CAG Schools Submission

Copyright Advisory Group – Schools (**CAG Schools**) Submission responding to Productivity Commission 5 Pillars Interim Reports

Executive Summary

This submission is made by the Schools Copyright Advisory Group (**CAG Schools**), which represents almost 9,550 primary and secondary schools in Australia and their approximately four million students on copyright matters.

CAG Schools thanks the Productivity Commission (**PC**) for its in-depth analysis, draft recommendations and requests for information to boost Australia's productivity growth. CAG will respond to the following:

- Building a Skilled and Adaptable Workforce Interim Report (**Skilled and Adaptable Workforce Interim Report**), draft recommendations 1.1 and 1.2
- Harnessing Data and Digital Technology Interim Report (**Data and Digital Technology Interim Report**), information request 1.1.

Australia's economic vision seeks to grow the economy by harnessing the benefits of new technologies, including artificial intelligence (**AI**), to build a more skilled workforce and tackle productivity challenges. Fundamental to this vision is a high-quality education system that equips students with the foundational skills needed to thrive in a digital economy. This includes strategic investment in education technology (**edtech**), such as AI.

The Australian Government is already strengthening the education system to ensure students can keep up with and adapt to technological change. As the Treasurer, the Hon Dr Jim Chalmers MP, noted: "*A big motivation for our record investment in education is making sure skills keep pace with technological change*."

The benefits of AI and edtech

Australian schools are committed to providing students with the skills necessary for further study and to contribute productivity to the workforce. Schools and education departments/administering bodies (**Education Bodies**) are building digital capability and productivity by investing in innovative, locally developed, edtech, including AI tools.

Education Bodies are making this investment to both help alleviate teacher burden, and improve educational outcomes. The productivity dividends in relation to teacher time based on these initiatives could be upwards of **$754–$839 million per annum**, freeing up teacher time to focus on educating Australian students. There are a number of impediments to fully achieving the educational and productivity benefits of AI and edtech across the schools sector, which would be removed if the issues identified by the PC in its interim reports were addressed.

A roadmap for reform

CAG Schools recommends a three-part roadmap for ensuring the productivity and educational benefits of AI are fully realised, which aligns with the approach taken by the PC in its interim reports:

1. **A nationally coordinated approach to edtech, AI and educational resources** The PC has highlighted a critical national consideration - how best to ensure that Australian students benefit from the educational advantages that will flow from national coordination, including open educational resources, and appropriate access to AI and edtech. CAG

Schools believes there is significant merit in exploring a coordinated approach to edtech, AI and access to educational resources.

Draft recommendation 1.1 – Invest in a single national platform for all teachers to access lesson planning materials.

CAG Schools notes there are a number of initiatives in Australia and internationally designed to provide platforms for teachers to access high quality educational materials. These initiatives are most successful when developed in partnership with Education Bodies, governments, publishers and curriculum experts, with copyright clearances and rights management issues addressed early in the process. This approach enables educational resources to be made available through open licensing (such as Creative Commons Attribution (CC BY) licences).

This submission provides a number of examples of positive initiatives across the education sector, as well as some of the copyright challenges that prevent these initiatives from being deployed on a national level.

2. Reforming copyright laws to support Australia's national vision for Australian schools

CAG Schools supports the PC's decision to seek further information on potential copyright reform to fix regulatory roadblocks to productivity and the adoption of AI:

Information request 1.1 – Are reforms to the copyright regime required?

Reform is urgently required to ensure Australian Education Bodies and teachers can safely develop, teach and use edtech and AI tools for the benefit of Australian students.

Australian schools are committed to the best practice use of digital technologies for the benefit of Australian students. However, gaps in our outdated copyright framework are roadblocks to the use of digital teaching methods, and the development and use of edtech (including AI) in schools. Many teacher uses of modern teaching tools with Australian students are not clearly permitted under existing exceptions or the educational statutory licences in section 113P of the *Copyright 1968* (Cth) (**Copyright Act**) (**statutory licence**).

Our educational copyright laws are stuck in the 'chalk and talk' era and place an unreasonably high burden on teachers and Education Bodies. These challenges pose significant roadblocks for teachers, students, parents and schools in using digital technologies and AI in education.

Extensive reviews of Australia's copyright framework have consistently highlighted the need for a more flexible and adaptive framework to facilitate digital education. Without urgently needed updates, we risk falling further behind other nations and failing to fully realise our productivity goals.

Draft recommendation 1.2 Lead national efforts to ensure equitable access to educational technology (edtech) and artificial intelligence (AI).

One of the biggest blockers to equitable access and the confident uptake of edtech and AI in the Australian education sector, is the outdated and confusing nature of Australia's copyright system. The current system places significant roadblocks and legal uncertainty in the way of both the development and deployment of AI, edtech and digital teaching methods across the schools sector. Ensuring that copyright law operates equitably and

appropriately recognises the public interest in a mix of exceptions and licensing arrangements for educational uses, is critical to achieving this goal.

CAG Schools requests the PC to recommend the following three reforms to be introduced as a priority:

1. remote learning reforms to resolve digital teaching and online learning issues
2. a non-commercial text and data mining (**TDM**) exception that clearly applies to education to resolve impediments to developing edtech and AI
3. a fair dealing for education exception to resolve impediments to teaching and using AI.

Information request 1.1 – Feedback on a fair dealing exception for TDM.

CAG Schools supports the need for copyright reform to achieve Australia's productivity and AI goals. At a minimum, CAG Schools submits that the PC must recommend the introduction of an exception to enable TDM for non-commercial purposes to ensure AI and edtech can be legally developed and used by and for Australian schools.

3. **Ensuring appropriate governance arrangements for a national approach to educational resources and copyright licensing.**

Any coordinated approach to the development of open education resources for Australian students would require appropriate governance arrangements. The PC has previously highlighted the lack of appropriate governance arrangements for the statutory licences administered by declared collecting societies. The Guidelines for the Declaration of Collecting Societies (**Guidelines**) were last reviewed in 2001, and market conditions, technologies and licensing arrangements have fundamentally changed since this time. The review into these arrangements called for by the PC in 2016 has not taken place and should be prioritised as a key part of ensuring the appropriate governance framework for a national approach to educational resources and copyright licensing.

Making the case for reform

This submission is set out in four parts:

- **Part 1** considers the future of education in Australia and its role in achieving Australia's economic vision.
- **Part 2** provides support for the PC's draft recommendations that Australia should adopt a nationally coordinated approach to the adoption of edtech, AI and educational resources, and highlights legacy approaches to resource development that are incompatible with generative AI and the importance of open educational resources.
- **Part 3** discusses the copyright roadblocks to achieving Australia's educational, productivity and AI visions, and the urgent reforms required to remove these roadblocks. It explains:
    - existing copyright barriers to digital teaching methods
    - the copyright barriers to the adoption of AI and edtech
    - how Australia is out of step with international approaches to educational copyright exceptions

    - the reforms needed to update the Copyright Act to ensure Australia's copyright framework is aligned with Australia's goals for the education system.
- **Part 4** discusses the need for clear governance structures to future-proof our copyright framework and ensure appropriate oversight.

Table of Contents

Submission

Providing our students a high-quality education is the fundamental building block to a productive economy. Now more than ever, we need a copyright system that paves the way, rather than creates obstacles, to Australia's ability to leverage the benefits of new technologies in education. These reforms proposed by CAG Schools are practical, forward-looking steps that will empower Education Bodies[1] to build the digital skills Australia needs to stay competitive on a global stage.

CAG Schools thanks the PC for the opportunity to present these views.

Part 1 – The future of education

A high-quality school education is the critical first step to ensuring Australia's future workforce is adaptable, employable and can actively contribute to productivity. In December 2019, the Commonwealth and all State and Territory governments committed to the Alice Springs (Mparntwe) Declaration (**Declaration**).[2] The Declaration set out the vision for:[3]

> *"[A] world class education system that encourages and supports every student to be the very best they can be, no matter where they live or what kind of learning challenges they may face"*.

