

Bills Digest
No. 87 2000–01

Communications and the Arts Legislation
Amendment Bill 2000

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INFORMATION AND RESEARCH SERVICES

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Communications and the Arts Legislation Amendment Bill
2000

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Communications and the Arts Legislation Amendment Bill 2000

Date Introduced: 30 November 2000

House: House of Representatives

Portfolio: Communications, Information Technology and the Arts

Commencement: Royal Assent

Purpose

To make minor amendments to a number of Acts administered by the Communications, Information Technology and the Arts portfolio.

Background

As there is no central theme to the Bill the background to the various measures will be discussed below.

Main Provisions

Public Lending Right Act 1985

Public Lending Right (PLR) was introduced in Australia in 1974. It is based on the concept that creators and publishers should receive payment for the loss of income they incur when copies of their books are freely available in public libraries. PLR operated administratively for 13 years, until the *Public Lending Right Act 1985* (PLR Act) formally commenced on 1 July 1987. The PLR Act provides that a Public Lending Right Scheme (PLR Scheme) be gazetted by the Minister.

In the Second Reading Speech for the Public Lending Right Bill 1985, the then Minister said:

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Public Lending Right is an internationally recognised concept for compensation paid to authors to recompense them for income lost by the free multiple use of their books in public lending libraries.

The Australian Public Lending Right Scheme was introduced in 1974 following recommendations by the Literature Board of the Australia Council [...] The board had undertaken a study [...], in response to representations from Australian authors and publishers seeking recognition of the principle that the community as a whole should compensate them, at least in part, for the loss of potential income represented by their books being borrowed, free of charge, from public libraries.¹

Evaluation of the PLR Scheme:

In 1999 an evaluation committee formed by the Department of Communications, Information Technology and the Arts issued a report on the PLR Scheme² which amongst other things recommended that the PLR Scheme should be more clearly defined and articulated.

In its report the evaluation committee considered the absence of a clear statement of the objectives of the PLR Scheme in the Act to be a serious deficiency, leading to unproductive arguments as to the purpose of the payments currently made.³ The committee was satisfied that the PLR's objectives are much broader than simply providing recompense for lost income, and strongly believed that the broader objectives of encouraging Australian writing should be acknowledged and explicitly stated in legislation.

The evaluation committee considered that:

these objectives should explicitly acknowledge both the loss of income by creators and publishers through the multiple use of their books in public libraries and the important cultural role that the Scheme has served in promoting Australian writing and culture, and which has been implicitly recognised in its operations and payment arrangements.⁴

The evaluation committee recommended that a statement of objectives of the PLR Scheme be incorporated into the Act. **Item 1** of the Bill implements this recommendation and inserts an objects clause into the Act. According to **proposed section 2A** the objects are twofold:

- to make payments to Australian creators and publishers on the basis that income is lost from the availability of their books for loan in public lending libraries; and
- to support Australian culture by encouraging the growth and development of Australian writing and publishing.

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Deceased creators

Items 2-5 of the Bill clarify the process of making final payments in respect of deceased creators under the PLR Scheme. Under subsection 5(2) the Scheme may only provide for payments to be made to a 'prescribed person'. **Items 3 and 5** remove references to beneficiaries such as widows, widowers and children from the definition of 'prescribed person'. This reflects a decision made in 1996 when the PLR Scheme ceased payments to beneficiaries of deceased creators.⁵ Instead of direct beneficiary payments, section 26 of the PLR Act allows the Scheme to make payments to the legal personal representative of a deceased creator. Section 26 will continue to operate.

Telecommunications Act 1997

Carriage service provider immunity

Section 315 of the *Telecommunications Act 1997* provides that a senior police officer may request a carriage service provider to suspend the supply of the carriage service in certain circumstances. These circumstances include where the officer has reasonable grounds to believe that an individual with access to the a particular carriage service has inflicted serious personal injury, or threatened to kill or seriously injure another person, and the suspension of the service is reasonably necessary to prevent the threat being made again. A carriage service provider may comply with such a request but is not bound to comply.

