



**Australian Government**  

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**Department of Foreign Affairs and Trade**

8 April 2004

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

Dear Sir / Madam

I refer to the letter from Professor James Lahore, Chairman of the Copyright Law Review Committee (CLRC), to Dr Ashton Calvert, Secretary of the Department of Foreign Affairs and Trade (Department) dated 11 February 2004 concerning the Copyright Law Review Committee's Issues Paper on Crown Copyright (Issues Paper).

The Department makes the following submissions. Where no submission is made in respect of an issue raised by the Issues Paper, the Department does not wish to comment on that issue.

**Issues 1 and 2**

Government ownership of copyright material should continue to extend to all works and subject matter regardless of format.

A Commonwealth record is defined by the *Archives Act 1983 (Cth)* as:

“a document (including any written or printed material) or object (including a sound recording, coded storage device, magnetic tape or disc, microform, photograph, film, map, plan or model or a painting or other pictorial or graphic work) that is, or has been, kept by reason of any information or matter that it contains or can be obtained from it or by reason of its connection with any event, person, circumstance or thing.”

Accordingly, all records created by the Department include literary works and artistic works such as drawings, plans, images, films and sound recordings.

To ensure the continued integrity of these Commonwealth records, copyright should continue to be vested in the Crown for works created in the course of Government business regardless of format.

### **Issue 3**

Individual authors have moral rights regardless of whether they own copyright in the relevant work. The Department understands moral rights to include the right of the author to be attributed as the author of the material, the right not to be falsely attributed and the right not to have material used in a way that is prejudicial to the author's honour or reputation.

The Department currently attributes moral rights to authors (such as editors, authors of historical documents and professional photographers) where known but assigns copyright to the Crown where a work is produced in the course of Government employment or under the direction or control of the Government (subject to contractual obligations). The Department intends to continue this practice and submits that the Crown should continue to attribute moral rights to authors where applicable.

### **Issue 4**

The Department submits that the current legislative framework is appropriate and adequate.

### **Issue 7**

Refer to comments above concerning Issue 3.

The Department submits that it would be too broad to deem all documents produced as a 'Government function' as created by the Government. For example, there are many works produced under contract by contractors as part of a 'Government function' in respect of which contractors have full right, title and interest under the terms of the contract. For the avoidance of doubt, information created by contractors which is the property of the contractor under contract should not be caught by any deeming of documents produced as a 'Government function'.

### **Issue 8**

There are circumstances in which copyright protection in non-Crown works may subsist for a longer period than copyright in Crown works (see paragraph 35 of the Issues Paper). The Department submits that, as the Crown will never suffer a 'death', copyright protection that subsists for 50 years from the date of creation of the relevant work is generally adequate for Crown purposes.

### **Issue 11**

The Department submits that the prerogative rights and privileges of the Crown should include the text of bilateral treaties negotiated between the Government of Australia and the Government of another state(s).

### **Issue 14**

The Department submits that the moral rights of authors and the Crown are not adequately protected by the *Freedom of Information Act 1982 (Cth)* (FOI Act) and the *Privacy Act 1988 (Cth)*. Once an applicant has received access to documents under the FOI Act there are no

guidelines as to how the material may be used, disseminated or copied. Some protection for the integrity of the material is provided by the Copyright Act. On this basis the Department considers that Crown ownership of copyright should continue to be provided for under the Copyright Act.

The Department consents to the Copyright Law Review Committee Secretariat making this submission available in digital form.

Please contact Helen Horsington, Legal Officer in Administrative and Domestic Law, on (02) 6261 2972 should you wish to discuss any of the Department's submissions.

Yours sincerely,

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