

EDUCATION, SCIENCE AND TRAINING

SENATE LEGISLATION COMMITTEE - QUESTIONS ON NOTICE 2004-2005 ADDITIONAL ESTIMATES HEARING

Outcome: 1

Output Group: 1.2 – Assistance to individuals including those with special needs.

DEST Question No. E482_05

Senator Crossin asked on 16 February 2005, EWRE Hansard page 117.

Question:

I understand there is a standard Commonwealth clause regarding intellectual property being in fact owned by the Commonwealth. We have seen that in DCITA with funding to arts centres.

Has there been concern raised about that standard clause in contracts for tutors?

What are the issues around intellectual property?

Answer:

Intellectual property

Where the Australian Government contracts directly with tutors (i.e. not through providers), there is no intellectual property clause proposed for inclusion in the contracts.

Standard Indigenous Education Agreements (IEAs) for the 2005-08 quadrennium propose that intellectual property rights in all funded material will be owned by the provider, subject to the rights of any third party. The Australian Government will require a license to enable its use of reports and in some cases other funded material under these agreements.

In bilateral discussions a number of major providers have raised issues concerning the grant of an unlimited license to the Australian Government to use funded material. Two main issues have been raised, firstly the impact of the grant of an unlimited license on a provider's capacity to commercially exploit the intellectual property in the funded material and secondly, the requirement to secure a similar license in respect of third party intellectual property rights in material a provider wishes to incorporate as part of the funded material, including the capacity of providers to secure such a license from the third party.

The Australian Government will only require a permanent, irrevocable, free, world wide, non-exclusive license (including a right of sub-license) to use, reproduce, adapt and exploit the intellectual property rights in any reports provided under the terms of an IEA. Initially this license was proposed in respect of all funded material.

A license to enable the use of funded material will be required in cases where substantial project funding is provided under an IEA and it is likely to result in the development of materials where it may be desirable, for the purposes of advancing the Objects of the *Indigenous Education (Targeted Assistance) Act 2000* (the Act), to ensure that material can be made widely available to other providers delivering the Australian Government's Indigenous Education Programmes.

This will mean that other providers would not have to use their Australian Government funding to acquire this material, the development of which the Australian Government has already funded.

A license will not be required in respect of funded material which is developed incidental to the delivery of Indigenous Education Programme elements such as Supplementary Recurrent Assistance and ITAS In-class Tuition. This type of material would usually be of low commercial value or limited potential benefit to other providers in advancing the objects of the Act.