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Dear Fiona

Many thanks for the opportunity to provide a Viscopy submission to the Copyright Law Review Committee (CLRC) concerning the government ownership of copyright material. The issues paper circulated encourages questions regarding the need and options for reform, as well as a cost benefit approach to those options.

The following submission is of an operational, rather than a legal nature. It stems from the observation of Crown copyright in action, during our daily functions and activities as a copyright collecting society for visual artists.

Background on Viscopy

- Viscopy collects royalties on behalf of its 4300 current visual artist members. These include professional fine artists, sculptors, craftspeople, cartoonists, photographers, architects and designers. We have recently been approached by several artist associations in New Zealand to represent them also, in the same manner as APRA operates a subsidiary company in NZ, APRA NZ.
- Our members are freelancers who are dependent upon royalties as a major source of their income. The Australia Council report "Don't Give Up Your Day Job" lists the average income for a visual artist in Australia at AUD\$10,000, almost \$15,000 below that of musicians.

Our current income consists of:

1. A proportion of statutory "secondary" royalties – that is, royalties derived from statutory licenses that cover educational use and Government use under Parts VA and VII respectively of the *Copyright Act 1968*. As we are not a declared society, these royalties are distributed to us through the Copyright Agency Limited and Screenrights, and disbursed to Viscopy members and affiliates;

2. The primary licensing of artistic works created by our members;
3. Voluntary licenses with public galleries concerning the digital use of artistic works created by our members, and one off arrangements concerning the reproduction of artistic works created by our members;
4. Reproductions by commercial galleries of the artistic works created by our members;
5. Voluntary contracts and licenses with auction houses and art resellers, covering the reproduction of artistic works created by our members;
6. In addition Viscopy represents the artistic works of 250,000 international artists via our 42 international affiliations with visual arts collecting societies.

All Viscopy tariffs are based on the international rates set by our affiliates overseas.

RESPONSE TO QUESTIONS

Issue 1

The Committee seeks your views as to whether the 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 Viscopy feels that the Government ownership of copyright material should exclude all artistic works including drawings, paintings including indigenous art, craftwork, photographs, cartoons, illustrations, designs and architectural plans currently within the copyright term which applies to individual creators.
- 1.2 It should also exclude artistic works in so far as they have been incorporated into the other subject matter, including cinematographic films, transmissions, broadcasts, published edition copyright and any other technology not yet devised unless some kind of statutory licence analogous to the “synchronisation” right for sound recording and film (cf. section 23 and the decision of the High Court in *PPCA v FACTS*) can be deemed to apply and equitable remuneration flow.
- 1.3 Display, the giving of grants or project investment by Crown owned entities should not be conditional on the surrender of copyright.
- 1.4 Government ownership of copyright should be reserved for those activities that are the provenance of Government and wholly public functions. The current Act stresses this “purposive approach” approach, namely that the acts must be done “for the service of the Crown in right of a State or Territory”, but this definition is quite inadequate in view of the vast range of services in right of a State or Territory, some of which may not be “for” the Crown.

The drive to acquire creative rights has been driven by the cost recovery and commercialisation trends seen at all levels of Crown activity and in Crown owned entities such as statutory authorities. This has made the Crown a copyright owner with additional powers very hard to negotiate for the creator of artistic works, who is often also dependent on the Crown for exhibition, or as a funding source.

- 1.5 One further issue which is not directly raised is the position of works of artistic craftsmanship and the notorious difficulty of loss of protection for the copyright in those works where the designs they embody are applied industrially. The industrial application of such designs in the service of the Crown lead to a further destruction of the copyright interests of the author. We have no evidence of the Crown ever acting to compensate authors in these circumstances.

Issue 2

The Committee seeks your views as to whether the Government should enjoy all the exclusive rights of copyright.

