

### **Submission to Productivity Commission re Intellectual Property Arrangements: Draft Report**

I write as the Chair of the Professional Historians Association NSW & ACT (PHA NSW & ACT) representing independent public historians in New South Wales and the Australian Capital Territory to comment on the Intellectual Property Arrangements draft report.

1. Firstly, we agree with the first statement of the key points that Intellectual property (IP) arrangements need to balance the interests of rights holders with users.
2. We also agree and commend you for draft recommendation 4.1, and strongly agree that the Australian Government should amend the *Copyright Act 1968* (Cth) so the current terms of copyright protection apply to unpublished works. As is made clear in the Report, that unpublished works remain in copyright for perpetuity is a major issue for libraries and archives and much needed digitalisation programs. Copyright in perpetuity is also a major impediment to historians as we rely heavily on unpublished material to produce new and innovative histories.
3. The PHA NSW & ACT agree with the conclusion that copyright protection currently 'lasts too long', particularly since the extension of the duration of copyright under the Australia United States Free Trade agreement (AUSFTA). However, the recommendation that copyright last a mere 15-25 years from creation is to solve one problem by creating another. Many historians and others who produce creative works are not highly paid and need copyright payments over an extended period. We urge a more moderate recommendation, such as the term of copyright extending to fifty years since the creation of the work.
4. The PHA NSW & ACT is also concerned with the proposition that Australia adopt US-style 'fair use' exceptions to our Copyright Act. Such a system relies on case law and, as Canada has found, is detrimental to individual authors and creators and results in a decline in works produced in the respective country. Australian produced works, including history publications, would suffer under a US-style 'fair-use' exception. For many historians, the current educational copying scheme sees monies returned to the

authors when their work is copied by schools, universities and colleges, as much of it is. This would be lost under the proposed changes. Further, the cost of defending their rights in court would be prohibitive to independent scholars and historians.

We therefore request that you consider revising your draft report by extending the recommended time for copyright and dropping the proposed change to 'fair use'. We look forward to unpublished material no longer being in copyright for perpetuity.

Yours sincerely

3 June 2016

Dr Mark Dunn

Chair

Professional Historians' Association NSW & ACT