

---

# Chapter 1

## Background to the inquiry

1.01 In December 2003, the Attorney-General asked the Committee to conduct an inquiry into Crown ownership of copyright in accordance with the terms of reference on pages xi to xiv.

1.02 Amongst other matters, the Committee was asked to consider the extent and appropriateness of government reliance on copyright to control access to, and/or use of, information; the social and economic objectives of government copyright ownership; the implications of privatisation of government agencies and outsourcing of government functions for public access to material; the effect of new technologies; and international comparisons. The Committee was also asked to consider both legislative and non-legislative options for reform.

### Key factors leading to the inquiry

1.03 In part, this reference came about because of concerns relating to the interaction between government ownership of copyright and competition policy.

1.04 The terms of reference specifically mention the *Review of Intellectual Property Legislation under the Competition Principles Agreement* (the report of the Ergas Committee).<sup>1</sup> The Ergas Committee noted that by virtue of section 176 of the *Copyright Act 1968* (the Copyright Act), the government is in a more favourable position than other contractors or employers.<sup>2</sup> The Ergas Committee considered this situation to be inconsistent with the principle of competitive neutrality set out in section 3(1) of the Competition Principles

---

<sup>1</sup> Intellectual Property and Competition Review Committee, *Review of Intellectual Property Legislation under the Competition Principles Agreement*, Chairman Mr Henry Ergas, IP Australia, Canberra, 2000.

<sup>2</sup> *ibid.*, p. 114. Section 176 is discussed in more detail in Chapter 4.

Agreement<sup>3</sup> and recommended that government should not be given preferential treatment under the Copyright Act.<sup>4</sup> Accordingly, the Ergas Committee recommended that section 176 be amended. The Government's response to this recommendation supported the objective of eliminating unjustified preferential treatment, but opted to develop 'best practice' policy guidelines rather than amend the Copyright Act.<sup>5</sup>

1.05 The Committee's terms of reference also note that calls have been made for amendment of section 177 of the Copyright Act. That section, discussed in more detail in Chapter 5, gives the Crown ownership of copyright in material that the Crown is first to publish.

1.06 The Committee notes that equivalent provisions in other common law countries have been reviewed in recent years and their scope restricted.

## **Conduct of the inquiry**

1.07 As the first step in this inquiry, the Committee released an Issues Paper in February 2004 and invited submissions from interested organisations and individuals by 26 March. In July 2004, the Committee released a Discussion Paper for the purpose of a public forum held in Sydney on 27 July 2004. The Issues Paper, Discussion Paper and public submissions were made available on the Committee's website at <[www.ag.gov.au/clrc](http://www.ag.gov.au/clrc)>. A list of submissions is at Appendix 1.

1.08 More than sixty people representing a range of stakeholder interests attended the Sydney forum. Following that forum, the Committee held further

---

<sup>3</sup> Section 3(1) of the Competition Principles Agreement provides: 'The objective of competitive neutrality policy is the elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities: Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership. These principles apply only to the business activities of publicly owned entities, not to the non-business, non-profit activities of those entities.' See National Competition Council, *Compendium of National Competition Policy Agreements*, 2<sup>nd</sup> ed, June 1998, p.17.

<sup>4</sup> Intellectual Property and Competition Review Committee, *op cit*, p. 114.

<sup>5</sup> Government Response to Intellectual Property and Competition Review Committee Recommendations, 28 August 2001.

consultations in Perth and Melbourne with State governments and other interested parties. Attendees at the various meetings are listed at Appendix 2.

1.09 The level of interest in the inquiry was higher than the Committee had expected. In order to consider the concerns expressed on a wide range of issues as fully as possible and to consult further with State governments, the Committee sought an extension for the inquiry. The Attorney-General, the Hon Philip Ruddock MP, subsequently extended the reporting date to 4 March 2005.

1.10 The Committee thanks all those individuals and organisational representatives who made submissions and attended the public forum and other consultations. The Committee found their contributions very valuable input to its consideration of the issues.

### **Scope of this report**

1.11 Chapter 2 outlines what is meant by ‘Crown copyright’ and briefly discusses the scope of material in which government may own copyright. Chapter 3 discusses the current law in Australia and gives a brief history of the development of Crown copyright in the United Kingdom and Australia.

1.12 Chapter 4 discusses relevant public policy issues, including the Ergas Committee’s recommendation. Chapter 5 looks in detail at the provisions of Part VII Division 1 of the Copyright Act and similar provisions in other common law countries, while Chapter 6 discusses the prerogative right in the nature of copyright.

1.13 Chapter 7 discusses exceptions to infringement of copyright owned by government. Chapter 8 discusses the range of entities which may be considered to be the ‘Commonwealth’ and the ‘State’ for the purposes of copyright ownership. Chapter 9 presents the Committee’s conclusions and recommendations on the issues examined in Chapters 4 to 8.

1.14 Chapter 10 discusses moral rights insofar as they relate to Crown copyright. Finally, Chapter 11 considers management of Crown copyright material.

### **Terminology used in this report**

1.15 The terms ‘Crown copyright’ and ‘government copyright’ are often used interchangeably. There are also references in different parts of the Copyright Act to ownership of copyright by ‘the Crown’, ‘government’ and ‘the Commonwealth or a State’. A brief discussion of what is meant by those terms is included in the next chapter. In this report, general references to ‘government’ include the governments in all Australian jurisdictions, unless otherwise indicated.