The Declaration recognised the critical importance of digital skills and technologies to Australia's learners and to our future workforce:[4]

> *"In an information and technology rich society we must ensure that educators are supported to continually develop their own skills, in order to teach young Australians the essential skills and core knowledge needed for a modern society and economy."*

However, Australia continues to face roadblocks to achieving this vision. As the PC observes in the Skills and Adaptable Workforce Interim Report:[5]

> *"…the share of students leaving school with solid foundational skills is falling. School teachers are under pressure to produce teaching materials for a wide range of student abilities. These challenges are more acute for teachers in remote areas or who teach out of their field."*

The need for high-quality education, including the adoption and effective use of new technologies, has never been greater as Australia seeks to lift productivity in the digital economy. As the Treasurer, the Hon Dr Jim Chalmers MP, noted: "*A big motivation for our record investment in education is making sure skills keep pace with technological change*."[6]

---

[1] This includes government and non-government schools as well as the government departments of education, Catholic education bodies and Independent school associations which administer or represent these schools.
[2] The Alice Springs (Mparntwe) Education Declaration, February 2020. Available at https://www.education.gov.au/indigenous-education/resources/alice-springs-mparntwe-education-declaration.
[3] Ibid, p 2.
[4] Ibid, p 7.
[5] Skilled and Adaptable Workforce Interim Report, p 1.
[6] See 'Opinion piece: Australia shouldn't fear the AI revolution – we can turn algorithms into opportunities', The Hon Dr Jim Chalmers MP, Treasurer, 4 August 2025, available at https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/articles/opinion-piece-australia-shouldnt-fear-ai-revolution-we-can.

Adoption of edtech, including AI, also aligns with the recommendations of the House of Representatives Standing Committee on Employment, Education and Training in its 2024 *Study Budy or Influencer Report,* which called on the Government to "*consider making the use of GenAI in education a national priority*" and to "*maximise the opportunities of GenAI education specific tools and integrate such tools into the school curriculum and practice*".[7]

Australia has also developed the *Australian Framework for Generative AI in Schools* (**the AI Framework**),[8], to guide the responsible and ethical use of generative AI in ways that benefit students, schools and society.

Adoption and use of new technologies (including AI) is fundamental so that:

- teachers can provide tailored learning without added burden
- Education Bodies can produce high-quality materials that can be adapted to different education settings and students[9]
- students can learn and develop the necessary technical skills to enter further study and become productive contributors to Australia's digital economy.

The future of education has already begun.

Generative AI offers an opportunity to transform the way we deliver Australian education. When implemented well, it can personalise learning, reduce teacher workload, improve access and inclusion, and enhance student engagement through dynamic, interactive content.

Education Bodies are building digital capability and productivity by investing in innovative, locally developed, education specific AI tools. Already, AI is reshaping classrooms by adapting to individual students' needs, automating tasks like lesson planning and marking (where appropriate), and supporting students with disabilities or language barriers through multimodal tools like translation, text to speech and visual aids.

Across Australia, there is a growing drive to fully harness these benefits, to promote equity, lift student outcomes and prepare our education system for the future. Some schools and jurisdictions have already invested in edtech to help alleviate teacher burden and improve student outcomes. For example:

[7] See Study Buddy or Influencer' report by the House of Representatives Standing Committee on Employment, Education and Training, Inquiry into the Use of Generative Artificial Intelligence in the Australian Education System, at 2.21 (noting "*Minister Clare stated that Australia is 'entering an age where AI has got to be part of education'*"), Box 4.1, and at 2.31-33, 2.85, 2.90.
[8] See https://www.education.gov.au/schooling/resources/australian-framework-generative-artificial-intelligence-ai-schools.
[9] Ibid, p 5.

- South Australia (**SA**) Department of Education's EdChat has been made available to all SA government schoolteachers to aid with lesson planning, administrative tasks and to assist students with their learning.[10]

  Case Study: SA Department of Education's English Proficiency Tool on EdChat

  - In 2024, SA Department of Education trialled a new tool as part of EdChat to assist with assessing a student's English language proficiency. The app reduced the time taken to complete this task from an average of 30 minutes to just **52 seconds**, an incredible **97% reduction**. The tool is now being made available to all SA government teachers.

- New South Wales (**NSW**) Department of Education's EduChat is available to all NSW government schools and department staff. During the trial of EduChat in 2024 across 50 schools,[11] the tool was found to save teachers **more than 1 hour per week** by producing correspondence, newsletters and helping develop student resources.[12]
- Brisbane Catholic Education's (**BCE**) generative AI tool has saved teachers an average of **9.5 hours a week** in their planning time and administrative tasks during the pilot program.[13]

[10] See https://www.education.sa.gov.au/parents-and-families/curriculum-and-learning/ai/edchat. See also, https://www.education.sa.gov.au/department/media-centre/our-news/ai-tool-saves-teachers-thousands-of-hours-of-work.
[11] In 2024, the NSW Department of Education conducted a trial of EduChat in 16 schools in Term 1, expanding to 50 schools in Term 2. The trial continued throughout 2024. See https://education.nsw.gov.au/teaching-and-learning/education-for-a-changing-world/nsweduchat.
[12] See https://www.theguardian.com/australia-news/2024/sep/16/ai-chat-tool-nsw-schools-nsweduchat-prue-car#:~:text=On%20Monday%20the,hour%20a%20week.
[13] Skilled and Adaptable Workforce Interim Report, p 22 citing Microsoft Australia 2025.

Using the above examples, the following case studies illustrate how digital tools can deliver measurable productivity dividends in education.[14] For the purposes of these case studies, teacher time has been valued at an average **AUD $95k–$105k salary**.[15]

Example 1 — SA Department of Education's English Proficiency Tool (per-assessment and annualised)

The English proficiency app reduced assessment time from **30 minutes to ~52 seconds** (~97% faster), saving **~0.486 hours** per assessment. Valuing teacher time at an average **AUD $95k–$105k salary**, this equates to:

- **~AUD $23–$26 saved per assessment** (base salary only)
- **~AUD $30–$34 saved per assessment** (incl. 30% on-costs).

Based on **31,434 assessments completed in 2024**,[16] the annual saving is:

- **~AUD $0.73–$0.81 million** (base salary only)
- **~AUD $0.95–$1.05 million** (incl. 30% on-costs).

This is best framed as a **productivity dividend**: labour time freed for higher-value teaching.

Example 2 — NSW Department of Education's EduChat (trial savings)

During its 2024 trial across 50 schools, **NSW Department of Education's EduChat** saved teachers **more than 1 hour per week** by producing correspondence, newsletters and student resources. Assuming 1 hr/week = **38 hrs/year per teacher**, the dividend per teacher is:

- **~AUD $1,820–$2,010** per teacher per year (base salary only)
- **~AUD $2,370–$2,610** per teacher per year (incl. 30% on-costs).

If scaled to 58,000 teachers,[17] this equates to a productivity dividend of **~AUD $106–$117 million annually** (base) or **~AUD $137–$151 million** (with on-costs).

[14] These dividends are expressed both in terms of base salary and full employment cost (including on-costs).
[15] See https://www.prosperoteaching.com.au/teaching-abroad/relocating-to-australia/?utm_source=chatgpt.com.
[16] Note, the number of assessments is based on the number of students assessed as part of the trial of this tool in 2024. See https://www.education.sa.gov.au/department/media-centre/our-news/ai-tool-saves-teachers-thousands-of-hours-of-work.
[17] Note, the number of teachers is based on 2024 total full time equivalent teaching staff from the NSW government schools (rounded to the nearest 1000). See https://www.acara.edu.au/reporting/national-report-on-schooling-in-australia/staff-numbers.

Example 3 — Brisbane Catholic Education (BCE) AI Tool

BCE's pilot found its generative AI tool saved teachers an average of **9.5 hours per week** in planning and administration. That equates to **~361 hours/year per teacher**. At the same salary valuation, the dividend per teacher is:

- **~AUD $17,350–$19,170 per year** (base salary only)
- **~AUD $22,560–$24,920 per year** (incl. 30% on-costs)

If scaled to just 6,000 teachers,[18] that's a productivity dividend of **~AUD $104–$115 million annually** (base) or **~AUD $135–$150 million** (with on-costs).

If these case-study savings were realised at scale across the Australian teaching workforce, the potential productivity dividend is significant as shown in the case study below.

Example 4 – Sector-wide potential (illustrative only)

Assumptions:

- National school teacher workforce ≈ **300,000 FTE** (Australian Bureau of Statistics (**ABS**)/ Australian Curriculum, Assessment and Reporting Authority (**ACARA**)).
- Productivity gains of **~1 hour/week per teacher** (NSW EduChat case) = **~38 hrs/year each**.
- Hourly value = **$48–$53/hr** (base salary only) or **$62–$69/hr** (incl. on-costs).

