

Building the Data Commons using open content licences: some observations from the Australian experience 2005 – 2010

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CODATA

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2010



Queensland University of Technology



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What is the nature of this data commons?

- Reconceptualize the “public domain” or commons:
 - New conceptualisation of “public domain”
 - Not just a no rights “wasteland [or] dump on the outskirts of respectable culture” (Bollier, *Viral Spiral*)
 - Something of value in its own right – open knowledge and content that can be accessed, reused and distributed
 - Encompasses materials that are copyright-protected and made available for access and reuse (licensed) under open source software and open content licences

The commons has to be built (constructed)

- Openness is not a naturally occurring (or enduring) state
- Openness must be constructed
- When dealing with intangible interests in intangibles, openness is achieved using legal tools (Uhlir, Reichmann, Stallman, Lessig)
- “free beer” vs “free as in speech”
 - Stallman – the latter, not the former;
 - the free beer approach will not achieve openness for data – instead, can lead to lock up/lock out

A code for the commons

- Code vs Code: [tech] code / standards / [legal] code
- Legal code is multi-layered, exists in different dimensions, ranges from general to specific, differs in degree of formality
 - Global/local (international/national)
 - General/specific

Using legal code to construct openness

- Global (International)
 - Treaties, UNESCO, OECD, WTO, International science collaborations (Antarctic, Polar Information commons)
- Local (National)
 - General
 - Statutes governing: COPYRIGHT, patents, freedom of information (right to information), trade secrets
 - National Information Strategy/Policy
 - Specific
 - Statutes governing: environmental reporting, exploration for minerals and petroleum, toxic pollutants, etc
 - Policies on access to and reuse of Public Sector Information, (PSI) research outputs (data, publications)

The legal code and openness

OECD PSI Recommendation (2006)

- the “**Openness**” principle states:
 - “Maximising the availability of public sector information for use and re-use based upon **presumption of openness as the default rule to facilitate access and re-use**. Developing a regime of access principles or assuming openness in public sector information as a default rule wherever possible no matter what the model of funding is for the development and maintenance of the information. **Defining grounds of refusal or limitations, such as for protection of national security interests, personal privacy, preservation of private interests for example where protected by copyright, or the application of national access legislation and rules.**”
- the “**Access and transparent conditions for re-use**” principle states:
 - “Encouraging broad non-discriminatory competitive access and conditions for re-use of public sector information, eliminating exclusive arrangements, and removing unnecessary restrictions on the ways in which it can be accessed, used, re-used, combined or shared, so that **in principle all accessible information would be open to re-use by all**. Improving access to information over the Internet and in electronic form. **Making available and developing automated on-line licensing systems covering re-use in those cases where licensing is applied, taking into account the copyright principle below.**”

High level recognition in Australia of the importance of open access to data

“Open access to government data can dramatically increase the value created from the data both socially and economically [and] the society as a whole benefits from access to the data”

- Senator Kate Lundy, Free and Open Source Software for Geospatial Conference 2009



