Date Introduced: 17 April 1985
House: House of Representatives
Presented by: Hon. Barry Cohen, M.P., Minister for Arts, Heritage and Environment

Short Digest of Bill

Purpose

To establish a Public Lending Right Scheme to provide payments to Australian authors and publishers whose books are used by members of the public through public libraries.

Background

Just as composers or dramatists in many countries receive payment under performing rights legislation whenever their works are performed in public, authors and publishers have for some time sought to establish their right to an analogous "public lending right" (PLR). This right entitles them to be paid a library or lending royalty when their books are lent to readers by public libraries.

The idea of PLR was first incorporated into library compensation schemes in Denmark (1946), Finland (1964), Iceland (1968), Norway (1947), and Sweden (1954). In 1973 the New Zealand Government created the New Zealand Authors' Fund which provided the legislative vehicle through which authors in that country could be compensated for the use of their books. Like the schemes set up in the Nordic countries, the New Zealand fund was financed by a central government grant. Apart from New Zealand, both Australia and the United Kingdom introduced PLR Schemes into their countries in 1974 and 1979 respectively.

The idea of such a scheme in Australia was mooted over a decade ago. As early as November 1972 the former Prime Minister, Mr Whitlam, emphasised the need for authors to be paid for the library use of their works. He had been impressed by the New Zealand initiative in this area. In response to representations from Australian authors and publishers, Mr Whitlam directed the Literature Board of the Australian Council for the Arts to undertake a study on the possibility of a PLR Scheme for this country.
The Australian PLR Scheme became a reality on 1 July 1974 and while it was similar to its New Zealand counterpart, the Australian scheme had several notable advantages. Under the Australian scheme, eligibility for a royalty by an author could extend beyond his lifetime as the scheme considered the "life" of each title to extend from its date of publication through the life of an author or, on the death of the author, 50 years from the publication date. Moreover, Australian publishers too, received a royalty per volume of one-fourth the amount awarded to the author.

At the scheme's inception all Australian authors listed in the Australian National Bibliography and whose works were stocked by more than 50 public libraries in Australia, were entitled to 50 cents a year for every library copy of their books.

The Australian PLR Scheme has only operated on a purely administrative basis. It has been under the control of several Commonwealth bodies including the Australian Authors' Fund Committee within the Department of the Prime Minister and Cabinet in 1974, the Australia Council in 1976 and the Department of Home Affairs in 1980. The scheme is currently operated by a PRL Committee within the Department for Arts, Heritage and Environment. Members of this Committee are appointed by the Minister and they include representatives of authors, publishers, libraries and the Government.

The PLR Scheme has a current budget of $1.78m and some 4,500 authors and publishers receive payments under the scheme. Basic rates of payment per volume have increased to 70 cents for authors and 17.5 cents for publishers and overall funds for the scheme are provided by the Federal Government within the annual appropriation for the Department for Arts, Heritage and Environment.

The Australian PLR Scheme has been widely accepted and supported by authors, publishers and libraries in its ten years of operation. However, critics maintain that PLR in Australia lacks authority and legitimacy and requires an Act to affirm its status.

The current Bill is the second of two efforts by a Federal Government to enact PLR legislation. A much earlier drafted Australian Authors' Bill lapsed with the dissolution of Parliament in November 1975.
Briefly, the Bill will establish a statutory PLR Scheme and outlines its scope and functions. A PLR Committee will be charged with administering the scheme. The Minister is also empowered to both approve or modify a scheme and to appoint and terminate the appointment of Committee members. The Bill also sets out the procedures to be followed by claimants who wish to appeal against a decision made by the Committee.

