

## ODPP COPYRIGHT POLICY

### Background:

1. The ODPP has an Intellectual Property Policy. Copyright comes under the heading of Intellectual Property but requires a separate protocol.<sup>1</sup>
2. The ODPP produces many works. These works are protected by copyright and include all publications, databases, content on the intranet and internet. The ownership is known as Crown Copyright which means the copyright is owned by the NSW Government through the Office of the Director of Public Prosecutions (unless otherwise agreed). A copyright statement must attach to the work to clearly set out the rights as to use. If there is no copyright statement the work is “locked up” and permission is needed from the copyright owner to reproduce it. The author of the work maintains the moral rights to the piece of work and must be recognised as the author of the work and must be consulted before the work is changed in any major way.
3. The purpose of this Policy is to ensure the works produced by the ODPP and by third parties and utilised by the ODPP are managed effectively and protected. This will benefit the author of the work and also the person using the work.
4. ODPP work is produced to fulfil the functions of the Office as set out in the Director of Public Prosecutions Act 1986. Some of the work will also be produced for the benefit of all staff, ie Research Flyers. Some of the work is produced for the benefit of the public ie publications for victims and witnesses. Some of the work is appropriate for commercial purposes ie the Advance Notes.
5. It is necessary to ensure the work is available to ODPP staff and to the public as required, that the work is not misused or misrepresented and that work capable of being commercialised is identified where appropriate, with requisite advice.

### ODPP and copyright:

1. In relation to **inhouse material** when the ODPP creates a work it is automatically protected by full copyright. ODPP staff members do not have to comply with copyright related procedure to use the material but ODPP staff must abide by the conditions set out in this document.
2. This internal policy permits all documents on the **intranet** to be copied and distributed as necessary for in house ODPP work. However internal work produced for the benefit of ODPP staff members (such as the Research Flyers, Crown Submissions, Papers, Manuals, Legislation updates, Advance Notes etc) should **not** be distributed outside the Office without consent of the Deputy Solicitor (Legal) who will consider the request and may consult with the author of the document.

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<sup>1</sup> This Protocol is based on information contained in the Copyright Management Toolkit: Alison Shames State Copyright Manager, Attorney General’s Department, October 2006

3. The documents on the **website** are for public access and are subject to a restrictive copyright notice that limits the use of the material. This statement protects the Crown copyright in particular by specifying the circumstances in which work may not be copied and distributed.

Unless stated otherwise, copyright for this website design and content (including information, data, documents, pages and images (“the Material”)) is owned by the Office of the Director of Public Prosecutions NSW or used under licence. The material is subject to copyright under the Copyright Act 1968 (Cth) and it is owned by the State of New South Wales through the Office of the Director of Public Prosecutions NSW. You may make limited copies of the content contained within this website in accordance with the Copyright Act, including copies for research, study, criticism, review or news reporting. You may not reproduce, adapt, modify, communicate to the public, reproduce or otherwise use any part of this website (in particular for commercial purposes) without written permission from the Office of the Director of Public Prosecutions. That permission, if given, will be subject to conditions that will include a requirement that the copyright owner's name and interest in the material be acknowledged when the material is reproduced or quoted, either in whole or in part. Please address enquiries and requests for permission to the attention of the Copyright Officer by mail: Deputy Solicitor (Legal) Office of the Director of Public Prosecutions Locked Bag A8 Sydney South NSW 1232. This copyright statement also does not apply to any third party works appearing in the Material. **Trademarks** Trademarks used in this website are the property of their respective owners.

This copyright restriction should not affect ODPP staff members provided the material is accessed and utilised for ODPP work.

4. The use of **third party material** for ODPP work (ie documents obtained from links from the intranet such as JIRS, LBC etc) the ODPP relies on **s183** of the Copyright Act (Cth) (see annexure). As part of the NSW Government the ODPP is entitled to use copyright material (ie photocopy text, newspapers etc) ‘for the services of the Commonwealth or State’ without first seeking permission from the copyright owner. Under section 183 there are no limits on the amount of material that can be used nor on the number of copies that may be made. However this internal policy requires ODPP staff only to make the number of copies as are reasonably required.
5. The phrase “services of the Commonwealth or State” is not defined in the Act but case law assists in interpretation to include “services provided by Government as well as services of the Crown if it was done for the purpose of performing a duty or exercising a power which was imposed upon or invested in the executive government by statute or prerogative.”
6. The copyright owner may be entitled to compensation but the ODPP does not have to negotiate any fees directly as the ODPP is a member of Copyright Agency Limited (CAL). CAL is a collection agency and collects copyright fees from the ODPP (and other government agencies) under statutory licensing schemes. CAL distributes monies collected to publishers meaning that the ODPP does not have to seek permission to reproduce text, artworks and music on each occasion they are used or reproduced.

