

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

PUBLIC LENDING RIGHT BILL 1985

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1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 17 April 1985

(*Minister for Arts, Heritage and Environment*)

A BILL

FOR

**An Act to provide for payments in respect of Australian books
held in Australian libraries**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

1. This Act may be cited as the *Public Lending Right Act 1985*.

5 **Commencement**

2. This Act shall come into operation on a day to be fixed by Proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—
“Australia” includes the external Territories;
10 “Chairperson” means the Chairperson of the Committee;
“claim” means a claim for a payment under the scheme;
“claimant” means a person who makes a claim;
“Committee” means the Public Lending Right Committee established by
section 7;
15 “member” means a member of the Committee and includes the
Chairperson;

“previous scheme” means the Public Lending Right Scheme administered by the Department as in force immediately before the commencement of this Act;

“scheme” means the scheme approved under section 5, or, if that scheme has been modified under that section, that scheme as so modified. 5

(2) A reference in this Act to an Australian author or an Australian person is a reference to an author or a person, as the case may be, who—

- (a) is an Australian citizen, wherever resident; or
- (b) is ordinarily resident in Australia.

(3) Where a book has been written by an Australian author or Australian authors and by another person or other persons, this Act applies as if the book had been written by the Australian author or Australian authors. 10

(4) A reference in this Act to modifying the scheme includes a reference to omitting or adding a provision, or substituting a provision for another provision.

(5) A person who, by virtue of a determination under the previous scheme, was eligible to receive payments under that scheme in respect of a book shall be taken, for the purposes of this Act and the scheme, to be a claimant in respect of that book unless, by virtue of a determination under the previous scheme, the person was not eligible to continue to receive payments under that scheme in respect of that book. 15 20

Extension to external Territories

4. This Act extends to every external Territory.

Public Lending Right Scheme

5. (1) The Minister may, by notice published in the *Gazette*—

- (a) approve a scheme for and in relation to the making of payments to persons in respect of books; and 25
- (b) modify the scheme so approved.

(2) The Minister shall not approve a scheme under paragraph (1) (a) if it provides—

- (a) for the making of payments in respect of books other than books that are held in libraries in Australia; or 30
- (b) for the making of payments in respect of books to persons who are not prescribed persons in relation to those books.

(3) The Minister shall not modify the scheme under paragraph (1) (b) if sub-section (2) would have prohibited the Minister from approving the scheme, as so modified, under paragraph (1) (a). 35

(4) In this section, “prescribed person”, in relation to a book, means—

- (a) an Australian author of the book;
- (b) where an Australian author of the book has died—a widow, widower or child of the deceased author, or a person having a 40

relationship or association with the deceased author of a kind specified in the scheme;

5 (c) an Australian person who illustrated, translated, compiled or edited the book or otherwise contributed to its form or contents;

10 (d) where an Australian person who illustrated, translated, compiled or edited the book or otherwise contributed to its form or contents has died—a widow, widower or child of the deceased person, or a person having a relationship or association with the deceased person of a kind specified in the scheme; and

(e) a publisher of the book who is included in a class of publishers specified in the scheme.

Payments under scheme

15 6. (1) The Committee shall, in accordance with the scheme, determine the eligibility of a claimant and the amount of the payment (if any) to be made to the claimant.

(2) A payment under the scheme to a claimant shall not be made except in accordance with a determination of the Committee.

20 (3) The Committee may, for the purpose of the performance of its functions under this Act or the scheme, require a claimant—

(a) to furnish to the Committee such information, or to make available to the Committee such documents, as the Committee specifies in writing; and

25 (b) to verify, by statutory declaration, any information or documents furnished or made available to the Committee.

(4) The Committee may refuse to consider a claim unless the claimant complies with any requirement made by the Committee under sub-section (3).

Public Lending Right Committee

30 7. For the purposes of this Act, there shall be a Public Lending Right Committee.

Functions of Committee

8. (1) The functions of the Committee are—

35 (a) to determine the eligibility of a claimant and the amount of the payment (if any) to be made to the claimant;

(b) to approve payments under the scheme;

(c) to furnish advice to the Minister, either of its own motion or upon request made to it by the Minister, in respect of matters relating to the operation of this Act or of the scheme;

- (d) to make recommendations to the Minister with respect to—
 - (i) the modification of the scheme, including modification of the payments, or rates of payments, under the scheme; and
 - (ii) other matters relating to the operation of the scheme or this Act; and
- (e) such other functions as the Minister determines in writing.

