

Response to the 2007 Discussion Paper on the Extension of Legal Deposit

Introduction

The Department of Finance and Deregulation (Finance) through its business group, the Australian Government Information Management Office, welcomes the opportunity to submit a response to the *2007 Discussion Paper on the Extension of Legal Deposit*.

Finance is responsible for developing policy for Government on-line delivery and information technology and communications management.

Finance assists agencies to meet their obligations under the existing Legal Deposit requirements through its administration of the Commonwealth Library Deposit and Free Issue Schemes (LDS) distribution service. The LDS distributes printed Australian Government Publications to the National, State and participating University libraries.

Response to Issues

Issue 1: Should the legal deposit scheme be extended to audiovisual and electronic materials and, if so, how should such materials be defined (including the quality of legal deposit materials, such as the 'best copy')?

There would be value in extending the legal deposit scheme to audiovisual and electronic materials including, but not limited to, web material and electronic publications.

The definition of material to be deposited via Legal Deposit should be flexible and extensible, to account for changes in the way information is published, and be based on the material's relationship to Australia, rather than on its format.

Issue 2: Should an extended legal deposit scheme be in the Copyright Act 1968 or is a separate piece of legislation more appropriate?

An amendment to the Copyright Act is the appropriate mechanism.

Issue 3: How many copies of published material should a publisher be required to deposit under an extended legal deposit scheme?

The number of published copies to be submitted should be based on the type or format of the material and the preservation requirements of that media. Where content is deposited electronically it should not be necessary for more than one copy to be deposited.

The collecting institution should be allowed to make copies of electronic material as required to preserve and allow access to that material.

Where material is freely published, the collecting institutions should have the option and discretion to collect or harvest, preserve and make that content publicly available without seeking the permission of the copyright holder. The collecting institution should support requests by the copyright holder to control access to library material collected in this way.

In the context of government websites, as content changes frequently, it is likely to be impractical for either the publisher to notify or the collecting institution to collect all the changes. An extension to Legal Deposit should recognise this and give the collecting institution the flexibility to define how often material is collected/deposited based on the characteristics of the material.

Issue 4: Should the existing requirement that material be deposited at the publisher's expense continue to apply under an extended legal deposit scheme?

Where material is deposited with the collecting institution, it should be at the publisher's expense.

The cost to publishers could be reduced by the use of technology solutions to allow:

- the publishing institution to inform the collecting institution about the library material; and
- the collecting institution to automatically collect the material.

Technology solutions that may be useful in this context, include:

- RSS to describe and locate electronic resources on the internet;
- An xml site map describing and pointing to significant resources on a website; and
- Use of web harvesting, electronic archiving and search technologies to harvest and preserve access to websites.

Issue 5: Should there be a role for other organisations, in addition to the NLA and NFSA, to act as repositories for material under an extended legal deposit scheme?

There may be a role for other organisations or libraries (such as State and University libraries) to act as repositories for materials, however this may be by entering into preservation agreements with the principal repositories (National Library of Australia (NLA) and National Film and Sound Archive) to become "Trusted Repositories", rather than as a defined repository within an extended legal deposit scheme.

Preservation agreements would also help ensure ongoing preservation by these other organisations of their material and may assist in the preservation of material by maintaining redundant copies. Preservation agreements should also include provision for handover of the repository if the organisation ceases to exist or can no longer fund the repository and provision for ongoing access to the material in the repository by the general public.

Issue 6: How might duplication of material collected by legal deposit agencies be avoided? For example, should publishers be required to deposit relevant material with more than one institution?

To control costs to publishers it is preferable that material should be deposited with only one institution for each type of content.

Collecting institutions should be able to share copies of material as necessary to ensure its preservation.

Issue 7: Should an extended legal deposit scheme apply to electronic versions of printed material?

An extended legal deposit scheme should apply to electronic versions of printed material. Printed material can quickly go out of print and electronic versions may be removed from public access as they become out of date and from then on, only be available from collecting institutions. Online repositories can continue to support online access into the future.

Issue 8: What other material should an extended legal deposit scheme apply to?

An extended legal deposit scheme should include any material published in an electronic format, including electronic copies of publications e.g. the Department of Finance and Administration 2006-2007 Annual Report <http://www.finance.gov.au/Publications/annualreport06-07/index.html>, and content on websites e.g. the Department of Finance and Deregulation website <http://www.finance.gov.au/>.