Item 6 inserts **proposed subsections 315(3A) and 315(3B)** to confirm that carriage service providers, their employees or their agents will not be liable for acts or omissions done in good faith in compliance with such a request to suspend supply of the carriage service.

Similarly carriage service providers, their employees and agents acting in compliance with Commonwealth and State disaster plans covered by subsections 345(1) or 346(1) will not be liable for acts or omissions done in accordance with such plans (**item 7, proposed section 346A**).

Telecommunications (Consumer Protection and Service Standards) Act 1999

Section 128 of the Act deals with the Telecommunications Industry Ombudsman scheme operated by Telecommunications Industry Ombudsman Limited. **Item 8** amends subsection 128(3) to substitute a reference to the Australian Company Number (ACN) of the Telecommunications Industry Ombudsman Limited with a reference to the new Australian Business Number (ABN).

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Trade Practices Act 1974

Part XIB of the *Trade Practices Act 1974* (TPA) is a telecommunications specific regime which aims primarily to prevent carriers and carriage service providers with a substantial degree of market power in a telecommunications market from engaging in anti-competitive conduct.

Carriers and carriage service providers are prohibited from engaging in anti-competitive conduct as defined in this Part. This is known as the 'competition rule'. On identifying conduct in breach of the competition rule the Australian Competition and Consumer Commission (ACCC) is empowered to seek an injunction and also issue a competition notice which states that the carrier or service provider has contravened or is contravening the rule. The competition notice is prima facie evidence of the matters in the notice and if the carrier or carriage service provider continues the conduct the ACCC can seek Federal Court orders for various remedies and pecuniary penalties. Once a notice has been issued, private parties may seek injunctions or other orders for breaches of the competition rule.

Section 151AQB of the TPA deals with advisory notices issued by the ACCC in conjunction with a competition notice. Advisory notices provide guidance on how the recipient might change its conduct so it is no longer anti-competitive. Currently advisory notices may only be issued when the competition notice is in force. **Item 9** replaces the current subsections 151AQB(1) and 151AQB(2) with a **new subsection 151AQB(1)** and provides that an advisory notice may be issued at the same time as a competition notice or at any time after the competition notice has been issued.

Items 10-15 are consequential to the proposed amendment of section 151AQB. References to 'a notice under subsection (2)' are to be replaced with references to 'advisory notices'.

Items 16-17 make technical amendments to section 151CM of the TPA to correct drafting errors and anomalies.

Item 18 inserts **proposed section 152CWA** and deals with the exercise of procedural powers by ACCC members when resolving telecommunication disputes by arbitration. A procedural power in relation to arbitration is a power of the ACCC other than a power to make, vary or revoke a determination or a power to give a draft determination (**proposed subsection 152CWA(3)**). Procedural powers include the power to take evidence on oath, summon witnesses and refer matters to an expert (section 152DC). Currently these powers may only be exercised by the ACCC as constituted for the purposes of arbitration. For arbitration the TPA stipulates that the ACCC is to be constituted by 2 or more members of the ACCC nominated in writing by the Chairperson (section 152CV). **Proposed subsections 152CWA(1) and 152CWA(2)** enable the Chairperson or a sitting member nominated by the Chairperson to exercise the procedural powers of the ACCC in relation to arbitration. According to the Explanatory Memorandum this will remove the current difficulty where the ACCC cannot exercise 'procedural powers' when a sitting member is

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absent or is not available, without reconstituting the ACCC for the purposes of the arbitration.⁶

Endnotes

- 1 House of Representatives, *Hansard*, p. 1304.
- 2 Public Lending Right Scheme Evaluation Steering Committee, *Evaluation of the Public Lending Right Scheme: Report*, Canberra, Department of Communications, Information Technology and the Arts, 1999.
- 3 *Ibid*, p. 35.
- 4 *Ibid*, p. 40.
- 5 *Ibid*, p. 48.
- 6 *Explanatory Memorandum*, p. 10.

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