

**SUBMISSION ON CROWN COPYRIGHT FOR THE
COPYRIGHT LAW REVIEW COMMITTEE**

25 MARCH 2004

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Executive Summary of CCH Australia Limited's Position

CCH Australia Limited ("CCH") submits that the policy objectives underlying Crown copyright are best achieved by:

- (a) retaining copyright in Government Materials;
- (b) providing for the uniform copyright protection of Government Materials by abolishing prerogative rights in the nature of copyright and replacing them with copyright for Government Works; and
- (c) providing for a blanket statutory licence scheme permitting reproduction of all Government Works provided that the quality of the reproduction is reliably accurate and publicly available.

CCH Australia Limited

CCH is part of the Wolters Kluwer Group, a global business-to-business publishing organisation based in Amsterdam. For over 35 years, CCH has established a reputation as one of Australia's leading independent providers of professional information and materials.

CCH is an integral knowledge partner for busy professionals in providing the market with detailed commentary and analysis, value added source materials, and workflow tools and applications. By providing people with an understanding of core compliance issues, as well as the latest in best practice and professional development, CCH equips professionals to service the needs of their clients while assisting the government in the accurate dissemination of, and access to, government information.

As well as legal, tax and HR publications, CCH has an extensive range of knowledge products in the business area, as well as workflow tools and practical software – a range that is constantly expanding to meet our clients' changing needs. However, accuracy, quality and fast reporting remain among its most important hallmarks – delivered in print and electronic formats, with much of this content material available online at www.cch.com.au.

These submissions particularly concern copyright in the areas of interest to CCH, namely, copyright in;

- (a) judgments of both State and Commonwealth courts and tribunals ("Judgments");
- (b) legislation and regulations made by all arms of government ("Legislative Materials"); and
- (c) materials published by the executive arms of Commonwealth and State Governments including diverse materials such as ASIC policy statements, ATO rulings, OSR practice directions, forms, determinations, rulings etc. Annexure B to this submission contains a

list of materials to which this category of documents relates (“Executive Materials”),

(collectively below as “Government Materials”).

Summary of our Position

CCH seeks the following outcomes regarding government ownership of Crown copyright:

- retaining copyright in Government Materials;
- providing for the uniform copyright protection of Government Materials by abolishing prerogative rights in the nature of copyright and replacing them with copyright for Government Works; and
- providing for a blanket statutory licence scheme permitting reproduction of all Government Works provided that the quality of the reproduction is reliably accurate and publicly available.

It is apparent that Judgments, Legislative Materials and Executive Materials are at present the subject of copyright protection, the ownership of which resides in the Crown. Different governments and different departments within governments take differing approaches to the administration of copyright for Legislative Materials and Executive Materials. In some instances, it is not clear whether a statutory body is the owner of copyright in certain material as opposed to the Crown. In the case of Judgments, different States have different attitudes to the administration of reproductions of their works. We submit that the current administrative scheme requires streamlining, increased transparency and uniformity.

The current legislative scheme does not cohesively reflect the policy that justifies the continued existence of copyright in Government Materials, namely the public interest in ensuring that reliably accurate materials are made available for broad dissemination to the public.

Issue 1: The Committee seeks your views as to whether government ownership of copyright material should extend to all works and subject matter. For example, should it only apply to literary works? Should artistic works such as architectural plans be excluded?

1.1 Presently, copyright ownership in Government Materials appears to exist by virtue of:

- (a) the general law of copyright under the *Copyright Act 1968* (“the Act”);
- (b) the Crown Copyright provisions in ss176–182 of the Act; and
- (c) the preservation in sec 8A of prerogative rights in the nature of copyright.

