



Civil Law and Justice Legislation Amendment Act 2015

No. 113, 2015

**An Act to amend various Acts relating to law and
justice, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

| | | |
|--|---|----|
| 1 | Short title..... | 1 |
| 2 | Commencement..... | 2 |
| 3 | Schedules..... | 2 |
| Schedule 1—Bankruptcy | | 3 |
| | <i>Bankruptcy Act 1966</i> | 3 |
| Schedule 2—International arbitration | | 7 |
| | <i>International Arbitration Act 1974</i> | 7 |
| Schedule 3—Family law | | 8 |
| | <i>Family Law Act 1975</i> | 8 |
| Schedule 4—Court security | | 9 |
| | <i>Court Security Act 2013</i> | 9 |
| | <i>Family Law Act 1975</i> | 11 |
| Schedule 5—Evidence | | 13 |
| Part 1—Privilege in respect of self-incrimination | | 13 |
| | <i>Evidence Act 1995</i> | 13 |
| Part 2—Application to the Australian Capital Territory | | 14 |
| | <i>Evidence Act 1995</i> | 14 |
| Part 3—Differences from Evidence Acts of other jurisdictions | | 16 |
| | <i>Evidence Act 1995</i> | 16 |
| Part 4—Other amendments | | 20 |
| | <i>Evidence Act 1995</i> | 20 |
| Part 5—Application of amendments | | 21 |
| Schedule 6—Protection of movable cultural heritage | | 22 |
| | <i>Protection of Movable Cultural Heritage Act 1986</i> | 22 |
| Schedule 7—National Library material | | 23 |
| | <i>Copyright Act 1968</i> | 23 |



Civil Law and Justice Legislation Amendment Act 2015

No. 113, 2015

An Act to amend various Acts relating to law and justice, and for related purposes

[Assented to 17 August 2015]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Civil Law and Justice Legislation
Amendment Act 2015*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|--|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 17 August 2015 |
| 2. Schedules 1 to 6 | The day after this Act receives the Royal Assent. | 18 August 2015 |
| 3. Schedule 7 | The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent. | 17 February 2016 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Bankruptcy

Bankruptcy Act 1966

1 Before subsection 18(1)

Insert:

Corporate status of Official Trustee

2 After subsection 18(2)

Insert:

Extra function of Official Trustee

- (3) The functions of the Official Trustee include acting in accordance with an order of a court relating to the payment of a debt due by a person to the Commonwealth or a Commonwealth authority.

Example: Such an order may, for example, provide for the Official Trustee to:

- (a) take custody of, control and own property as security for payment of such a debt; and
- (b) sell the property; and
- (c) apply the proceeds of the sale wholly or partly towards the payment of the debt.

Note: Other provisions of this Act and other laws of the Commonwealth confer other functions on the Official Trustee.

Official Trustee's seals

3 Before subsection 18(8)

Insert:

Official Receiver acting for Official Trustee

4 Before subsection 18(8B)

Insert:

Inspector-General acting for Official Trustee

5 Before subsection 18(9)

Insert:

State of mind of Official Trustee

6 Before subsection 18(11)

Insert:

General interpretation provisions

7 Before paragraph 20B(8)(a)

Insert:

- (aa) acting in accordance with an order of a court relating to the payment of a debt due by a person to the Commonwealth or a Commonwealth authority; or

8 At the end of section 27

Add:

- (2) To avoid doubt, subsection (1) does not:
 - (a) confer jurisdiction in a criminal matter; or
 - (b) exclude the jurisdiction of a court of a State or Territory under the *Judiciary Act 1903* in a criminal matter relating to this Act.

9 Subsection 77C(1)

Omit “both” (first occurring), substitute “more”.

10 After paragraph 77C(1)(b)

Insert:

- ; (c) produce all books in the person’s possession relating to any matters connected with the performance of the functions of the Official Receiver or a trustee under this Act.

11 At the end of subsection 116(2)

Add:

- ; (s) the bankrupt’s property that is:

- (i) a support for the bankrupt that was funded under the National Disability Insurance Scheme (as defined in the *National Disability Insurance Scheme Act 2013*); or
- (ii) an NDIS amount (as defined in that Act).