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(2) For the purpose of carrying out its functions, the Committee may consult or co-operate with any person or body, including a body established by a State, by the Northern Territory or by a local government body, that may be able to provide assistance to the Committee.

10

Membership of Committee

9. (1) The Committee shall consist of—

- (a) a Chairperson;
- (b) 2 members to represent Australian authors;
- (c) a member to represent publishers of books written by Australian authors;
- (d) a member to represent libraries in which books written by Australian authors are held;
- (e) a member, being an officer of the Attorney-General’s Department, nominated by the Attorney-General; and
- (f) a member, being an officer of the National Library of Australia, nominated by the Director-General of the National Library.

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(2) A member of the Committee—

- (a) shall be appointed by the Minister;
- (b) shall be appointed on a part-time basis; and
- (c) subject to sub-section (5), holds office for such period, not exceeding 4 years, as is specified in the instrument of the member’s appointment, but is eligible for re-appointment.

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(3) Subject to sub-section (5), a person shall not hold office under sub-section (2) for a continuous period of more than 8 years.

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(4) A person who has held office under sub-section (2) for a continuous period of 8 years is not eligible for re-appointment for a term of office commencing within 12 months after the expiration of that period.

(5) A member referred to in paragraph (1) (e) or (f) holds office until the Minister terminates that member’s appointment in accordance with sub-section (6).

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(6) The Minister shall terminate the appointment of a member referred to in paragraph (1) (e) or (f) if, and only if, the Attorney-General or the Director-General of the National Library, as the case may be, requests the termination of the appointment.

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(7) The Chairperson may be referred to as the Chairman or the Chairwoman, as the case requires.

Remuneration and allowances

5 10. (1) A member (other than a member referred to in paragraph 9 (1) (e) or (f)) 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, the member shall be paid such remuneration as is prescribed.

(2) A member shall be paid such allowances as are prescribed.

10 (3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

Resignation

11. A member may resign from the office of member by writing signed by the member and delivered to the Minister.

15 **Termination of office**

12. (1) The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

20 (2) If a member is absent, except with the leave of the Minister, from 3 consecutive meetings of the Committee, the Minister may terminate the member's appointment.

(3) In this section, "member" does not include a member referred to in paragraph 9 (1) (e) or (f).

Acting Chairperson

25 13. (1) The Minister may appoint a person to act as Chairperson—

(a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office of Chairperson,

30 but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

35 (3) Where a person is acting as Chairperson in circumstances referred to in paragraph (1) (b) and the office of Chairperson becomes vacant while that person is so acting, then, subject to sub-section (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

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(4) The appointment of a person to act as Chairperson ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Minister.

(5) While a person is acting as Chairperson, the person has and may exercise all the powers, and shall perform all the duties, of the Chairperson.

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(6) The Minister may—

(a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed to act as Chairperson; and

(b) terminate such an appointment at any time.

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(7) The validity of anything done by or in relation to a person purporting to act as Chairperson shall not be called in question on the ground that the occasion for the person’s appointment had not arisen, that there is a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

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Acting members

14. (1) The Minister may appoint a person to act as a member—

(a) during a vacancy in the office of a member, whether or not an appointment has previously been made to the office; or

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(b) during any period, or during all periods, when a member is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office of member,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

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(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) Where a person is acting as a member in circumstances referred to in paragraph (1) (b) and the office of the member becomes vacant while that person is so acting, then, subject to sub-section (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

30

(4) The appointment of a person to act as a member ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Minister.

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(5) While a person is acting as a member, the person has and may exercise all the powers, and shall perform all the duties, of a member.

(6) The Minister may—

(a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed to act as a member; and

5 (b) terminate such an appointment at any time.

(7) The validity of anything done by or in relation to a person purporting to act as a member shall not be called in question on the ground that the occasion for the person's appointment had not arisen, that there is a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

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(8) In this section, "member" does not include the Chairperson.

Disclosure of interests

15 **15. (1)** A member who has a direct or indirect pecuniary interest in a matter being considered by the Committee shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee.