- 1.2 By virtue of these rights, it is apparent that the State and Commonwealth Governments retain ownership of Judgments, Executive Materials and Legislative Materials. There is, however, some doubt as to the extent to which government may retain copyright in works created by statutory bodies (see, for instance, *British Broadcasting Co v Wireless League Gazette Publishing Co* [1926] Ch 433).
- 1.3 In paragraphs [71] – [81] of the Issues Paper some public policy issues were identified concerning Crown copyright. It is submitted that of those policies, the ones that justify the continued existence of Crown copyright are those that required the *accurate* and reliable dissemination of legal materials. Unless the government is in a position to exercise control over the publication of such materials there is a very real concern that the public will not be able to have confidence in the accuracy of the legislation and judgments that it reads.
- 1.4 Accordingly, it is submitted that government ownership of copyright material should remain and that it should extend to all forms of works in which Government Material is or may be produced. Future advances in technology are not sufficiently predictable to warrant a limitation on the form of protection conferred. Government ownership should extend to all works and subject matter currently provided for by Part VII, Division 1 of the *Copyright Act 1968* subject to appropriate exceptions.
- 1.5 Part VII, Division 1 of the *Copyright Act 1968* requires legislative clarification to expressly specify all subject matter including broadcasts (sound and film) and published editions etc are subject to Crown copyright.

Issue 2: The Committee seeks your views as to whether the government should enjoy all the exclusive rights of copyright.

- 2.1 Our view is that the government should enjoy the exclusive rights of copyright subject to appropriate exceptions provided for in the *Copyright Act 1968*. It is submitted that the current exception in sec 182A relating to copyright in statutory instruments and judgments should be broadened to allow unlimited reproduction of Government Materials subject to conditions prescribed in the *Copyright Act 1968* or in the Regulations. The basis for the broadening of the exception is based on the public policy of promoting access to dissemination and use of accurate renditions of the laws of the Commonwealth and or States.
- 2.2 For the reasons set out below it is submitted that the conferring of a blanket statutory licence scheme permitting reproduction of all

Government Works, provided that the quality of the reproduction is reliably accurate and publicly available, is both appropriate and justified.

2.3 Public policy considerations

2.3.1 CCH endorses in part the views in the Issues Paper in paragraph [77]. It further notes the following statements on this matter:

- The public domain issue was emphasized by former NSW Attorney-General, John Hannaford, who said of the NSW government's legislative instrument providing a waiver of Crown copyright in NSW legislation:

“One of the cornerstones of democracy is that the people own the legislation. The waiver will do away with anachronistic concepts of Crown ownership that are not relevant to today's society. The NSW Government is the first jurisdiction in Australia, if not the first common law jurisdiction in the world, to recognize that the laws should be owned by the people”¹.

- In respect of judicial material, the *Berne Convention for the Protection of Literary and Artistic Works* permits a member country to deny copyright protection by providing in Art 2 *bis* (1) that countries may legislate to exclude, wholly or in part, political speeches and speeches delivered in the course of legal proceedings from the protection provided by the convention. Examples of this are the legislative instruments introduced by the New South Wales government that provides for a blanket waiver for use of their copyright material. In the United States, no publication or reporter can have copyright in the opinions delivered by the courts.
- We note the speech by Sir Laurence Street, the former Chief Justice of New South Wales, delivered on 2 February 1982, who said:

“To my mind it is unthinkable that a judge who delivers a judgment should have power to order that it be not reproduced in the Press or elsewhere. It is equally unthinkable that the Crown should have the power to suppress or forbid reproduction or quotation of a judgment in the Press, universities and elsewhere. The spectre of political censorship lurks not far behind assertions of copyright in judgments. I am not talking about quoting from the law reports – that is a different matter. What I am talking about is quoting from reporting and copying the raw judgment as delivered in court.”

¹ H Gallagher, “Our words are law” (1995) *Law Institute Journal*, 200 at 201.

2.3.2 It is submitted that the primary public policy justifying the retention of Crown copyright is to ensure the integrity and authenticity of official government publications and judgments.

2.3.3 In paragraph [78] of the Issues Paper it is observed that copyright ownership *“also eases the administrative burden on governments by reducing the need to make arrangements for the use of third party copyright material, while at the same time providing a potential revenue stream”*.

2.3.4 It is strongly submitted that it is in the public interest for there to be no licence fee imposed on the use of Crown copyright material for the reasons stated elsewhere in this submission and below.

2.4 Maintaining accuracy and integrity of Government Materials

2.4.1 CCH (and other commercial publishers) do not compete with the government in the reproduction of Government Material; the aim of commercial publishers is to add value to the Government Material by providing relevant commentary, aiding research by making the material more accessible and aiding in the timely dissemination of material. If commercial publishers were not operating in these State and Commonwealth markets, the governments of these jurisdictions would bear the full cost and burden of wide dissemination of and access to legislation, consolidating legislation, providing commentary and explanations of new cases and policies etc. Commercial publishers effectively reduce government costs.