12 Application of paragraph 116(2)(s) of the *Bankruptcy Act 1966*

Paragraph 116(2)(s) of the *Bankruptcy Act 1966* applies to bankrupts whose bankruptcies are taken under section 115 of that Act to have commenced on or after the commencement of that paragraph, whether:

- (a) the property mentioned in that paragraph was acquired before, on or after the commencement of that paragraph; or
- (b) amounts mentioned in that paragraph were paid before, on or after that commencement.

13 Paragraph 265(4)(a)

Omit “or removes”, substitute “, removes, disposes of or deals with”.

14 At the end of section 267

Add:

Presumed maker of declaration in electronic statement

- (3) If a declaration is contained in a statement that:
 - (a) was received by the Official Receiver electronically; and
 - (b) purported to be made by a particular person;the declaration is presumed to have been made by the person, in the absence of evidence to the contrary.
- (4) Subsection (3) applies whether the statement was filed, accompanied a declaration or petition or was given to the Official Receiver, as described in subsection (1).
- (5) Subsection (3) does not affect by implication the operation of a law of the Commonwealth outside this section.

15 Application of subsection 267(3) of the *Bankruptcy Act 1966*

Subsection 267(3) of the *Bankruptcy Act 1966* applies in relation to statements received electronically on or after the commencement of the subsection.

16 Section 273

Repeal the section, substitute:

273 Trial of offences constituted by refusal, failure or omission to act

- (1) This section applies to an offence against this Act, a physical element of which is:
 - (a) a refusal, failure or omission to act; or
 - (b) a contravention constituted by a refusal, failure or omission to act.
- (2) A person may be charged with, and convicted of, the offence as if the place of the refusal, failure, omission or contravention were any of the following:
 - (a) the place where the person should have done the act;
 - (b) the person's usual place of residence at the time the act should have been done;
 - (c) the person's place of residence last known to the Official Receiver.
- (3) Subsection (2) is subject to section 80 of the Constitution.
- (4) Subsection (2) does not apply to an offence against subsection 264A(1A), 264C(1) or 267F(1).

17 Application of section 273 of the *Bankruptcy Act 1966*

Section 273 of the *Bankruptcy Act 1966*, as amended by this Schedule, applies whether the refusal, failure, omission or contravention occurred before, on or after the commencement of the amendment made by this Schedule affecting that section.

Schedule 2—International arbitration

International Arbitration Act 1974

1 Section 21

Before “If”, insert “(1)”.

2 At the end of section 21

Add:

- (2) Subsection (1) applies to an arbitration arising from arbitral proceedings that commence on or after the commencement of this subsection, whether the arbitration agreement giving rise to the arbitration was made before, on or after 6 July 2010.

Note: The provision that is now subsection (1) commenced on 6 July 2010.

Schedule 3—Family law

Family Law Act 1975

1 Subsections 10C(2) and 10G(2)

Omit “, at least annually,”.

2 Subsection 65F(4)

Repeal the subsection.

3 Paragraph 65ZB(3)(b)

Before “in accordance with”, insert “the child leaves”.

4 Paragraph 68R(5)(b)

Omit “contact”, substitute “spending time”.

5 After paragraph 121(9)(a)

Insert:

- (aa) the communication of any pleading, transcript of evidence or other document to authorities of States and Territories that have responsibilities relating to the welfare of children and are prescribed by the regulations for the purposes of this paragraph; or

6 Application of paragraph 121(9)(aa)

Paragraph 121(9)(aa) of the *Family Law Act 1975* applies to communications made on or after the commencement of that paragraph, whether the communications relate to proceedings occurring before, on or after that commencement.

Schedule 4—Court security

Court Security Act 2013

1 Subsection 16(4)

After “must”, insert “take reasonable steps to”.

2 At the end of section 16

Add:

Note: Section 48A also deals with disposal of items given up on request, or seized, under this section.

3 Paragraph 27(3)(a)

Omit “ensure that the item is given”, substitute “take reasonable steps to give the item”.

4 At the end of section 27

Add:

Note: Section 48A also deals with disposal of items seized under this section.

5 At the end of subsection 41(1)

Add:

Note 1: For interim orders, see section 43.

Note 2: For variation or revocation of an order, see section 45.

Note 3: For appeals from the making of an order, see:

- (a) Part X of the *Family Law Act 1975* if the order was made by a member of the Family Court of Australia or the Family Court of Western Australia; or
- (b) Division 2 of Part III of the *Federal Court of Australia Act 1976* if the order was made by a member of the Federal Circuit Court of Australia.