Creating information pathways

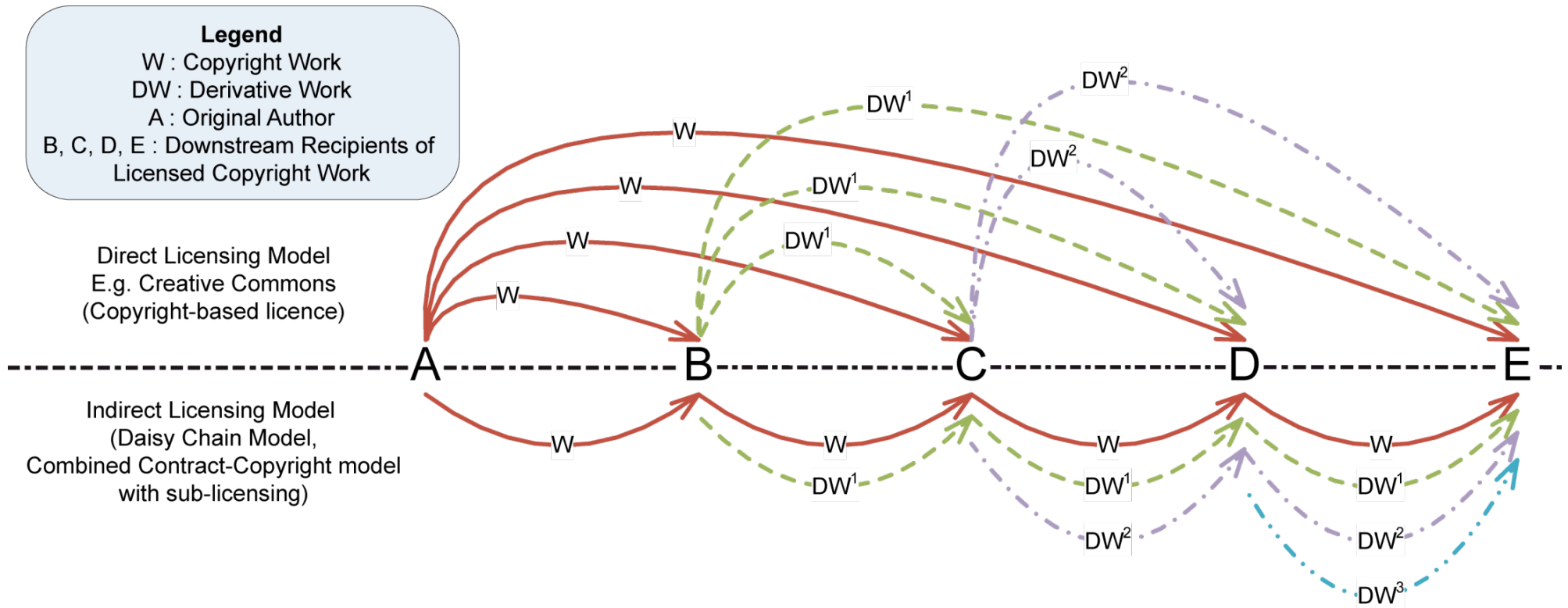
- Complexity of information pathways:
 - within government – among departments, agencies, different levels of government
 - between government and community:
 - From government to community
 - From community to government to community
 - from local to national to global
- Problem of “licence logjams”
 - Copyright has been relied on to control access (to prevent flow of information or to preserve commercial rights);
 - Often, there is no licence, so access/use/reuse rights are unknown – high transaction cost of negotiating new licences
 - Where licences exist, terms are incomprehensible or inconsistent

Creative Commons (CC)

- Copyright licensing vs “no rights” approach
- licences are based on existing copyright
- Licences are direct from the copyright owner to the end user



CC is a Direct, Copyright-based Licence



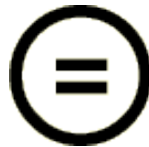
Creative Commons (CC)



Attribution – attribute the author



Noncommercial – no commercial use



No Derivative Works – no changes allowed



ShareAlike – changes allowed, but only if you put the new work under the same licence

Creative Commons (CC)



Attribution



Attribution-ShareAlike



Attribution-Noncommercial



Attribution-Noncommercial-ShareAlike



Attribution-NoDerivatives



Attribution-Noncommercial-NoDerivatives

Creative Commons (CC)

- Advantages of this approach for government and publicly funded research bodies:
 - mirrors the fundamental justification for recognising copyright in government materials
 - Supports government's open access policy objectives
 - Clear statement about the source of the data (attribution/provenance) – increased user confidence
 - Avoids financial and technical lock-up of taxpayer-funded materials
 - Permitted uses are consents/permissions to do acts within the scope of the copyright owner's exclusive rights

Creative Commons (CC)

- Enforceability of licence
 - *Trumpet Software v OzEmail* (1996) Federal Court of Australia, Justice Heerey (shareware software, the Trumpet Winsock program for connecting pre Windows 3.x computers to the internet)
 - *Jacobsen v Katzer* (US Federal Circuit 2008)
- Explicit statement of reuse rights
- Universal recognition of symbols
- Discoverability of digital objects (all major search engines and new services eg ccmixer)
- Enables legal remix and mashup

Adoption of CC licensing in Australia

- Australian Bureau of Statistics
- Geoscience Australia
- Bureau of Meteorology
- IMOS (Integrated Marine Observing System)
- Polar Information Commons (June 2010)
- Department of Broadband, Comms & Digital Economy: National Broadband Network Implementation Study (May 2010)
- Treasury: Federal Budget Papers (May 2010)
- Australian Parliament (June 2010)

