



**Australian Government**

**Department of Communications and the Arts**

# Educational Lending Right

Policies and Procedures 2011

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## 1. Commencement and operation of scheme

- 1.1 This document sets out the policy and operational procedures for the Educational Lending Right Scheme (“the Scheme”) and was approved by the then Minister for the Arts, the Hon Simon Crean MP, on 18 March 2011.
- 1.2 The Scheme commenced operation as an Administrative Scheme from 1 July 2004.
- 1.3 The Scheme is administered by the relevant Commonwealth department or agency that, from time to time, is responsible for the administration of the Scheme. Currently, the Department of Communications and the Arts is responsible for administering the Scheme.
- 1.4 Under the *Public Lending Right Act 1985*, a Public Lending Right Committee (the Committee) is established, which may be given functions other than those set out in the Act, by the Minister. The Minister may request the advice of the Committee in relation to the Scheme.
- 1.5 The Minister may authorise officers of the Department or the Committee to exercise on his or her behalf, any of the Minister’s powers or functions under the Scheme.

## 2. Objectives of scheme

The objectives of the Scheme are:

- 2.1 to make payments to Australian creators and publishers on the basis that income is lost from the availability of their books in educational lending libraries, and
- 2.2 to support the enrichment of Australian culture by encouraging the growth and development of Australian writing and publishing.

## 3. Interpretation and definitions

- 3.1 The interpretation of this document is as determined by the Minister in his or her absolute unfettered discretion.
- 3.2 In the event that any matters arise which are not addressed in this document, the Minister may amend this document or give directions relating to those matters.
- 3.3 In this document:

**book**—means a written work that has been published but excludes:

- audio-visual kits
- compact discs
- computer discs
- electronic books
- magazines and other serial publications
- talking books
- books designed for a single use (for example sticker books and workbooks), and
- any other material determined by the Committee to be excluded from the Scheme.

**Claimant**—means a creator or publisher who applies for payments under the Scheme.

**Commencing year**—in relation to an eligible book, means the financial year following the calendar year in which the book was first published.

**Department**—means the department responsible for the administration of the Scheme.

**Educational institution**—means all primary, secondary, combined and special schools; technical and further education (TAFE) institutions; and universities in Australia, which are registered or recognized under relevant Commonwealth/State/ Territory Education Acts, but excludes pre-schools.

**Held**—in relation to lending libraries, means eligible books that are catalogued by the lending library of an educational institution.

**Terminating year**—in relation to an eligible book, means the year in which the creator, or, where there is more than one creator of an eligible book, the last surviving creator, dies.

**Total payment**—in relation to an eligible creator or publisher, is the sum of the payments in a financial year for all eligible books of the eligible creator or publisher.

## 4. Creators

The Committee may determine that a person is an eligible creator in respect of a book if that person:

- 4.1 has authored, compiled, edited, illustrated or translated the book (see clause 6)
- 4.2 either is:
  - (a) an Australian citizen, wherever resident, or
  - (b) a non-citizen who is ordinarily resident in Australia
- 4.3 is entitled to receive a royalty payment for the sale of copies of the eligible book. In assessing this criterion of eligibility, the Committee shall have regard to payments in advance for royalties and whether the creator has a continuing financial interest in the book.

## 5. Publishers

- 5.1 The Committee may determine that a person is an eligible publisher if that person is:
  - 5.1.1 a person whose business consists wholly or substantially of the publication of books and who regularly publishes in Australia; or
  - 5.1.2 an Australian non-profit organisation that publishes to further its aims or objectives; or
  - 5.1.3 an eligible creator of an eligible book who also publishes the book.
- 5.1A In clause 5.1, regularly publishes means publishing new works or revised editions at least once in the preceding three-year period.
- 5.1B For the avoidance of doubt, regularly publishes does not include the reprinting of books.