- 2.1 Viscopy suggests that the Government should enjoy rights of copyright that relate to written work generated by its legislative, executive and judicial public functions. This would include all material generated by an employee of the Crown, but exclude commissioned works. We make further comment in relation to the executive functions of the Crown, below.
- 2.2 It is our understanding that the exclusive ownership of copyright was never intended to apply to works created by third parties not engaged in the public functions of the Crown.
- 2.3 Viscopy calls upon the CLRC to clarify this distinction in the reforms proposed, and to clarify which entities are considered part of the Crown. The gradual expansion of Government activities using the copyright material of citizens has resulted in a financial detriment to visual authors, who by income are some of the poorest members of the Australian community. Significant test cases, such as the “Morning Star Pole” case and others have pointed up the deficiencies in the current copyright law balance in this area. In particular, where copyright material is to be acquired or used, the current mechanism involving Copyright Tribunal proceedings and the settling of blanket terms is at odds with the more streamlined and individualised approach evident in sections 163-165A of the *Patents Act 1990*.

Issue 3

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

- 3.1 Viscopy suggests that moral rights should apply to all creators of works, excluding works that have been created in the employment of the Crown. In so far as visual artists are employed by the Crown (such as official war artists) specific policies should be in place to preserve the rights of those visual artists against infringements of rights authorship, misattribution or integrity.

3.2 In the case of artistic works completed by non-Government employee third parties, it is not a just position that the Crown could require a compulsory waiver of the moral rights to creative works, whether it has published them first, or otherwise. This concept goes against the initial principle of moral rights, has detrimental income impacts for individual creators and may act as a disincentive for creators to allow Government use of their works.

Issue 4

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

- 4.1 The Crown should have the same treatment as any other copyright owner, to discourage anti-competitive behaviour in light of recent commercialization.
- 4.2 For instance, if the Crown commissions a portrait of the Prime Minister, the artist does not have to be paid reproduction royalties, although the collection often will sell reproductions of the work on cards, in books catalogues etc.
- 4.3 If a private commercial gallery were to commission the same work, those reproduction royalties would have to be paid. Many of our members have works impacted in this way.
- 4.4 Just as the commissioning rule was repealed for private entities, it should be repealed for the Crown.
- a) sections 176 and 178 (works, sound recordings and cinematograph films made by, or under the direction or control of the government).**
- 4.5 Viscopy suggests that ss 176 and 178 be repealed, as per response to issue 1.
- b) section 177 (works if published by, or under the direction or control of the government).**
- 4.6 Viscopy suggests that s 177 also be repealed. This section is too broad and impacts the rights of third party professional copyright creators.
- c) section 35(6) (works made pursuant to the terms of employment under a contract of service or apprenticeship)?**
- 4.7 We feel that this is a standard employer employee relationship, where the copyright deriving from employment should reside with the employer.

Issue 5

The Committee seeks your views as to whether the *Copyright Act 1968* should make express provision with respect to copyright in materials produced by:

- a) **the executive;**
- b) **the judiciary; and**
- c) **the legislative.**

5.1 Legislation, judgements and parliamentary proceedings should be made available to the public by the Crown, without copyright implications. For instance such materials are available in the public domain in countries such as the United States and New Zealand. Individual instances where artistic works in particular are broadcast under guise of these exceptions could usually be dealt with under laws relating to abuse of court process, contempt of court and breach of parliamentary privilege.

5.2 There may be other works of the Crown that are not absolutely required to be published to the same degree, particularly in relation to the executive functions of government. Such works may also be subject to confidentiality or full public access may not be in the national interest, subject to Freedom of Information provisions. Government expenditure is not of itself an excuse to violate rights which would otherwise remain with private citizens.

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 Copyright Act 1968, and how this should be determined.

6.1 Viscopy feels this question should examine the function of the entity under scrutiny. We suggest that Government Business Enterprises be excluded from the definition for the purposes of copyright, as they are commercial in nature. Such entities should be responsible for their own copyright obligations. They do not perform public functions, with the exception of say the Universal Service Obligation, which Telstra has been well compensated for by the Crown.

6.2 The degree to which statutory authorities, or indeed some state government departments perform public vs cost recovery vs commercial activities, has substantively changed over the past 20 years. The copyright law has remained the same.

6.3 It is the position of Viscopy that where any entity, Crown or otherwise, engages in cost recovery or commercial activity that results from the work of a third party, that appropriate compensation be paid to the copyright creator. We are aware of cases where an artist has received no remuneration despite their works being reproduced and sold in shops run by Crown owned entities. This is clearly a normal retail activity, regardless of who owns the shop.