An extended legal deposit scheme should provide flexibility to the collecting institution to automatically collect website material it deems appropriate for preservation. In some cases this may include the harvesting of snapshots of entire websites into a repository.

Issue 9: Should an extended legal deposit scheme apply to broadcasts? If so should this be limited to any particular types of material? Should the scheme apply to internet material hosted in Australia?

An extended legal deposit scheme should apply to any material of significance regarding Australia, including internet material hosted in Australia. See Issues 8 and 10.

Issue 10: Should an extended legal deposit scheme apply to internet material hosted outside Australia and in what situations?

The scope of collected material should be determined by its relationship to Australia as opposed the location in which it is hosted. In the case of web content, the location that a website is hosted should not act as a barrier to the collection and preservation of content hosted on that website, subject to the relevant copyright laws of the jurisdiction concerned.

Issue 11: What approach, comprehensive, selective or hybrid, should be used for collection of materials under an extended legal deposit scheme? Should 'significance', say to Australian audiences, be the basis of any extension of legal deposit? Should online and offline material be treated differently and if so, on what basis?

A selection process of what to retain may include consideration of the capacity of collecting institutions to collect and retain the material. A selective approach would allow the collecting institutions the ability to change their collecting practices over time as their resources permit. This is especially true for the web environment which is constantly changing.

Within the scope of Australian Government publishing online, mandatory notification by agencies, supported by a technology solution, such as RSS, of new 'publications' would facilitate a selective approach.

Issue 12: In light of the existing provisions in the Copyright Act, is there a need for any additional provisions to ensure the safe storage and preservation of legal deposit materials?

The Collecting Institutions should be allowed to "shift" the format of collected material between print and electronic formats or between electronic formats as necessary to preserve and allow access to collected material, e.g. shift between print and electronic versions and vice versa.

Collecting institutions must support requests by the Copyright holder to restrict or control access to collected material, for instance to control access to an electronic version of a print publication.

Issue 13: What timeframe should apply for deposit under an extended legal deposit scheme? Is the timeframe for deposit suggested by the CLRC appropriate in the context of a selective approach to extending legal deposit? Should different time frames apply to the deposit of different published materials if legal deposit is extended?

The Copyright Law Reform Committee timeframe of one month to deposit content where content is deposited rather than collected or harvested by the collecting institution may be too short, resulting in many institutions routinely exceeding this timeframe. The timeframe to deposit should be influenced by the type of content, for instance a timeframe of three months may be appropriate for government electronic publications.

Where content is collected or harvested automatically by the collecting institution, the timeframe should be at its discretion.

Issue 14: In light of the recent amendments to the technological protection measure provisions in the Copyright Act, are any additional provisions required to ensure access to materials deposited under an extended legal deposit scheme? Should publishers be required to ensure that the copy of published material provided under an extended legal deposit scheme will be accessible?

Publishers should be required to ensure that collecting institutions are able to preserve collected material, by providing, where necessary, solutions in an appropriate format necessary to bypass any protection measures or the material in a suitable format.

Collecting institutions should be allowed to circumvent technological protection measures as necessary to ensure the preservation of collected material.

Collecting institutions should ensure that access to material with the protection measures removed is controlled so as not to allow its widespread distribution into the broader community without the permission of the copyright holder.

Issue 15: On what basis, if any, should access be restricted to material deposited under an extended legal deposit scheme?

There are several reasons for restrict access to deposited material, including where the copyright holder requests it, the material has a commercial value or the material has had technological protection measures removed.

Issue 16: Under any extended legal deposit scheme should legal deposit materials be subject to separate provisions concerning their use by the repository institution and the public? What kind of provisions are desirable to ensure that repository institutions can provide the public with adequate access to legal deposit materials under any extended scheme?

See response to Issue 12.

Issue 17: Are there any other issues that you consider relevant to the extension of the legal deposit scheme?

Collecting institutions should ensure that access to material with the protection measures removed, is controlled so that it is not able to be used as an authoritative source except in its original form and intent.

Any recommendation to extend the scheme would need to consider the costs involved of the proposed approach.

Consideration could be given to a two stage approach to extending the scheme, with the first stage involving electronic publications and the second stage involving web material. This would allow evaluation and introduction of systems for a more manageable collection, prior to including the possibly extensive material that would be collected from the web.