Illustrative national potential:
Using 320,000 teachers[19] × 38 hrs/year × $48–$53/hr, the national productivity dividend is:

- **~AUD $584–$644 million annually** (base salary only)
- **~AUD $754–$839 million annually** (with on-costs).

This is a conservative estimate: tools like BCE's pilot show **much larger savings (9.5 hrs/week)** in specific contexts, suggesting the upside could be substantially higher.

[18] Note, the number of teachers is based on 2023 total teaching staff from Brisbane Catholic Education schools (rounded to the nearest 1000). See Brisbane Catholic Education Annual Report 2023, p 4. Available at https://www.bne.catholic.edu.au/aboutus/AnnualReports/Documents/2023%20BCE%20Annual%20Report.pdf.
[19] Note, the number of teachers is based on 2024 total full time equivalent teaching staff across Australia (rounded to the nearest 1000).See https://www.acara.edu.au/reporting/national-report-on-schooling-in-australia/staff-numbers.

Part 2 – A nationally coordinated approach to edtech, AI and educational resources

The PC has highlighted critical national considerations - how best to ensure that Australian students benefit from the educational advantages that will flow from national coordination, including open educational resources, and appropriate access to AI and edtech. CAG Schools believes there is significant merit in exploring a nationally coordinated approach to edtech, AI and access to educational resources.

Draft recommendation – 1.1 Invest in a single national platform for all teachers to access lesson planning materials.[20]

CAG Schools notes a number of initiatives in Australia and internationally that are designed to provide platforms for teachers to access high quality educational materials. These initiatives enable educational resources to be made available through open licensing.

It is important for the PC to carefully consider four main issues in this regard:

1. Legacy approaches to developing and procuring curriculum resources are not suitable for the needs of AI and edtech.
2. Examples from Australia and internationally show that these initiatives are most successful when developed in partnership with Education Bodies, governments, publishers and curriculum experts, with copyright clearances and rights management issues addressed early in the process.
3. The critical importance of using open licensing models (such as **CC BY** licences)[21] in any national or jurisdiction-level platform, to ensure that the content created and procured by governments or Education Bodies in teaching resources can be used in schools without attracting additional licensing fees. For example, it would not make sense for public funds to be used to license content for inclusion in an educational resource, only for any subsequent use of that resource by teachers to also incur payments under the statutory licence.[22]
4. The need to consider the impact of a national platform on all school sectors, including the capacity of non-government schools to utilise such resources.

[20] Skilled and Adaptable Workforce Interim Report, p 2.
[21] See https://creativecommons.org/licenses/by/4.0/ and https://creativecommons.org/licenses/by/4.0/deed.en.
[22] *Copyright Act 1968* (Cth), s 113P. Available at https://www.legislation.gov.au/C1968A00063/2019-01-01/text. The statutory licence allows 'educational institutions' (including schools) to copy and communicate 'works' (s 113P(1)) and 'broadcasts' (s 113P(2)) for educational purposes. For 'works', the amount copied must 'not unreasonably prejudice the legitimate interests of the copyright owner' (s 113P(1)(d). These licences are administered by the two statutory appointed collecting societies, Copyright Agency (for 'works') and Screenrights (for 'broadcasts).

2.1 The challenges of legacy approaches to curriculum resources

Despite the growing interest in utilising AI in education,[23] and national imperatives to do so, Education Bodies are still developing and procuring curriculum resources using legacy approaches that are not clearly compatible with new AI use cases. For example:

- Education Bodies may have procured 'off-the-shelf' or commissioned resources, without securing copyright ownership, or the usage rights granted under legacy licensing arrangements do not extend to including the resources in an educational AI tool.
- Curriculum resources developed by teachers may include third-party materials lawfully copied under the statutory licence, but further use of those materials may not be covered under existing licensing arrangements. Legal uncertainty about the use of educational content in AI and edtech leads to uncertainty about how these resources can be shared and deployed more widely, without undergoing significant copyright clearances or potentially incurring further licensing costs. This also leads to significant administrative burden as teachers or Education Bodies must spend time checking permissions, labelling third party material, and navigating complex licensing terms. This diverts time and resources away from core teaching duties and acts as a disincentive to share resources on a national or jurisdictional basis.
- Legal uncertainty means that resources are often password protected to ensure limited access and compliance with educational licensing arrangements.
- There is significant confusion about what teachers can do with a resource if it includes material from different sources, or different types of content with different copyright rules (for example, works and broadcasts are covered by the statutory licence, other forms of content are covered by system wide voluntary licences, and other forms of content must be directly licensed on a case by case basis).
- Even where Education Bodies purchase content, contracts often lack clear copyright terms, meaning teachers are unclear if they can include resources in edtech solutions, or may still have to rely on the statutory licence to copy or share them further.
- The high cost of obtaining licenses to use content makes jurisdictions reluctant to share resources they've invested in, which reduces collaboration across the education sector.[24]

Generative AI highlights and intensifies these longstanding issues, as the challenges already present in developing shared educational resources equally affect the creation of education-specific AI tools. Without clear copyright arrangements, Education Bodies cannot fully embrace new technologies, including AI, both in the classroom and in the delivery of high-quality curriculum materials (as recommended by the PC).[25]

---

[23] For example, the NSW Department of Education and the SA Department for Education have each developed safe, education-specific generative AI "chatbots", NSWEduChat and EdChat.
[24] While creating their own content may involve some initial upfront investment, jurisdictions can reduce long term costs associated with relying on third party materials, increase clarity around how resources can be used and ensure those materials are reusable and AI compatible.
[25] Data and Digital Technology Interim Report, p 2.

CAG Schools' suggested approach to resolving these issues through a nationally coordinated edtech, AI and educational resources strategy aligns with the *AI Framework*,[26] which notably identifies copyright as a key consideration for safe and responsible AI use. CAG Schools' approach also supports the shared goals of OER and AI, such as promoting accessibility, equity and public benefit, while providing the legal and ethical foundation necessary for the safe and effective use of AI in education. Additionally, it is consistent with Australian, state and territory open access policies.[27]

The suggested approach will ensure:

- **increased flexibility and adaptability**, because openly licensed resources can be used by teachers and schools indefinitely, for any purpose (including training AI models), without restrictions or ongoing licence fees
- **reduced teacher burden** by clarifying exactly how resources can be used, removing the need for teachers to spend time ensuring they are complying with copyright obligations
- **efficient use of budgets** by leveraging existing curriculum teams to develop new resources in which Education Bodies own the copyright, and which can be used extensively and productively throughout the sector, avoiding wasted time and costs on retrofitting existing resources
- **bias reduction** by training AI tools on educational resources that are specifically developed for the Australian context and aligned with national and state curricula, which helps reduce the bias commonly found in large language models
- **increased legal certainty** because fully owned, openly licensed content can be used with AI without the need for further permission, copyright exceptions or licence fees.

[26] See https://www.education.gov.au/schooling/resources/australian-framework-generative-artificial-intelligence-ai-schools.
[27] See https://education.nsw.gov.au/rights-and-accountability/copyright (NSW); https://www.vic.gov.au/copyright (VIC); https://qed.qld.gov.au/copyright-statement (QLD); https://www.education.sa.gov.au/copyright (SA); https://www.education.wa.edu.au/copyright (WA); https://www.decyp.tas.gov.au/about-us/using-this-website/copyright-and-disclaimer/ (TAS); https://www.act.gov.au/copyright (ACT); https://education.nt.gov.au/copyright,-disclaimer-and-privacy (NT); https://www.education.gov.au/using-site/copyright (Cth).

2.2 Examples of successful approaches to open educational resources (OER)

CAG Schools highlights several successful OER models for consideration by the PC.

Australia

As the PC notes, several Education Bodies and organisations have already implemented an OER model and could serve as useful starting points for considering the benefits of openly shared education platforms. One great example is Ochre Education.[28]

It should be noted that currently Ochre restricts AI-generated material in its resources due to quality and copyright concerns. This reiterates the need to ensure our copyright framework is appropriately balanced to ensure Education Bodies and organisations can provide the best possible non-commercial, public interest resources in an accessible and efficient manner to maximise productivity across Australian schools.

Case Study: Ochre Education

Ochre Education is a national not-for-profit company and registered charity with public library status established in 2021.

All Ochre lessons and resources are "*designed to support teachers to effectively implement evidence-based practices as described in AERO's* Tried and Tested evidence guides for schools *and in line with AERO's* Teaching for how students learn: A model of learning and teaching*.*"

Ochre has adopted an open licensing model. Where possible, Ochre tries to use CC licensed material or its own content so its resources can be made available under CC BY 4.0.

