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### **Forget about China– it’s the WA Government using your Intellectual Property!**

Pit Crew, a cutting-edge WA business providing innovative labour market forecasting reports is not worried about foreign entities taking and using its reports – which can take hundreds of hours to prepare, it’s the WA Government, more specifically the Department of Training and Workforce Development (DTWD) it says is the major culprit.

In late 2021 Small Business Minister Reece Whitby said: *“The State Government is committed to helping small businesses start, grow and thrive in Western Australia”*. Premier Mark McGowan said in 2020: *“In these difficult times, small business needs our business,”* yet DTWD appear to have missed the memo.

In a State which supposedly promotes small business innovation, Pit Crew is finding out the hard way that the WA Government in fact shows little respect for the intellectual efforts of local businesses, let alone complying with the anti-pirating copyright laws.

Having gained access to an unlicensed copy of a very substantial Pit Crew report, DTWD decided to ignore numerous - 48 in total - copyright warnings stating that the report can only be used by subscribers, like Rio Tinto and BHP, who have been happy to pay the appropriate license fees for many years, instead they copied or distributed the expensive and highly sensitive report within DTWD and to at least four other WA Government departments, including the Premier’s Department, even to family, and has offered essentially nothing to Pit Crew in return.

Pit Crew has cried foul pointing out that the misuse of the labor market reports is not only illegal, it is totally incongruous with the levels of integrity shown by leading minerals and energy companies that respect Pit Crew’s rights and pay for access to the reports.

Pit Crew started developing their labour forecasting modelling systems in 2005, and delivered their first subscriber-based report in late 2007. The Company’s systems cannot be replicated. Accordingly past and present clients such as BHP, Rio Tinto, FMG, Roy Hill, Woodside, INPEX, Chevron, Bechtel, APPEA, AMMA, Santos, Perth Airport, SA Chamber of Mines and Energy, Northern Territory Government, British Columbia Government, Water Corporation, GHD, Downer Group, Monadelphous, Laing O’Rourke, LNG Canada, and British Columbia LNG Alliance have been happy to

pay Pit Crew's subscription fees in return for their innovative labour modelling and forecasting. But not it seems DTWD.

In June 2021, Pit Crew pursuant to a strict subscription agreement with the Chamber of Minerals (CME) released its May 2021 Labour Market report for the Resources Sector Workforce Report – Operations, Shutdowns and Construction. The report was provided to the CME. The report was timely given the labour shortages in the resources sector arising from the COVID-19 pandemic, the WA Government's border closures, and with the Premier's WA Skills Summit only a week away. The report was for CME internal use only but was released to DTWD who authorised the distribution of the report freely to over 33 staff in 4 departments and even to family.

Despite what Pit Crew describes is a gross violation of its IP rights, DTWD's response is in effect *you get nothing, and whatever copyrights you have in the report and no matter what it may cost, we can use it for certain purposes essentially for free. Also, if we send it to a family member that's ok too, so long as the family member hasn't opened the email.*

DTWD maintains that it can distribute the report freely and is offering no payment for the expensive report. And emailing the report to family members doesn't attract an obligation to compensate Pit Crew either. The McGowan Government relies on a relatively unknown part of the Copyright Act which is generally directed at allowing Government to copy books and other articles (s183 Copyright Act) in performing their function in return for "equitable remuneration" to the copyright owner. Generally, authors who publish widely receive suitable remuneration for the copying of parts of their work by Government through a 2010 collective "remuneration agreement" which can be made under the Copyright Act (s183A). This provides for usually no more than a few cents for each page copied to be remitted to the author. An arrangement that may work well with books and articles costing \$10-\$20, but pitiful for a \$40,000 labour market report. In essence, DTWD is saying its remuneration agreement for "equitable remuneration" to be paid to copyright owners doesn't need to be *fair!*

Pit Crew has told DTWD that "remuneration agreement" doesn't apply to all its copyrights, and certainly doesn't apply to the free and uncontrolled distribution of the report, including to family members; but they do not appear to be listening. For 10 months Pit Crew has asked basic questions, in line with the Copyright Act, directed at attempting to protect its IP, asking for the disclosure of emails showing at least the use and distribution of the report. In response the Government has been highly evasive, provided minimal information or simply ignored requests, eventually stating that it has deleted every related email, leaving little or no evidence of its conduct. In addition, every Pit Crew overture to resolve this poor Government behavior has received the response – you get nothing!

Pit Crew's Managing Director Peter Dyball says "DTWD's conduct does not pass the pub test! It suggests the WA Government is willing to use IP from local innovators and offer nothing in return. That's the clear message here. Moreover, they're willing into ignore their obligation to preserve evidence by deleting what may be incriminating emails. Why would they do that? This must change to have any local innovation in this State. DTWD and the Government need to get serious, accept they've behaved poorly and offer an appropriate level of remuneration."