6 Section 45

After “order may”, insert “, on application under section 45A,”.

7 At the end of section 45

Add:

- Note: For appeals from the variation or revocation of an order, see:
- (a) Part X of the *Family Law Act 1975* if the order was varied or revoked by a member of the Family Court of Australia or the Family Court of Western Australia; or
 - (b) Division 2 of Part III of the *Federal Court of Australia Act 1976* if the order was varied or revoked by a member of the Federal Circuit Court of Australia.

8 After section 45

Insert:

45A Application for variation or revocation

- (1) A variation or revocation of a court security order may be made on application by either of the following persons:
 - (a) the person specified in the order;
 - (b) the administrative head of the court to which the order relates.
- (2) If a person mentioned in subsection (1) applies for variation or revocation of a court security order:
 - (a) he or she must inform the other person mentioned in that subsection of the application; and
 - (b) both those persons are entitled to be heard on the application.

9 Application of section 45A of the *Court Security Act 2013*

Section 45A of the *Court Security Act 2013* applies to the variation or revocation, on or after the commencement of that section, of orders made before, on or after that commencement.

10 After section 48

Insert:

48A Disposal of dangerous items after 6 months

- (1) The administrative head of a court on whose court premises a dangerous item was given up on request under section 16 or seized under section 16 or 27 may dispose of the item if:
 - (a) at least 6 months has passed since the item was given up or seized; and

- (b) the item has not been returned, or given to a police officer, under that section.
- (2) If the operation of subsection (1) would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (3) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

11 Application of section 48A of the *Court Security Act 2013*

Section 48A of the *Court Security Act 2013* applies to the disposal on or after the commencement of that section of items given up or seized before, on or after that commencement.

Family Law Act 1975

12 At the end of subsection 94(1)

Add:

Note: This subsection applies to appeals from the making, variation and revocation of court security orders under the *Court Security Act 2013* as described in section 94AB.

13 At the end of subsections 94AAA(1A)

Add:

Note: This subsection applies to appeals from the making, variation and revocation of court security orders under the *Court Security Act 2013* as described in section 94AB.

14 After section 94AA

Insert:

94AB Appeals relating to court security orders

- (1) This section deals with the application of this Part in relation to the making, variation or revocation of a court security order under

Part 4 of the *Court Security Act 2013* by a member (as defined in that Act) of:

- (a) the Family Court; or
 - (b) the Family Court of Western Australia.
- (2) This Part applies as if the making, variation or revocation were a decree of the member's court in the exercise of original jurisdiction under this Act.

Note: As a result, an appeal from the making, variation or revocation lies under subsection 94(1), if the member is a member of the Family Court or a member of the Family Court of Western Australia other than a Family Law Magistrate of Western Australia.

- (3) However, if the member is a member of the Family Court of Western Australia because he or she is a Family Law Magistrate of Western Australia, this Part applies as if:
- (a) the making, variation or revocation were a decree of the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia exercising original jurisdiction under this Act; and
 - (b) proceedings for the making, variation or revocation were proceedings in the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia.

Note: As a result, an appeal from the making, variation or revocation by the member lies under subsection 94AAA(1A).

15 Application of section 94AB of the *Family Law Act 1975*

Section 94AB of the *Family Law Act 1975* applies to appeals instituted on or after the commencement of that section from the making, variation and revocation of court security orders before, on or after that commencement.

Schedule 5—Evidence

Part 1—Privilege in respect of self-incrimination

Evidence Act 1995

1 Subsection 128(3)

Omit “If”, substitute “Subject to subsection (4), if”.

2 Subsection 128(3)

Before “is to inform”, insert “is not to require the witness to give the evidence, and”.

3 At the end of section 128A

Add:

- (11) If a person has been given a certificate under a prescribed State or Territory provision in respect of information of a kind referred to in paragraph (6)(a), the certificate has the same effect, in a proceeding to which this subsection applies, as if it had been given under this section.
- (12) For the purposes of subsection (11), a prescribed State or Territory provision is a provision of a law of a State or Territory declared by the regulations to be a prescribed State or Territory provision for the purposes of that subsection.
- (13) Subsection (11) applies to:
 - (a) a proceeding in relation to which this Act applies because of section 4; and
 - (b) a proceeding for an offence against a law of the Commonwealth or for the recovery of a civil penalty under a law of the Commonwealth, other than a proceeding referred to in paragraph (a) of this subsection.