Importantly, Ochre has designed its resources to be adaptable, built on and supplemented by other high-quality content. Ochre encourages schools to have class copies of reference texts so quoting from texts is minimal, and it maintains productive relationships with publishers, as its resources are designed to complement texts.

The positive impact of this model is clear. Ochre already has **130,000 teachers signed up across 90% of Australian schools**, with over 22,000 resources and more than 400 added each week. Ochre estimates that teachers have **saved 2.5hrs/week** using their resources.

[28] See https://ochre.org.au/unauthorized.

United Kingdom (UK)

Another relevant example of the benefits and success of collaborating across jurisdictions, with experienced educators and industry is the Oak Academy UK (**Oak**).[29]

Case Study: Oak

Oak is an executive non-departmental public body, sponsored by the UK Department for Education. Through Oak, the UK Government has invested in creating a cache of around 16,000 high-quality OER that schools and teachers can use for free without needing permission from third party copyright owners or relying on a legislative exception or licence.

Oak licenses its OER under the UK Open Government Licence (**OGL**) which permits educational uses of the material as long as Oak is attributed (equivalent terms to the CC BY licence). This makes it clear to teachers how Oak resources can be used and allows flexibility for these resources to be used in new or different ways in the future.

This has also enabled Oak to develop and launch its own generative AI tool called Aila based on OpenAI's GPT-4o large language model. Aila generates curriculum-aligned lesson plans and other teaching resources like quizzes. To enable this functionality, Aila was fine-tuned using only curriculum resources developed by Oak (and in which Oak owns copyright). This meant that Oak did not need to rely on an exception or pay licence fees because it was using its own material to train Aila (which is fine from a copyright perspective), and schools and teachers can use any output with minimal risk of copyright infringement.

An Oak Impact Report released in 2024 found:[30]

> *"Nearly three quarters of users (**73%**) reported that using Oak had saved time with **45%** reporting this saved time had led to a decrease in workload and **28%** saying this saved time had been repurposed for other useful activities such as supporting pupils in class. The typical time saved in a week for these users was four hours."*

In addition, Oak users reported having *"a **more positive sense of workload management**, feeling more able to complete their assigned workload, feeling their workload was acceptable and feeling that workload was less of a serious problem at their school."*[31]

Oak's development and use of its own resources is an outstanding model for Australia to consider. Australian schools and administering bodies could benefit from following this approach, including because it would likely result in:

- significant **time and cost savings** for Education Bodies, who would not need to negotiate and take up a costly ongoing licence from Copyright Agency or other third parties to use copyright material to train or fine-tune AI models

[29] See https://www.gov.uk/government/organisations/oak-national-academy: "*The Oak National Academy is strategically aligned with but operationally independent from the Department for Education. It works with teachers across the country, giving them and their pupils access to high-quality digital curriculum resources which are free, optional, and adaptable."* For information on ALIA, see https://labs.thenational.academy/aila.
[30] See Oak Impact Report - https://sanity-asset-cdn.thenational.academy/files/cuvjke51/production/d845ff6ba48b8f39c0a5b1d831bd72edad8ba6de.pdf, pp 4 and 20, cited in https://www.thenational.academy/blog/impact-report-2023-2024.
[31] Oak Impact Report, p 20.

- **reduced copyright challenges** for teachers when using these resources in the classroom, and consequential reduction in costs under the statutory licence because the sector does not need to pay fees to Copyright Agency when schools use openly licensed material
- **minimisation of the risk** of copyright infringement for schools and teachers, as well as Education Bodies and their staff, because only openly licensed resources in which administering bodies own the copyright would be used to train or fine-tune AI models
- significant **reduction in burden** on teachers, who will not need to spend time thinking about what they can do with different resources under existing copyright licences and exceptions
- **clarity** that content generated by AI tools that have been fine-tuned using these openly licensed resources would be risk-free for teachers to use from a copyright perspective
- Australian schools **embracing new technologies**, including generative AI, to support innovation, strengthen our education system and better prepare our students for the future, with minimised risk of copyright infringement.

European Union (EU)

Similarly, the EU-funded *ENCORE Project* demonstrates how generative AI can reduce teacher workload by using tagged OER to automatically generate full lesson plans that reflect learning goals.[32] This also demonstrates the benefits of embracing edtech, including AI, in education. Notably the EU TDM exception[33] allowed ENCORE to be able to undertake these activities using AI, demonstrating the value of an appropriately balanced copyright framework.

Singapore

Singapore's Ministry of Education (**MoE**) has collaborated with GovTech to launch the Student Learning Space (**SLS**) which *"provides a library of curriculum-aligned resources for all grade levels and subjects."*[34] Further, it curates and maintains a list of approved textbooks to ensure schools make informed decisions when selecting learning materials.[35]

[32] See https://project-encore.eu/2023/01/the-encore-oers-database/.
[33] Article 4 of the 2019 Directive on Copyright in the Digital Single Market, available at https://eur-lex.europa.eu/eli/dir/2019/790/oj/eng.
[34] Skilled and Adaptable Workforce Interim Report, pp 19-20, citing Singapore MoE (Singapore Ministry of Education) nd, *Singapore's Student Learning Space*, Singapore's Student Learning Space, https://www.learning.moe.edu.sg/. See also See https://www.tech.gov.sg/technews/ai-in-education-transforming-singapore-education-system-with-student-learning-space.
[35] Ibid.

2.3 The importance of open licensing approaches

CAG Schools submits that the most effective approach to any national framework for educational resources is to create openly licensed educational resources. This is where Education Bodies could:

- **collaborate** (including across jurisdictions, sectors, with teachers, curriculum experts, publishers and industry partners) on the development of a coordinated, and owned, collection of content that reflects Australian teaching practices and ensure any materials that are used to train or fine-tune AI tools are owned by Education Bodies
- **create and commission** curriculum resources in which they own the copyright, and make those resources available under CC BY licences or other suitable open licence terms.

Australian schools need to be able to use technologies in ways that are:

- beneficial for teachers and students
- aligned with the public interest
- consistent with practices in other countries where such use is free.

A national approach to OER that promotes open licensing of curriculum materials and fosters collaboration will help achieve this goal.

Creative Commons (CC) licences

CC is an open licensing scheme which offer a standardised way to grant public permission to use your work, including for education, provided a user complies with the licence requirements.[36]

The CC BY 4.0 licence[37] allows users to share and adapt content provided the user attributes the copyright owner. This model would be an ideal way to ensure resources on the platform are accessible and adaptable across jurisdictions, sectors and by individual teachers as required.

Implementation of open licensing is straightforward.

One key benefit of CC licences is they are easy to implement. As part of the development of the national platform, template documents could be designed to include the CC licence label along with guidelines on how to deal with any third-party material (if any). The National Copyright Unit (**NCU**), which is engaged by CAG Schools to oversee copyright policy and administration for Australian schools, has examples available on its Smartcopying website which can be adapted for this purpose.[38]

Open licensing aligns with Australian, state and territory open access policies.

Many Australian government and education organisations are already openly licensing content.

---

[36] See https://creativecommons.org/share-your-work/cclicenses/.
[37] See https://creativecommons.org/licenses/by/4.0/.
[38] See for example, https://smartcopying.edu.au/how-to-attribute-creative-commons-licensed-materials/; https://smartcopying.edu.au/how-to-label-third-party-content-in-creative-commons-licensed-material/.

The Australian Governments Open Access and Licensing Framework (AusGOAL)[39] provides a standard for open licensing of copyright material that has been adopted by Australian Governments. The AusGOAL framework assists governments to make appropriate licensing decisions that enable the re-use of publicly funded materials by schools and the wider community.

In June 2014, AESOC (then known as AEEYSOC)[40] approved amending the terms of use and copyright notices of the websites and publications of all Australian Departments of Education to comply with AusGOAL and reflect best practices for open education resources and open access.

As a result, state and territory Departments of Education have implemented policies that encourage or require open licensing of their copyright material.[41] This requires the least restrictive CC licence to be applied to material (CC BY licence), unless circumstances prevent it. This licence allows material to be shared and adapted for any purpose, as long as the copyright owner is attributed.