7. Requests to and from other libraries for **journal articles** are made under s50 of the Copyright Act (Reproducing and communicating works by libraries and archives for other libraries or archives).
8. In NSW copyright is waived in relation to unreported **judicial decisions**<sup>2</sup> and so may be copied freely by ODPP staff. Judicial decision is defined to mean:
  - (a) a judgment, order or award of a State Court; or
  - (b) the reasons for any such judgment, order or award given by the State court or a member of the State court,that has or have been publicly delivered, made or given.
9. The ODPP may also freely use reported judicial decisions as they are “text” as referred to in to paragraph 6 above.
10. In NSW copyright is waived in relation to **legislation and other material** including instruments, proclamations and explanatory notes.<sup>3</sup>
11. Copyright in a work is not infringed by anything done for the purpose of a **judicial proceeding** or a report of a judicial proceeding. Judicial proceeding is defined as a proceeding before a court, tribunal or a person with power to hear, receive and examine evidence on oath – **s43(1)** and section 104.
12. In relation to judgments and legislation (and other material) from interstate or overseas ODPP staff members can print or download where the owner of the copyright has specifically given permission for the use or, when the material is required ‘for the services of the State’ (and would be covered by the agreement with CAL) or for “judicial proceedings” namely under section 183 or s43(1).
13. Copyright applies to **transcripts of evidence** and transcripts should not be copied or copies distributed by ODPP staff unless it is for the ‘services of the State’ under section 183 and or for ‘judicial proceedings’ under s43(1). For example transcripts can be copied in relation to inhouse ODPP work. Transcripts may be provided to police to assist police in investigations/inquiries relating to an ODPP matter.
14. As a general rule transcripts should not be provided to defence (who have a right to their own copy). However there are three exceptions;
  - i) Where necessary the ODPP may provide transcripts to the defence in appeal matters to the District Court (authorised by letter from the Attorney General to the Director dated 21.11.05)
  - ii) Transcripts may be provided to defence for disclosure purposes (and therefore usually within s43(1)) and

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<sup>2</sup> Waiver of Crown Copyright in judicial decisions by Instrument of John Hannaford Attorney General dated 28 February 1995.

<sup>3</sup> Waiver of Crown Copyright in legislation and other material by Instrument of Jeff Shaw QC Attorney General 27/9/96 and 19/1/01

- iii) Provision of transcripts to unrepresented accused (depending on the circumstances) in an effort to expedite judicial proceedings.
15. A copy of a witness's transcript may be provided to the witness for court purposes (**provided** the Crown Prosecutor or Managing Lawyer authorise it) as such action would come under s183 or s43(1). Please note victims may be able to gain access to transcript and court documents on application to the relevant Court criminal registry and they should not be provided with any documents from this Office apart from their own statement (and own transcript of evidence, if approved).
16. If an ODPP officer has to answer a **subpoena** then there are no copyright considerations as section 183 and s43(1) will apply and all material should be photocopied and forwarded to the appropriate court (subject to legal professional privilege issues and public interest immunity) including transcripts of evidence.

For all queries please contact the Deputy Solicitor (Legal) on 9285 8825.

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## S183 COPYRIGHT ACT

### ***183 Use of copyright material for the services of the Crown***

(1) The copyright in a literary, dramatic, musical or artistic work or a published edition of such a work, or in a sound recording, cinematograph film, television broadcast or sound broadcast, is not infringed by the Commonwealth or a State, or by a person authorized in writing by the Commonwealth or a State, doing any acts comprised in the copyright if the acts are done **for the services of the Commonwealth or State**.

(2) Where the Government of the Commonwealth has made an agreement or arrangement with the Government of some other country for the supply to that country of goods required for the defence of that country:

(a) the doing of any act in connexion with the supply of those goods in pursuance of the agreement or arrangement; and

(b) the sale to any person of such of those goods as are not required for the purposes of the agreement or arrangement;

shall, for the purposes of the last preceding subsection, be each deemed to be for the services of the Commonwealth.

(3) Authority may be given under subsection (1) before or after the acts in respect of which the authority is given have been done, and may be given to a person notwithstanding that he or she has a licence granted by, or binding on, the owner of the copyright to do the acts.

(4) Where an act comprised in a copyright has been done under subsection (1), the Commonwealth or State shall, as soon as possible, unless it appears to the Commonwealth or State that it would be contrary to the public interest to do so, inform the owner of the copyright, as prescribed, of the doing of the act and shall furnish him or her with such information as to the doing of the act as he or she from time to time reasonably requires.

(5) Where an act comprised in a copyright has been done under subsection (1), the terms for the doing of the act are such terms as are, whether before or after the act is done, agreed between the Commonwealth or the State and the owner of the copyright or, in default of agreement, as are fixed by the Copyright Tribunal.

(6) An agreement or licence (whether made or granted before or after the commencement of this Act) fixing the terms upon which a person other than the Commonwealth or a State may do acts comprised in a copyright is inoperative with respect to the doing of those acts, after the commencement of this Act, under subsection (1), unless the agreement or licence has been approved by the Attorney-General of the Commonwealth or the Attorney-General of the State.

(7) Where an article is sold and the sale is not, by virtue of subsection (1), an infringement of a copyright, the purchaser of the article, and a person claiming through him or her, is entitled to deal with the article as if the Commonwealth or State were the owner of that copyright.

(8) An act done under subsection (1) does not constitute publication of a work or other subject-matter and shall not be taken into account in the application of any provision of this Act relating to the duration of any copyright.

(9) Where an exclusive licence is in force in relation to any copyright, the preceding subsections of this section have effect as if any reference in those subsections to the owner of the copyright were a reference to the exclusive licensee.

(11) The reproduction, copying or communication of the whole or a part of a work or other subject-matter for the educational purposes of an educational institution of, or under the control of, the Commonwealth, a State or the Northern Territory shall, for the purposes of this section, be deemed not to be an act done for the services of the Commonwealth, that State or the Northern Territory.