20 (2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Committee and the member shall not, unless the Minister or the Committee otherwise determines—

(a) be present during any deliberation of the Committee with respect to that matter; or

(b) take any part in any decision of the Committee with respect to that matter.

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(3) For the purposes of the making of a determination by the Committee under sub-section (2) in relation to a member who has made a disclosure under sub-section (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

30 (a) be present during any deliberation of the Committee for the purposes of making the determination; or

(b) take part in the making by the Committee of the determination.

Meetings

16. (1) The Committee shall hold such meetings as are necessary for the performance of its functions.

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(2) The Chairperson—

(a) may, at any time, convene a meeting of the Committee; and

(b) shall, on receipt of a written request signed by not less than 3 members, convene a meeting of the Committee.

(3) The Minister may, at any time, convene a meeting of the Committee.

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(4) The Chairperson shall preside at all meetings of the Committee at which the Chairperson is present.

(5) Where the Chairperson is not present at a meeting of the Committee, the members present shall appoint one of their number to preside at the meeting.

(6) At a meeting of the Committee, 4 members constitute a quorum.

(7) Questions arising at a meeting of the Committee shall be determined by a majority of the votes of the members present and voting. 5

(8) The person presiding at a meeting of the Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(9) In this section—

“Chairperson” includes a person acting as Chairperson; 10

“member” includes an acting member.

Delegation

17. (1) The Committee may, by resolution, either generally or as otherwise provided by the resolution, delegate to a member, an acting member or a member of the staff assisting the Committee, all or any of its powers under this Act or under the scheme, other than this power of delegation. 15

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act and of the scheme, be deemed to have been exercised by the Committee.

(3) A delegation of a power under this section— 20

(a) may be revoked by a resolution of the Committee (whether or not constituted by the persons constituting the Committee at the time the power was delegated);

(b) does not prevent the exercise of the power by the Committee; and

(c) continues in force notwithstanding a change in the membership of the Committee. 25

(4) A delegation under this section, or the revocation of such a delegation, shall be notified to the Minister by the Chairperson.

(5) Section 34A of the *Acts Interpretation Act 1901* applies in relation to a delegation of power under this section as if the Committee were a person and so applies in relation to a delegation of a power of the Committee under the scheme as if the reference in section 34A of that Act to any Act were a reference to the scheme. 30

(6) A certificate signed by the Chairperson or a person acting as Chairperson stating any matter with respect to a delegation of a power under this section is *prima facie* evidence of that matter. 35

(7) A document purporting to be a certificate mentioned in sub-section (6) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

Staff

18. The staff necessary to assist the Committee shall be persons appointed or employed under the *Public Service Act 1922*.

Annual report

5 19. (1) The Committee shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report of the operation of the scheme and of this Act, with particular reference to their operation during the year that ended on that 30 June.

(2) A report under sub-section (1) may include—

- 10 (a) information or comments concerning the effect of the scheme; and
(b) recommendations relating to any matters concerning the operation of the scheme or of this Act.

15 (3) The Minister shall cause a copy of a report furnished to the Minister under sub-section (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

(4) The Committee shall furnish to the Minister such additional reports as the Minister from time to time requires and may from time to time furnish such other reports as the Committee thinks fit.

20 **Review of certain decisions of Committee**

20. (1) In this section—

“decision” has the same meaning as that expression has in the *Administrative Appeals Tribunal Act 1975*;

25 “decision of the Committee” means a decision of the Committee under this Act in connection with a claim.

(2) The Committee shall, by notice in writing given to a claimant affected by a decision of the Committee, inform the claimant of the decision of the Committee.

30 (3) A claimant who is dissatisfied with a decision of the Committee may, by notice in writing given to the Committee within a period of 28 days after the day on which the decision first comes to the notice of the claimant, or within such further period as the Committee allows, request the Committee to reconsider the decision.

35 (4) There shall be set out in a request under sub-section (3) the ground on which the request is made.

(5) Upon receipt of a request under sub-section (3), the Committee shall reconsider its decision and may—

- 40 (a) confirm the decision;
(b) vary the decision; or
(c) set the decision aside and make a new decision in substitution for the decision so set aside.