Other education organisations also make their materials available under CC BY as best-practice, as noted by the PC. For example, Education Services Australia (**ESA**) and ACARA each licence their websites under CC BY as is ESA's Student Wellbeing Hub.[42] The Australian Curriculum is licensed by ACARA under CC BY, as are some state and territory curriculums (eg the Queensland curriculum licensed by the Queensland Curriculum and Assessment Authority (**QCAA**) under CC BY). CAG Schools would encourage all jurisdictions to license their curriculums under CC BY. CAG Schools is also strongly committed to the use of open licensing. The NCU license all their materials under a CC BY 4.0 licence.[43]

Draft recommendation 1.2 Lead national efforts to ensure equitable access to educational technology (edtech) and artificial intelligence (AI)[44]

CAG Schools strongly supports the importance of national coordination of efforts to ensure equitable access in Australian schools to edtech and AI. However, despite the potential of OER and the development of national or jurisdiction-based educational resources and AI/edtech solutions, one of the biggest blockers to equitable access and confident adoption of these technologies in Australian education is our outdated copyright framework.

To address this and ensure copyright law operates equitably and effectively, the public interest must be recognised through a balanced mix of exceptions and licensing arrangements for educational use. This is explored in more detail in Part 3 below.

---

[39] See https://www.infrastructure.gov.au/sites/default/files/guidelines_for_releasing_public_sector_information_-_final_september_201_.pdf.
[40] Australian Education, Early Childhood Development and Youth Affairs Senior Officials Committee.
[41] See https://education.nsw.gov.au/rights-and-accountability/copyright (NSW); https://www.vic.gov.au/copyright (VIC); https://qed.qld.gov.au/copyright-statement (QLD); https://www.education.sa.gov.au/copyright (SA); https://www.education.wa.edu.au/copyright (WA); https://www.decyp.tas.gov.au/about-us/using-this-website/copyright-and-disclaimer/ (TAS); https://www.act.gov.au/copyright (ACT); https://education.nt.gov.au/copyright,-disclaimer-and-privacy (NT); https://www.education.gov.au/using-site/copyright (Cth).
[42] See https://www.esa.edu.au/other/terms-of-use and https://studentwellbeinghub.edu.au/educators/professional-learning-courses/?course_type=educator.
[43] See https://smartcopying.edu.au/.
[44] Skills and Adaptable Workforce Interim Report, p 2.

Part 3 – Copyright reform needed to achieve Australia's education vision

Australian schools cannot fully prepare students for the future because our copyright laws are stuck in the 'chalk and talk' era.

The Copyright Act is simply not fit-for-purpose for current digital teaching methods, or for achieving our national goals regarding edtech and AI. Further, Australia's outdated copyright framework is out of step with international approaches.

3.1. Identifying the copyright problems

There are two key copyright challenges to Australia's education vision:

1. Current copyright exceptions do not neatly or universally apply to digital teaching methods.
2. The Copyright Act does not clearly and legally support the development, teaching and use of edtech and AI.

4.1.1 Digital teaching methods

The problems with Australia's copyright framework predate AI use and development. Outdated copyright settings are acting as a regulatory handbrake on digital teaching methods and creating uncertainty for schools. Specifically:

1. The Copyright Act lacks clear and legal pathways for digital instruction and online lessons (eg via Zoom). This means that activities that are free in the classroom are unlawful or attract licence fees in digital teaching environments.
2. While CAG Schools supports the application of the statutory licence to content that is commercially exploited by copyright owners, the overly broad scope of statutory licences means licence fees are paid for publicly shared online resources that are intended to be free, such as free online fact sheets or health guides.

We discuss the specific problems for each of these roadblocks below.

1. Digital instruction and online lessons (eg via Zoom)

Australian schools lack clear and legal pathways to use technologies such as Zoom for digital teaching, let alone newer tools like AI. Current copyright exceptions do not adequately cover many forms of digital instruction - from displaying text on interactive whiteboards to teaching and remote learning through platforms like Zoom or Teams.

For example, current exceptions do not neatly apply to the following scenarios:

a. A teacher delivers a lesson using an interactive whiteboard to students in the classroom while some students are required to learn remotely due to self-isolation. To ensure those students can fully participate, the teacher records the live lesson and makes the recording available to them afterwards.

b. A school is subject to a stay-at-home order due to flooding. A teacher is teaching via Zoom and uses the record function as they teach. This recording is then made available

to all students in the class on demand in case they were unable to watch the live Zoom lesson. These on demand lessons are vital to families that have multiple school aged children and limited devices. These students need the option of being able to watch lessons later and at a time when a device is available for the student.

c. A rural student has an interest in physics, but a physics class is not offered at their school. The student accesses and watches a physics lesson on demand from a metropolitan school where it is offered.

2. Overly broad scope of statutory licenses

The overly broad scope of the statutory licences[45] means that they apply not just to educational uses of books, e-books, journals (hardcopy or digital), art works etc, but also to free online information sheets, general web information, free infographics, and free colouring-in sheets - even when those works are publicly shared online with no expectation of payment.

The digital 'scope creep' involved in the extension of statutory licensing to all forms of online content has seen well-intentioned public policy (compensating authors and publishers for lost sales due to photocopying) lead to the creation of 'false markets', and the collection of licence fees for works where there is no expectation of payment (see Case Study below).

Australian schools pay licence fees to use free publicly shared online materials for which there is no expectation of payment, in circumstances where schools in jurisdictions such as the United States, Singapore, the UK and EU can rely on a public interest exception to use these materials for free.

Further, ordinary Australians use these materials every day on the internet for free, but schools must pay licence fees if the same content is used in Australian classrooms. The school sector's most recent estimate is that Australian schools pay approximately **$6.61 million per year** in licence fees for the use of publicly shared online materials that have no commercial value.[46]

Some of the publicly shared materials that Australian schools have paid licence fees to use include the 'About Us' pages of corporate websites, the nutrition guide on the McDonald's website, free fact sheets, and bullying and mental health resources on the Kids Helpline website.[47]

The Australian Law Reform Commission (**ALRC**) and PC recommended the correction of this anomaly, but it remains an ongoing issue. CAG Schools is extremely concerned that this could be exacerbated if current statutory licensing approaches are adopted for AI. For example, the statutory licence might extend to cover AI outputs that:

- give factual information (eg an AI generated pneumonic for remembering the atomic weights of atoms on the periodic table)

---

[45] See in particular the 'works' statutory licence is set out in the Copyright Act s 113P(1).
[46] A note on financial estimates: Copyright Agency does not disclose its distribution practices in relation to the 'works' statutory licence. So, schools do not receive information about the amount of revenue actually allocated to the use of images that were publicly shared online with no expectation of payment. As such, the NCU assumes that Copyright Agency distributes on a proportional basis to the information recorded as remunerable by Copyright Agency in copyright surveys. For example, if total licence revenue is $X and the proportion of these images recorded in copyright surveys is Y%, we assume that the licence fee revenue attributable is Y% of $X million.
[47] See for example: https://kidshelpline.com.au/teens/issues/bullying and https://kidshelpline.com.au/kids/issues/talking-about-feelings.

- adopt other freely available information (eg designing a geography excursion using Google Maps data or adding Australian context to freely available US government resources).
- generate the answer to a maths question or other material that would not be protected by copyright.

Technological advancements should not mean activities previously considered in the public interest are no longer considered in the public interest due to the use of new technologies. Without appropriate exceptions, there is a real risk that Australian schools will be locked out of the AI transformation altogether because our education system simply won't be able to afford it.

This "scope creep" has the potential to further erode the role of public interest educational use exceptions in favour of greater reliance on licensing in the AI context, despite the ALRC and PC recognising that our copyright framework needs to include appropriate free educational use exceptions that recognise and support the public interest in education.

4.1.2 Edtech and AI

As the PC notes:[48]

> *"Teachers need access both to high-quality materials to suit every ability level in their class, and to educational technology (including artificial intelligence) that can meet students at their current level and help them advance".*

However, gaps in our outdated copyright framework are roadblocks to Education Bodies and students embracing edtech (including AI).

There are three aspects to this problem:

1. Education Bodies cannot **develop** tailored edtech and AI tools with legal certainty.
2. Teachers cannot clearly **teach** the skills needed to use AI tools. For example, demonstrating the basics of building and training an AI tool.
3. Education Bodies and students cannot clearly and legally **use** AI for teaching and learning. For example, creating learning resources or undertaking learning activities using AI.