2.4.2 It is submitted that government departments do not have the current resources, capacity and skill sets to produce and publish the products, precedents and materials that Australian professionals rely upon to provide quality, accurate and timely advice to clients.

2.4.3 CCH assists the government in disseminating information while ensuring the accuracy and integrity of government information. CCH also adds “value” to government information. For example, CCH:

- provides relevant commentary and explanations in relation to reproduced legislation and judicial decisions by expert legal commentators. Value to Government Material is also added by headnotes, indexes, history notes and digests. Specialist commentaries make these materials more easily understood by legal professionals, non-legal professionals and government departments;
- employs approximately fifty full-time staff whose primary task is to accurately consolidate legislation, create indexes, and accurately reproduce Government Material;

- provides aggregations of subject information and relevant time lines. For example, CCH's *Australian Trade Practices Law Reporter* provide copies of the relevant legislation, cases and commentary and is complimented by CCH's *Australian Trade Practices Compliance* that provides the necessary tools for a trade practices advisers to create effective trade practices compliance programs for their clients. The importance of the aggregation of information should not be underrated. A HR professional advising management on its company's EEO policies can utilise the CCH service, *Australian and New Zealand Equal Opportunity Law & Practice*, which will clearly indicate what legislation, both Federal and State, is relevant, rather than the sometimes "hit and miss" process of searching multiple government websites where the aggregation of legislation is normally by alphabetical order rather than by relevant subject areas;
- editors often alert government bodies as to inaccuracies in Government Material that results in corrigendums in the process of consolidating legislation and writing headnotes; these corrections assist in reducing the government's scope for error;
- assists in the operation of the government functions. For example, government issued material often quotes our reproductions, headnotes or value added material. For example, many otherwise unreported decisions are published in CCH's specialist law reports. In the recent High Court decision of *Romanos v Pentagold Investments Pty Limited & Anor* (2003) HCA 58, Kirby J refers to the Court of Appeal judgment of *Tanwar Enterprises Pty Ltd v Cauchi* (2002) NSW ConvR ¶¶56-014 as reported in CCH's *New South Wales Conveyancing Law & Practice*. A large number of government departments, agencies and judicial bodies are current subscribers to our publications and rely heavily on the accuracy and currency of the material, both source and analytical, contained in our publications;
- risk management / insurance. Access to quality products and precedents is probably the most important risk management strategy for professionals, which is particularly crucial given the soaring costs of professional indemnity insurance schemes; and
- provides an important "educational" role for HR managers, accountants and lawyers. For example, CCH's products and services form part of the informal continuing legal education program for lawyers. CCH also offers CCH Learning products, including online compliance programs for trade practices and OHS laws.

2.4.4 The payment of licence fees to the Crown would undermine CCH's ability to provide its "value added services".

2.4.5 If customers did not believe that CCH added value to the Government Material, customers would purchase legislation and other materials directly from the government publishers.

2.4.6 For example, CCH's recent publication *Australian Corporations & Securities Legislation 2004 (Volume 1, 2 and 3)* aggregates a comprehensive selection of related Acts and Regulations. It represents:

- a cost effective publication for the market. To purchase the equivalent printed Commonwealth Acts and Regulations from CanPrint would cost a total of \$191.70. The publication retails for \$120.00 and also includes other relevant legislation from other jurisdictions;
- legislative history which indicates the full name, date of assent, date of commencement and all subsequent amending legislation;
- an historical background to the *Corporations Act 2001* (Cth), and a comprehensive outline and explanation of each Chapter of the Act;
- checklists including the *Corporations Regulations 2001* checklist, and a comparative table for the *Financial Services Reform Act 2001*, and a comparative table between the *Corporations Act 2001* and the former Corporations Law;
- square bracket headings;
- history notes which provides details of the amending legislation and the effective date of commencement;
- editorial notes provided by the CCH Corporate Law Editors where errors or inconsistencies exist in the text of the legislation; and
- a combined index to all the Acts and Regulations published.