- 5.2 In considering whether a claimant published a book, the Committee may have regard to:
- 5.2.1 the contract for publication of the book
  - 5.2.2 who copy-edited the book
  - 5.2.3 who designed the book
  - 5.2.4 who supervised the production of the book
  - 5.2.5 who supervised the printing of the book
  - 5.2.6 who marketed the book
  - 5.2.7 who assumed financial responsibility for the publication of the book
  - 5.2.8 any other matter the Committee considers relevant.
- 5.3 For the purposes of the Scheme, a publisher must have published an eligible book in Australia. In assessing this criterion of eligibility, the Committee may have regard to:
- 5.3.1 where the contract for publication of the book was made
  - 5.3.2 where the book was copy-edited
  - 5.3.3 where the book was designed
  - 5.3.4 where the production of the book was supervised
  - 5.3.5 where the printing of the book was supervised
  - 5.3.6 where the book was marketed
  - 5.3.7 any other matter the Committee considers relevant.
- 5.4 A person's status as an eligible publisher is not affected solely because of a dealing about the right to publish a subsequent edition of an eligible book (for example, the licensing of the production of a subsequent edition).
- 5.5 An eligible publisher of an eligible book (the "former publisher") ceases to be so if the:
- 5.5.1 rights to publish the book are transferred to another publisher (the "new publisher")
  - 5.5.2 Committee decides that the new publisher has taken on the function of publishing the book in Australia.
- 5.6 The former publisher ceases to be the eligible publisher of the eligible book from the date of transfer. The Committee may accept a claim from the new publisher for the book from that date.

## 6. Books

- 6.1 An eligible book is a book that has:
- 6.1.1 been allocated an International Standard Book Number (ISBN)
  - 6.1.2 been published and offered for sale
  - 6.1.3 an identifiable creator or creators
  - 6.1.4 a total number of eligible creators not exceeding five
  - 6.1.5 a catalogue record in an Australian national bibliographic database
  - 6.1.6 a minimum print run as determined by the Committee.
- 6.1A However, a book is not an eligible book if a claim for the book was not lodged within 5 years of the first publication of the book or a revised edition of that book.
- 6.1B For the avoidance of doubt, the reprint of a book does not entitle a person to lodge a claim for a book that was first published more than 5 years previously which but for the operation of clause 6.1A would have been an eligible book under the Scheme.

- 6.2 An eligible book may remain so until its terminating year under the Scheme.
- 6.3 A revised or re-issued edition of an eligible book may be taken to be a copy of the eligible book, whether or not it has been allocated another ISBN.
- 6.4 The Committee may determine from time to time the maximum number of copies of an eligible book held by a lending library of an educational institution which will be used to calculate a payment under the Scheme.
- 6.5 The Committee may determine from time to time whether a minimum total number of copies of an eligible book are required to be held by lending libraries of educational institutions to enable an eligible creator to receive a payment under the Scheme. The Committee's determination may be based on statistical sampling or any other estimation process that the Committee considers appropriate.

## 7. Claims and dealings with claims

### 7.1 Claims

- 7.1.1 Payments in this Scheme are based on claims made by eligible creators and publishers.
- 7.1.2 The Minister may determine from time to time the form required for the submission of claims, information required to be supplied, due date for receipt of claims, and any other matters relating to the making of claims. Claims which do not comply with these requirements may be rejected.
- 7.1.3 The Minister will cause advertisements to be published soliciting claims, and will determine the form, content and media of their publication.
- 7.1.4 Claims made and accepted in relation to previous schemes providing for ELR may be adopted in relation to this Scheme.
- 7.1.5 Subject to this clause 7, claims will endure for the life of the Scheme and may also be taken into account in future schemes.
- 7.1.6 The Minister may require, from time to time, fresh claims to be lodged.
- 7.1.7 A person is not entitled to lodge a claim in respect of a book for any financial year proceeding the commencing year in respect of that book.

### 7.2 Bodies corporate in liquidation et cetera

- 7.2.1 No payment to a body corporate will be approved, where the Minister is aware that an order of a court or resolution of creditors or members has been made that the body corporate be wound up.
- 7.2.2 Where a payment to a body corporate is approved but not yet made, and the body corporate ceases business as a publisher, is ordered to be wound up, or is the subject of a resolution of creditors or members requiring it to be wound up, the Minister will rescind the approval and cancel payment.

## 7.3 Claimants not able to be contacted

- 7.3.1 Where a claim has been accepted in a past year in this Scheme or another scheme for ELR, and a payment was returned unclaimed or not able to be completed, and the Minister was unable to locate the claimant after taking reasonable steps, the claim may be rejected in the current year of the Scheme.
- 7.3.2 Where a claim has been accepted and payment approved, and payment is unable to be completed because the Minister is unable to locate the claimant after taking reasonable steps, the approval may be rescinded and payment cancelled, and no credit will accrue.
- 7.3.3 Where a claimant whose claim has been rejected or approval has been rescinded in accordance with this clause 7 is subsequently located or provides sufficient information to the Minister, his or her claim may be accepted in relation to subsequent years. There is no obligation on the Minister to reconsider missed or cancelled payments.

