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Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam,

**Copyright Amendment Bill 2025 - an opportunity to correct anomaly affecting architects**

Thank you for progressing the *Copyright Amendment Bill 2025* and for the broader work underway to modernise Australia's copyright framework. We support efforts to clarify and update the law.

We write to highlight an important gap that places Australian practice at odds with international norms. While the Bill advances several worthwhile reforms, it does not address section 176 of the *Copyright Act 1968* - a provision that treats independent consultants as if they were Crown employees for copyright purposes.

Under general copyright principles, authors of creative works retain ownership unless they are employees creating works in the course of their employment. Section 176 disrupts this balance. It has been interpreted to vest copyright in the Crown for architectural works created by independent consultants engaged under contract - treating these external professionals as though they were government servants, despite having no employment relationship with the Commonwealth.

This anomaly gives government an exceptional position unavailable to any other client commissioning professional services. The United Kingdom, which had a comparable provision in its *Copyright, Designs and Patents Act 1988*, recognised this inequity and amended its law to confine Crown copyright to works created by officers or employees of the Crown. Independent contractors in the UK now retain their copyright and grant licences for government use. We ask that Australia follow this precedent and take this opportunity - through this Bill or a closely following tranche - to correct this long-standing oversight.

**Why this matters**

- Normal practice: In the private sector, architects retain copyright and grant a project specific licence to clients. This is efficient, fair and well understood.
- Government practice: Section 176 has been applied so that works made "by or under the direction or control" of the Crown vest in the Crown. In practice, this captures independent consultants and compels assignment of intellectual property.
- Real world impacts: Government can replicate buildings without further engagement or payment.

- Architects are constrained from adapting or exporting their own designs.
- Public agencies gain a competitive advantage inconsistent with competitive neutrality.
- The approach undermines authors' material interests protected by Article 27(2) of the Universal Declaration of Human Rights.

**A long-recognised oversight**

In 2000, the Intellectual Property and Competition Review Committee found section 176 gives the Crown preferential treatment and recommended amending it to put the Crown "in the same position as any other contracting party," allowing architects to negotiate terms that prevent reuse or require fair payment for reuse.

The UK has since confined "Crown copyright" to works by officers/servants of the Crown and procures licences from independent contractors. US practice is similar. There is no evidence that these changes have impeded government delivery.

**What we are asking for**

- Limit Crown ownership to employee created works: Amend section 176 so ownership vests in the Crown only where the work is made by a Crown officer/employee in the course of their duties. Make clear that ordinary briefs, standards and oversight do not make a consultant's work "under the direction or control" of the Crown.
- Provide a practical statutory licence for government projects: For works commissioned from independent contractors, establish a non-exclusive, non-transferable, project and site-specific licence, effective upon payment. It should cover approvals, tendering, construction of a single instance (unless otherwise agreed), operation, maintenance and safety. Any additional use (extra sites/builds or derivative designs) should require agreement on fair terms.
- Clarify scope and preserve rights: Confirm that "architectural works" include drawings, specifications, models and digital files (including BIM), and preserve moral rights.
- Align procurement: Update Commonwealth Procurement Rules and model consultancy agreements to reflect the amended settings and encourage harmonised State and Territory adoption.

**Key Benefits**

- Keeps government projects moving with clear, sufficient rights for delivery and asset management.
- Restores competitive neutrality and aligns Australia with UK/US practice.
- Protects Australian architects' IP and export competitiveness.
- Reduces disputes through clear statutory defaults.

We appreciate the progress being made through the current Bill. Addressing section 176 alongside these reforms - or committing to do so promptly - would correct a long-standing anomaly in a way that is fair, internationally consistent and practical for government delivery. Thank you for considering our submission.

Yours sincerely,

**Adam Haddow**
National President