

IN CONFIDENCE

Public Lending Right for New Zealand Authors Regulations 2008

Governor-General

Order in Council

At Wellington this day of 2008

Present:
in Council

Pursuant to section 16 of the Public Lending Right for New Zealand Authors Act 2008, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Regulations

1 Title

These regulations are the Public Lending Right for New Zealand Authors Regulations 2008.

2 Commencement

- (1) These regulations come into force on 1 January 2009.
- (2) In 2009, the chief executive must do an updating survey.
- (3) In 2010, the chief executive must do a triennial survey.

3 Interpretation

In these regulations, unless the context requires another meaning,—

Act means the Public Lending Right for New Zealand Authors Act 2008

Government Statistician has the meaning given to it by the Statistics Act 1975

illustration includes a photograph

National Library has the meaning given to it by the National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003

recount means a recount requested under regulation 12(1)

triennial survey means a survey described in regulation 9(1)

updating survey means a survey described in regulation 9(2) to (4).

4 Meaning of book

- (1) For the purposes of section 6(1)(c) of the Act, a publication must satisfy the condition in this regulation that applies to it.
- (2) A book that is intended for children must—
 - (a) contain at least 24 pages of text and illustrations; or
 - (b) contain at least 48 pages of text.
- (3) A book that consists entirely of text that is not drama or poetry must contain at least 48 pages of text.

- (4) A book that consists entirely of text that is drama or poetry must contain at least 24 pages of drama or poetry or both.
- (5) A book that consists entirely of illustrations must contain at least 96 pages of illustrations.
- (6) A book that is a combination of text and illustrations must contain at least 48 pages of text and illustrations.
- (7) A book that appears in an annual volume must comply with whichever of subclauses (2) to (6) applies to it.
- (8) A book that is a translation must comply with whichever of subclauses (2) to (6) applies to it.

5 Meaning of New Zealand library

For the purposes of section 8(b) of the Act, the library must not be—

- (a) a school library; or
- (b) a special library in a government department named in Schedule 1 of the State Sector Act 1988; or
- (c) a special library in a science or technology body; or
- (d) a private library.

6 Payments under scheme

The chief executive must make payments under the scheme to the authors who are entitled to the payments before the end of the year in which the authors enter their names in the register.

7 Register for purposes of scheme

- (1) The chief executive may keep the register in writing or electronically.
- (2) The chief executive must provide a registration form that can be submitted in writing or electronically.
- (3) The registration form may require a New Zealand author to provide some or all of the following:
 - (a) the author's name;
 - (b) the author's pen name, if any;
 - (c) the author's contact details;
 - (d) details about the author's book;
 - (e) a statement that the author is eligible to receive a royalty payment for the book:

- (f) the names of any other authors of the book:
 - (g) for a book that has 2 or 3 authors, the proportions in which the royalty payment is shared under the publishing contract:
 - (h) the means by which the author wants to receive his or her payment under the scheme:
 - (i) either—
 - (i) a copy of the author’s publishing contract; or
 - (ii) if the author has published the book wholly of his or her own accord, a statement confirming the author’s eligibility to receive income from the sale of the book:
 - (j) any other information or statement necessary for the administration of the scheme:
 - (k) a declaration under the Oaths and Declarations Act 1957 about any information or statement provided by the author in the form.
- (4) An author who wants to receive a payment under the scheme in a year must submit a completed registration form to the chief executive between 1 January and 30 April in that year.
- (5) The author must submit the registration form in writing or electronically.
- (6) The author has entered his or her name in the register when the chief executive accepts the author’s registration form.

8 Eligibility criteria for books and New Zealand authors

- (1) A New Zealand author is entitled to payments under the scheme if—
- (a) subclauses (2) and (3) are satisfied; and
 - (b) subclause (4) is satisfied, if it applies.
- (2) The author’s book must satisfy the following criteria:
- (a) the number of copies of the book in New Zealand libraries must be at least 50 as determined by regulation 10:
 - (b) the book must have no more than 3 authors:
 - (c) the book must be published:
 - (d) the book must have been published before 31 March in the year in which its author enters his or her name in the register.

- (3) The author—
 - (a) must be eligible to receive a royalty payment for the book; and
 - (b) must not have assigned his or her royalty payment.
- (4) If the author's text is in an anthology, the author—
 - (a) must be the editor of the anthology; and
 - (b) must have written at least 48 pages of text in addition to the anthologised text.

9 How New Zealand libraries are to be surveyed or sampled

- (1) The chief executive must do a triennial survey of the National Library and 39 other New Zealand libraries to find out how many copies they hold of books by New Zealand authors who have entered their names in the register in the year of the triennial survey.
- (2) In the first year after the triennial survey, the chief executive must do an updating survey of the National Library and the 39 other New Zealand libraries to find out—
 - (a) how many copies they hold of books that are by New Zealand authors who—
 - (i) had not entered their names in the register at the time of the triennial survey; and
 - (ii) have entered their names in the register in the year of the current updating survey; and
 - (b) how many copies they hold, in the year of the current updating survey, of books by New Zealand authors who have requested recounts.
- (3) In the second year after the triennial survey, the chief executive must do an updating survey of the National Library and the 39 other New Zealand libraries to find out—
 - (a) how many copies they hold of books that are by New Zealand authors who—
 - (i) had not entered their names in the register at the time of the triennial survey; and
 - (ii) had not entered their names in the register at the time of the previous year's updating survey; and
 - (iii) have entered their names in the register in the year of the current updating survey; and