## 8. Payments to creators

### 8.1 Approvals

- 8.1.1 The Minister may approve the making of a payment to an eligible creator of an eligible book.
- 8.1.2 The Minister may approve the making of a payment, to the legal representative of an eligible creator of an eligible book, who has died, for the financial year in which the creator died. The creator must already have made a claim for payment in accordance with the Scheme.
- 8.1.3 No other payment will be made to the estate of a deceased creator.

### 8.2 Amounts

- 8.2.1 The amount of a payment under sub-clause 8.1.1 or 8.1.2 is:
- (a) in the case where the creator is the only eligible creator of the book, an amount calculated by multiplying the creator's educational lending right rate of payment for that financial year by the estimated number of copies of the book held in the lending libraries of educational institutions; or
  - (b) in the case where the creator is one of a number of eligible creators, the amount that would be payable under 8.2.1 (a) to the only eligible creator divided by an amount for each eligible creator proportionate to that creator's share of entitlement to royalties in the eligible book.
- 8.2.2 For the purposes of paragraph 8.1, the creator's educational lending right rate of payment shall be determined by a Minister for a financial year.
- 8.2.3 For the purposes of 8.2.1 (b), where there is no evidence available in relation to a creator's respective share of entitlement to royalties in an eligible book, the Minister may treat the creators of the book as having equal entitlements to royalties.
- 8.2.4 The Minister may determine a minimum payment amount. If the total amount that would be payable to a claimant for a financial year under this Scheme is less than the minimum payment amount, the amount is not payable and no credit will accrue.

- 8.2.5 The Minister may determine a maximum payment amount. If the total amount that would be payable to a claimant for a financial year under this Scheme is more than the maximum payment amount, any amount in excess of the maximum payment amount is not payable and no credit will accrue.
- 8.2.6 Paragraph 8.2.5 does not apply to payments made to claimants for the financial year ending on 30 June 2012.

## 9. Payments to publishers

### 9.1 Approvals

- 9.1.1 The Minister may approve the making of a payment to an eligible publisher of an eligible book.
- 9.1.2 The Minister will not approve a payment to an eligible publisher of an eligible book unless an eligible creator of a book is entitled to a payment under clause 8.

### 9.2 Amounts

- 9.2.1 The amount of the payment to the eligible publisher of an eligible book that may be approved under clause 9 is an amount calculated by multiplying the publisher's educational lending right rate of payment for that financial year by the estimated number of copies of the book held in the lending libraries of educational institutions.
- 9.2.2 For the purposes of clause 9.2.1, the publisher's educational lending right rate of payment shall be determined by the Minister for a financial year.
- 9.2.3 For the purposes of clause 9.2.1, where there are two or more joint publishers of the same edition of an eligible book, the Minister may, after having taken into account any wishes expressed by, and any agreements between, those publishers, apportion the payment in such manner as the Minister considers appropriate.
- 9.2.4 The Minister may determine a minimum payment amount. If the total payment that would be payable under this Scheme to a publisher for a financial year is less than the minimum payment, the amount is not payable and no credit will accrue.
- 9.2.5 The Minister may determine maximum payment amount. If the total amount that would be payable to a publisher for a financial year under this Scheme is more than the maximum payment amount, any amount in excess of the maximum payment amount is not payable and no credit will accrue.
- 9.2.6 Paragraph 9.2.5 does not apply to payments made to claimants for the financial year ending on 30 June 2012.

## 10. Underpayments

- 10.1 This section applies if the Minister considers that an amount paid to a claimant under this Scheme or a former scheme for a financial year was less than the correct amount.
- 10.2 The Minister may, for a subsequent financial year, approve a payment to the claimant of an amount equal to the difference between the amount that was paid and the correct amount.

10.3 To avoid doubt, a payment under subsection 10.2 is in addition to any payment to the claimant that may be approved under section 8 or 9 for the subsequent financial year.

## 11. Overpayments

11.1 If a payment paid to a claimant under this Scheme or a former scheme is more than the correct amount, the excess amount is a debt due to the Commonwealth and may be recovered:

- (a) in a court of competent jurisdiction, or
- (b) by deduction of the whole or part of the excess amount from an amount that would otherwise be payable to the claimant under this scheme.