



# ADMINISTRATIVE REVIEW COUNCIL

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Our ref: 04/8732

Your ref:

11 August 2004

Ms Louise Gell  
The Director  
Copyright Law Review Committee Secretariat  
Attorney-General's Department  
Robert Garran Offices  
National Circuit  
Barton, ACT, 2600

Dear Ms Gell

**Re: Crown Copyright Discussion Paper**

Thank you for the opportunity to comment on the Copyright Law Review Committee's paper, *Crown Copyright: Discussion paper for consultation forum, Sydney, 27 July 2004* (the Discussion Paper).

The Council has considered both the Discussion Paper and the Committee's earlier *Crown Copyright Issues Paper* (the Issues Paper).

**Background**

The Issues Paper discusses the original rationale for crown copyright, including the need to ensure the integrity and authenticity of official publications. It suggests that freedom of information and privacy laws now provide the means of regulating the appropriate use of, and access to, information held by the government (Issues Paper, p.35).

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Wayne Martin QC  
Professor John McMillan  
Robert Cornall  
Stephen Gageler SC  
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Major General Paul Stevens AO (rtd)

Justice Garry Downes AM  
Professor David Weisbrot  
Professor Robin Creyke  
Richard Humphry AO  
Melanie Sloss SC  
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In the subsequent Discussion Paper, the Committee notes that governments have used copyright to restrict access to documents. Accordingly, views are sought on whether government ownership of copyright should be used as a means of restricting access and controlling use in light of freedom of information (FOI) legislation.

### **Access to government information**

Prior to the commencement of the *Freedom of Information Act 1982* (FOI Act), access to information held by the Commonwealth Government or its agencies was, generally speaking, a matter of discretion. It appears that in many areas the norm was for people to be refused access. The FOI Act was a response to that situation.

Section 3 of the FOI Act provides that the object of the Act is to extend, as far as possible, the right of the Australian community to access information in the possession of the Commonwealth Government by:

- making publicly available information about the operations of departments and public authorities;
- creating a general right of access to certain information in the possession of government; and
- creating a right to bring about the amendment of government records containing personal information that is incomplete, incorrect, out of date or misleading.

The FOI Act seeks to provide a comprehensive FOI regime, which includes exemptions and exclusions based on weighing up various competing public interests.

In 1995, the Council and the Australian Law Reform Commission released a joint report entitled, *Open Government: a review of the Freedom of Information Act 1982*. This report concluded, amongst other things, that neither the particular government of the day nor public officials collect or create information for their own benefit. It considered that the information holdings of the government are a national resource that should generally be accessible to the public. Denial of access is not generally consistent with open and accountable government.

While documents should be released informally outside of the FOI Act wherever possible, an agency refusing to release a document should advise the applicant of the right to apply for access under the FOI legislation. In this regard, the FOI Act should be viewed as a restriction on the ability of an agency to refuse to release information.

In view of this, the Council does not consider that government ownership of copyright should be used as a means of restricting access.

### **Use of government information**

While the FOI Act and *Privacy Act 1988* regulate access to Commonwealth government information, they do not seek to regulate the subsequent use of information available to the public. Accordingly, there may be good arguments for the retention of government ownership of copyright based on the need to ensure the integrity and authenticity of government information in the public domain.

It is important, however, that assertion of crown copyright (for example, imposing a fee for purchasing a government guideline) is made in a manner consistent with the goal of open and accountable government, rather than discouraging citizen involvement in government.

The Council trusts that these comments are of assistance. Should you have any queries, please do not hesitate to contact Margaret Harrison-Smith or Marion Berry of the Council Secretariat in the first instance on telephone number (02) 6250 5800.

Yours sincerely

A handwritten signature in cursive script that reads "Wayne Martin". The signature is written in black ink and is positioned above a solid horizontal line that serves as a separator.

Wayne Martin QC  
President