 200A" .

(d) Omit all the words from and including "notation" , substitute "notation stating that the copy was made on behalf of that institution and specifying the date on which the copy was made." .

38. Subsections 203H (3) and (3A):

Omit the subsections.

39. Paragraph 203H (4) (a):

Add at the end of the paragraph "or" .

40. Paragraph 203H (4) (aa):

Omit the paragraph, substitute the following paragraph:

"(aa)makes on, or attaches to, a copy of a sound recording or a cinematograph film a notation of the kind referred to in subsection (2);" .

41. Paragraph 203H (4) (b):

Omit the paragraph.

42. Subsection 203H (4):

Omit "or message" .

43. Subsection 203H (5):

Omit ", (2), (3) and (3A)" , substitute and (2)" .

44. Paragraphs 203H (5) (a), (5) (b) and (5) (c):

Omit ", a cinematograph film or an eligible item, or of a part of a work or an eligible item" , substitute "or a cinematograph film, or of a part of a work" .

45. Paragraph 203H (5) (e):

Omit ", a cinematograph film or an eligible item, or of a part of an eligible item," , substitute "or a cinematograph film" .

46. Paragraph 203H (6) (a):

Add at the end of the paragraph "or" .

47. Paragraph 203H (6) (b):

Omit the paragraph.

50. Subsections 203H (8) and (9):

Omit the subsections.

51. Paragraph 203H (9A) (a):

Add at the end of the paragraph "or" .

52. Paragraph 203H (9A) (b):

Omit the paragraph.

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