

1985

THE PARLIAMENT OF THE COMMONWEALTH

OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PUBLIC LENDING RIGHT BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Arts, Heritage
and Environment)

OUTLINE

The purpose of the Public Lending Right Bill 1985 is to establish a statutory basis for the operation of the Public Lending Right Scheme and thereby formalise the Government's commitment to compensation of Australian authors and publishers for the free multiple use of their books in public lending libraries in Australia.

The Bill makes provision for:

- delineation of the scope of the Scheme;
- description of the powers of the Minister;
- constitution and operation of the Public Lending Right Committee; and
- review of certain decisions of the Committee.

The Public Lending Right Scheme has, since its inception in 1974, operated on an administrative basis, funded under an item within the annual appropriation of its administering authority. There will be no change in the funding procedure or in the level of funding as a result of this legislation, except for such increases in the rates of payment to authors and publishers as may be determined by the Minister to be appropriate under the prevailing budgetary circumstances.

NOTES ON CLAUSES

Clauses 1 and 2 - Short title and Commencement

1. The first two clauses of the Bill provide for the short title and commencement of the legislation. The provisions of the Bill will come into effect on a day to be fixed by Proclamation, to allow co-ordination with publication of the administrative details of the Public Lending Right Scheme in the Gazette and with the commencement of a new financial year for the Scheme.

Clause 3 - Interpretation

2. This clause defines the principal words and expressions used for the purposes of the legislation. Particular provision is made in this clause to include persons eligible to receive payments under the existing Public Lending Right Scheme as it is currently administered by the Department of Arts, Heritage and Environment. The extent of the application of the term "Australian" to authors and books is also specifically defined.

Clause 4 - Extension of Act to external Territories

3. This clause extends the operation of the legislation to every external Territory of the Commonwealth of Australia.

Clause 5 - Public Lending Right Scheme

4. This clause details the powers of the Minister and the scope of the Public Lending Right Scheme, as explained below.

Sub-clause 5 (1)

5. The Minister is given the power to approve and modify a scheme for the making of payments to persons in respect of books, by means of notices published in the Gazette.

Sub-clauses 5 (2) and (3)

6. These provisions delineate the scope of the scheme by describing the classes of books and persons to whom the scheme could not apply and the limitations placed thereby on the Minister's power.

Sub-clause 5 (4)

7. This sub-clause defines the class of "prescribed person" to whom the scheme does apply. It includes, in relation to a book:

- an Australian author, illustrator, translator, compiler, editor or contributor;
- the spouse and children of a deceased author/illustrator/translator/compiler/editor/contributor;
- a person who has had a special relationship or association with a deceased author/etc. (The nature of such relationships is specified by the scheme, the intention being to take account of long-term dependent companions); and
- a publisher (this class of person is also further specified in the scheme).

Clause 6 - Payments under scheme

8. This clause details the power of the Committee to determine the eligibility of claimants to payment under the scheme and, in so doing, to require the furnishing of necessary information by the claimant.

Clause 7 - Public Lending Right Committee

9. The Committee is formally established by this clause.

Clause 8 - Functions of Committee

10. The functions of the Committee fall into two categories:

- (i) those concerned with the routine operation of the scheme described in clause 5 and;
- (ii) those concerned with advice and recommendations to the Minister.

The first category includes determination of the eligibility of claimants and the amounts payable to them, and approval of such payments; the second category includes advice to the Minister on the operation of the Act or the scheme, and recommendations on modification of the scheme. This clause also makes provision for the Committee to consult widely for the purpose of carrying out its functions.

Clause 9 - Membership of Committee

11. The composition and terms of appointment of the Committee are detailed in this clause.

Sub-clause 9 (1)

12. The composition of the Committee has been designed to provide balanced representation of literary interest groups. The officers from the National Library of Australia and the Attorney-General's Department are included to provide professional technical advice.

Sub-clauses 9 (2), (3) and (4)

13. With the exception of the two government representatives, the members of the Committee are appointed on a part-time basis by the Minister for a maximum term of 4 years. This period was chosen to ensure some continuity of experience, as was the provision for a second term. A reasonable turnover of membership is, however, guaranteed by the limit of 8 years on continuous holding of office and by the subsequent 12 month period of non-eligibility for reappointment.

Sub-clauses 9 (5) and (6)

14. These sub-clauses describe the special terms of appointment of the government representatives on the Committee.

Sub-clause 9 (7)

15. Allowance is here made for the optional use of the titles "Chairman" or "Chairwoman", according to the preference of the incumbent.

Clause 10 - Remuneration and allowances

16. This clause provides for the payment of remuneration and allowances to members other than the government representatives, who are full-time public servants.

