

Australia's simplified preservation laws

In 2017 the Australian government introduced major changes to the preservation provisions of the Australian Copyright Act, as part of the [Copyright Amendment \(Disability Access and Other Measures\) Act 2017](#). These changes, which came into effect on 22 December 2017, essentially “fix” Australia’s preservation provisions, which had previously been confusing and paradoxical. The new provisions remove almost all limits on preservation of collection material, allowing [international best practice preservation](#).

Prior to the 2017 changes, Australian libraries and archives were only able to make preservation copies of works in their collection materials in certain circumstances. Copyright law limited the number of copies they could create, the format these copies could be in and, worst of all, only allowed published and audiovisual materials to be preserved after the work had already deteriorated or been lost.

New preservation exception

The 2017 copyright changes fix this problem by replacing the previous preservation provisions (old ss51A and 110B) with a single new exception (s113H) that is broad, simple and allows international best practice preservation practices.

This exception essentially allows library officers to do anything for the purpose of preserving a collection. There are no limits on:

- the activity - copying, emailing to others, posting to cloud services etc are all permitted as long as they are for the purpose of preservation;
- the material - the same rules apply no matter what it is you are preserving, be it a book or an audiovisual work, published or unpublished, old or new etc;
- the format - materials can be copied into the same format, or transferred into one or several other formats, in line with your preservation policy;
- the number of copies - multiple copies in multiple formats can now be made, in line with preservation practices;
- any library officer - the exception allows library officers to preserve the collection of other institutions, enabling those with specialist equipment to do the work on behalf of others.



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The government also makes it clear (in the [Explanatory Memorandum](#)) that:

- point of purchase copying is permitted under the exception - so you do not have to wait for the material to become “old” or deteriorate before you can preserve it. As long as you cannot at that time obtain the material in the preservation format you need, you can preserve the material the moment it enters your collection.
- the exception also doesn’t require the library or archive to continue to hold the source material - this acknowledges that there might be circumstances in which it is appropriate to destroy the original copy, for example due to cost of storage or safety concerns.

Limitation – obtaining a new copy

The only significant limit in the exception is that, before preserving published material, the library officer must be satisfied that a copy cannot otherwise be obtained in the format needed, consistent with preservation best practice. For example, if you can purchase a copy in the format you need from a commercial vendor, you should do this rather than creating your own copy.

However, note that:

- this limit does not apply to original material - this includes manuscripts, letters, diaries, home videos etc, even if the material was subsequently published; and
- the available copy must be in the exact format needed for preservation - for example, the fact that an electronic version is available in a proprietary ebook format does not prevent you from copying the work into an open document format.

What this limit essentially aims to do is ensure institutions do not rely on a preservation copy instead of purchasing a replacement copy of material that is still commercially available but that has become old or damaged. If you are genuinely preserving material in your collection, it is unlikely to be a barrier.

Who can use the exception?

The only other place in which the new exception is narrower than the previous provisions is how it defines a “library”.

Previously, any library or non-profit archive was able to make use of the preservation provisions. But libraries must now be “open to the public” to fall within the exception (or be a Parliamentary library, which are listed specifically).

This aligns the definition of library with that used in other exceptions in the Copyright Act (eg document delivery) and is not meant to be a major limitation. It includes:

- institutions that are only open to a subcategory of the public (eg students);
- institutions that are only open part-time, on a temporary basis, or on request; and
- institutions that only make their materials available via interlibrary loan.

However, if you work in a corporate library that is only open to employees of your company and does not participate in interlibrary loan, you may miss out under the new provisions.

Note that the definition of archive remains the same in the new exception - you merely need to be a non-profit archive to qualify, and do not need to be “open to the public”. So collections of material held by, for example, RSLs or local non-profit historical societies can still be preserved, even if they are not made available to the public.

Key cultural institutions

Key cultural institutions (usually institutions with a statutory function) get a separate preservation exception in the Act. This echoes the pattern of the old provisions, which gave key cultural institutions rights separate from other libraries and archives.

However, unlike the old provisions, the new key cultural institution exception is essentially identical to the general exception. So all the same rules above apply to key cultural institution the same as to other institutions.

Access

The preservation exception aims to deal only with preservation of material, not with access to it. Access to materials is usually provided under other provisions in the Copyright Act, such as document delivery, interlibrary loan or the s200AB flexible dealing provision.

However, the exception does include one access clause - it allows you to provide onsite access to an electronic preservation copy, as long as you take reasonable steps to prevent it from being used to infringe copyright. This means that you can now provide onsite researchers with direct access to electronic preservation copies in place of the originals, so that you do not have to disturb delicate objects and can continue to provide access to materials that have become degraded etc. Previously you needed a special “dumb terminal” to do this, but this restriction is now removed.

The Act does not say what it means by “reasonable steps to prevent infringement.” However, reminding a client of their copyright obligations or posting a notice next to the computer to be used similar to that attached to photocopiers should be sufficient.

It is also important to note that once you have made a preservation copy, it can be used as the source to provide access to material under any of the other provisions of the Copyright Act. So if you are supplying material under document delivery or interlibrary loan, or if you plan to post it online under s200AB, you can use your preservation copy to do so, rather than having to re-scan the original material. You just have to make sure the supply is legal under these other provisions.

Technological Protection Measures

Finally, it is important to note that you are allowed to bypass technological protection measures (TPMs) to preserve materials in your collection.

A TPM is a digital lock that prevents you from accessing or copying the material. Usually you are not able to break these locks, even for purposes that would otherwise be legal.

However, the newly-passed Copyright Regulations 2017 include an explicit exemption to allow libraries and archives to circumvent TPMs for the purpose of preservation (and, notably, also for document delivery and interlibrary loan). This means if a video or a DVD you want to preserve has a copy protection technology applied, you can remove or break that technology to make your preservation copy. You can also use your preservation copy instead of the TPM-protected original within the limits of the law.

The [Australian Libraries Copyright Committee](#) is the primary policy body for the discussion of copyright issues affecting libraries and archives in Australia. For more information and resources on copyright for libraries, including regular training opportunities throughout Australia, see the <http://libcopyright.org.au>.