Licence review checklist

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Feedback was also received from a number of agencies, which was greatly appreciated.

Copyright

*Licence review checklist*

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Licence

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Information security

This document has been security classified using the Queensland Government Information Security Classification Framework (QGISCF) as PUBLIC and will be managed according to the requirements of the QGISCF.

# Introduction

Most government information is protected by Copyright law including information generated by or for Queensland Government agencies. Copyright, a type of intellectual property (IP) – arises automatically at the point the information is created (usually written, diagrammatical, audio-visual or multimedia).

In early 2018, the [Information access and use policy](https://www.qgcio.qld.gov.au/documents/information-access-and-use-policy-is33) (IS33) was updated reflect that the Queensland Government has formally adopted the use of the six Creative Commons (CC) International 4.0 licences as the preferred Queensland government information licencing framework.

The [Information access and use policy](https://www.qgcio.qld.gov.au/documents/information-access-and-use-policy-is33) (IS33) mandates that departments license their publicly available, copyright information using the Creative Commons framework where possible, with Departments required to apply the least restrictive licence possible. The licences ensure entities intending to use copyright information are aware of the terms and conditions of use.

Providing that any confidential or private information is removed before licensing, the CC licences are suitable for the majority of Queensland Government copyright information released to the public, which will generally have low commercial IP value.

To address the small minority of cases in which the CC licences are not appropriate, agencies should consider using a Restrictive Licence (RL). A RL template is available in the QGCIO [Knowledge base](https://www.qgcio.qld.gov.au/publications/knowledge-base) for agencies to use as a starting point in developing a restrictive, contractual licence for the protection of confidential (including commercial-in-confidence) information and for government information not protected by copyright.

For example, copyright and commercial-in-confidence information may inform the development of IP that has potential commercial value (e.g. a document pertaining to a trademark, design, patent or plant variety). This copyright information may need to be kept protected, for the appropriate extent and duration, by using a contractual restrictive licence based on the RL template.

The CC licences apply only to copyright information. A pre-condition to licensing copyright information is to establish copyright ownership by agencies or the legal entitlement to license that government information. The RL template will mostly involve the licensing of copyright information.

The following checklist provides guidance in the steps involved for CC licensing and RL template (contractual) licensing. A summary of this checklist is provided as a diagram on the last page of this document

# Checklist for licensing government information

|  |  |  |
| --- | --- | --- |
| Step 1 – Information access and use policy (IS33) compliance | Yes | No/not applicable |
| Apply the [Information access and use policy](https://www.qgcio.qld.gov.au/documents/information-access-and-use-policy-is33) (IS33) in deciding whether to license your department’s copyright and non-copyright government information. |  |  |
| 1. All Queensland Government departments are responsible for licensing Crown copyright and other public-sector information using the least restrictive licence possible under RTI push release principles.[[1]](#footnote-2) |  |  |
| 1. The six CC licences, will apply to most copyright information. |  |  |
| 1. Where restrictive factors (e.g. third party contractual constraints, commercial IP, privacy or confidentiality issues) apply, CC licences are not appropriate. 2. In such cases, the [Restrictive Licence (RL) template](https://www.qgcio.qld.gov.au/knowledge-base/ausgoal-restrictive-licence-agreement-template-knowledge-base) may be used as a starting point to negotiate the contractual terms required to apply. In some exceptional cases, it may be best to defer public release or licensing (e.g. for a period until the priority date for patents). |  |  |
| If you decide that the [Information access and use policy](https://www.qgcio.qld.gov.au/documents/information-access-and-use-policy-is33) (IS33) requires your department to license an information asset, then proceed with the following steps in this guide. |  |  |
| Step 2 – Information security and determining release status | Yes | No/not applicable |
| For information classified as “public”, agencies should:   * provide public access in accordance with the RTI “push” model and * license its (copyright) reuse in alignment with the [Information access and use policy](https://www.qgcio.qld.gov.au/documents/information-access-and-use-policy-is33) (IS33). |  |  |
| 1. For **undetermined** or **unclassified** information undertake a security assessment. |  |  |
| 1. If the security assessment results in a classification limiting or prohibiting release for confidentiality or privacy reasons, the information may only be licensed provided any individual’s personal or confidential information has been removed or de-identified. |  |  |
| 1. Any personal information covered by the *Information Privacy Act 2009 (Qld)* unable to be removed or deidentified must be classified **restricted** and should not be licensed. |  |  |
| 1. For further information see:  * your department’s information security policy * [Information access and use (IS33) policy](https://www.qgcio.qld.gov.au/documents/information-access-and-use-policy-is33) * [Determining the ex-ante release status of information](https://www.qgcio.qld.gov.au/documents/determining-the-ex-ante-release-status-of-information) * [Queensland Government information security classification framework.](https://www.qgcio.qld.gov.au/documents/information-security-classification-framework-qgiscf) * [Queensland Public Sector Intellectual Property Principles](https://www.qld.gov.au/dsiti/assets/documents/ip-principles.pdf) |  |  |