Federal Budget Papers

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BUDGET STRATEGY AND OUTLOOK

BUDGET PAPER NO. 1
2010-11

CIRCULATED BY

THE HONOURABLE WAYNE SWAN MP
TREASURER OF THE COMMONWEALTH OF AUSTRALIA

AND

THE HONOURABLE LINDSAY TANNER MP
MINISTER FOR FINANCE AND DEREGULATION
OF THE COMMONWEALTH OF AUSTRALIA

FOR THE INFORMATION OF HONOURABLE MEMBERS
ON THE OCCASION OF THE BUDGET 2010-11

11 MAY 2010

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- updated to keep up with developments in open access and copyright law.
- **First significant adopter - Parliament of Australia**
 - will be porting its central <http://www.aph.gov.au> website (including all parliamentary materials: legislation, explanatory memoranda, committee reports, etc.) across to a [Creative Commons v3.0 BY-NC-ND Australian licence](#).
 - Full implementation will occur when the new website is released in late 2010
 - See <http://www.aph.gov.au/legal/copyright.htm>



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Update: Geoscience Australia

- SE Asia Satellite Data for IFCI - National Earth Observation Group, Geoscience Australia
- processed satellite data used for working out the year-to-year change in tropical forest cover in SE Asia - This work is tied to international efforts to reduce the rate and impact of climate change – data forms inputs to national carbon accounting systems, which countries (and international aid sponsors) then use to objectively monitor trends in the carbon economy.
- Nearly all releases are under CC
- Australia has encouraged Thai and Indonesian space agencies to take the same approach



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The Creative Commons Licence

The Bureau of Meteorology recommends using the Creative Commons Licence for water information because it:

- provides a legally binding public notice about how your organisation's information may be used
- will provide a consistent and transparent legal framework for all water information resources
- contains strong limitation of liability and warranty clauses
- is an established de-facto international standard for licensing electronic information
- is free and costs little or nothing to implement
- requires attribution of the information author.

Creative Commons licences are widely used across the Internet by individuals, companies and governments. For example, [Wikipedia](#) and [Flickr](#) both use Creative Commons Licences. The [Australian Bureau of Statistics](#) has licensed the majority of the information on its website under the Creative Commons Licence. [Geoscience Australia](#) has licensed numerous datasets, including its Australian Mines Atlas and MODIS data, under the Creative Commons Licence.

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The Creative Commons Licence is available in [plain English](#) text and a full [legal code](#). The Licence requires the Bureau's website to link to the text and the code.

Attributing water information suppliers and use of the Creative Commons Licence

The Bureau of Meteorology wants to ensure that water information suppliers are correctly attributed for their information. The Bureau's Australian Water Resources Information System ([AWRIS](#)) is being designed to correctly capture and publish attribution details of organisations providing water information. It will also say whether an organisation has agreed to license their information under the Creative Commons Licence.

National Broadband Network Implementation Study and Wiki

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https://wiki.dbcde.gov.au/display/CH01/Home?showChildren=false

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Chapter 01: Executive Summary

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How CC came to be applied to PSI in Australia – a chronology

- **1990s:** Cutler, Wainwright – digital content strategy proposals
- **2001:** Office of Spatial Data Management (OSDM) access and reuse policy
- **2004:** Launch of Creative Commons in Australia
- **2004:** Launch by Queensland Government of Spatial Information Licensing Project
- **2005:** *Unlocking the Potential: Digital Content Industry Action Agenda, Strategic Industry Leaders Group report to the Australian Government*
- **2005 – 2006:** Queensland Government’s Government Information Licensing Framework (GILF) proposed use of Creative Commons licensing for PSI
- **2007 – 2010:** GILF project continues as a Queensland Government-QUT collaboration, developing knowledge about and models for use of CC on PSI
- **2007 on:** Australian Bureau of Statistics (ABS), Geoscience Australia (GA), Bureau of Meteorology (BoM) implement open access and adopt CC licensing; National Library of Australia; Australian Broadcasting Corporation; various State and local government initiatives
- **2008:** *OECD Ministerial Seoul Declaration on the Future of the Internet Economy* - OECD Recommendations on publicly funded research (2006) and Access to PSI (2008)
- **2008:** *Venturous Australia* report on National Innovation System (Cutler Report)
- **2009:** *Australia’s Digital Economy, Future Directions* (Department of Broadband, Communications and the Digital Economy)
- **2009:** EDIC Report (and Victorian Government’s response (2010)
- Government 2.0 Taskforce (2009), “Engage: Getting on with Government 2.0” (December 2009) and Government’s response
- **2009:** New Zealand (draft) Government Open Access Licensing Framework (NZGOAL); UK *Power of Information* report
- **2009 – 2010:** Freedom of Information/Right to Information reforms – State and Federal legislation

