

Article for *Copyright World*

Moral Rights amendments pass House of Representatives

Ian McDonald, Australian Copyright Council, 17 November 2000

In previous issues of *Copyright World* we have reported on the slow progress Australia is making in amending its Copyright Act to provide a reasonably comprehensive set of provisions to protect the moral rights of creators (see, for example, (2000) 98 *Copyright World* 6-7; serious government-level consideration of the issues dates back to a discussion paper released by the previous government in June 1994).

Debate on the Copyright Amendment (Moral Rights) Bill, which was introduced into the federal House of Representatives on 8 December 1999, was resumed on 30 October 2000. The Bill was passed by the House the following day. The Bill as passed contains a number of amendments moved by the Government. These amendments include amendments to the duration of the rights and the works to which the rights will apply; and amendments to the provisions concerning works of architecture and artworks attached to buildings and to moveable artistic works.

A number of the Government's amendments were made in light of concerns that considerations relevant to the film and television industries were determining the shape of moral rights for creators across all sectors. Thus, distinctions are drawn in the Bill as passed between the application of moral rights to films and to works. For example, the duration of all moral rights in *works* has been amended to be the period of copyright (in the Bill as introduced, the right of integrity for all works died with the creator). For films, however, the right of integrity will remain the life of the creator. Secondly, the Bill as introduced provided that the right of integrity would apply only to works and films coming into existence after the Bill comes into force. The Bill as passed, however, provides that the right of integrity will apply to all *works* if the creator is alive at the time the Bill commences, and for all *films* if the film is made after that date.

Other amendments were moved by the Government in order that artists be given three weeks notice of changes to, or removal or destruction of buildings or other artistic works. These amendments will be relevant in cases where the person dealing with the building or work might otherwise have a defence under the Act to a claim that he or she has infringed the creator's moral rights. Under the Bill as passed, the artist or architect will generally be given the opportunity either to remove or document his or her work. In addition, the Bill in its amended form now also gives a creator the right to be consulted in the event that a site-specific sculpture or other moveable artistic work is to be removed from the relevant site.

None of the opposition parties moved any amendments in the House, on the basis that they were not aware of what amendments the Government was intending to introduce. However, some speakers noted that the Bill as introduced in December 1999 did need to be amended substantially before their colleagues in the Senate would vote for the Bill when it came before them.

It is not known when the Bill will be debated by the Senate, or what amendments might be moved by the opposition parties, given that a number of the Government's amendments in the House of Representatives address criticisms levelled at the Bill when it was introduced. Certainly, the breadth of the consent provisions continue

to be of concern to creators, as consent under the Bill effectively could constitute a waiver of moral rights.

The Bill and Explanatory Memorandum are available on the Parliament House website at www.aph.gov.au/legis.htm . The Attorney-General's second reading speech when introducing the Bill is also available at www.aph.gov.au/hansard/index.htm.