6.4 The lack of clarity on this matter has left copyright creators vulnerable to pressure to give up their reproduction rights, when the “public” use is likely to be commercial in effect.

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 government. If so, in whom should the copyright vest?

7.1 Viscopy considers that all works that are materials produced by public employees, as part of a public, *non commercial* function, should be deemed to have been created by government.

7.2 This specifically excludes:

a) functions performed by government that are commercial in current or future intent, or that have commercial or royalty loss implications for third party creators of copyright.

b) the rights of artistic or commissioned works. This is to preserve the rights of said works for the creators and to stop the exploitation of reproduction rights by the Crown, unless appropriately paid a fee for their use.

Issue 8

The Committee seeks your views as to the appropriate duration of government copyright. Should it be the same as for copyright material.

8.1 The duration of government copyright should be the same as for copyright material.

8.2 However Viscopy feels that the rights of all artistic works currently under use by the Crown, that are under copyright, should be retained by the artist, rather than the Crown. Where there is no identifiable individual human author or authors, then the copyright term applicable to the Crown conferred by sections 180 and 181 should remain (subject always to copyright term extension proposed by the Government).

8.3 Viscopy now represents two photographic associations and notes that the length of copyright for photographs should be extended to be the same as for other visual works, as proposed in the United States Free Trade Agreement.

8.4 Should the FTA not come into effect, Viscopy would strongly encourage the CLRC to support an identical provision concerning the copyright of photographs in the *Copyright Act 1968*, to bring the rights of photographers in line with those enjoyed by other visual artists in Australia, as is long overdue.

Issue 9

The Committee seeks your views as to the application of exceptions to government copyright material. Should the exceptions apply to government copyright material in the same way as they apply to material?

9.1 It is Viscopy's experience that there is widespread abuse of these exceptions, both in a private sector and Crown context. Many entities claim to require the works of our artists for study purposes, for instance, including some that do not have educational or cultural functions. Other entities may have these functions, but the rights in question are actually being reproduced for commercial gain.

9.2 In addition, the international convention of licensing a copyright work dictates that though a lower tariff is used to calculate the "cultural /educational" use of a work, such uses still result in a payment being made to the copyright creator.

9.3 Viscopy suggests the CLRC review this area, being mindful of the size and influence of the Crown, the complexity of having rights in multiple State, Territory and Federal governments and the difficulty of negotiating with them, for an individual creator.

9.4 We also point out that Part VII of the Act, and more particularly subsection 183(11) adopts the expedient of simply excluding use "for the educational purposes of an educational institution" from this Part. We see a combination of exclusory provisions that then place the particular activity "at large" within the general governance provisions of the Act combined with provisions by which certain entities or emanations of the Crown would be a sensible legislative balance in keeping with the scheme of the Act. The general principle of Australian copyright law that all dealings with copyright material must be both fair *and* for a permitted purpose should govern the letter and spirit of such combination of exclusions and inclusions.

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 license and appropriate model?

10.1 Yes, Viscopy supports the position to allow multiple copies of the decisions of courts and tribunals, having regard to the general principles regarding contempt of court and abuse of process referred to above. A blanket license should not be necessary if reforms allow such decisions to be in the public domain. It is in the civic interest of citizens to have access to such materials. That is the heart of the concept of "public function".

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 Even though the inviolability of prerogative rights were specifically identified with the insertion of section 8A in 1980, Viscopy supports the proposition that prerogative rights should be further clarified in legislation.
- 11.2 It is suggested that the prerogative right as currently expressed in section 8A should be extended to include limited hard copy new media uses that relate specifically to judicial materials and legislative materials. For instance a CD Rom of Crown Acts, or a multimedia project concerning the judiciary.
- 11.3 However, from our experience with the internet, we know that it exists globally, outside the jurisdiction of any one nation. Therefore, we suggest that the extension of the Australian prerogative right to the internet could be difficult to implement in practice.

