

**DATED**

**201**

Insert full date here

## **DEED - GIFT OF RECORDS**

**BETWEEN**

**THE LIBRARIES BOARD OF SOUTH AUSTRALIA**  
**(“Board”)**

**-AND-**

[

]

Your full name

**(“Donor”)**

\* This Deed of Gift covers the transfer of ownership of archival records to the Libraries Board of South Australia – which is the legal entity governing the State Library. It includes explanatory notes throughout.

This agreement is not used for deposit of records of ongoing organisations such as Businesses, Societies and Churches, which require a Deed of Deposit

**Please initial any changes you make to the document**

**THIS is a DEED of GIFT** made on [ ]

**BETWEEN:**

**THE LIBRARIES BOARD OF SOUTH AUSTRALIA**, a body corporate pursuant to the Libraries Act, 1982 of North Terrace, Adelaide, 5000, South Australia (“**Board**”)

**AND**

[ ]

Please provide your full name

of

[ ]

Please provide your full address

(“**Donor**”)

**BACKGROUND**

The Donor is the owner of the records described in Item 1 of the Schedule to this Deed (“**Records**”) and wishes to make a gift of the Records to the Board.

**OPERATIVE PART**

**1. OWNERSHIP**

The Donor wishes to assign ownership of the Records to the Board. The assignment of ownership of the Records will occur when the Donor or the executor of the Donor’s estate delivers the Records into the Board’s control and possession. For the avoidance of doubt, assignment may occur after execution of this Deed by the parties.

Explanation

- Ownership here means enduring physical custody of the Records. The State Library will not accept donation of archival material without a Legal Agreement transferring custody to the Libraries Board permanently.
- Ownership of the Intellectual Property (Copyright) is dealt with under Section 3 (Copyright).

## 2. RESTRICTIONS ON USE

The Board agrees that in dealing with the Records it will comply with the terms and conditions of access, copying and publication specified in Items 3, 4, 5, and 6 of the Schedule.

### Explanation

#### Restrictions on use

- It is preferred that there are no unnecessary restrictions on access to records. Some sensitive materials will require an embargo on access for a period or access only with written permission from the Donor (or an appropriate representative of an Indigenous community). Restrictions to be specified in Schedule Item 3
- We prefer that there are no restrictions on copying for private research or study. Restrictions to be specified in Schedule Item 4.
- Publication rights are vested in the copyright holder. If the Donor is not the copyright holder, or the material is out of copyright, Schedule Item 6 should say 'Not applicable'. If the donor is the copyright holder and prefers not to assign copyright to the Board, Schedule Item 6 should say "No publication without permission from the copyright holder". The Board would prefer that the date (year) or time when copyright will transfer to the Board, is specified at Item 3.1.2.
- Donated photographic material will normally be digitised and published online (including via Picture Australia) unless the copyright owner specifies otherwise in Schedule Item 5.

### 3. COPYRIGHT

(See explanatory notes in box below)

- 3.1. Where the Donor owns copyright in all or any of the Records, the Donor:
- 3.1.1. \*assigns to the Board the copyright subsisting in the Records described in Item 2 of the Schedule; or
- 3.1.2. \*agrees that copyright subsisting in the Records described in Item 2 of the Schedule shall vest in the Board on \* .....  
[Insert a date or year]/ My death/or the death of ..... [Insert name(s)].  
[\* delete or cross out, whichever is inapplicable]
- 3.2. If the copyright subsisting in the Records described in the Schedule is not assigned to the Board at the time the Donor assigns ownership of the Records to the Board, then the Donor grants to the Board a licence, free of charge, to deal with the Records as if it were the owner of the copyright subsisting in the Records subject always to clause 2, until such time as that copyright vests in the Board pursuant to clause 3.1.2.

#### Explanation

- Ownership of copyright (intellectual property rights) is separate from ownership of the physical item
- Copyright can be transferred to the Board through Clause 4 of this deed and Item 2 of the Schedule.
- Creators of copyright works have certain moral rights (including the right to be recognised as the creator) which persist after transfer of copyright.
- Complex groups of records may have multiple copyright owners.
- Copyright may persist in unpublished material in perpetuity and can be inherited.
- In some instances it may not be possible to determine who (if anyone) has copyright.

Donors are advised not to assign copyright to the Board unless they are certain that they have a clear right to do so. (If copyright is not to be assigned to the Board for any part of the Records, all of Section 4 should be crossed out, and nothing should be listed in Item 2 of the Schedule.)

#### 4. WARRANTIES

Either

- 4.1 \* The Donor warrants that they:
- 4.1.1 own the Records;
  - 4.1.2 own the copyright in the Records described in Item 2 of the Schedule;  
and
  - 4.1.3 are not restricted from making a gift of the Records to the Board.

And

- 4.2 The Donor hereby indemnifies the Board against any loss or liability that has been reasonably incurred by the Board as a result of a claim made or threatened against the Board that the use by the Board of the Records in accordance with this Deed infringes the intellectual property rights of a third party,

Or

- 4.3 \*The Executors of the Donor's estate warrant that, to the best of his/her knowledge and belief that:
- 4.3.1 the records were owned by the deceased;
  - 4.3.2 the Donor owned the copyright in the Records; and
  - 4.3.3 the Donor was not restricted in any way from making a bequest of the Records to the Board.

*[\* delete whichever is inapplicable]*

#### Explanation

- The Warranty Clause is a mandatory State Government requirement devised by the Crown Solicitor's Office. Clause 5.2 is intended to ensure that the Board can recoup any legal and other costs it incurs if an infringement of copyright is claimed.
- Donors are advised to consider carefully whether there is potential for a third party to claim copyright, and to discuss this with the Library before proceeding with the Gift.

**EXECUTED AS A DEED**

\*

**THE COMMON SEAL** of [ ] )

)  
was hereunto affixed in the presence of: )

.....  
Director  
[Print Name: ]

.....  
Director/Secretary  
[Print Name: ]

or

\*

**SIGNED** by [ ] )

) ..... Your signature  
in the presence of: ) (Signature of Donor)

.....  
Witness Witness signature and name  
[Print Name: ] Name: ]

*\*/Delete the inapplicable]*

**SIGNED** for and on behalf of **THE LIBRARIES** )

)  
**BOARD OF SOUTH AUSTRALIA** by ) .....  
)

)  
[ ] being a person duly )

)  
authorised in that regard in the presence of: )

.....  
Witness  
[Print Name: ..... ]

Explanation  
If you are not donating on behalf of an organisation with a Common Seal please print your name in the brackets after "Signed by" and sign on line above "Signature of Donor". Your signature must be witnessed. It is not necessary to use a Justice of the Peace or lawyer as witness.

## **SCHEDULE**

### **Item 1**

**Records**

### **Item 2**

**Records in which copyright is owned by the Donor** [see explanation on page 3]

### **Item 3**

**Restrictions on Access** [see explanation on page 2]

- None       Other:  
(Please specify)

### **Item 4**

**Restrictions on Copying for Private Research or Study** [see explanation on page 2]

- None       Other:  
(Please specify)

### **Item 5**

**Restrictions on online publishing of digitised images by the State Library** [see explanation on page 2]

- None       Other:  
(Please specify)

### **Item 6**

**Restrictions on Publication** [see explanation on page 2]

- None  
 No publication without written permission from the copyright holder  
 Other:  
(Please specify)