- (b) how many copies they hold, in the year of the current updating survey, of books by New Zealand authors who have requested recounts.
- (4) The updating surveys are also to find out,—
 - (a) in the first year after the triennial survey, how many copies the National Library and the 39 other New Zealand libraries hold of books that—
 - (i) are by New Zealand authors who had entered their names in the register at the time of the triennial survey and have entered their names in the register in the year of the current updating survey; and
 - (ii) were not counted in the triennial survey; and
 - (b) in the second year after the triennial survey, how many copies the National Library and the 39 other New Zealand libraries hold of books that—
 - (i) are by New Zealand authors who had entered their names in the register at the time of the triennial survey and have entered their names in the register in the year of the current updating survey; and
 - (ii) were not counted in the triennial survey; and
 - (iii) were not counted in the previous year's updating survey.
- (5) The result of the triennial survey is used to estimate the number of copies held in New Zealand libraries of each book by each individual New Zealand author described in subclause (1).
- (6) The result of each updating survey is used to estimate the number of copies held in New Zealand libraries of each book by each individual New Zealand author described in subclause (2) or (3).
- (7) The result of the triennial survey plus the result of the relevant updating survey is used to estimate the number of copies held in New Zealand libraries of each book by each individual New Zealand author described in subclause (4).
- (8) For the purposes of each triennial survey and the next 2 updating surveys, the 39 New Zealand libraries surveyed must be those named by the Government Statistician and must be the same 39 libraries for the 3 surveys.

- (9) For the purposes of the estimations referred to in subclauses (5) to (7), the surveyed libraries must be given the statistical weightings provided by the Government Statistician.
- (10) The following provisions apply for the purpose of determining how a book by a New Zealand author is counted in a survey:
 - (a) if a book is published in more than one volume because of its size, it is counted as a single book:
 - (b) if a book is published in more than one volume because each volume contains a different component, each volume is counted as a separate book:
 - (c) if a book is donated to a New Zealand library, it is counted only if the chief librarian of the recipient library certifies in writing or electronically to the chief executive that—
 - (i) the book is one that the library would have bought; and
 - (ii) the number of copies donated is the number that the library would have bought.

10 Number of copies

The number of copies of a book by a New Zealand author who has entered his or her name in the register in a year is as follows:

- (a) for a book counted in a triennial survey whose author has not requested a recount, the number estimated under regulation 9(5), until the next triennial survey or until the author requests a recount:
- (b) for a book counted in a triennial survey whose author has requested a recount, the number estimated under regulation 9(6), until the next triennial survey:
- (c) for a book counted in an updating survey whose author has not requested a recount, the number of copies estimated under regulation 9(6) or (7), until the next triennial survey or until the author requests a recount:
- (d) for a book counted in an updating survey because its author has requested a recount, the number estimated under regulation 9(6) or (7), until the next triennial survey.

11 Method by which payments under scheme are calculated

- (1) A payment under the scheme for a year is calculated by applying the following formula:

number of copies x book rate.

- (2) In the formula in subclause (1),—

- (a) **number of copies** means the number of copies of a book by a New Zealand author for the year as determined by regulation 10:
- (b) **book rate** means the rate determined for the year by applying the following formula:

$$\frac{\text{funding available}}{\text{total number of copies.}}$$

- (3) In the formula in subclause (2)(b),—

- (a) **funding available** means the funding available for payments to New Zealand authors under the scheme in the year:
- (b) **total number of copies** means the total number of copies of books for which New Zealand authors are entitled to payments in the year, determined using the following results:
- (i) for the year of the triennial survey, the result of the triennial survey:
- (ii) for the first year after the triennial survey, the result of the triennial survey plus the result of the first year's updating survey:
- (iii) for the second year after the triennial survey, the result of the triennial survey plus the result of the first year's updating survey plus the result of the second year's updating survey.

- (4) If a book has 2 or 3 authors,—

- (a) the payment is shared among the authors in the same proportions as the royalty payment is shared under the publishing contract; and
- (b) an author's share is paid only if the author has entered his or her name in the register.

12 Challenges to decisions

- (1) A New Zealand author who believes that the numbers of copies of his or her book or books in New Zealand libraries have increased may have a single recount for each book in the period between the relevant triennial surveys. The author must contact the chief executive to request the recount.
- (2) A New Zealand author who believes that an error has been made in his or her payment may have the apparent error investigated. The author must contact the chief executive by 15 April in the year following the payment and must state his or her reasons for believing that there has been an error.
- (3) A New Zealand author who believes that any other decision affecting him or her made in the course of the scheme's administration is wrong may have the decision investigated. The author must contact the chief executive by 15 April in the year following the decision and must state his or her reasons for believing that the decision is wrong.
- (4) A contact with the chief executive must be made in writing or electronically.

Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations provide for the implementation of the public lending right for New Zealand authors scheme. They come into force on 1 January 2009.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*:

These regulations are administered by the National Library.