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 As per previous answers, Viscopy is particularly concerned regarding the “just terms” implications of public acquisition of copyright from copyright creators, for the purposes of potential future commercial activities either by the Crown or Crown owned entities. The particular problem of valuation of intellectual property assets, particularly where the particular asset has not yet begun to generate a revenue stream, the reduced copyright term granted by legislation to the Crown where it acquires such property and the often unique quality of the copyright work all combine to render the operation of such “just terms” acquisitions unpredictable. Without guidance from the Courts or the Copyright Tribunal with regard to setting such just terms it is not possible to support the present state of affairs.
- 12.2 The lack of co-ordination between the Commonwealth and the States on copyright issues has made it difficult to follow up which entities consider themselves part of the Crown. It is also true that policy regarding the Crown procurement of intellectual property assets differs from Government to Government and from agency to agency. In some cases – such as the State of Victoria – intellectual procurement policy has been in the course of development for a number of years and remains unpublished. Valuation of intellectual property assets is not uniform, if it is ever conducted at all, and policy for remuneration of authors, sale, cost recovery and enforcement (including enforcement outside of a particular State or Territory government’s jurisdiction is also haphazard or non-existent and debate conducted, if at all, within the bureaucracy and not in the public domain of the Copyright Tribunal, the Courts or published policy.

12.3 The exercise of a limited monopoly right such as copyright whether by the Crown as an acquirer or the Crown as a provider must also give rise to the risk of anti-competitive effects. The public and the government alike also retain a competing interest in the on-going integrity and security of data and copyright material in general. The particular balance of personal and public interest where Crown copyright is concerned resembles but is far from the same as the wider copyright debate between the public good and private incentive. In view of the deficiencies and discrepancies in current Crown conduct between the States and Territories described above, considerable additional work using concrete economic data is required to publish and justify any policy balance intended to be reached by any proposed legislative clarification or reform. Viscopy has a limited number of specific examples but (like the Myer Enquiry into the Visual Arts before it) it has been unable to obtain statistics from the Bureau, among other sources, because the relevant categories for copyright use, remuneration and trade both in government and the private sector are only just being classified, and data will only become available in the future. (See ABS Culture, Sport and Recreation Statistics: Current Activities and Future Strategy (Australian Bureau of Statistics, Adelaide) September 1992).

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 Viscopy suggests that the CLRC investigate the constitutional and competition policy impacts of the Commonwealth and State Governments harmonising their approach to copyright with regard to creation, acquisition, ownership, exploitation and divestment.
- 13.2 The visual arts sector is a significant contributor to Australia's GDP, adding approximately \$160 million to GDP in 1996-1997 according to the most recent statistics published in the Myer Enquiry Report (table 2.5). The Myer enquiry noted that value-added data were estimates from available Bureau of Statistics material and other sources. Copyright services were estimated to contribute less than \$0.1 million for 2000 – 2001 (Appendix G, Activity 9, p377). The level of remuneration through provision of copyright services to the visual arts sector is still clearly in its infancy compared to other cultural products, particularly film, music and literature.
- 13.3 The 1999 study *Use of Artistic Work in Australian Publications* commissioned by Viscopy and Copyright Agency Limited (CAL) found that Government is a regular user of the works of visual artists, (Table 13). By virtue of section 176 of the *Copyright Act 1968* (the "Act), however, copyright in such works vests in the Crown in right of the Commonwealth or of a State upon first publication of that entity.

- 13.4 The same study indicated the startling survey result that no Government respondent obtained any copyright rights from any source for use in its publications (Table 25). One can only assume that this is because Government respondents assume that they may rely on the provisions of section 176. The effect, however, is that visual artists lose their copyright on first publication and therefore have no entitlement to equitable remuneration under the existing schemes.
- 13.5 Further, the vesting of copyright in the Crown gives rise to a shorter copyright term, by virtue of section 180 of the Act. This too leads to a diminution of value of the copyright when compared with the term (life of the artist plus fifty years) where the artist retains copyright ownership.
- 13.6 These few statistics alone indicate that in practical terms, Crown copyright is largely ignored or flouted when compared with copyright rights exercised in the private sector. All sectors of government appear to be uniform in this disregard. That said, various statutory corporations and other entities which may or may not be emanations of the Crown are not distinguished. We also point out that Local Government, particularly where it is carrying out programs funded and mandated by State, Territory or Federal governments are not dealt with here.
- 13.7 In practical terms, Viscopy does not consider the situation has progressed past the situation as set out in the Australian Copyright Council Bulletin Government and Copyright (ACCC Bulletin 76 Vol 5) in which the emphasis is largely about ownership and management within government rather than rights acquisition, remuneration and other interaction with the outside market and individuals as creators.