Clauses 11 and 12 - Resignation and Termination of office

17. These clauses prescribe the mechanisms for voluntary resignation, or termination of office by the Minister.

Clause 13 - Acting Chairperson

18. This clause provides for the appointment by the Minister of an Acting Chairperson during a vacancy in the office of the Chairperson, or during the latter's absence from duty or from Australia.

Clause 14 - Acting members

19. The terms and conditions of the appointment of acting members are described in this clause, including provision in sub-clause 14 (2) for the appointment of standing acting members (i.e. deputies).

Clause 15 - Disclosure of interests

20. This clause requires the disclosure by members of any direct or indirect pecuniary interest in matters coming before the Committee, and prescribes the procedures to be adopted in the event of such disclosures.

Clause 16 - Meetings

21. This clause details the frequency and method of convening of meetings of the Committee, and the rules of procedure which such meetings must follow.

Clause 17 - Delegation

22. Provisions for the delegation of its powers by the PLR Committee are outlined in this clause. Delegation is limited to members, acting members, or staff assisting the Committee (defined in the following clause). The remaining parts of this clause reflect standard practice in delegation procedures, including the application of the Acts Interpretation Act 1901.

Clause 18- Staff

23. This clause defines the staff assisting the Committee, referred to in Clause 17 (1), as public servants employed under the Public Service Act 1922. This reflects the fact that the PLR Scheme is administered wholly by officers of the Minister's Department.

Clause 19 - Annual report

24. Under the provisions of this clause an Annual Report to the Minister must be furnished as soon as practicable after 30 June. The clause describes matters appropriate for inclusion in the Report and the procedures to be adopted by the Minister in tabling the Report in Parliament. Provision is also made for additional reports as required.

Clause 20 - Review of certain decisions of Committee

25. This clause embodies standard procedures for review of decisions made by the PLR Committee, including the operation of the Administrative Appeals Tribunal Act 1975.

Sub-clause 20 (1)

26. Definitions of "decision" and "decision of the Committee" for the purposes of the clause are given by this sub-clause.

Sub-clause 20 (2)

27. This sub-clause provides for notification in writing of claimants affected by a decision of the Committee.

Sub-clauses 20 (3) and (4)

28. Provision is made by these sub-clause for requests in writing, within a prescribed period, for reconsideration of Committee decisions.

Sub-clauses 20 (5) and (6)

29. These sub-clauses describe the alternative findings open to the Committee on reconsideration of their decision, and the requirement for notification of the claimant in writing of the result of the reconsideration.

Sub-clause 20 (7)

30. This sub-clause places a 90-day limit on reconsideration of decisions and provides that the original decision shall be confirmed if no notice of the result of reconsideration has been received by the claimant at the expiration of that period.

Sub-clause 20 (8)

31. Provision is made in this sub-clause for application to the Administrative Appeals Tribunal for review of decisions reconsidered as described above.

Clause 21 - Statements to accompany notification of decisions

32. This clause ensures that notices in writing of decisions (see sub-clause 20 (2)) or of the results of reconsideration of decisions (see sub-clause 20 (6)) contain statements describing the rights of the claimant to seek review of these decisions - in the first instance, by the Committee itself; and in the second, by the Administrative Appeals Tribunal. The clause also provides, however, that a failure to include such a statement does not effect the validity of the decision.

Clause 22 - Offences

33. A standard penalty of \$2,000 or imprisonment for 12 months or both is established by this clause for the making or presenting of an oral or written statement, false or misleading in a material particular, to the Committee or its delegate. The clause also provides for the making and enforcing of a court order for repayment of any monies paid to the convicted person as a result of the false statement (this is additional to the penalty). The application of this clause to a corporation is also described.

Clause 23 - Recovery of overpayments

34. This clause provides for recovery in a court of competent jurisdiction of any payment made under the scheme as the result of a false or misleading statement, whether deliberately made or not. This general power of recovery is complementary to the provisions of clause 22.

Clause 24 - Evidence of payment

35. In relation to the powers of recovery of payments described in clauses 22 and 23, this clause establishes that a certificate signed by the Chairperson, or a person acting as Chairperson, stating the amount of a payment made under the scheme as the consequence of a statement, shall be prima facie evidence of that payment having been made.

Clause 25 - Payments inalienable

36. This clause is intended to prevent alienation of PLR payments by recipients, or otherwise by operation of law, except as provided for by clause 26.

Clause 26 - Payment to personal representative

37. Should an eligible person not have received their PLR payment before their death, this clause provides for such payment to be made to their legal personal representative.

Clause 27 - Regulations

38. This clause contains the standard provision for the making by the Governor-General of Regulations required by the Bill or necessary for the carrying out of its provisions.