

Deed of Variation

This deed of variation is made on 15 January 2008.

This deed of variation is made between and binds the following parties:

Copyright Agency Limited ACN 001 228 799, ABN 53 001 228 799 of Level 15, 233 Castlereagh Street Sydney, New South Wales 2000 (**CAL**)

Commonwealth of Australia represented by the Attorney-General's Department ABN 92 661 124 436 of Robert Garran Offices, National Circuit, Barton ACT 2600 (**Attorney-General's Department**)

Operative Provisions

The parties to this deed of variation agree to vary the following clauses of the Agreement dated 10 June 2003 between the Commonwealth of Australia and the Copyright Agency Limited ('the Agreement').

In clause 1.1 of the Agreement, replace the definition of 'Communication' with:

'Communication (except where used in respect of Newspaper Clips) means making a Work available in digital or other electronic machine-readable form to employees, members, contractors and agents of any Participating Body by means of email, intranet or through a web page that is not accessible by anyone apart from an employee, member, contractor or agent of any Participating Body.'

'Communication (in respect of Newspaper Clips) means making a Work available in digital or other electronic machine-readable form to employees, members, contractors and agents of a Participating Body only by means of internal email or Intranet and not otherwise; for the avoidance of doubt, this term does not include external emails or the act of making a Work available to the public on an internet web page.'

In clause 2.1.2 of the Agreement replace 'up to 30 June 2003' with 'during the term of this Agreement', so that clause 2.1.2 will read:

'An endorsement may be lodged at any time during the term of this Agreement.'

Amend clause 2.1.7 of the Agreement to read:

`Where:

- a) an Eligible Body comes into existence on or after 1 July 2001 and lodges an Endorsement during the term of this Agreement, its rights and liabilities under the Agreement will be deemed to commence from the date the Eligible Body came into existence; or
- b) an Eligible Body is in existence before 1 July 2001 and lodges an Endorsement during the term of this Agreement, its rights and liabilities under the Agreement will be deemed to commence from 1 July 2001’.

In clause 3.1 of the Agreement replace `30 June 2007’ with `30 June 2009’, so that clause 3.1 will read:

`Subject to clauses 3.2, 3.3, 12.3 and 15, this Agreement commences on 1 July 2001 and continues in force until 30 June 2009 (the Term)’.

In clause 3.2 of the Agreement replace `30 June 2007’ with `30 June 2009’, so that clause 3.2 will read:

`The Term for Digital Copying and Communication of Newspaper Clips is agreed to have commenced on 1 July 2001 and shall end on 30 June 2009’.

Amend clause 9.1.1(a) of the Agreement to read:

‘within a reasonable time after lodging an Endorsement, provide a notice to CAL advising the number of EFT Employees of the Participating Body as at the previous 30 June and, where reasonably practicable and where not already provided to CAL, at 30 June of each prior year following the date on which the Agreement is deemed to commence under clause 2.1.7.’

Add a new clause 13.5 to the Agreement to read:

‘In respect of Communications covered by this Agreement, CAL agrees to promptly make reasonable efforts to seek authorisations from copyright owners for CAL to collect Remuneration for such Communications. For the purposes of clauses 13.1 and 13.2, Participating Bodies are entitled to rely on CAL making such efforts.’

Replace all of Schedule 1 of the Agreement with:

SCHEDULE 1

Form of Endorsement

(Clause 2)

Election by an Eligible Body to Subscribe to Agreement

This Election to Subscribe is dated: _____

Date Eligible Body came into existence (this applies only to an Eligible Body that was not in existence prior to 1 July 2001):

The parties to this Election to subscribe are:

^insert name of Participating Body^ ABN ^insert ABN of Participating Body^ of
^insert address of Participating Body^ (**Participating Body**)

Copyright Agency Limited ACN 001 228 799, ABN 53 001 228 799 of Level 15,
233 Castlereagh Street, Sydney, New South Wales (**CAL**)

Commonwealth of Australia represented by the Attorney-General's Department
ABN 92 661 124 436 of Robert Garran Offices, National Circuit, Barton ACT
2600 (**Attorney-General's Department**)

A. Interpretation

CAL Agreement	Means the deed of agreement between CAL and the Attorney-General's Department made pursuant to Part VII Division 2 of the <i>Copyright Act 1968</i> dated 10 June 2003 as amended from time to time between CAL and the Attorney-General's Department.
Contact Officer	Means the officer of the Participating Body with responsibility for the operation of its contract with CAL as notified in Annexure 1 to this Election to Subscribe.
Election to Subscribe	Means this instrument which creates a contract between CAL and the Participating Body.
Financial Year	Means a 12 month period commencing on 1 July and ending on 30 June.

B. Formation of contract

- B.1. The Participating Body and CAL agree that execution of this Election to Subscribe gives rise to a separate contract between CAL and the Participating Body, incorporating terms set out in the CAL Agreement.
- B.2. Where the Participating Body has previously executed an election to subscribe under the CAL Agreement, the separate contract so created is terminated at the date of execution of this Election to Subscribe and is replaced by the separate contract created under item B.1 above.
- B.3. The details applying to the separate contract created by the execution of this Election to Subscribe are set out in Annexure 1 to this Election to Subscribe.

C. Contact Officer

- C.1. The Contact Officer is responsible for operation of the contract with CAL in relation to the Participating Body. The Contact Officer should cooperate generally with CAL and the sampling body in accordance with the Participating Body's contract with CAL, and in particular should furnish details of EFT Employee numbers as required by that contract.

D. Variations

- D.1. Annexure 1 may be varied from time to time as required. The Participating Body will serve such variations on CAL and the Attorney-General's Department at their address for notices in clause 17 of the CAL Agreement.