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| --- | --- | --- |
| Step 3 – Copyright subsistence assessment | Yes | No/not applicable |
| Does copyright subsist? Assessment |  |  |
| 1. As a prerequisite condition to using the CC licences, copyright must subsist in the information.If copyright does not subsist in the information you cannot license the information using the CC licences. Care must also be taken in licensing such information using the RL template contract, as you would not be able to rely on copyright in the information. |  |  |
| 1. Copyright automatically subsists in your agency’s information:  * when expressed in a material form, usually written, diagrammatical or audio-visual (either electronic or hard copy) * when it constitutes a literary, dramatic, musical and artistic work, sound recording (e.g. CD format), film (including video and DVD formats), television and sound broadcast and published editions of works (as described in the Copyright Act 1968 (Qld)) * when it is original in the sense of not being substantially copied from another copyright work. |  |  |
| Has copyright expired? |  |  |
| 1. Non-government owned copyright lasts for the duration of the life of the person who has created the material, plus a further 70 years. |  |  |
| 1. Government (Crown) copyright starts from the time a work is first expressed in a material form. Once a work is published, copyright expires after 50 years. |  |  |
| Step 4 – Copyright ownership assessment | Yes | No/not applicable |
| Does your agency (as part of the Queensland Government) own the copyright in the information? 3 – Copyright Subsistence Assessment |  |  |
| 1. To license your agency’s copyright information using a CC licence or the RL template, your department must qualify as the **sole** owner of the copyright in the information. |  |  |
| 1. Where your department is **not** the sole copyright owner, you **must obtain prior permission** from any other owners (or relevant licensees) of the copyright information. |  |  |
| 1. Your department owns copyright in information that is generated:  * by employees during their employment and as part of their job duties * by any third party (i.e. a party external to government) provided they generate the information under the “direction or control” of your agency for governmental purposes, as prescribed under section 176 of the Copyright Act 1968 (Cth). Control in this context means your agency has the legal authority to give directions to prepare the work   **Note:** These rules are subject to an agreement (between your department and an employer and/or contractor) to the contrary.   * by the agency’s independent contractors/consultants when copyright is stated in a term in their service contract to be owned by your department.   **Note:** where ownership is not expressed as a term to be granted to your agency, the copyright will be owned by the independent contractors or consultants. |  |  |
| Step 5 – Third party prior permission | Yes | No/not applicable |
| If you wish to license information which includes third party materials, you will need to consider the following. (Note: specialist advice may be needed.)  Obtain prior permission to license the information (using the chosen licence) from the parties named in the following circumstances: |  |  |
| 1. Third party - Where a party external to government owns the copyright, or has the non-exclusive lawful right to license the copyright, obtain permission from that third party. |  |  |
| 1. Other agencies – Where information is generated with or by another Queensland agency, your agency must first obtain permission from the other agency (even though the State of Queensland owns the copyright in these circumstances). |  |  |
| 1. Nominated party - Where a contractual or other legal obligation (e.g. a statutory provision) requires the agency to obtain permission from a nominated person/organisation. |  |  |
| 1. Exclusive licensee - Where the government information is exclusively licensed, obtain permission from the exclusive licensee. |  |  |
| 1. Transferee - Where the copyright in the information has been sold (transferred/assigned) obtain permission from the new owner. |  |  |
| 1. CC licensor – Where third party information is already licensed under a CC licence and your agency now wishes to license the information in a way not permitted under the existing CC licence, it must obtain the necessary permission from the copyright owner/licensor as identified in the CC licence metadata. 2. **Note:** No permission is required to on-license information if your agency complies with the terms of the existing CC licence. |  |  |
| Step 6 – CC licence selection | Yes | No/not applicable |
| Can a CC BY licence be selected? |  |  |
| 1. The [Attribution 4.0 International (CC-BY 4.0)](https://creativecommons.org/licenses/by/4.0/) licence is the default licence of preference as it is the least restrictive 2. Description: image |  |  |
| If the CC BY is inappropriate, can another CC licence be [selected](https://creativecommons.org/choose/)? |  |  |