2.4.7 It is to be noted that at present the Crown adopts a restrictive practice of providing specific "authorised report" status to the publishers of certain law reports (such as the Federal Court Reports and the Commonwealth Law Reports). It is submitted that this approach is contrary to the spirit of the policy that is to encourage the dissemination of law reports and is discriminatory. Any review of the current copyright regime should, it is submitted, ensure that this approach ceases.

Issue 3: The Committee seeks your views as to whether moral rights should apply in the context of government copyright.

3.1 CCH does not wish to make a submission on this issue.

Issue 4: The Committee seeks your views as to whether the legislative scheme establishing government ownership of copyright material is appropriate. In particular, should the government acquire ownership of copyright material by virtue of:

- (a) sections 176 and 178 (works, sound recordings and cinematograph films made by, or under the direction or control of, the government),**
 - (b) section 177 (works if published by, or under the direction or control of, the government),**
 - (c) section 35(6) (works made pursuant to the terms of employment under a contract of service or apprenticeship)?**
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4.1 For the reasons stated in answer to Issue 1 above, it is submitted that a uniform approach as suggested in paragraph [27] of the Issues Paper be adopted in relation to Executive Material. Clearly, the existence of uncertainty as to the ownership of copyright in judicial and some legislative materials is undesirable, it is submitted that the Act should be amended to expressly provide for ownership by the Crown of:

- Judgments;
- Executive Materials; and
- Legislative Materials.

Issue 5: The Committee seeks your views as to whether the Copyright Act should make express provision with respect to copyright in materials produced by:

- (a) the executive;**
 - (b) the judiciary; and**
 - (c) the legislative.**
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5.1 As noted above, it is submitted that the *Copyright Act 1968* should make express provision in respect of Crown copyright, including any prerogative right or privilege of the Crown in the nature of copyright, in materials produced by the executive, judiciary and legislature. Such provision should only be implemented in conjunction with, and in acknowledgement of, the public policy of promoting access to, and dissemination and use of, Government Material. Refer to Issue 2 for further discussion of the public policy considerations and to Issue 10 for one proposed model for legislative reform.

Issue 6: The Committee seeks your views as to what entities should be included as part of 'the Commonwealth or a State' for the purposes of the Copyright Act and how this should be determined.

6.1 It is submitted that there is a need to clarify and make uniform the copyright position insofar as it concerns Executive Materials to include the

multitude of agencies, bodies, committees, departments and instrumentalities that form and carry out the government functions of the Commonwealth and States. As noted above, CCH endorses the Australian Copyright Council's recommendation² to include in the Copyright Regulations a list of bodies etc that are covered by the term "the Commonwealth or a State" and thus the *Copyright Act 1968*. A list of the bodies and publications that CCH submits should be included within the Regulations are detailed in Annexure B to this submission.

Issue 7: The Committee seeks your views as to whether all material produced as part of a government function be deemed to have been created by the government. If so, in whom should copyright vest?

7.1 CCH agrees that all material produced as part of a government function be deemed to have been created by the government and thus subject to the Crown copyright provisions and statutory exceptions under the *Copyright Act 1968*.

Issue 8: The Committee seeks your views as to the appropriate duration of government copyright. Should it be the same as for non-government copyright material?

8.1 CCH does not wish to make a submission on this Issue.

Issue 9: The Committee seeks your views as to the application of the exceptions to government copyright material. Should the exceptions apply to government copyright material in the same way as they do to non-government copyright material? Should there be a special exception for copyright material owned by the government?

9.1 CCH submits that the current exceptions in the *Copyright Act 1968* should apply to Crown copyright in the same way as they apply to non-government copyright material.

9.2 As to other exceptions, see CCH's submission in relation to Issue 10, below.

Issue 10: The Committee seeks your views as to whether the licence in s 182A to reproduce legislative materials and the decisions of courts and tribunals should be expanded to allow multiple copies? Alternatively, is a blanket licence scheme an appropriate model?

10.1 The current scheme of limited ad hoc licences issued by the State and Federal Governments is, it is submitted, an unwieldy means of meeting

² Australian Copyright Council, *Submission the Government's response to the report of the Intellectual Property and Competition Committee*, 2001.

the stated policy objectives in respect of published Judgments and Executive and Legislative Materials. Blanket licences or exemptions included within the Act would be a more appropriate system.