Main Provisions

Under the Bill a PLR Scheme may be approved and modified by the Minister in a notice published in the Gazette (paragraphs 5(1)(a) and (b)). The scope of the scheme is limited in that it will only cover those books held in libraries in Australia (paragraph 5(2)(a)) as well as only being applicable to an Australian Citizen or a person ordinarily resident in Australia (paragraphs 3(2)(a) and (b)). More importantly, a person will not be eligible for payment under the scheme unless he or she is an author of a book, or alternatively, is a person who has illustrated, translated, compiled, edited or contributed to the form or content of a book (paragraphs 5(4)(a) and (c)). If a person satisfying any one of these categories has died, then a widow, widower or child of the deceased person or someone having a special relationship or association with the deceased will also qualify for payment under the scheme (paragraphs 5(4)(b) and (d)). The scheme will also make payments to publishers of books (paragraph 5(4)(e)). It is also worth emphasising that anyone eligible to receive payments under the existing PLR Scheme for a book, will be taken as being eligible for payments out of the proposed scheme in respect of that book (sub-clause 3(5)).

The Bill also establishes a PLR Committee (clause 7) whose main functions are to determine whether a person is entitled to claim against the scheme and to decide on and approve the individual amounts to be paid out to claimants. The Committee also has the responsibility of advising and making recommendations to the Minister with respect to the general operation of the scheme and its governing legislation (sub-clause 8(1)). The Bill also gives the Committee liberty to consult any person or body for assistance in carrying out its functions (sub-clause 8(2)). Members of the PLR Committee are appointed by the Minister and the Committee consists of a Chairperson, 2 members representing Australian authors and 1 member each representing publishers, libraries, the Attorney-General's Department and the National Library of Australia (sub-clause 9(1)). Appointment to the Committee is on a part-time basis...
for any period up to 4 years (paragraphs 9(2)(b) and (c)). Although re-appointment to the Committee is possible, a member who has served on the Committee for a continuous period of 8 years will not be eligible for re-appointment until 12 months after that period has expired (sub-clause 9(3) and (4)). A member of the Committee may either resign (clause 11) or have his or her appointment terminated by the Minister (clause 12).

The Bill further empowers the Minister to appoint, on terms specified by him, an acting Chairperson or member. However such acting appointments may only be made for 12 months (clauses 13 and 14).

The Bill also outlines in detail the Committee's operational duties with regard to its meetings, delegation of powers, employment of staff and the preparation of reports.

Meetings of the Committee can be convened by either the Chairperson or the Minister, whenever a meeting is deemed necessary. A meeting can also be convened by the Chairperson on the receipt by him of a written request signed by at least 3 members (clause 16). The Committee may also, by resolution, delegate to a member, acting member or a member of the staff assisting it, all or any of its powers. A power exercised by a delegate, shall be deemed to have been exercised by the Committee (sub-clauses 17(1) and (2)).

Staff may be employed under the Public Service Act 1922, to assist the Committee (clause 18).

The Bill requires the Committee to furnish a report to the Minister as soon as practicable after 30 June each year, regarding the operation of the PLR Scheme and the legislation during the year (sub-clause 19(1)). The Minister will be required to table the report in both Houses of Parliament (sub-clause 19(3)).

The Bill also contains important provisions whereby certain decisions of the Committee may be reviewed. Thus, a person who has lodged a claim with the Committee will be notified in writing of the Committee's decision (sub-clause 20(2)). If the claimant is dissatisfied with the decision, he may, within 28 days of having received notice of the Committee's decision, request the Committee to reconsider that decision (sub-clause 20(3)). The Committee is required to reconsider its decision when it receives the request. The Committee may either confirm or vary the decision, or set the decision aside and substitute a new one (paragraphs 20(5)(a), (b) and (c)). It must again notify the claimant.
in writing of its decision (sub-clause 20(6)). If the claimant remains dissatisfied, then application may be made to the Administrative Appeals Tribunal for review (sub-clause 20(8)).

The Bill makes it an offence for anyone to make an oral or written statement, in connection with a claim, to the Committee which is false or misleading in a material particular. Such an offence is punishable by a penalty of $2,000 or 12 months imprisonment, or both (sub-clause 22(1)). Any money paid out to a person who has made a claim which is false or misleading is recoverable as a debt due to the Commonwealth (clause 23).

For further information, if required, contact:

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