




Australian Government

Department of Communications and the Arts

Bureau of Communications and Arts Research

Terms of Reference: review into the efficacy of the Code of
Conduct for Australian Copyright Collecting Societies

July 2017



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Background

This review responds to recommendation 5.4 of the Productivity Commission's Inquiry Report into Intellectual Property Arrangements, noting the Australian Government's stated preference for the Department of Communications and the Arts to undertake the review, in consultation with the Australian Competition and Consumer Commission (ACCC).

Scope

The Bureau of Communications and Arts Research (BCAR), within the Department of Communications and the Arts, will review and report on the efficacy of the Code of Conduct for Collecting Societies (the Code).

In undertaking this review, the BCAR will assess the extent to which the Code promotes fair and efficient outcomes. This will include assessing:

- whether the Code is meeting its rationale and objectives, including promoting confidence and participation in the system, and mitigating any potential market power issues where these occur in relation to collecting societies
- the extent to which the Code promotes transparency, accountability and good governance including by examining whether the Code contains sufficient monitoring and review mechanisms, and
- the extent to which the Code represents best practice in comparison with other domestic and international codes and guidelines.

Any other matters that are deemed significant and relevant to the scope of the review following stakeholder consultation may also be examined.

The review will then make findings and recommendations on ways to improve overall confidence in the system and how these could be implemented. Recommendations will address whether the Code should be made mandatory and whether objectives or provisions of the Code should be amended, taking into account additional compliance costs for affected parties.

The review will, where appropriate, draw on the work of previous inquiries into copyright, but only insofar as they relate to the operations and governance of collecting societies. This review will not include examination of the jurisdiction and decisions of the Copyright Tribunal, and whether or not specific licence fees or royalty payments are fair and reasonable.

Process and governance

The review team will be informed by subject-matter expertise from within the Department, as well as broader support and technical advice from the ACCC, and other relevant government agencies on the implications for any changes for competition and the general interests of consumers.

The BCAR will consult widely with collecting societies, user groups and other relevant stakeholders about the Code's efficacy and the review's proposed recommendations. Public consultation will be



undertaken following the release of a discussion paper in mid-2017, and the publication of a draft report in late-2017. Public submissions will be made available on the Department's website.

An external reference group consisting of key representatives from collecting societies, licensee groups and other interested parties will also be assembled after the publication of the discussion paper to provide input into the process. Membership of this group will be published on the Department's website once finalised.

The review team will report on its findings and recommendations to the Minister for Communications by March 2018. The final report will be publicly released.