(6) Where, pursuant to a request under sub-section (3), the Committee reconsiders a decision under sub-section (5), the Committee shall, by notice in writing given to the claimant who made the request, inform the claimant of the result of the reconsideration.

(7) Where—

(a) a person has made a request under sub-section (3) for the reconsideration of a decision; and

(b) at the expiration of the period of 90 days after the day on which the request was made, the person has not received notice of the result of the reconsideration of the decision,

the Committee shall thereupon be deemed to have confirmed the decision under sub-section (5).

(8) An application may be made to the Administrative Appeals Tribunal for review of—

(a) a decision that has been confirmed, or is deemed to have been confirmed;

(b) a decision as varied; or

(c) a decision made in substitution for a decision set aside, under sub-section (5).

Statements to accompany notification of decisions

21. (1) A notice given to a claimant in accordance with sub-section 20 (2) in relation to a decision (in this sub-section referred to as the “original decision”) shall include a statement to the effect that—

(a) if the claimant is dissatisfied with the original decision the claimant may, in accordance with sub-section 20 (3), request the Committee to reconsider the original decision; and

(b) subject to the *Administrative Appeals Tribunal Act 1975*, if a person whose interests are affected by the original decision is dissatisfied with—

(i) the decision resulting from the reconsideration; or

(ii) where the person has not been notified of the results of the reconsideration within the period of 90 days after the day on which the request for the reconsideration was made—the original decision,

the person may make application to the Administrative Appeals Tribunal for review of the decision resulting from the reconsideration, or the original decision, as the case may be.

(2) A notice given to a claimant under sub-section 20 (6) in relation to a reconsideration of a decision shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, if a person whose interests are affected by the decision resulting from the reconsideration is dissatisfied with that last-mentioned decision, the person may make application to the Administrative Appeals Tribunal for review of that last-mentioned decision.

(3) A failure to comply with the requirements of sub-section (1) or (2) does not affect the validity of the decision.

Offences

22. (1) A person shall not, in or in connection with a claim, knowingly—

- 5 (a) make to the Committee, or to a delegate of the Committee, a statement, whether oral or in writing; or
- (b) present to the Committee or to such a delegate a document, that is false or misleading in a material particular.

Penalty: \$2,000 or imprisonment for 12 months, or both.

10 (2) Where a person is convicted of an offence against sub-section (1), the court may, in addition to imposing a penalty under that sub-section, order the person to repay to the Commonwealth the amount of any payment under the scheme paid to the person in consequence of the making of the statement or the presentation of the document.

15 (3) Where a court has made an order under sub-section (2), a certificate signed by the appropriate officer of the court specifying the amount ordered to be repaid and the person by whom the amount is payable may be filed in a court having civil jurisdiction to the extent of that amount and is thereupon enforceable in all respects as a final judgment of that court.

20 (4) For the purposes of the application of this section in relation to a corporation, but without prejudice to the liability of any person other than the corporation—

- 25 (a) a statement made, or a document presented, by a person acting on behalf of the corporation shall be deemed to be made or presented by the corporation; and
- (b) the knowledge of any employee or agent of the corporation shall be deemed to be knowledge of the corporation.

Recovery of overpayments

30 23. Where an amount by way of a payment under the scheme has been paid to a person in consequence of the making of a statement, or the presentation of a document, by or on behalf of the person, being a statement or document that was, whether to the knowledge of the person or not, false or misleading in a material particular, an amount equal to the amount of the payment is recoverable from the person by the Commonwealth in a court of competent
35 jurisdiction as a debt due to the Commonwealth.

Evidence of payment

40 24. For the purposes of sections 22 and 23, a certificate purporting to be signed by the Chairperson or a person acting as Chairperson and stating that an amount by way of a payment under the scheme has been paid in consequence of the making of a statement, or the presentation of a document, is *prima facie* evidence of the matters stated in the certificate.

Payments inalienable

25. Subject to section 26, a right (if any) to receive a payment under the scheme is inalienable, whether by way of, or in consequence of, assignment, charge or otherwise, and is not liable to be taken in execution or be dealt with under the law relating to bankruptcy. 5

Payment to personal representative

26. Where the Committee has determined that a person is to receive a payment under the scheme and the payment has not been made at the date of the death of that person, the amount of that payment is payable to the legal personal representative of that person. 10

Regulations

27. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act. 15

