

**COMMONWEALTH OF AUSTRALIA**

**COPYRIGHT ACT 1968**

**IN THE COPYRIGHT TRIBUNAL OF AUSTRALIA**

**FILE NO. CT 2 OF 2003**

**APPLICATION FOR DETERMINATION UNDER S 183(1) OF THE COPYRIGHT  
ACT 1968 (CTH)**

**REFERENCE BY:                   COPYRIGHT AGENCY LIMITED V STATE OF NEW  
SOUTH WALES**

**ORDER**

**TRIBUNAL:                       PERRAM AP, C RIORDAN (Member)**

**DATE:                             28 OCTOBER 2013**

**WHERE MADE:                 SYDNEY**

**THE TRIBUNAL ORDERS THAT:**

1. Within 60 days of the end of each calendar quarter (**Period**), in discharge of its obligations under s. 183(4) of the *Copyright Act* 1968 (**Act**) and what would be its obligations under that subsection but for the operation of s 183A(1) of that Act, the State of New South Wales (**State**) shall provide to Copyright Agency Limited (**CAL**):
  - (a) a list of the survey plans registered in New South Wales (**Plans**) provided over the counter for a fee in that preceding Period;
  - (b) a list of the Plans provided electronically for a fee, excluding to or via information brokers, in that preceding Period;
  - (c) a list of the Plans provided electronically for a fee via Information Brokers in that preceding Period,

which lists shall be in an electronic data file (for example CSV or Excel) ordered according to Plan number and shall also include the date of provision, and where held in ITS, the LPI surveyor ID; and shall inform CAL of:

- (d) the total number of Plans provided through each delivery channel (indicating the relevant channel) in that preceding Period;
  - (e) the amount of the fee charged by the State in that preceding Period for providing a copy of a Plan (excluding and separately identifying in each case any amount for GST or Royalty Component):
    - (i) for supply over-the-counter; and
    - (ii) electronically (excluding to or via Information Brokers).
2. Within 90 days of receipt of the information required to be provided in compliance with paragraph 1 of these Orders, subject to the information provided by the State being accurate and complete, CAL shall provide to the State:
- (a) a list of CAL's members for the relevant Period who are owners of copyright in Plans whom it represents as agent for the purposes of ss 183(4) and (5) of the Act in relation to the exercise during the Period of the communication right in Plans by the State under s 183 of the Act (**CAL Agent Members**);
  - (b) by reference to the lists provided by the State in compliance with paragraph 1(b) and (c) of these Orders, corresponding lists of CAL Agent Members whose Plans have been provided by the State electronically for a fee during the relevant Period, cross referencing the CAL Agent Member to the Plan number;
  - (c) the total numbers of Plans the copyright in which is owned by CAL Agent Members provided by the State for a fee in the relevant Period via each of the delivery channels referred to in paragraph 1(b) and (c); and

- (d) a statement of the amounts payable for the relevant Period determined in accordance with the formulae set out in **Schedule A** to these orders (**Schedule A**) and the inputs into the formulae, which amounts, when paid, shall fully discharge the State's obligations for the Period:
  - (i) pursuant to s 183A of the Act, to pay equitable remuneration to CAL for all government copies of Plans made by or on behalf of the State for a fee in that Period; and
  - (ii) pursuant to s 183(5) of the Act, to pay copyright owners of Plans for all communications of registered survey plans made by or on behalf of the State or by persons authorised in writing by the State for a fee in that Period, where CAL is relevantly the agent for the copyright owners,

which information provided by CAL to the State pursuant to paragraphs (a) to (d) may be made publicly available by the State.

3. Within 45 days of receipt of the information required to be provided in compliance with paragraph 2 of these Orders, subject to the information provided by CAL being accurate and complete, the State shall pay to CAL the amounts determined in accordance with Schedule A in discharge of its obligations on and from 1 January 2013:
  - (a) pursuant to s 183A of the Act, to pay equitable remuneration to CAL for all government copies of Plans made by or on behalf of the State for a fee in that Period; and
  - (b) pursuant to s 183(5) of the Act, to pay copyright owners of Plans for all communications of registered survey plans made by or on behalf of the State or by persons authorised in writing by the State for a fee in that Period, where CAL is relevantly the agent for the copyright owner,

for so long as CAL remains the relevant declared collecting society for government copies for the purposes of s 183A of the Act and the agent of owners of copyright in Plans for the purposes of communications within s 183 of the Act.

4. The State may in writing request CAL to provide the State with such additional information as the State may from time to time reasonably require in order to:
  - (a) verify the information provided by CAL pursuant to paragraph 2(a) to (d) or otherwise to confirm that it has discharged its obligations under s. 183(5);
  - (b) satisfy State or Commonwealth statutory, regulatory or policy requirements; or
  - (c) satisfy requests for such information from Treasury, Parliament or from internal or external auditors,

which information shall be provided by CAL within 30 days of receipt of the request and which information may be made publicly available by the State.

5. Notwithstanding paragraph 3 of these orders, if during the 45 day period following provision of the information required to be provided by CAL in compliance with the paragraph 2 of these orders, the State acting reasonably makes a written request for additional information pursuant to paragraph 4 of these orders, then the 45 day period referred to in paragraph 3 of these orders will not commence to run until CAL has provided the State with the additional information requested.
6. Notwithstanding paragraphs 1, 2 and 3 of these Orders, for the period 1 January 2013 to 30 September 2013:
  - (a) the period of 60 days referred to in paragraph 1 shall commence to run from the date of these Orders;
  - (b) the Period referred to in Schedule A shall mean the nine month period from 1 January 2013 to 30 September 2013.