10.2 It is submitted that a new blanket licensing scheme should be incorporated in legislation to authorise the reproduction of, without charge:

- (a) Judgments;
- (b) Executive Materials; and
- (c) Legislative Materials;

provided only that:

- (i) the material reproduced is accurate, in a proper context and of good standard;
- (ii) copyright in the Crown is acknowledged; and
- (iii) the reproduction does not represent that the reproduction is an official version of the original work.

10.3 One means by which this change could be achieved is set out in Annexure A to this submission. No doubt other models will also commend themselves during the course of the current consultative process. CCH submits that any draft amendments should be the subject of full discussion and submission before they are finalised.

10.4 It is submitted, separately to the above proposed licence scheme, that sec 182A(2) should be repealed and the definition of “prescribed work” expanded (either in the Act itself or within the framework of new Regulations).

10.5 In the absence of the above amendment, CCH supports the continuation of the current “blanket licence” to educational institutions and publishers allowing multiple reproductions of Commonwealth legislative materials where the material is reformatted or rekeyed. This licence should be uniform in its application to all government copyright material across all Commonwealth and State jurisdictions.

10.6 As submitted above, the current discriminatory practice of the Crown nominating certain law reports as “authorised” should cease.

Issue 11: The Committee seeks your views as to the appropriate nature and scope of prerogative rights. Should the prerogative rights in the nature of copyright be clarified or replaced by legislation?

11.1 Subject to the provision of a licence in terms stated in relation to Issue 10, CCH does not wish to make a submission on this Issue.

Issue 12: The Committee seeks your views as to any issues arising under the Commonwealth Constitution and how these may affect the possible options for reform.

12.1 CCH does not wish to make a submission on this Issue.

Issue 13: The Committee seeks your views as to the practical operation of the law relating to the administration or licensing of copyright material. In particular, should government practice be encouraged to achieve uniformity throughout the different Australian jurisdictions?

13.1 At present the ad hoc system of copyright licensing within different branches of government and within different State and Commonwealth Governments is, as explained below, cumbersome, slow and expensive. It is submitted that a legislative scheme that provides automatic reproduction rights to any person provided certain standard of accuracy are adhered to, will obviate the need for any complicated system of the administration of rights. Set out below are some comments referable to the current system.

- The uniform adoption of a blanket licence or revocable waiver for conditioned use of government copyright material would remove the administrative burden of individual government departments having to receive, process and grant individual use licences. A further benefit of the amendment would be the uniform licence and conditions of use across all Commonwealth and State jurisdictions.
- However, if a separate approval process is retained under any new legislation, it is submitted that significant improvements should also be made to the government's administration of copyright. Any permissions to reproduce, licensing arrangements and the payment of any licence fees should be made through one Commonwealth and State body specifically set up to process the administration of all government copyright and other intellectual property rights. The role and responsibilities of Commonwealth Copyright Administration (CCA) could possibly be increased for this purpose.
- Commercial publishers, including CCH, reproduce a range of Government Material including cases, legislation, practice directions, rulings, determinations and forms. If each governmental department separately administers copyright, it is time consuming for publishers and their editors to investigate the different procedures for each department or agency. If one system was in place, we submit that this would aid the dissemination and use of Governmental Material, especially as publishers and editors would have clarity as to the necessary procedures, expected time frames, form of acknowledgment and compliance issues. CCH submits that such procedures should be clearly communicated to educational institutions

and publishers. One of the main problems in the current practice of obtaining individual permissions from separate agencies is that their individual requirements are not always clear, including supplying details of the relevant contact person.

- CCH also submits that any government template for the reproduction of Government Material be provided in electronic format. Presently, some government departments still require receipt of formal letters while other departments now accept email requests.
- In addition, it is submitted that the government contract to assess and respond to any request to reproduce material within a reasonable turnaround period. We confirm that some permission requests to government departments take an unreasonably long period of time to process.

Issue 14: The Committee seeks your views as to the appropriateness of the law relating to government ownership of copyright given the operation of freedom of information and privacy laws in regulating access to, and use of, personal and government information.