Government (“Crown”) Copyright

- Vast amounts of government copyright materials
- Copyright applies to:
 - Informational works
 - Research outputs (reports, papers, databases)
 - Cultural materials
- In Australia, UK, NZ, UK data compilations are protected by copyright if they are sufficiently original
 - Protection extends only to the arrangement of the collected components
 - Copyright does not apply to mere facts/information
- Public Sector Information (PSI) in a broad sense includes material that is:
 - created within government by government employees;
 - produced externally by recipients of government funding; or
 - prepared by non-government parties and lodged with government under a statutory obligation or regulatory direction.

Copyright in data compilations

- Protected if meets the originality threshold.
- Protection extends only to the arrangement of the collected components
 - i.e. the particular way the data/components is presented in the compilation.
- Copyright does not apply to mere facts/information
- Copyright interests may co-exist independently in components contained within the database and in the database itself, and may be owned by different parties.

Copyright in data compilations

Telstra Corporation Ltd v Phone Directories Company Pty Ltd (2010)

- where an author or authors of a compilation can clearly be identified; and
- it can be shown that the compilation is original in the sense that it is the product of
 - some “independent intellectual effort”;
 - the exercise of “sufficient effort of a literary nature”;
 - involves a “creative spark”; or
 - the exercise of “skill and judgment”,then it is likely to be protected by copyright.
 - [2010] FCA 44 at [344] per Gordon J.

Unlocking the Potential: Digital Content Industry Action Agenda (2005)

- Recommended that the digital content industry should:
 - Engage with work on alternative approaches to intellectual property licensing, **such as Creative Commons**;
 - Develop ways of improving access to Government intellectual property for commercial exploitation by digital content firms, to encourage innovation.

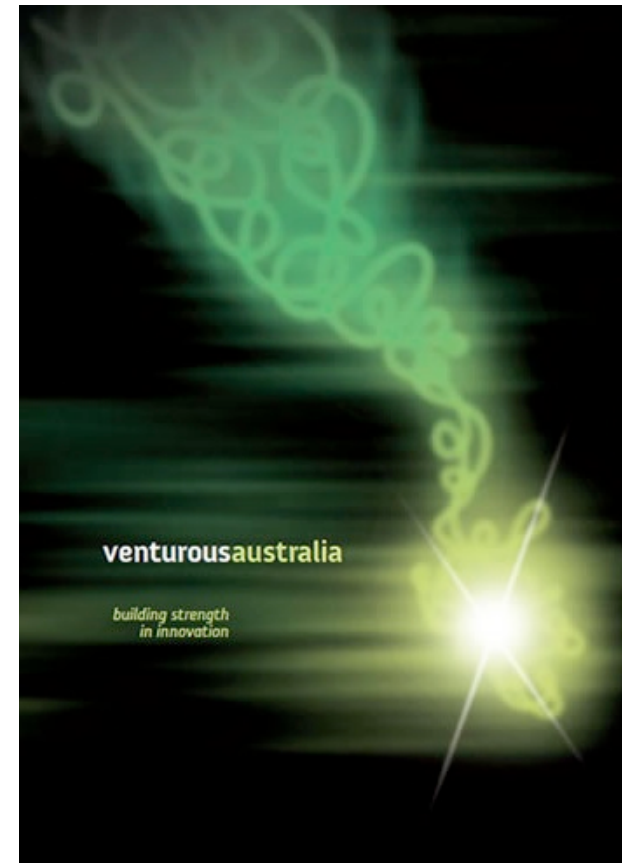
Venturous Australia (2008)

Recommendation 7.7

- Australia should establish a **National Information Strategy** to optimise the flow of information in the Australian economy.

The fundamental aim of a National Information Strategy should be to:

- utilise the principles of targeted transparency and the development of auditable standards to maximise the flow of information in private markets about product quality; and
- maximise the flow of government generated information, research, and content for the benefit of users (including private sector resellers of information).