Note 1: Bodies corporate cannot claim this privilege: see section 187.

Note 2: Clause 3 of Part 2 of the Dictionary sets out what is a civil penalty.

Part 2—Application to the Australian Capital Territory

Evidence Act 1995

4 Chapter 1 (introductory note)

Omit “and ACT courts”.

5 Subsection 4(1)

Omit “or an ACT court”.

6 Subsection 4(1) (note 2)

Repeal the note, substitute:

Note 2: *Federal court* is defined in the Dictionary. The definition includes persons or bodies required to apply the laws of evidence.

7 Subsection 4(1) (note 3)

Omit “or ACT courts”.

8 Paragraph 4(5)(b)

After “a court of”, insert “the Australian Capital Territory,”.

9 Paragraphs 4(5)(c) and (d)

Repeal the paragraphs.

10 Paragraph 4(5)(e)

Omit “on or after that day—”.

11 Subsection 4(6) (not including the note)

Repeal the subsection.

12 Subsections 8(4) to (6)

Repeal the subsections.

13 Section 19

Repeal the section.

14 Subsection 128(15) (not including the notes)

Repeal the subsection.

15 Subsection 128A(1) (definition of *disclosure order*)

Omit “or an ACT court”.

16 Section 131B

Omit “or an ACT court”.

17 Subsection 182(2)

Omit “or (until the day fixed by Proclamation under subsection 4(6)) an ACT court”.

18 Subsection 187(1)

Omit “or the Australian Capital Territory”.

19 Subsection 187(1)

Omit “or an ACT court”.

20 Part 1 of the Dictionary (definition of *ACT court*)

Repeal the definition.

Part 3—Differences from Evidence Acts of other jurisdictions

Evidence Act 1995

21 Chapter 1 (introductory note)

Omit all the words after “*Related legislation*”, substitute:

This Act is in most respects uniform with the following State and Territory Acts:

- (a) the *Evidence Act 1995* (NSW);
- (b) the *Evidence Act 2001* (Tas.);
- (c) the *Evidence Act 2008* (Vic.);
- (d) the *Evidence Act 2011* (ACT);
- (e) the *Evidence (National Uniform Legislation) Act 2011* (NT).

While these Acts are in most respects identical to this Act, there are differences. The explanatory memorandum to the Civil Law and Justice Legislation Amendment Bill 2014 includes a table setting out the differences as at 8 July 2014. An updated version of the table is maintained by the Attorney-General’s Department on its website (<http://www.ag.gov.au>).

22 Subsection 3(3) (note)

Repeal the note.

23 Subsection 4(1) (note 1)

Repeal the note.

24 Subsection 4(6) (note)

Repeal the note.

25 Section 5 (note 1)

Omit “Note 1”, substitute “Note”.

26 Section 5 (note 2)

Repeal the note.

27 Section 6 (note)

Repeal the note.

28 Section 7 (note)

Repeal the note.

29 Subsection 8(6) (note)

Repeal the note.

30 Section 8A (note 1)

Omit “Note 1”, substitute “Note”.

31 Section 8A (note 2)

Repeal the note.

32 Subsection 9(3) (note)

Repeal the note.

33 Subsection 68(4) (note)

Repeal the note.

34 Subsection 70(2) (note 1)

Repeal the note.

35 Subsection 70(2) (note 2)

Omit “Note 2”, substitute “Note”.

36 Subsection 128(7) (note)

Repeal the note.

37 Subsection 128(15) (note 3)

Repeal the note.

38 Subsection 129(5) (note)

Repeal the note.

39 Subsection 150(1) (note)

Repeal the note.

40 Subsection 151(2) (note)

Repeal the note.

41 Subsection 155(2) (note 1)

Repeal the note.

42 Subsection 155(2) (note 2)

Omit “Note 2”, substitute “Note”.

43 Subsection 155A(2) (note 1)

Repeal the note.

44 Subsection 155A(2) (note 2)

Omit “Note 2”, substitute “Note”.

45 Subsection 163(2) (note 1)

Repeal the note.

46 Subsection 163(2) (note 2)

Omit “Note 2”, substitute “Note”.

47 Subsection 170(1) (note)

Repeal the note.

48 Subsection 171(3) (note)

Repeal the note.