14.1 CCH does not wish to make a submission on this Issue.

Issue 15: The Committee seeks your views as to the effect of new technologies on government ownership of copyright material. In particular:
(a) does copyright continue to be relevant?
(b) how does one safeguard against the distortion or inappropriate use of government material made available through new technologies?
(c) is facilitating government information online inconsistent with the policy objectives behind government ownership of copyright?

- 15.1 CCH submits that copyright continues to be relevant in light of new technologies. New technology certainly affects the method of delivery of information but the same copyright issues apply to the ownership and use of the actual material.
- 15.2 It is submitted that the suitable approach to balance competing public interests of accuracy and access is to incorporate the licence scheme proposed above (Issue 10). The commercial and practical matters that underlie this submission are addressed further in the balance of this section.
- 15.3 Significant technological advances over the last decade have allowed the government and its agencies and entities, such as Australasian Legal Information Institute (AustLII) and Scaleplus, to make Government Material more freely available through the Internet. It is noted that this is in line with the strategic objectives of the National Office of the Information Economy (NOIE) that promotes the continued government ownership of

material and greater access to government information (paragraph [84] of Issues Paper).

- 15.4 CCH supports the government approach to allow greater access to government information. CCH is, in fact, AustLII's largest private supporter. Graham Greenleaf, co-founder of AustLII, has authorized CCH to convey the following comments in this submission concerning the relationship between AustLII and commercial publishers:

“The approach AustLII takes is that the value that AustLII is best able to add to primary legal materials comes from large-scale automated processing of the materials, whereas the traditional strength of commercial legal publishers comes from their substantial investment in value adding through editing and the intellectual value it adds. In this sense, AustLII and commercial publishers are complementary.

There are other senses that AustLII can be complementary to a commercial legal publisher too. Our stable URLs and encouragement of 'deep linking' allow legal publishers who choose to do so (particularly new entrants who do not have their own large collections of cases and legislation) to build value-added services on top of AustLII's primary legal materials.

The 'Publishers Search' facility developed in cooperation between CCH and AustLII is a good example of complementary facilities, where the ability to repeat an AustLII search over publisher's materials provides AustLII and CCH users with seamless access to a much wider range of materials.

The WorkplaceInfo site developed by ABL is another good example of similar cooperation.”

- 15.5 Increases in the use of technology have also led to higher expectations. Customers now expect to receive information without delay. This expectation has also resulted in the development of a range of online products that can be updated more quickly than print products. CCH customers have communicated that they are also burdened with higher expectations, e.g. clients expect their lawyers and accountants to be strictly up-to-date.
- 15.6 These significant technological advances have increased the general expectations in society in relation to the receipt and processing of information at all levels together with an increase in the actual amount of information. Professionals rely on publishers to inform them of recent developments and changes to practice. CCH has the resources to track

changes and developments regarding Government Material. Small firm legal practitioners and tax accountants, for example, do not have the time or resources to research government websites to remain fully informed and some of these practitioners will still not have the necessary technological skills and training to carry out such searches.

- 15.7 As a result of customer feedback concerning their need for the immediate supply of information, we have introduced a “Daily Email Alert” service which is a free email service sent to subscribers which provides them with the latest news and developments in tax, HR, OHS, law, financial planning, superannuation, corporate governance and related subjects. In short, despite the increasing level of access to Government Material as a result of technological advances, CCH still adds value to the Government Material available online through commentary, aggregation of material and method of delivery.
- 15.8 In the interests of retaining control over the accuracy and integrity of Government Materials, CCH supports the retention of copyright. It is submitted that technological developments do not alter this position.

Issue 16: The Committee seeks your views as to whether, as a matter of public policy, the government should own copyright in materials produced by the:

- (a) executive arm of government?***
(b) legislative arm of government?
(c) judicial arm of government?
-

- 16.1 Yes. We refer to our submission above in relation to Issues 5 and 10.
- 16.2 In addition to the above, we ask the Committee to note the argument that the basis for the ownership of all Crown copyright by the Commonwealth and States has been undermined by trends in competition law as stated in paragraphs [85] and [86] of the Issues Paper.