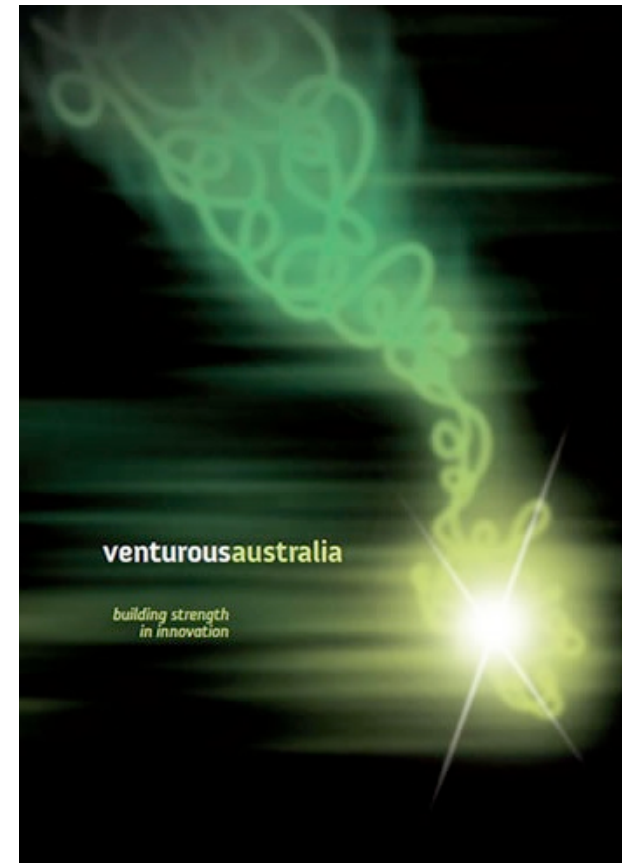
Venturous Australia (2008)

Recommendation 7.8

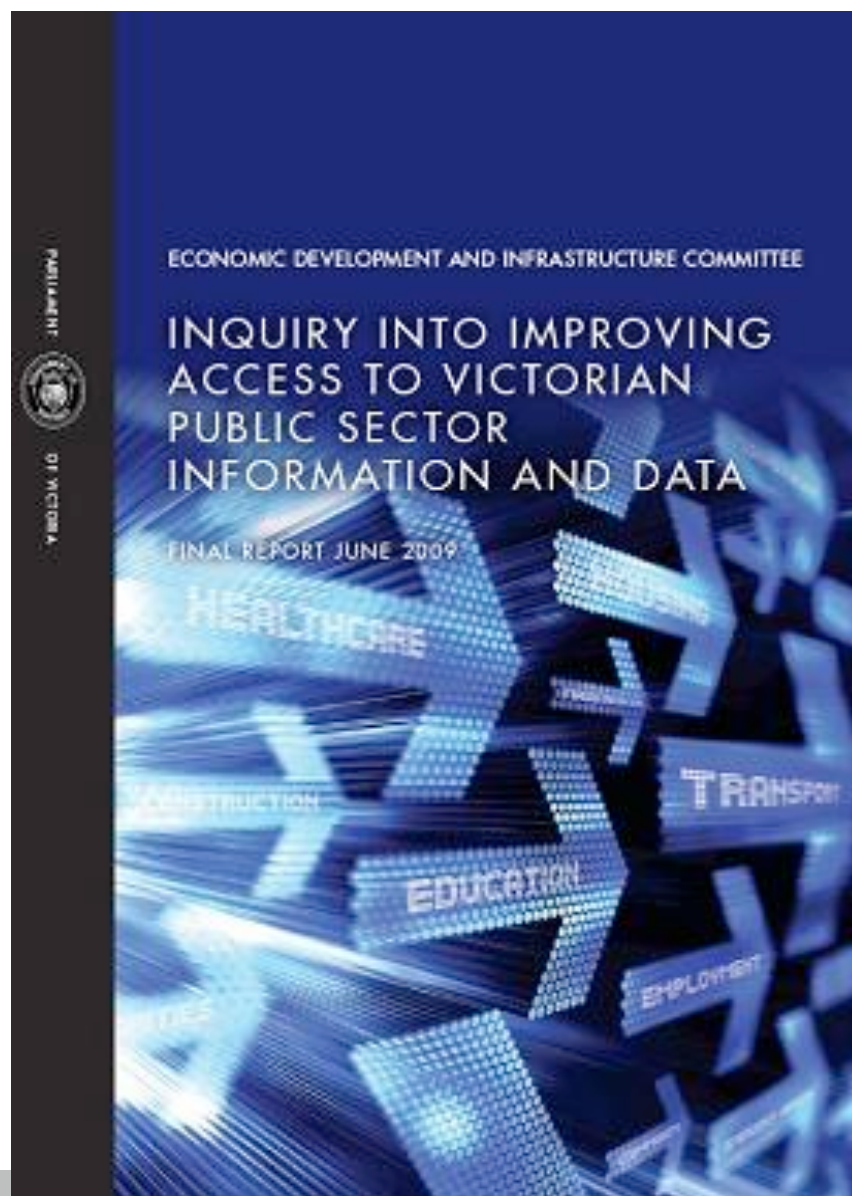
- Australian governments should adopt international standards of open publishing as far as possible. Material released for public information by Australian governments should be released under a **creative commons** licence.