7. Where the lists provided by the State pursuant to order 1 reasonably appear to contain errors, be incomplete or be contained within a corrupt file, CAL may in writing request the State to provide CAL with:

(a) replacement lists; or

(b) relevant supplementary information pertaining to or correcting the error or completing the lists where the lists are incomplete,

which shall be provided by the State within 30 days of receipt of the request and the 90 day period referred to in paragraph 2 of these orders will not commence to run until the State has provided CAL with the replacement lists or supplementary information.

8. The operation of paragraphs 1 to 7 of these Orders may be varied with respect to any Period by express written agreement signed by an authorised representative of each of the parties.

9. The parties have liberty to apply on 5 days notice.

10. The Application otherwise be dismissed at the expiration of 90 days.

**Date that entry is stamped:**

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Registrar

## SCHEDULE A

**Remuneration payable to CAL for each Period shall be calculated as follows:**

$$\text{RemIB} = \text{CIB} \times (\$14.50 \times C) \times \text{RR}\%$$

$$\text{RemOL} = \text{COL} \times \$ \times \text{RR}\%$$

$$\text{RemOTC} = \text{OTCP} \times \$ \times \text{RR}\%$$

<b>Definitions and terms used</b>	
<b>BCPI</b>	102.0, which represents the base CPI, being the Australian Bureau of Statistics weighted average of eight capital cities CPI index number for December 2012.
<b>C</b>	For the financial year 2013/2014, is 1, and for each financial year thereafter is $(\text{CPI} \div \text{BCPI})$ .
<b>CAL Agent Members</b>	CAL's members who are owners of copyright in Plans and whom it represents as agent for the purposes of ss 183(4) and (5) of the <i>Copyright Act 1968</i> .
<b>CIB</b>	The number of Plans the copyright in which is owned by CAL Agent Members that were provided electronically for a fee in the Period to or via Information Brokers.
<b>COL</b>	The number of Plans the copyright in which is owned by CAL Agent Members that were provided electronically for a fee in the Period, excluding to or via Information Brokers.
<b>CPI</b>	102.0 until 30 June 2014, thereafter for each twelve month period (1 July to 30 June each year), the Australian Bureau of Statistics weighted average of eight capital cities CPI index number for the preceding December.

<b>Definitions and terms used</b>	
<b>Information Broker</b>	Person who has entered into an agreement with the State to make information in the Register available in accordance with conditions determined by the State.
<b>SIX</b>	The State's web based server platform known as the Spatial Information Exchange (SIX), including LPI Online located at URL <a href="http://www.shop.lpi.nsw.gov.au">www.shop.lpi.nsw.gov.au</a> , or any replacement or additional electronic medium through which the State makes available electronic copies of Plans for a fee.
<b>OTCP</b>	Total Plans supplied by the State for a fee over-the-counter at LPI during the relevant Period.
<b>Period</b>	means each calendar quarter ending on 31 March, 30 June, 30 September or 31 December, as the case may be.
<b>Plan</b>	Survey plan registered in New South Wales.
<b>Register</b>	The register required to be maintained by the Registrar-General under s 31B of the <i>Real Property Act 1900</i> .
<b>RemIB</b>	Remuneration payable to CAL for the provision of Plans by the State to Information Brokers and by Information Brokers for a fee during the relevant Period.
<b>RemOTC</b>	Remuneration payable to CAL for the provision of physical copies of Plans over-the-counter by the State for a fee during the relevant Period.
<b>RemOL</b>	Remuneration payable to CAL for the provision of Plans through SIX for a fee during the relevant Period, not being to or via information brokers.
<b>Remuneration</b>	Remuneration or payment (whether equitable or otherwise) under ss 183 or 183A of the <i>Copyright Act 1968</i> .

**Definitions and terms used**

**Royalty Component**

That component of the total fee per Plan assigned by the State when setting its fees for the provision of Plans over-the-counter or through SIX, as the case may be, to discharge the State's prospective obligations in a relevant Period under ss 183(5) or 183A to copyright owners of Plans or to CAL as agent of copyright owners of Plans or as a declared collecting society, as the case may be, being no more than the amount that will be payable pursuant to these orders for the provision of a Plan by the relevant delivery channel.

**RR**

**Royalty rate**, expressed as a percentage, is 7.31%, with this amount having been determined applying the following formula:

$$RR = \left( PR \times \frac{100 - CC}{100} \right) \times \left( \frac{100 - EX}{100} \right)$$

where:

**PR** is the royalty rate before reductions of 12.5 determined by the Tribunal at paragraph 116 of the Reasons of 17 July 2013;

**CC** is the Crown copyright reduction of 36.5 determined by the Tribunal and referred to at paragraph 116 of the Reasons of 17 July 2013; and

**EX** is the reduction for expired copyright of 7.95 being the proportion of Plans in which copyright has expired determined pursuant to the sampling exercise of 4200 Plans undertaken by the State having regard to paragraph [75] of the Reasons of 17 July 2013.

**\$**

Fee charged by the State for providing a copy of a Plan, for supply over-the-counter or through SIX as the case may be, excluding any amount for GST or Royalty Component.