Issue 17: The Committee notes that these models, and other overseas models, do not treat government copyright material in a uniform manner and seeks your views as to whether any of them provide useful models for Australia.

- 17.1 It is submitted that there are elements in international models that may provide useful models for Australia. All suggested international models assume that the public policy of providing access to laws and government information is the dominant objective in the administration and classification of government copyright.

- 17.2 It is submitted that the conditions of use for the reproduction of Government Materials should be prescribed under the *Copyright Act 1968* to ensure integrity, attribution and accuracy on similar conditions to the Canadian *Federal Law Order SI/97-5* (8 January 1997) which states that government copyright materials can be reproduced provided that “due diligence is exercised in ensuring the accuracy of the materials reproduced and the reproduction is not represented as an official version.”
- 17.3 It is further submitted that a single body should be set up to administer copyright for the Commonwealth and States or that the role of the Commonwealth Copyright Administration (CCA) be extended. It is noted that government copyright in Canada is administered by the Canadian Government Publishing (CGP) (paragraph [113] of Issues Paper) that is the body responsible for issuing licence agreements and granting permission to reproduce government material. Although individual requests to government departments may be made, the CGP can grant permissions directly, with the authorisation of the relevant government department that produced the material.

Issue 18: The Committee seeks your view as to options for reform, legislative or otherwise, and the costs and benefits of those options.

- 18.1 In summary, in relation to each of the proposed options for reform:
- (a) *Abolishing Crown copyright, and/or Crown prerogative, in all circumstances (either vesting copyright privately or placing all material in the public domain).*
- CCH does not believe that this is an appropriate option. This option may satisfy the policy of providing access to information but will fail to address the policy of ensuring the integrity and accuracy of information that is reproduced.
- (b) *Abolishing Crown copyright, and/or Crown prerogative, in different types of material by distinguishing between material produced by the different arms of government.*
- The Commonwealth and States should retain copyright ownership in Government Materials.
- (c) *Retaining Crown copyright but making a special exception to copyright infringement for Government Material.*

CCH supports the introduction of a blanket licence for the reproduction of Government Material specified in an amended form of sec 182A and any

prescribed Regulations. See further at Issue 10 above and one suggestion for legislative reform as detailed in Annexures A and B.

- (d) *Retaining Crown copyright, and/or Crown prerogative, but waiving or licensing it in all circumstances.*

Where Crown copyright and/or Crown prerogative is retained, the Commonwealth and States should introduce a blanket licence for the use of such material. This could be achieved through the broadening of the current exception in sec 182A of the *Copyright Act 1968* to provide for multiple reproductions of prescribed works. See further at Issue 10 above and one suggested model for legislative reform as detailed in Annexures A and B.

- (e) *Retaining Crown copyright, and/or Crown prerogative, but waiving copyright in, or allow licences over, certain types of material.*

We are of the view that where Crown copyright and/or Crown prerogative is retained, the Commonwealth and States should waive or introduce a blanket licence for the use of such material. This could be achieved through the broadening of the current exception in sec 182A of the *Copyright Act 1968* to provide for multiple reproductions of prescribed works. See further at Issue 10 above and one suggested model for legislative reform as detailed in Annexures A and B.

- (f) *Retaining Crown copyright, and/or Crown prerogative, but clarifying it through legislative amendment.*

We support the clarification of current Crown copyright ownership through legislative amendment with the primary objective of ensuring the public policy of providing access to, and dissemination and use of, accurate government materials to all. See further at Issues 2 and 5.

- (g) *Retaining the current legislation but improving the administration of Crown copyright, and/or Crown prerogative.*

We believe that the administration of government copyright should be uniform across all jurisdictions and promote the public policy of providing access to, and dissemination and use of, accurate Government Materials to all. In this regard, we suggest that a single body be set up to properly and efficiently administer all government copyright for the Commonwealth and each State.

Issue 19: The Committee seeks your views as to any transitional issues arising out of the options for reform.

19.1 We submit that any continued or developed government copyright policies be clearly and precisely communicated to commercial publishers at all stages, including any procedures or policies in relation to transitional issues.