Recommendation 7.10

- A specific strategy for ensuring the scientific knowledge produced in Australia is placed in machine searchable repositories be developed and implemented using public funding agencies and universities as drivers.



Victorian Parliament's Economic Development and Infrastructure Committee (EDIC) Report, *Improving Access to Victorian Public Sector Information and Data* (2009)



Victorian Parliament's EDIC Report (2009) - Key Recommendations

- *Recommendation 1:* That the Victorian Government release a public statement indicating that it endorses open access as the default position for the management of its public sector information.
- *Recommendation 2:* That the Victorian Government develop a whole-of-government Information Management Framework (IMF) with the following key features:
 - that the object of the IMF is to promote and facilitate increased access to and re-use of Victorian public sector information (PSI) by government, citizens, and businesses;
 - that the default position of the IMF be that all PSI is made available;
 - that the IMF define and describe criteria under which access to PSI may be restricted, or released under licence;
 - that PSI made available under the IMF be priced at no cost or marginal cost; and
 - that the IMF establish a systematic and consistent whole-of-government methodology for categorisation, storage and management of PSI.

Victorian Parliament's EDIC Report (2009)

Recommendation 14:

- That the Victorian Government adopt the **Creative Commons licensing model as the default licensing system** for the Information Management Framework.

Chairman's Foreword: *"The second key recommendation of the Committee is that the Victorian Government **make use of the Creative Commons licensing model for the release of PSI.** The Committee was told Creative Commons licences can be appropriately used for up to 85 per cent of government information and data, providing a simple to understand and widely used system for the re-use of PSI."*

Victorian Government's response to EDIC (2010)

- Endorsed the EDIC's overarching recommendation that the default position for the management of PSI should be open access.
- Committed to the development of a whole-of-government Information Management Framework (IMF) whereby PSI is made available under Creative Commons licensing by default with a tailored suite of licences for restricted materials.
- Supported Recommendation 14 (adopt CC licensing as the default licensing system for the IMF).
- Government's response was released under a CC licence (CC BY-NC-ND)
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Government 2.0 Taskforce Report (2009)

Engage: Getting on with Government 2.0 (22 December 2009) –
<http://gov2.net.au/report>

Central recommendation: A declaration of open government by the Australian Government

Accompanying the Government's announcement of its policy response to this report, a declaration of open government should be made at the highest level, stating that:

- using technology to increase citizen engagement and collaboration in making policy and providing service will help achieve a more consultative, participatory and transparent government
- public sector information is a national resource and that releasing as much of it on as permissive terms as possible will maximise its economic and social value to Australians and reinforce its contribution to a healthy democracy
- online engagement by public servants, involving robust professional discussion as part of their duties or as private citizens, benefits their agencies, their professional development, those with whom they are engaged and the Australian public. This engagement should be enabled and encouraged.

The fulfilment of the above at all levels of government is integral to the Government's objectives including public sector reform, innovation and using the national investment in broadband to achieve an informed, connected and democratic community.



Government 2.0 Taskforce report (2009)

Recommendation 6: Make public sector information open, accessible and reusable [chapter 5, p 58]

6.1 By default Public Sector Information (PSI) should be:

- free
- based on open standards
- easily discoverable
- understandable
- machine-readable
- freely reusable and transformable.

6.2 PSI should be released as early as practicable and regularly updated to ensure its currency is maintained.

6.3 Consistent with the need for free and open reuse and adaptation, PSI released should be licensed under the **Creative Commons BY** standard as the default.