| 1. Consider the other five CC licences[[2]](#footnote-3) and note the base conditions that are variously combined to create the licences - Attribution (BY), Non-Commercial (NC), No Derivatives (ND) and Share-Alike (SA). 2. [Attribution Non-Commercial (CC BY-NC 4.0)](https://creativecommons.org/licenses/by-nc/4.0/) Description: image 3. [Attribution Share Alike (CC BY-SA 4.0);](https://creativecommons.org/licenses/by-sa/4.0/) Description: image 4. [Attribution No Derivatives (CC BY-ND 4.0);](https://creativecommons.org/licenses/by-nd/4.0/) Description: image 5. [Attribution Non-Commercial Share Alike (CC BY-NC-SA 4.0);](https://creativecommons.org/licenses/by-nc-sa/4.0/) Description: image 6. [Attribution Non-Commercial No Derivatives (CC BY-NC-ND 4.0)](https://creativecommons.org/licenses/by-nc-nd/4.0/) Description: image |  |  |
| 1. Consider licensing compatibility – for derivative work and collective works (as defined in the CC licences) consult the [Government and public-sector information](http://creativecommons.org.au/learn/government) page on the CC Australia website. |  |  |
| 1. Software – For copyright protected software programs, do not apply the CC licences. Rather use:  * the GNU [General Public Licence](https://www.gnu.org/licenses/licenses.en.html#GPL) (GPL) (see the [Open source software policy](https://www.qgcio.qld.gov.au/documents/open-source-software-policy) and [position](https://www.qgcio.qld.gov.au/documents/open-source-software-position) for further information); or * your agency’s software licence precedents; or * negotiate an RL template based contract. |  |  |
| Step 7 – Restrictive Licence (RL) template selection | Yes | No/not applicable |
| The RL template is available in the QGCIO’s [Knowledge base](https://www.qgcio.qld.gov.au/publications/knowledge-base) (Queensland Government employees only). It has two parts: the main part and the schedule. |  |  |
| The [RL template [[3]](#footnote-4)](https://www.qgcio.qld.gov.au/knowledge-base/ausgoal-restrictive-licence-agreement-template-knowledge-base) is specifically for material to be licensed under some form of limiting or restrictive condition for information that contains commercial or confidential information where IP risks (indemnification and/or confidentiality), and commercial (royalties) potential for the State are such that none of the CC licences are suitable and a contractual licence between only the licensor and the designated licensee is required. |  |  |
| Read the model clauses in the main part of the RL template. These are the standard clauses. Do not edit these. Insert all necessary details relevant to the transaction in the schedule and consider drafting further clauses or overriding/deactivating the standard clauses in the schedule as necessary, to satisfy the parties’ particular negotiated requirements. |  |  |
| Consider the **commercialisation principles** within the [Queensland Government Public Sector Intellectual Property Principles](https://www.qld.gov.au/dsiti/assets/documents/ip-principles.pdf).   1. **Note:** Specialist skills and advice are likely to be needed for commercialisation of copyright and other IP (e.g. patent or trade mark). |  |  |
| Step 8 – Approval/authorisation | Yes | No/not applicable |
| Obtain all internal agency approvals to license the material (prior to release/publication). |  |  |
| Step 9 – Apply licence icon, statement/attribution and copyright notice | Yes | No/not applicable |
| For CC licensed material:   * Apply a copyright notice, followed by the CC licence statement, the CC icon for the selected licence, and finally the CC licence summary and attribution (which may be the licensing agency’s name).   Consider the following example for a CC BY licence:   1. **Note:** High resolution (.svg, .png and .eps) Creative Commons licence markings can be downloaded from the Creative Commons website: [www.creativecommons.org/about/downloads](http://www.creativecommons.org/about/downloads). 2. HTML code for application of the CC licences is available from the [Creative Commons website](https://creativecommons.org/choose/%20https:/creativecommons.org/choose/). |  |  |
| For material licensed using the RL template:  Apply a copyright notice, followed by the RL licence statement, the RL licence summary and attribution.  Restrictive Licence logo  **Note:** If not copyright information, omit the notice. |  |  |
| For the CC licences (except for CC BY) and RL template licences:   * Add agency or other contact details for further information or copyright enquiries below the licence summary:   For permissions beyond the scope of this licence contact: **(insert contact details).**  For the CC licences and RL template licences:   * Where a document is the subject of the licence – add document control status, version number and approval details:   + Status (e.g. final, draft, for discussion purposes)   + Version (e.g. 00.11)   + Approved by:   + Date:   Note: It is recommended that you keep the completed checklist as a record of your licence selection. |  |  |

# Summary of checklist for licensing government information

Document history

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| --- | --- | --- | --- |
| Version | Date | Author | Key changes made |
| 1.0.0 | April 2011 | IPCO | Approved |
| 2.0.0 | June 2012 | QGCIO | Approved |
| 2.0.1 | February 2018 | QGCIO | Updated / reviewed |
| 3.0.0 | March 2018 | QGCIO | Finalised |

1. See *Right to Information Act 2009* (RTI) and IS33: Information access and use. [↑](#footnote-ref-2)
2. Available at https://creativecommons.org/share-your-work/licensing-types-examples/licensing-examples/ [↑](#footnote-ref-3)
3. Developed on instructions from Queensland Treasury by Crown Law in the Department of Justice and Attorney-General. [↑](#footnote-ref-4)