

## Instructions for Straive

The objective of this coding exercise is to replace the current mark up in Forms & Precedents content with semantically correct mark up. We have created new, semantically correct mark up for this purpose.

There is a node in ECJ called 'Clause Intelligence' that contains the new DTD. You will be able to work on copies of the relevant content in this node.

This document lists the new tags and explains where they are to be placed in a precedent document.

The new DTD for Core Research forms and precedents introduces a number of new tags designed specifically for this content and also contains some tags that you may already be familiar with.

Please ensure that you also mark up all references to legislation, case law and any internal or external secondary materials. Use the relevant Service5 ID for this purpose.

## ID naming convention

**Guidecard:** Publication Abbreviation [.] Unique Identifier e.g AEPF.IN17

**Prec.grp:** guidecard@id\_prec.grp\_uniquenumber e.g AEPF.INI7\_prec.grp\_1

**Prec.subgrp1:** guidecard@id\_prec.subgrp1\_uniquenumber e.g AEPF.INI7-prec.subgrp1\_1

**Prec:** guidecard@id.precedentno e.g AEPF.INI7.320-25

**Clause:** precedent@id.clauseno e.g AEPF.INI7.320-25.1

**Sub-clause:** clause@id.subclauseno e.g AEPF.INI7.320-25.1.1

**Schedule:** precednt@id.scheduleno e.g AEPF.INI7.320-25.SCH1

## 1. Author information tags

### 1.1. Tags

```
<auth.info>

  <author>

    <name> </name>

    <position> </position>

    <affiliation> </affiliation>

  </author>

</auth.info>
```

### 1.2. Elements of precedent to be tagged

The author mark up designates the author of the precedent, his or her position, and his or her affiliation with a law firm or other organisation. In the example below, the author is 'Dr Gordon Hughes', his position is 'Principal', and his affiliation is 'Davies Collison Cave Law'.

This precedent has been authored for LexisNexis by **Dr. Gordon Hughes, Principal, Davies Collison Cave Law.**

## 2. Introductory note tag

### 2.1. Tag

`<intro.note> </intro.note>`

### 2.2. Element of precedent to be tagged

This tag is used to mark up the introductory note. The introductory note comes before the beginning of the body of the precedent. It gives the user some context and background about what the precedent is and how it should be used. This content is currently displayed marked up as a table and displayed on Lexis Advance as a box in AEFP, and as a block of text in IPPR. What you see in the box below is an example of an introductory note.

#### Introductory note

A party has a common law right to terminate in the event of a fundamental breach of a condition of a contract. Accordingly, the role of the termination clause is to modify or clarify the common law position by elaborating on circumstances which do, or do not, constitute a terminating event.

It is common to refer to the right arising in the event of a breach of a "material: term", although the meaning of the word "material" has been open to debate (see *Minister for Immigration v Dela Cruz* (1992) 34 FCR 348; (1992) 110 ALR 367; BC9203397). A "material" breach is not a term recognized by contract law, as opposed to "fundamental" breach (see *Forklift Engineering Australia Pty Ltd v Powerlift (Nissan) Pty Ltd* [2000] VSC 443; BC200007795). Ambiguity can be reduced if specific triggering events are provided as examples of a "material" breach (see *Forklift Engineering Australia Pty Ltd v Powerlift (Nissan) Pty Ltd* [2000] VSC 443; BC200007795).

Insolvency is typically listed as a triggering event. The terminating party should be aware of the ipso facto provisions of the Corporations Act 2001 (Cth) (see parts 5.1, 5.2 and 5.3A) which applies a stay to the exercise of termination rights in the event of insolvency, so as to allow the insolvent party a reasonable period in which to address its financial difficulties.

#### Termination for convenience

A "termination for convenience" clause is sometimes sought by customers in particular, enabling them to withdraw mid-term without penalty from a contractual commitment. The rationale for termination clauses of this nature is not compelling — it is even less so if it is the supplier, as opposed to the customer, seeking the right to withdraw from a contractual commitment in the absence of a breach by the customer.

### 3. Party tags

#### 3.1. Tags

```
<party>  
  <party.name party-type="PARTY TYPE">  
    </party.name>  
  </party>
```

The party type is not mandatory.

#### 3.2. Element of precedent to be tagged

There is usually a clause within an agreement precedent that sets out the parties to the agreement. Below is an example of this type of clause.

```
between  
[name of licensor] (ABN [ABN]) of [address], [email address] (Licensor)  
and  
[name of licensee] (ABN [ABN]) of [address], [email address] (Licensee).
```

## 4. Defined term tag

### 4.1. Tag

`<term> </term>`

### 4.2. Element of precedent to be tagged

This tag is used to identify defined terms in the Definitions/Interpretation clause and in-line within clauses in the body of the precedent.

The example below is defined term ('Moral rights') within the Definitions section of a precedent.

**Moral Rights** means rights of integrity, rights of attribution and other rights of an analogous nature which may now exist or which may exist in the future in respect of the Licensed Property under the Copyright Act 1968 (Cth) or under the law of a country other than Australia.

The next example is a defined term that appears in-line within a clause. The defined term is bold and in parentheses. Both types of defined term use the `<term></term>` tag.

#### 2 Assignment

In consideration of the sum specified in Item 2 of schedule 1 (**Consideration**) paid to the Assignor by the Assignee, [optional: receipt of which is acknowledged,] the Assignor assigns absolutely to the Assignee:

## 5. Label and title tags

### 5.1. Tags

`<label> </label>`

`<title> </title>`

### 5.2. Elements of precedent to be tagged

These tags are used for the number/letter of an element of the precedent and for its title (if it has one). In the example below, the '2.1' would be in the `<label>` tag and the word 'Grant' would be in the `<title>` tag.