Government 2.0 Taskforce report (2009)

Recommendation 6: Make public sector information open, accessible and reusable

- 6.6 Where ownership of the PSI data rests with the Commonwealth, data should be released under CC BY licence. Negotiation with the other party/parties will be required to ensure release under CC BY for PSI which is not owned by the Commonwealth or is shared with another party/parties....
- 6.7 Copyright policy should be amended so that works covered by Crown copyright are automatically licensed under a CC BY licence at the time at which Commonwealth records become available for public access under the *Archives Act 1983*
- 6.8 Any decision to withhold the release of PSI, other than where there is a legal obligation to withhold release, should only be made with the agreement of, or in conformity with policies endorsed by the proposed Office of Information Commissioner...
- 6.9 The Australian Government should engage other members of the Council of Australian Governments, to extend these principles into a national information policy agreed between all levels of government: federal, state, territory and local

Government's response to Gov 2.0 Taskforce report (2010)

<http://www.finance.gov.au/publications/govresponse20report/index.html>

- Generally accepted Gov 2.0 Taskforce's recommendations (12 out of 13)
 - agreed in principle to Recommendation 6, including:
 - 6.3 Consistent with the need for free and open reuse and adaptation, PSI released should be licensed under the **Creative Commons BY standard as the default.**
- Government's response was released under a Creative Commons Attribution (CC BY) 2.5 Australia licence



Creative Commons (CC) and Government Guide

- [Using Creative Commons 2.5 Australia Licences on Government Copyright Materials](#) [pdf, 3.62MB] is available under the “Government” topic on the Creative Commons Australia site, covering:
 - how copyright law applies to Australian government material,
 - how copyright can be managed to facilitate beneficial open access practices by government,
 - how CC licences can be used to achieve open access to government material, and
 - provides practical step-by-step guidance for agencies and their officers on licensing and use of government copyright materials under CC 2.5 Australia licences.

Open Access Policies, Practices and Licensing: A Review of the Literature in Australia and Selected Jurisdictions (2009)

Professor Anne Fitzgerald

The full economic, cultural and environmental value of information produced or funded by the public sector can be realised through enabling greater access to and reuse of the information. To do this effectively it is necessary to describe and establish a policy framework that supports greater access and reuse among a distributed, online network of information suppliers and users. The objective of the literature review is to identify materials published in Australia and elsewhere dealing with policies, principles and practices relating to access to and reuse of public sector information.

<http://eprints.qut.edu.au/28026/>

See generally: <http://www.aupsi.org>



References

- 2005-2006 - Stage 2 Report of GILF Project – Access to Government Information and OCL – An Access and Use Strategy <http://www.qsic.qld.gov.au/> - see also <http://www.gilf.gov.au>
- July 2007 – First National Summit – Qld Parliament House – Conference Report on the Australian National Summit on OA to PSI - <http://www.qsic.qld.gov.au/>
- March 2008 - Second National Summit <http://datasmart.oesr.qld.gov.au/Events/datasmart.nsf/0/D5A62A2C8FAA54754A2573D40018342A?OpenDocument>
<http://www.osdm.gov.au/Events/182.aspx>
- The Report of the Victorian Parliament's Economic Development and Infrastructure Committee (EDIC), *Inquiry into Improving Access to Victorian Public Sector Information and Data* (EDIC Report), tabled in Victorian parliament on 24 June 2009 - http://www.parliament.vic.gov.au/edic/inquiries/access_to_PSI/final_report.html
 - Response: Government of Victoria, *Whole of Government Response to the Final Report of the Economic Development and Infrastructure Committee's Inquiry into Improving Access to Victorian Public Sector Information and Data*, February 2010, available at <http://www.diird.vic.gov.au/diird-projects/access-to-public-sector-information>
- Government 2.0 Taskforce report, *Engage: Getting on with Government 2.0* (December 2009) – <http://gov2.net.au/report>

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- *Enabling Open Access to Public Sector Information with Creative Commons Licences - The Australian Experience*, Anne Fitzgerald et al, Chapter 14 in *Access to Public Sector Information: Law, Technology & Policy* (edited by B. Fitzgerald), Sydney University Press, 2010; available also at <http://eprints.qut.edu.au/29773/>
- Building the Infrastructure for Data Access and Reuse in Collaborative Research (OAK Law Project)
<http://www.oaklaw.qut.edu.au/reports>
- OAK Law Project Report No. 1: Creating a legal framework for copyright management of open access within the Australian academic and research sectors (2006)
http://eprints.qut.edu.au/6099/1/Printed_Oak_Law_Project_Report.pdf
- ANDS Guide: 'Copyright and Data'
<http://ands.org.au/guides/copyright-and-data-awareness.html>
- ANDS Guide: 'Creative Commons and Data'
<http://ands.org.au/guides/cc-and-data.html>