1. Impediments to developing tailored edtech and AI

CAG Schools agrees with the PC's commentary in information request 1.1 from the *Data and Digital Technology Interim Report*,[49] that copyright barriers to training models are a regulatory issue. These barriers need to be addressed, particularly in the context of education.

It is critical to Australia's vision for a modern education system that Education Bodies are able to undertake activities such as training or fine-tuning AI models, optimising search engines and analysing trends in text - all of which rely on making "technical" copies of works by turning digital copies of material into data that computers can use (ie TDM).

[48] Skilled and Adaptable Workforce Interim Report, p 5.
[49] Data and Digital Technology Interim Report, p 28.

However, currently there is no copyright exception that would permit Education Bodies to undertake TDM in Australia to **develop** AI tools, even for not-for-profit, non-commercial educational purposes such as:

- creating a custom website index to improve teacher access to content
- developing a custom AI chatbot that uses local content that is appropriate for students
- developing the kind of AI and edtech solutions envisaged by the PC.

2. Impediments to teaching AI

Teachers cannot legally **teach** students the basics of building and training AI tools due to a lack of public interest exceptions that would apply to the making of the technical copies required to perform this activity for all forms of copyright materials in a classroom. This is a clear public interest educational activity that should **not** be covered by a licence.

3. Impediments to using AI for teaching and learning

Current copyright exceptions do not neatly apply to Education Bodies or teachers **using** AI for teaching and learning. Examples include:

- teachers using part of a free publicly shared online economic report as a prompt in an AI tool to develop teaching and learning materials on Australia's gross domestic product
- teachers using AI to differentiate an existing learning resource to meet student language accessibility needs by creating 'easy English', bilingual or culturally relevant resources
- teachers using AI to assist in developing engaging explanations or illustrations of complex topics
- an education department or non-government school ingesting extracts of purchased or licensed Australian teaching materials into an AI tool to assist students.

Impact of these impediments

These three impediments hinder the potential positive impacts of edtech and AI. For example:

- teachers face increased burden due to lack of clarity as to what and how materials and AI tools can be used
- there are systemic barriers to achieving the potential administrative benefits of AI regarding the long hours that teachers spend finishing the significant number of tasks outside lesson delivery.[50] These barriers hamper the potential productivity dividends noted in the case studies in Part 1 above (eg as much as 9.5hrs/week)
- the lack of legal certainty surrounding AI means schools cannot provide equitable access to edtech without undue legal risk, which, as the PC notes, puts vulnerable students and schools (eg in remote areas) at a disadvantage.[51]

Without urgent reforms, Australia cannot achieve our national goals regarding edtech and AI or our education vision in delivering a world-class education system.

---

[50] Ibid, p 7.
[51] Skilled and Adaptable Workforce Interim Report, p 37.

3.2 Some problems are not new – but AI exacerbates them

The issues with Australia's copyright regime are not new, with both the ALRC and the PC previously supporting the education sector's calls for new exceptions for non-commercial, non-prejudicial educational uses of materials, including through new technologies.

More than a decade ago, the ALRC, PC and Copyright Modernisation Consultation all recommended changes to our copyright laws to support productivity and better suit the needs of Australian schools and Education Bodies.[52] These recommendations were never implemented.

The 2013 ALRC Copyright and the Digital Economy Report noted:[53]

> *"… the existing exceptions for educational use of copyright material are due for reform. New exceptions are needed to ensure educational institutions can take full advantage of the wealth of material and new technologies and services now available in the digital age…. Education should not be hampered or stifled by overly prescriptive and confined exceptions. Licences should not be required for fair uses of copyright material that do not harm rights holders and do not reduce the incentive to produce educational material."*

The 2016 PC Intellectual Property (**IP**) Arrangements report endorsed the ALRC's recommendations for copyright reform, and noted that rather than hindering innovation and creativity, as claimed by some participants, IP reform would also invigorate innovation by various means, including:[54]

- Australian firms will be able to take full advantage of opportunities in cloud computing
- medical and scientific researchers will be able to better utilise TDM
- the education sector will avoid paying millions of dollars each year to use materials that are freely available online.

The importance of ensuring schools can safely provide digital services was acknowledged by the then Minister for Urban Infrastructure and Cities, the Hon Paul Fletcher in his Second Reading Speech of the *Copyright Amendment (Service Providers) Bill 2017*:[55]

> *"… the bill will help nearly 9,500 primary and secondary schools and 41 universities across Australia to more confidently provide digital services to 3½ million school students and over 1.3 million higher education students."*

---

[52] See ALRC Copyright and the Digital Economy Final Report 122 (**ALRC Report**), November 2013, available at alrc.gov.au/wp-content/uploads/2019/08/final_report_alrc_122_2nd_december_2013_.pdf; PC IP Arrangements Report; Department of Communication and the Arts Copyright Modernisation Consultation Paper, March 2018. See also Data and Digital Technology Interim Report, pp 26-27. See further Discussion paper—Exposure Draft Copyright Amendment (Access Reform) Bill 2021 & Review of Technological Protection Measures Exceptions (**Discussion Paper**), p 5. Available at https://www.infrastructure.gov.au/have-your-say/have-your-say-draft-copyright-reform-legislation.

[53] ALRC Report, p 311.

[54] See PC IP Arrangements Report, Overview, p 27.

[55] Available at https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2Fb97914f6-6e43-4c52-abd4-d5ec004fbfb5%2F0025%22.

Similarly, the Government's proposed *Copyright Amendment (Access Reform) Bill 2021* (**Access Reform Bill**) sought to address the need for reform of educational exceptions in a digital era:[56]

> *"The Bill will update and streamline the exceptions in the Act relating to educational institutions so that they are material and technology neutral, support contemporary teaching methods, and facilitate remote and online learning."*

However, the Access Reform Bill was never introduced.

The rise of AI is merely the latest illustration of the structural problems created by these longstanding deficiencies in our copyright framework and the urgent need for meaningful reform.

In order to meet our productivity goals, AI Framework objectives and broader economic vision, Australia must act now.

3.3 How to solve the copyright problems

There are three key reform priorities that will solve the problems set out in Part 3.1. These are:

1. remote learning reforms to resolve digital teaching and online learning issues
2. a non-commercial TDM exception that clearly applies to education to resolve impediments to **developing and teaching** edtech and AI
3. a fair dealing for education exception to resolve impediments to **teaching and using** AI.

These reforms would also ensure our students and Education Bodies are on equal footing with those in other high-performing countries, enabling us to fully realise our education vision and broader productivity goals. We explore each of these below.

3.3.1 Remote learning reforms

Amendments to support remote learning were announced by former Attorney-General, the Hon Mark Dreyfus KC MP on 11 April 2024, which reflected an agreement on legislative change between representatives of schools and creative industries, reached during a series of roundtables in 2023-2024.[57] However, these reforms have not been implemented.

Australian schools cannot confidently embrace digital teaching, let alone edtech and new technologies with outdated copyright exceptions that are stuck in the hardcopy, 'bricks and mortar' classrooms era.

CAG Schools calls for the PC to recommend these reforms be implemented as a priority to give Australian teachers clarity that they can embrace digital teaching legally.

---

[56] Discussion Paper – Exposure Draft Copyright Amendment (Access Reform) Bill 2021, December 2021, p 28. Available at https://www.infrastructure.gov.au/sites/default/files/documents/discussion-paper--exposure-draft-copyright-amendment--access-reform--bill2021.pdf.

[57] The Hon Mark Dreyfus KC MP, Media Release, Copyright reform to protect remote learning, 11 April 2024.

3.3.2 Non-commercial TDM exception

In response to information request 1.1 in the Data and Digital Technology Interim Report[58], CAG Schools recommends, at a minimum, introducing a new non-commercial TDM exception into the Copyright Act that clearly applies to educational uses.

A non-commercial TDM exception that clearly applies to educational uses would solve problem 1 identified in Part 3.1.2, by permitting the development of local, education-specific AI tools and AI-enabled technologies. This would mean that Education Bodies could develop both national and local, education-specific AI tools and AI-enabled technologies. It would also allow a teacher to demonstrate developing an AI tool in class (see problem 2 in Part 3.1.2). Examples of uses that would be permitted under this exception include:

- ✓ an Education Body adapting ('fine-tuning') existing AI models to make them more relevant and safer to use in Australian schools
- ✓ an Education Body developing an AI chatbot in-house
- ✓ an Education Body indexing its own websites and digital repositories to provide a search engine that enables teachers to find relevant resources more quickly and easily
- ✓ a teacher building a simple AI tool in-class as a demonstration, or teaching machine learning techniques.