49 Subsection 182(5) (note 1)

Repeal the note.

50 Subsection 182(5) (note 2)

Omit “Note 2”, substitute “Note”.

51 Section 185 (note)

Repeal the note.

52 Subsection 186(2) (note)

Repeal the note.

53 Section 194

Repeal the section.

54 Subsection 195(2) (note 1)

Omit “Note 1”, substitute “Note”.

55 Subsection 195(2) (note 2)

Repeal the note.

56 Section 196

Repeal the section.

57 Part 1 of the Dictionary (note at the end of the definition of *confidential document*)

Repeal the note.

58 Part 1 of the Dictionary (note at the end of the definition of *federal court*)

Repeal the note.

59 Part 1 of the Dictionary (notes 1 and 2 at the end of the definition of *government or official gazette*)

Repeal the notes.

Part 4—Other amendments

Evidence Act 1995

60 Section 31 (heading)

Repeal the heading, substitute:

31 Witnesses who cannot hear adequately or speak adequately

61 Paragraph 1(1)(d) of Part 2 of the Dictionary

After “person”, insert “or body”.

62 Clause 4 of Part 2 of the Dictionary

Repeal the clause, substitute:

4 Unavailability of persons

- (1) For the purposes of this Act, a person is taken not to be available to give evidence about a fact if:
 - (a) the person is dead; or
 - (b) the person is, for any reason other than the application of section 16 (Competence and compellability: judges and jurors), not competent to give the evidence; or
 - (c) the person is mentally or physically unable to give the evidence and it is not reasonably practicable to overcome that inability; or
 - (d) it would be unlawful for the person to give the evidence; or
 - (e) a provision of this Act prohibits the evidence being given; or
 - (f) all reasonable steps have been taken, by the party seeking to prove the person is not available, to find the person or secure his or her attendance, but without success; or
 - (g) all reasonable steps have been taken, by the party seeking to prove the person is not available, to compel the person to give the evidence, but without success.
- (2) In all other cases the person is taken to be available to give evidence about the fact.

Part 5—Application of amendments

63 Application of amendments

- (1) The amendments made by this Schedule do not apply in relation to proceedings the hearing of which began before the commencement of this Schedule.
- (2) The *Evidence Act 1995*, as in force immediately before that commencement, continues to apply in relation to proceedings the hearing of which began before that commencement.

Schedule 6—Protection of movable cultural heritage

Protection of Movable Cultural Heritage Act 1986

1 Subsection 17(5)

Repeal the subsection.

Schedule 7—National Library material

Copyright Act 1968

1 Subsection 10(1)

Insert:

available online, in relation to National Library material, has the meaning given by section 195CF.

delivery period has the meaning given by subsection 195CD(2).

National Library material has the meaning given by section 195CE.

National Library Minister means the Minister administering the *National Library Act 1960*.

2 Subsection 10(1) (definition of *the National Librarian*)

Repeal the definition.

3 Before section 195A

Insert:

Division 1—Interpretation

4 Before section 195B

Insert:

Division 2—Review

5 After section 195B

Insert:

Division 3—National Library of Australia

195CA Simplified outline

Persons publishing certain literary, dramatic, musical or artistic works in Australia must deliver copies of the works to the National Library. The National Library may also request the delivery of works that are available online.

195CB Copy of certain material to be delivered to the Library

Material published but not available online

- (1) A person commits an offence if:
 - (a) the person publishes National Library material in Australia on a particular day, but not in such a way that makes the material available online; and
 - (b) the person is not requested under section 195CC, during the period of 1 month starting on that day, to cause a copy of the material to be delivered under section 195CD; and
 - (c) the person contravenes section 195CD.

Penalty: 10 penalty units.

Material available online

- (2) A person commits an offence if:
 - (a) the person publishes National Library material; and
 - (b) the material is available online; and
 - (c) the person is requested under section 195CC to cause a copy of the material to be delivered under section 195CD; and
 - (d) the person contravenes section 195CD.

Penalty: 10 penalty units.

Offences of strict liability

- (3) Subsections (1) and (2) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Not continuing offences

- (4) Subsection 4K(2) of the *Crimes Act 1914* (about continuing offences) does not apply in relation to an offence against subsection (1) or (2).