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 The public interest is best served by legislation, judicial opinions and public policy being accurate and the process of creation and source of authority transparent.. This is because a large number of decisions will then be carried out in the community based upon those works. Use will be guaranteed by the implication of social compulsion that is attached to the force of law. In this sense, the Crown represents the collective will of the people or society, as well as more narrowly the Queen. In this sense the Crown is a monopoly as nobody else can pass laws, create judicial precedents etc.
- 14.2 This is a completely different case than the creation of an artistic work, which is a competitive activity - generally the product of a single imagination or defined group of imaginations - that of the creator. The need to reward the creator of an artistic work with a royalty is paramount in societies such as Australia, where remuneration from artistic activities is likely to be at the lower end of the income

scale – artists could earn more by working for the public service as a clerk, for instance. They pay a high opportunity cost for the creation of artistic works, which are considered desirable by society.

14.3 While a degree of imagination is no doubt used to develop acts of Parliament, government policies and judicial decisions, these works of the Crown are based on fact, research and impartial processes as well as elements of party politics, lobbying, consultation etc.

14.4 The purpose of Crown copyright should be to ensure that such items are authentic. The purpose could be seen to authenticate what is a Crown work in the public legislative, judicial or executive interest. As a method of retaining authority and authenticity, Crown copyright is an indirect mechanism which bolsters much more direct methods of control of data integrity and data flow.

14.5 Despite impacts on the initial rationale for government ownership of copyright, Freedom of Information is essential to act as a check and balance against the extensive information powers of the Crown, both over the community and the individual. This has become more important since the commercialisation of government has increased.

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?

15.1 This question may be valid for the consumer, but copyright was not devised for their convenience.

15.2 This is certainly not a question that many artistic copyright creators ask – their very livelihood depends on the maintenance of copyright. They know what artistic works they have created, and when, and for what purpose.

15.3 Viscopy is concerned that Australia is vulnerable to ill conceived, anti-copyright schemes such as Creative Commons (formulated by software developers at Stanford in America in Palo Alto, California), because of the lack of appreciation many institutions have of their copyright obligations and the very real economic effect of any shift in the balance between private incentive and public interest.

15.4 Creative Commons is based on a software model and has tried (with limited success, even within the US) to extend the principle of copyright free works to all artistic works. Unfortunately this robs copyright creators of their rightful income from royalties. There is also a problem enforcing these contracts, even in America.

b) How does one safeguard against the distortion or inappropriate use of government material made available through new technologies?

15.5 This is really a question of online security policy, in which law features as part of the matrix of risk management. Viscopy would suggest the Crown adopts online security measures such as those we use ourselves to protect artistic works. Issues of trusted systems in a completely electronic environment are better dealt with through the mechanism of legislation relating to Parliamentary and other government records, the archives provisions and those provisions of the criminal law, telecommunications and broadcast legislation.

c) Is facilitating government information online inconsistent with the policy objectives behind government ownership of copyright.

15.9 The secure facilitation of public function government information online is a good example of democracy in action. The implication here is that the information belongs to the community, as in the Federal US or New Zealand. Copyright remains an indirect but important method of identifying an owner and a source responsible for the publication of such information in the form it was intended to be published. With its emphasis on form, copyright remains an important conceptual force in the preservation of authentic forms of information as opposed to the altered, mediated or inauthentic.

15.10 The implication of the idea of the Crown as an individual copyright owner, with powers above those merely economic powers of any other copyright owner, make it into a behemoth. This has an impact on the capacity of the executive, judiciary and legislature to impartially carry out their public functions.

15.11 Is the Crown acting in terms of its public functions, funded by the taxpayer, or a desire to achieve cost recovery? The latter is a policy determination and should not have the force of law. It is a perspective that apes the private sector, and yet the Crown has greater powers than the private sector.