19.2 In relation to any proposed legislative reform to the *Copyright Act 1968*, we request that an interim waiver of any licence fees be made by the Commonwealth and State governments, especially in relation to the use of materials produced by the legislative and judicial arms of government, until the legislation concerning the proposed exemptions receives assent and or commencement. We submit that any reform should not be retrospective in any manner.

Issue 20: The Committee seeks your views as to any other matters arising out of this Issues Paper.

20.1 CCH does not wish to make a submission on this Issue.

CCH consents to the Copyright Law Review Committee Secretariat making this submission available in digital form for the purpose of carrying out this review on Crown Copyright. Prior written consent should be obtained before the contents of this submission are used or reproduced for any other purpose.

Dated: 25 March 2004

A handwritten signature in black ink, appearing to read 'S. Bennett', with a stylized flourish at the end.

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Annexure A*Proposed replacement sec 182A of the Copyright Act 1968***Copyright in a prescribed work**

- (1) The copyright, including any prerogative right or privilege of the Crown in the nature of copyright, in a prescribed work is not infringed by the making of unlimited copies of the whole or of a part of that work by or on behalf of a person.
- (2) In subsection (1), *a prescribed work* means:
 - (a) an Act or State Act, an enactment of the legislature of a Territory or an instrument (including an Ordinance or a rule, regulation or by-law) made under an Act, a State Act or such an enactment;
 - (b) a judgment, order or award of a Federal court or of a court of a State or Territory;
 - (c) a judgment, order or award of a Tribunal (not being a court) established by or under an Act or other enactment of the Commonwealth, a State or a Territory;
 - (d) reasons for a decision of a court referred to in paragraph (b), or of a Tribunal referred to in paragraph (c), given by the court or by the Tribunal;
 - (e) reasons given by a Justice, Judge or other member of a court referred to in paragraph (b), or of a member of a Tribunal referred to in paragraph (c), for a decision given by him or her either as the sole member, or as one of the members, of the court or Tribunal; or
 - (f) any further subject matter as prescribed by the Regulations.
- (3) Any person who makes a reproduction of a prescribed work must:
 - (a) exercise due diligence in ensuring the accuracy of the prescribed work that is reproduced;
 - (b) acknowledge Crown copyright in the original work that is reproduced; and
 - (c) not represent that the reproduction is an official version of the original work.

Annexure B

Proposed amendment to Copyright Regulations

[Insert new Regulation after Regulation 27]

Regulation 28 A prescribed work under sec 182A

28 The prescribed works specified in Schedule 13 to these Regulations are declared to be “a prescribed work” for the purposes of sec 182A(2)(f).

[Insert new Schedule 13]

SCHEDULE 13

Regulation 28

**PRESCRIBED WORKS FOR PURPOSES OF SEC 182A(2)(F) OF THE
COPYRIGHT ACT 1968**

Accounting Standards
Australian Competition & Consumer Commission (“ACCC”) Determinations
ACCC Guidelines
ACCC Policy Statements
Australian Customs Notices
Australian Prudential Regulation Authority (“APRA”) Insurance Circulars
APRA Notices under Insurance Act
APRA Prudential Standards
Australian Securities and Investment Commission (“ASIC”) Class Orders
ASIC Forms
ASIC Policy Statements
ASIC Practice Notes
ASIC Releases
Australian Standards
Australian Stock Exchange (“ASX”) Guidance material
ASX Listing Rules
Australian Taxation Office (“ATO”) PAYG withholding tables
ATO Product Rulings
ATO Publications
ATO Rulings (final & draft) of various types issued by the Commissioner/ATO (eg GSTR series, GSTD series, GSTB series)
ATO Tax Determinations
Consumer Credit Industry Codes
Consumer Price Index (“CPI”) Figures
Forms
General/Life Insurance Supervisory Levy Determinations

Guidance Material
Interpretative Decisions
Legislative Determinations issued by various Government Ministers and any Commissioners
National Competition Council Reports
Policy Discussions
Press Releases
Practice Statements and Fact Sheets
Private Binding Rulings
Productivity Commission Reports
Revenue Authorities - Rulings, Determinations, Circulars, Forms, Practice Statements/Directions
Tables, such as the monthly official ATO foreign currency exchange rates
Treasury Guidance Material
Standard Forms, Diagrams and Flow Charts