

## Victorian Curriculum and Assessment Authority submission to the Productivity Commission's Draft Report into Australia's Intellectual Property Arrangements

### PUBLIC SUBMISSION: Summary Position Statement

#### *Introduction*

The Victorian Curriculum and Assessment Authority (VCAA) is a statutory authority, continued under the *Education and Training Reform Act 2006* (Vic) and responsible to the Victorian Minister for Education. The VCAA provides curriculum, assessment and reporting for *all* Victorian students and learners by developing and implementing:

- the Victorian Early Learning and Development Framework (VELDF)
- the Victorian Curriculum F-10/AusVELS
- the National Assessment Program – Literacy and Numeracy (NAPLAN)
- the Victorian Certificate of Education (VCE)
- the Victorian Certificate of Applied Learning (VCAL)

Across these programs, the VCAA develops examinations and curriculum resources that sometimes include third party copyright materials. For the inclusion of such materials in examinations the VCAA relies on Section 200 of the *Copyright Act 1968* (Cth) ('the Act'). For the inclusion of third-party materials in curriculum resources (including the publication of past exam papers) the VCAA secures licences directly from rights holders within the framework of Section 183 of the Act.

This VCAA submission addresses Chapter 5 (Copyright licensing and exceptions) of the draft report.

#### *Summary*

The VCAA supports the introduction within the Act of a Fair Use exception containing clear illustrative purposes. The VCAA would also welcome the simplification and realignment of the government statutory licence schemes to match current needs in the digital environment as well as any amendments or refinements to s183 which can bring greater certainty in outcome for government activity.

- ***How a Fair Use exception can supplement reliance on Section 200:*** Not having official status as an educational institution, the VCAA cannot rely on the usual provisions available to educational institutions which enable these to copy and communicate copyright works for educational purposes (Statutory Licence Parts VA and VB and s200AB). Section 200 (specifically s200(1)) remains the only educational exception within the Act on which the VCAA can rely in order to fulfil its statutory function to providing assessment programs to

schools. As this exception currently does not include the right of communication, its utility is being considerably and rapidly eroded as the education sector transitions assessment programs from a paper-based examination process to secure online digital delivery. Establishment of a Fair Use exception will be absolutely essential if s200 remains unamended.

- ***Streamlining and realigning the scope of the Government Statutory licences (s183A to 183F)***: The Productivity Commission specifically asks whether the government statutory licence schemes require reforming in similar manner to that proposed for the educational statutory licence schemes (Information Request 5.3). The VCAA supports the general calls made by government bodies, and as proposed in the ALRC's final report, to make the government statutory licences less prescriptive. The VCAA also contends that the limitations of the government statutory licence schemes in their current form are impractical and at odds with the demands of the digital environment, particularly in relation to essential interactions between the school sector and curriculum authorities.
- ***Issues with reliance on s183***: The VCAA seeks also to raise awareness about the difficulties curriculum and assessment authorities face when relying on Section 183 (negotiating Crown Use directly with rights holders). The process of negotiating usage under s183 is often laborious, outcomes are often uncertain and costly, and it has revealed a divergence in interpretation between rights holders and government bodies like the VCAA about the scope and protection provided under s183.
- ***How a Fair Use exception can supplement reliance on Section 183***: The VCAA suggests that a combination of a Fair Use exception, encompassing minor non-commercial, educational uses, and a simplified government statutory licence scheme accounting for more significant usage, would benefit the VCAA. Such a combination would enable the VCAA to proceed in developing and delivering innovative curriculum and assessment programs with greater certainty of costs and outcomes, minimal delay and less bureaucracy.