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 If these materials are not, following reforms to the *Copyright Act 1968*, in the public domain, they should be accessible to the public for re-use where the information is of a nature that is not confidential. Otherwise there may be a growth in ignorance with regard to the references behind public functions.

Issue 17

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

- 17.1 The notion of Crown copyright is based on principles dating back to feudal times. Similar principles have evolved in a number of monarchies and successor theories which dwell on the absolutist values of the State.
- 17.2 As Australia heads down a route likely to lead to a Republic, the idea of Crown copyright is less likely to have currency than the US system of public domain for public government works. At the same time, the experience of both European and post-colonial countries suggest that protection of cultural heritage, folklore, indigenous and archaeological artefacts and work that passes from individual artistic control to the public domain with involve calls upon the government in action to protect such work from selective exploitation and debasement.
- 17.3 The ability of the Crown to have reproduction rights in artistic works and other works of cultural heritage assigned to itself should be investigated and restricted by regulation and or protocol. It is also clear that in some cases there will be Constitutional constraints on such acquisitions. Again, a balance of factors which include international developments and treaty obligations is necessary.

Issue 18

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

Creators of Artistic Works

- 18.1 Viscopy suggests that the CLRC consider a means of exempting the artistic works of private professional creative individuals and groups from Crown copyright in all circumstances.
- 18.2 This to include a retrospective nullification of all artistic works rights waivers or ownership agreements issued to the Crown, via encouragement, as a condition of display, investment, or grant funds, or via some form of alternative strong suggestion without the copyright creator having access to legal advice. Indigenous artists are particularly vulnerable to the latter.
- 18.3 This to include an undertaking in the form of a protocol by the States and Commonwealth, including Crown owned entities, not to enter into any similar waivers or ownership agreements in the future. Such a protocol could be negotiated via the Cultural Ministers Council.

- 18.4 The impact of the above is that all reproductions of artistic works by the Crown or Crown owned entities, should be subject to a royalty, to be paid to the creator of the artistic work at a rate set by private negotiation or, in the last resort, an application for acquisition on just terms modelled on provisions similar to those in the Patents Act ss. 163-165A or by means of equitable remuneration set by the Copyright Tribunal.
- 18.5 The most cost effective way of paying these reproduction fees would be in the form of a licence to Viscopy to cover the Crown and Crown owned entities of each state. The entities covered would have to submit a statement of annual use (currently performed by the NGA, NGV and AGNSW) so that the funds could be allocated to artists as a function of use.
- 18.6 The implications are, a reduction in the capacity for future cost recovery by the Crown, and Crown owned entities, not an expense.

Crown Copyright

- 18.7 As suggested by the Australian Copyright Council, those entities considered as part of the Crown should be listed as part of the *Copyright Act 1968*.
- 18.8 The Crown should consider its aims in making information available to the public. If there is a desire for maximum penetration of information, then the application of fees to Crown copyright may well restrict access. The CLRC should examine the cost benefit implications of public domain access.
- 18.9 The Crown should undertake an audit of the impact to date of commercialisation, and the impact this process has on the definition of what is “Crown copyright”.

Issue 19

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

- 19.1 When Viscopy was created, as part of Creative Nation in 1996, no new funds were allocated to the Crown or the entities it owns, to pay reproduction royalty fees to visual artists. Viscopy may not have changed the obligations these entities have under the *Copyright Act 1968*, but it did give artist members a means of collection and distribution for their royalties.
- 19.2 This has resulted in a variety of responses to copyright obligations, ranging from full compliance to no compliance at all. The matter is further confused by a lack of legal understanding by some Crown owned entities. The resulting stalemate could be corrected by uniform licensing arrangements being established, as is the case with other art forms.

Fees for the Use of Legislative, Judicial and Executive Materials

19.3 Should the Crown universally apply fees for reproduction on legislative, judicial and executive functions, then the implication for those members of the public who cannot afford access should be considered.

The CLRC has the opportunity to suggest how the Crown can best act as a positive, best practice example for the community regarding the use of copyright.

Best regards

Chryssy Tintner MBA MFA
VEO
Viscopy