E. Payment of Administration Costs

- E.1. The Participating Body agrees to reimburse the Attorney-General's Department for the Participating Body's share of the costs incurred by the Attorney-General's Department in negotiating and managing the CAL Agreement. The Attorney-General's Department will determine the relevant costs applicable to the Participating Body at the end of each Financial Year.
- E.2. The Attorney-General's Department will invoice the Participating Body for the costs incurred over the course of the preceding Financial Year by providing an invoice to the Participating Body's Contact Officer.
- E.3. The Participating Body agrees to pay invoices, delivered in accordance with item E.2, within 30 days of receipt.

Signatures

Executed as a Deed

SIGNED, SEALED AND DELIVERED
for and on behalf of
(Participating Body)^ by:

Name of signatory

Signature

In the presence of:

Name of witness

Signature of witness

SIGNED, SEALED AND DELIVERED
for and on behalf of **Copyright
Agency Limited** by:

Director

Signature

Director/Secretary

Signature

SIGNED SEALED AND DELIVERED
for and on behalf of the
**Commonwealth of Australia as
represented by the Attorney-
General's Department** by:

Name of signatory

Signature

In the presence of:

Name of witness

Signature of witness

Annexure 1 - Details

Specify name of Participating Body:

Is the Participating Body a Department, Agency or Commonwealth Corporation?
(Specify which)

Name and contact particulars of the Contact Officer(s):

Please list in the table below:

- Name of Participating Body and all associated bodies to be included in the Agreement (Boards, Statutory authorities or agencies, commissions);
- Address details and any relevant contact details;
- Current EFT numbers for the Participating Body and each associated body to be included in the Agreement.

Name of Participating Body and all associated bodies	Address	EFT Employees

[Please attach a separate sheet if extra space is required]

Specify any elements of the Participating Body that are to be excluded from the Agreement (eg. Boards, statutory authorities or agencies, commissions) [Please attach a separate sheet if extra space is required]:

Does the Participating Body subscribe to a Press Clipping Service? If so please provide details of the Service

Does the Participating Body have an In-House Newsclipping Service?

In Schedule 3, Part B, Paragraph 2(b) of the Agreement, replace all of 2(b) with:

'(b) Digital Copying and Communication

Remuneration for Digital Copies and Communication of Newspaper Clips is calculated and payable in accordance with the following tables:

Table 1: Rates Effective for the period 1 July 2001 to 30 June 2006

Number of Employees	In-House Press Clipping Service per Digital Newspaper Clip made available electronically for up to 90 days	Press Clipping Service per Digital Newspaper Clip made available electronically for up to 90 days	Per Digital Newspaper Clip stored on an intranet or electronic database longer than 3 months: (Stored from post expiry of the 90 days)		
			Year 1	Year 2	Year 3 +
1 - 1000	\$1.25	\$0.25	\$0.20	\$0.10	\$0.05
1001 - 2000	\$1.35	\$0.35	\$0.20	\$0.10	\$0.05
2001 - 3000	\$1.45	\$0.45	\$0.20	\$0.10	\$0.05
3001 - 4000	\$1.55	\$0.55	\$0.20	\$0.10	\$0.05
>4000	\$1.65	\$0.65	\$0.20	\$0.10	\$0.05

Table 2: Rates Effective 1 July 2006

Number of Employees	In-House Press Clipping Service per Digital Newspaper Clip made available electronically for up to 90 days	Press Clipping Service per Digital Newspaper Clip made available electronically for up to 90 days	Per Digital Newspaper Clip stored on an intranet or electronic database longer than 3 months: (Stored from post expiry of the 90 days)		
			Year 1	Year 2	Year 3 +
1 - 1000	\$1.31	\$0.26	\$0.20	\$0.10	\$0.05
1001 - 2000	\$1.42	\$0.37	\$0.20	\$0.10	\$0.05
2001 - 3000	\$1.53	\$0.48	\$0.20	\$0.10	\$0.05
3001 - 4000	\$1.64	\$0.59	\$0.20	\$0.10	\$0.05

>4000	\$1.75	\$0.70	\$0.20	\$0.10	\$0.05
-------	--------	--------	--------	--------	--------

In Schedule 3, Part B, Paragraph 2(c)(ii) of the Agreement replace
`payments are subject to CPI adjustment post 1 July 2006' with
`payments are subject to an annual CPI adjustment post 1 July 2006.'

In Schedule 6, Paragraph 1 of the Agreement, replace 'Digital Copying and/or Intranet Communication' with 'Digital Copying and/or Communication' so that Schedule 6, Paragraph 1 reads:

'The Remuneration payable by each Participating Body for Digital Copying and/or Communication of Copyright Material other than:'

In Schedule 6, Paragraph 1(b) of the Agreement replace the rate calculation table with the following table:

Year	Formula
2001-2002	\$0.50 cents x EFT employee
2002-2003	\$1.50 x EFT
2003-2004	\$1.50 x EFT
2004-2005	\$1.50 x EFT
2005-2006	\$1.60 x EFT
2006-2007	\$2.50 x EFT
2007-2008	\$2.50 x EFT
Post 2007-2008	To be determined

Rate calculations for Strata 2 Departments in the interim will be calculated by agreement on the following EFT numbers effective 1 July 2004:

Australian Taxation Office (ATO)	5,000 EFT
Centrelink	6,000 EFT
Department of Defence	17,000 EFT

Executed as a Deed

SIGNED, SEALED AND)
DELIVERED for and on behalf of)
Copyright Agency Limited by:)

Director

Signature

Director/Secretary
SIGNED SEALED AND)
DELIVERED for and on behalf of)
the **Commonwealth of Australia**)
as represented by the)
Attorney-General's Department
by:

Signature

Name of signatory

Signature

In the presence of:

Name of witness

Signature of witness