Importantly, this exception must be technology-neutral, as emphasised by the PC in the Data and Digital Technology Interim Report.[59] This will ensure our copyright framework is future-proofed as technologies and pedagogies continue to evolve and adapt. An exception that is technology-specific risks becoming quickly outdated and adding to legal uncertainty and burden on teachers.

The need for technology-neutral exceptions was also emphasised by the ALRC:[60]

> *"Innovation in the digital economy is more likely to be promoted by copyright provisions that are technologically neutral."*

Similarly, the PC in its earlier IP Arrangements Report noted:[61]

> *"By being technology neutral — that is, not creating incentives that encourage particular types of ideas over others — an IP system better enables society to take advantage of inventions and creations."*

In addition, to provide Education Bodies acting in the public interest certainty, and to ensure consistency with the Preamble to the WIPO Copyright Treaty, the non-commercial TDM exception should **not** be subject to an opt-out. To do so would undermine the public interest purpose behind establishing the exception.

[58] Data and Digital Technology Interim Report, p 28.
[59] Data and Digital Technology Interim Report, p 2 (noted in draft recommendation 1.1). See also p 18.
[60] ARLC Report, p 40.
[61] PC IP Arrangements Report, p 70.

The table below provides examples of what CAG Schools considers would, and would not, be permitted under a non-commercial TDM exception:

This TDM exception would **allow**:	… but it would **not allow**:
✓ an education department to develop an AI chatbot in-house	× "big tech" companies to use material to train AI without consent or payment
✓ an education department to index its own websites and digital repositories to provide a search engine for staff	× mass digitisation of purchased hardcopy material like books or CDs so that they are more convenient to access
✓ a school to fine-tune an AI model using learning resources so that it generates safer, curriculum aligned outputs	× a business to fine-tune an AI model to improve workplace efficiency using material 'scraped' from the internet
✓ a teacher to build a simple AI tool in-class as a demonstration	× teacher to build an AI tool that they charge a fee to others to use

Australian schools are strong investors in and supporters of the creative industry. The NCU estimates that the school system spends approximately **$1.17 billion per annum** purchasing content.[62] Importantly, schools are not commercial actors, instead, they (or their administering bodies) are tasked with spending allocated public funds (for government schools) or funds from parents/guardians (for non-government schools) in an efficient and accountable manner that prioritises providing high quality education to Australian students. Having a non-commercial TDM exception will strike the appropriate balance between fair public interest uses and protecting creator interests.

To assist with this, CAG Schools supports the development of regulatory guidelines, if required, that provide non-exclusive example scenarios of what activities might fall within the exception. These guidelines could be developed in collaboration with Education Bodies and relevant stakeholders, including creators, to ensure the appropriate balance between public interest uses and protecting creator interests.

CAG Schools submits that a non-commercial TDM exception is the **minimum reform necessary** to achieve Australia's digital education vision and broader productivity goals.

[62] This estimation is based on a survey of 379 schools conducted in late 2012 and early 2013. The 379 schools provided a random stratified representation of schools by State, Sector (Government, Catholic and Independent) and Level (Primary, Secondary, Combined) to allow statistically reliable estimations to be done of school spending on a national basis. In 2012, the content acquisition figure by schools was $400 million, which when indexed by CPI equates to nearly $559 million annually in 2025.
The Commonwealth Bank's survey found that parents spent, on average, $127 per student on textbooks. There are 3.8 million schoolchildren in Australia, which equals to over $480 million spent on purchasing textbooks in 2017. When indexed by CPI equates to over $608 million annually in 2025. See https://www.commbank.com.au/guidance/newsroom/parents-brace-for-1-7-billion-back-to-school-bill-shock-201801.html. Taking the estimated schools spend of $559 million plus the estimated parents spend of $608 million, the total estimated spend is $1.17 billion (using the twelve month CPI increases each year to December 2024), available at https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia.

It is worth noting the UK has had a non-commercial TDM exception since 2014,[63] and Singapore has had a TDM exception since 2021.[64] These exceptions do not mean schools will no longer invest in educational publishing. For example, in 2016, the UK Publishers Association (**PA**) reported physical and digital schoolbook sales rose 7%.[65] This was after the introduction of the UK's non-commercial TDM exception. In 2024, the PA reported digital education book revenue in the UK rose 5% to £100 million.[66]

3.3.3 Fair dealing for education exception

In addition to a TDM exception, a fair dealing for education exception (as previously recommended by the PC and ALRC) needs to be introduced to permit certain non-commercial, educational uses of copyright works, including in connection with AI. This exception will resolve the issues set out in Part 3.1.2 regarding the teaching and use of AI by Education Bodies and students and alleviate some of the concerns identified in Part 3.1.1 regarding digital teaching methods and the statutory licence. For example, when teachers use AI tools to generate a summary of a work, differentiate an existing learning resource to meet student needs, or teach students the practical skills they need to safely and effectively use AI.

A fair dealing for education exception would allow schools and teachers to use someone else's material without the need to obtain a licence or get permission, but only if what they want to do is **fair**. Schools would still need to purchase or license content or obtain permission to use other people's material in ways that are **not fair**. CAG Schools is confident that this proposed public interest exception, will not harm Australian creators or significantly change the licensing revenue paid to authors and publishers.

As PC Commissioner Stephen King commented (our emphasis added): [67]

> "***Such an exception would not be a 'blank cheque'*** *for all copyrighted materials to be used … the use may also need be considered 'fair' in the circumstances, and this would help preserve copyright holder's interests."*

[63] *CDPA* s 29A 'Copies for text and data analysis for non-commercial research', available at: https://www.legislation.gov.uk/ukpga/1988/48/section/29A.
[64] *Singapore Copyright Act 2021* cl 244 'Copying or communicating for computational data analysis'. See also Copyright Factsheet pp 14-15. Note Singapore's exception does not specify it must be for "non-commercial" purposes.
[65] See https://www.publishers.org.uk/publications/the-pa-publishing-yearbook-2016/.
[66] See https://www.publishers.org.uk/publications/publishing-in-2024/.
[67] 'Regulating AI the right way' by Stephen King and Julie Abramson, published in *The Australian* on 10 August 2025. Also available at https://www.pc.gov.au/media-speeches/articles/regulating-ai-the-right-way.

The table below sets out examples of what CAG Schools considers would, and would not, be considered fair under this exception:

It would be **fair** to:	…but it would **not be fair** to:
✓ download a colouring-in sheet from the internet that is marked "free to use" and print it for a class	× download a sample chapter of a textbook from a publisher's website and print it for a class
✓ download a free health pamphlet for student use	× download an entire digital resource protected by a digital 'lock' (TPM)
✓ photocopy two pages of a novel for students to annotate in-class	× photocopy a full chapter of a novel for students annotate in-class
✓ include three paragraphs from a journal article in a PowerPoint	× upload an entire journal article to a digital teaching environment for students to read
✓ copy and paste a few paragraphs from a freely accessible research report into a prompt to a generative AI tool to generate a summary.	× copy and paste an entire paywalled newspaper article into a prompt to a generative AI tool to generate a summary.

Similar to Part 3.3.2 above, this exception must be technology-neutral to ensure our copyright framework is future-proofed as technologies and pedagogies continue to evolve and adapt. In addition, to give Education Bodies acting in the public interest certainty, the fair dealing for education exception should not be subject to contracting out.

3.4 Reform is needed for international consistency

Many other jurisdictions, including Singapore[68] and the UK,[69] already have copyright frameworks that feature more flexible, technology-neutral copyright exceptions than we have in Australia. For example, the UK has had an equivalent exception to a fair dealing for education exception ('Illustration for Instruction') since 2014 which expressly prevents contracting out, [70] and Singapore has recently updated its educational copyright framework (see Singapore Case Study below).[71] These exceptions provide educators with clarity that they can use new technologies such as AI in the classroom and the confidence to teach with them.