195CC Library may request a copy of material available online

- (1) The Director-General of the National Library may request, in writing, a person to cause a copy of National Library material to be delivered under section 195CD if:
- (a) the person publishes the material; and
 - (b) the material is available online; and
 - (c) the Director-General considers that a copy of the material should be included in the national collection of library material (see section 6 of the *National Library Act 1960*).

Note: The national collection includes a comprehensive collection of library material relating to Australia and the Australian people.

- (2) The request may be made any time after the person publishes the material.
- (3) For the purposes of paragraph 9(2)(d) of the *Electronic Transactions Act 1999*, one way of consenting to a request being made by way of electronic communication is having the ability to automatically receive user agent requests.

Example: The Director-General could use a web harvester to make requests in the form of user agent requests.

195CD Delivering material to the Library

- (1) A person contravenes this section unless the person causes to be delivered to the National Library, before the end of the delivery period for the National Library material, a copy of the material that:
- (a) is a copy of the whole of the material (including any illustrations, drawings, engravings, photographs and audio-visual elements); and
 - (b) if the copy was requested under section 195CC—is in the electronic form in which the material was available online; and

- (c) if the copy is in an electronic form:
 - (i) is free from any technological protection measure; and
 - (ii) is accompanied by any software or additional information necessary for the National Library to access the material from the copy; and
 - (d) if the copy is in hardcopy form:
 - (i) is finished and coloured, and bound, sewed, stitched or otherwise fastened together, in the same manner as the best copies of the material are supplied to the public; and
 - (ii) is on the best paper on which the material is printed; and
 - (e) is delivered at the person's own expense, unless the copy was requested under section 195CC and the request stated otherwise; and
 - (f) meets the requirements (if any) prescribed by the National Library Minister for the purposes of this paragraph.
- (2) The **delivery period**, for National Library material, starts on:
- (a) for material published in a way covered by paragraph 195CB(1)(a)—the day it was so published; or
 - (b) for material requested under section 195CC—the day the request was made;

and ends 1 month later or on a later day allowed by the Director-General of the National Library.

Note: This section could apply twice, with separate delivery periods, if material published in Australia but not available online later became available online and was requested under section 195CC more than 1 month after it was published.

195CE Meaning of *National Library material*

A literary, dramatic, musical or artistic work, or an edition of such a work, (whether in an electronic form or otherwise) is ***National Library material*** if:

- (a) the work or edition is:
 - (i) a website, web page, web file, book, periodical, newspaper, pamphlet, sheet of music, map, plan, chart or table; or
 - (ii) prescribed by the National Library Minister for the purposes of this subparagraph; and
-

- (b) copyright subsists in the work or edition under this Act; and
- (c) the work or edition is not primarily audio-visual; and
- (d) in the case of an edition:
 - (i) the edition contains additions or alterations in the text or other reading matter, illustrations, drawings, engravings, photographs or audio-visual elements; and
 - (ii) the content of at least one of those additions or alterations was not contained in any earlier edition; and
- (e) the work or edition is not prescribed by the National Library Minister for the purposes of this paragraph.

Note: The same work in hardcopy form and an electronic form is the same National Library material.

195CF Meaning of *available online*

National Library material is *available online* if it is communicated:

- (a) on the internet; or
- (b) in an electronic form prescribed by the National Library Minister for the purposes of this paragraph.

195CG Infringement notices

- (1) The National Library Minister may prescribe a scheme enabling a person who is alleged to have committed an offence against subsection 195CB(1) or (2) to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must equal one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

195CH Relationship with State and Territory laws

This Division 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 Division) 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 National Library material published in the State or Territory.

195CI Delegation

- (1) The Director-General of the National Library may, in writing, delegate the Director-General's powers under this Division to a member of the staff of the National Library who is an SES employee or acting SES employee.

Note: The relevant powers are in section 195CC (about requesting copies of material available online), and subsection 195CD(2) (about allowing further time for delivery).

- (2) In exercising powers under a delegation, the delegate must comply with any written directions of the Director-General.

195CJ Legislative instruments

The National Library Minister may, by legislative instrument, prescribe matters required or permitted by this Division to be prescribed by that Minister.

Division 4—Other matters

6 Sections 201 and 241

Repeal the sections.

7 Application of amendments

The amendments made by this Schedule apply in relation to National Library material published by a person on or after the commencement of this item.

*[Minister's second reading speech made in—
Senate on 29 October 2014
House of Representatives on 25 June 2015]*

(236/14)