In May 2022, Teresa Nobre, a legal expert on copyright at COMMUNIA,[72] conducted a study '*Is it legal? Education and Copyright in the Digital Age*'. The study analysed copyright exceptions in the context of digital and remote teaching and learning activities across 40

[68] Singaporean Education Bodies can rely on the *Singapore Copyright Act 2021* s 191 (Fair Use exception) and/or s 243 (TDM exception). Available at https://sso.agc.gov.sg/Acts-Supp/22-2021/Published/20211007?DocDate=20211007. See also 'Box 1.7 – Text and data mining around the world' in the PC Data and Digital Technology Interim Report, p 27.
[69] UK Education Bodies can rely on the *Copyright, Designs and Patents Act 1988* (UK) (**CDPA**), s 29A 'Copies for text and data analysis for non-commercial research'. Available at https://www.legislation.gov.uk/ukpga/1988/48/contents.
[70] *CDPA* s 32 'Illustration for Instruction'.
[71] Full *Singapore Copyright Act 2021* available at https://sso.agc.gov.sg/Acts-Supp/22-2021/Published/20211007?DocDate=20211007. For more information on the *Singapore Copyright Act 2021*, see the Copyright Factsheet by the Intellectual Property Office of Singapore (**IPOS**), available at https://www.ipos.gov.sg/docs/default-source/resources-library/copyright/copyright-bill-factsheet.pdf.
[72] See https://communia-association.org/.

countries (including Australia), and the impact these had on the education environment. The study concluded:[73]

> *"…countries with broader, more flexible, and technologically neutral exceptions are better equipped to facilitate remote and digitally-supported education and empower teachers to make use of their academic freedom to choose and adapt materials essential for the provision of quality education for all."*

However, as demonstrated in Part 3.1, current Australian copyright laws do not give schools and Education Bodies the legal certainty they need. Australia's copyright framework is inconsistent with exceptions already available in other jurisdictions.

Currently Australia is ranked 11th in the PISA rankings, well behind 1st placed Singapore.[74] Without a suitable regulatory framework and more modern approaches to resource development, Australian schools risk falling further behind, placing our students at a disadvantage and hindering Australia's broader productivity goals.

Case Study: Singapore's Copyright Framework

In 2021, Singapore introduced a new Copyright Act to:

- update Singapore's copyright regime to reflect technological developments
- introduce new exceptions to ensure copyright works remain reasonably available for public benefit
- introduce new rights and remedies to provide creators with more recognition and incentives to create works.

Relevant changes included:

- a new consolidated fair use exception (*Singapore Copyright Act 2021* cl 190-194)
- a new exception for educational uses by non-profit schools (*Singapore Copyright Act 2021* cl 204), which permitted the use of free resources from the internet for educational purposes provided the relevant conditions were met
- a new exception for the copying of copyright works for the purpose of computational data analysis (including TDM) (*Singapore Copyright Act 2021* cl 243 – 244)
- a new regulatory framework for collective management organisations (**CMOs**) (*Singapore Copyright Act 2021* cl 458 – 476)* to *"enhance the standards of transparency, good governance, accountability, and efficiency"* of CMOs.

  *Note, these provisions came into effect in 2023 following further public consultation. This scheme is governed by the Copyright (CMOs) Regulations 2023, see https://www.ipos.gov.sg/about-ip/copyright/collective-management-organisation.

This means for example:

- a teacher in Singapore could demonstrate how to train an AI model to students by developing a model in class and training the model on a curated set of materials in

[73] Is it legal? Education and Copyright in the Digital Age, Teresa Nobre, Education International Research, May 2022, p 321. Available at: https://eiie.io/3PdfYEW. See also Education and Copyright: Obstacles to Teaching in the Digital Age, by Teresa Nobre, 19 July 2022, licensed under a CC BY 4.0 International License. Available at https://www.ei-ie.org/en/item/26467:education-and-copyright-obstacles-to-teaching-in-the-digital-age.
[74] See https://worldpopulationreview.com/country-rankings/pisa-scores-by-country/.

Singapore under the computational data analysis exception, but an Australian teacher could not

- a teacher in Singapore could download a kids health challenge sheet that was made available for free on a sports institute's website to discuss in class for free but if an Australian teacher did the same, it is paid for under the statutory licence.

Australia's copyright framework, which does not contain appropriate exceptions for digital teaching practices or AI adoption in the education sector, is also inconsistent with the preamble to the WIPO Copyright Treaty, to which Australia is a party, which recognises:[75]

> *"…the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the Berne Convention".*

A copyright framework that supports public interest uses of copyright materials, including in online education environments, would align Australia with international norms established under the WIPO Copyright Treaty.

[75] Preamble to World Intellectual Property Organization **(WIPO)** WIPO Copyright Treaty (**WCT**) (1996), available at: https://www.wipo.int/wipolex/en/treaties/textdetails/12740.

Part 4 – Governance and future-proofing Australia's copyright framework

To ensure the copyright framework set out in Parts 2 and 3 is robust and future-proofed, it is critical that appropriate independent governance structures are put in place. Specifically, a:

1. clear, independent governance structure for a coordinated approach to edtech, AI and educational resources, and
2. review of the existing governance structure for statutory licensing regimes.

We discuss these further below.

4.1 Governance of a coordinated approach to edtech, AI and educational resources

CAG Schools supports the PC's view that a coordinated approach should include consideration of:

- **sufficient and ongoing funding** to develop, maintain and update these resources.
- **adequate training and skilled staff** to review and manage resources.
- **clear details** on the delivery of the project, infrastructure, pilots and who would be responsible for creating, approving and updating content.

CAG Schools notes that appropriate independent **governance** frameworks must also be in place for content developers responsible for the national platform to ensure accountability, oversight and that the approach meets the objectives of equitable access and adaptability.

4.2 Governance of statutory licensing regimes

The schools sector has significant governance concerns regarding the administration of existing statutory licensing regimes, including an outdated Code of Conduct for Copyright Collecting Societies 2019 (**Code of Conduct**) and lack of transparency or independent oversight as to how declared collecting societies (which administer the statutory licence) are allocating public funds (for government schools) or fees paid by parents/guardians (for non-government schools).

Neither the Code of Conduct, nor the existing legislative framework applying to declared collecting societies, provide any mechanism for the education sector to have these concerns addressed or impose any obligation on collecting societies to act fairly or in the interests of licensees.

Declared collecting societies are subject to the Guidelines for the Declaration of Collecting Societies (**Guidelines**), but these were last revised in April 2001. Market conditions and licensing arrangements have fundamentally changed since these Guidelines were reviewed, and the Guidelines themselves are so outdated that they refer to statutory provisions that have subsequently been repealed from the Copyright Act. The PC highlighted the need for an ACCC

review into the governance arrangements for declared collecting societies in 2016, but this has still not taken place.[76]

To address these concerns, CAG Schools urgently calls for a review of the statutory licensing framework. This should include review of the Guidelines and the broader governance arrangements of collecting societies under the statutory licence.

Conclusion

As observed by Adelaide Botanic High School Principal Sarah Chambers when referring to the adoption of EdChat and AI in schools:[77]

> *"I think the thing I appreciate about the approach is to not shy away from this challenge, to really look to the reality that this is a technology that will influence how we work, from now and into the future, because it's not going anywhere".*

Generative AI offers an opportunity to transform the way we deliver Australian education. Across Australia, there is a growing drive to fully harness these benefits, to promote equity, lift student outcomes and prepare our education system for the future. However, copyright imposes several roadblocks to achieving these goals.

Australia needs clear copyright arrangements to ensure Education Bodies can fully embrace and offer equitable access to new technologies, including AI, both in the classroom and in the delivery of high-quality curriculum materials (as recommended by the PC).[78]

The three-step roadmap proposed by CAG Schools which includes:

1. a coordinated approach to edtech, AI and educational resources
2. reforming copyright laws to support Australia's national vision for Australian schools
3. ensuring appropriate governance arrangements for a national approach to educational resources and copyright licensing,

will not only enable Australian schools to teach students the fundamental skills needed to contribute productively and adapt to the digital economy, but also ensures that Australia remains internationally competitive. In addition, it will promote the sustainable and effective use of publicly funded education budgets as schools navigate the digital era.

Providing students with a high-quality education is the foundational step towards achieving Australia's economic vision and boosting productivity by harnessing new technologies and developing a skilled, adaptable workforce. Now, more than ever, we need a copyright system that facilitates - rather than obstructs - Australia's ability to leverage the benefits of new technologies in education.

---

[76] PC IP Arrangements Report, pp 25-26. Note although a review of the Voluntary Code of Conduct for Collecting Societies occurred, and some improvements were made, a review of the governance arrangements for declared collecting societies remains outstanding.
[77] Quoted in *https://www.abc.net.au/news/2025-08-19/teachers-should-generative-ai-chatbots-be-embraced/105660244*.
[78] Data and Digital Technology Interim Report, p 2.