#### 2.1 Grant

The Licensor grants to the Licensee:

- (a) an *[exclusive/non-exclusive/sole]* licence; and
- (b) the right to grant sublicences in accordance with clause 2.5,

to Exploit the Products and the Intellectual Property within the Territory for the Term (**Licence**).

## 6. Clause tags

### 6.1. Tags

```
<clause.grp id="CLAUSE GROUP ID">

  <clause id="CLAUSE ID" type="CLAUSE TYPE">
    <subclause id="SUB-CLAUSE ID">
      <subclause id="SUB-CLAUSE ID">
        <!-- Further nested sub-clauses up to six
        levels -->
      </subclause>
    </subclause>
  </clause>
</clause.grp>
```

### 6.2. Element of precedent to be tagged

These tags are to be used to identify each clause of the precedent and the nested sub-clauses within them. These will be the tags that you use most frequently. The 'type' attribute is not mandatory, but you may be asked to use it in some circumstances.

The below example has a clause and two levels of nested sub-clause. The text in italics is a drafting note that is associated with the clause:

#### **3 Warranties and indemnity**

*[This is a comprehensive (but not necessarily exhaustive) list of warranties. The user (and the parties) need to give thought to what can and should be warranted and exactly how it should be worded, including the possibility of an assignment with no warranties (or indemnity) at all.]*

(a) The Assignor warrants to the Assignee that:

- (i) the Assignor has absolute title to the Designs;
- (ii) there are no encumbrances applying to the Designs;
- (iii) manufacture, sale, letting, hire or use of the article subject of the Designs do not infringe the designs or any other intellectual property rights of a third party;
- (iv) registration of each Design is current and of full force and effect and there are no existing or threatened challenges to the registration of the Designs.

## 7. Optional attribute for clauses and sub-clauses

### 7.1. Attribute

```
<clause id="CLAUSE ID" optional="y">  
  <subclause id="SUB-CLAUSE ID" optional="y">  
  </subclause>  
</clause>
```

The above example shows an optional clause with child that is an optional sub-clause.

It is not necessary that optional clauses be nested within a parent clause. Optional sub-clauses should be children of a clause.

### 7.2. Relevant element of precedent

Some clauses and sub-clauses are identified as 'Optional' by the author. When you are marking up this content, it is important to note whether the clause or sub-clause is optional or alternative. Optional clauses are indicated in the text by using the word 'Optional' in italics at the start of the clause or sub-clause and placing it within square brackets: i.e. [*Optional*:...].

This is an example of an optional sub-clause:

#### 7.2 [*Optional*: Non-exclusive licence]

The licensee acknowledges and accepts that the rights granted under this agreement are non-exclusive and do not prevent the licensor or any other third party from licensing the licensed property in the Territory during the currency of this agreement for any purpose in any format.]

See below for the alternative clause attribute information.



## 8. Alternative attributes

### 8.1. Attributes

```
<clause id="CLAUSE ID"
<clause id="ALT CLAUSE ID.1" alternative="y" alt-to="ALT CLAUSE
ID.2">
    <subclause id="SUB-CLAUSE ID">
    </subclause>
</clause>
<clause id="ALT CLAUSE ID.2" alternative="y" alt-to="ALT CLAUSE
ID.1">
    <subclause id="ALT SUB-CLAUSE ID.1" alternative="y" alt-
to="ALT SUB-CLAUSE ID.2">
    </subclause>
    <subclause id="ALT SUB-CLAUSE ID.2" alternative="y" alt-
to="ALT SUB-CLAUSE ID.1">
    </subclause>
</clause>
</clause>
```

The above example includes two alternative clauses and two alternative sub-clauses within one of those clauses.

If the alternatives are whole clauses, nest all the alternatives within a parent clause. If the alternatives are sub-clauses, they will already be the children of a parent clause.

Use the “alt to” attribute to list all of the IDs of clauses and sub-clauses to which the particular clause or sub-clause is an alternative.

### 8.2. Element of precedent to be tagged

This tag is used to identify clauses that are alternatives to each other. At the moment, alternative clauses are identified in the text by the word ‘Option’ in italics at the beginning of the clause or sub-clause, followed by a number [*Option 1...*], [*Option 2...*]. We are working to make this clearer in the future so that it is easier to distinguish between optional and alternative clauses and sub-clauses.

Here is an example of alternative clauses in a precedent:

#### **6 GST and Withholding tax**

[Option 1: If GST is payable in respect of payments made by the Assignee to the Assignor under this Agreement, the amounts payable must be increased by the amount of the GST, provided that:

- (a) the Assignor is registered for the purposes of GST; and
- (b) the Assignor must provide the Assignee with an invoice that complies with the form of "tax invoice" specified in the GST regulations.]

*[Note: The payments by the Assignee may be subject to GST, however if the Assignor is a 'foreign resident' for tax purposes then the transaction may be exempt from GST, but the transaction with the 'foreign resident' Assignor may be subject to the withholding tax provisions of the Australian Income Tax Legislation.]*

[Option 2: Any withholding tax payable must be deducted from any money payable to the Assignor. If such deductions are made the Assignee must use its best endeavours to deliver to the Assignor any documentation evidencing the payment of the taxes or charges in order that the Assignor can obtain tax credits with its own tax authorities regarding the taxes or government charges (or both) which have been deducted by the Assignee.]

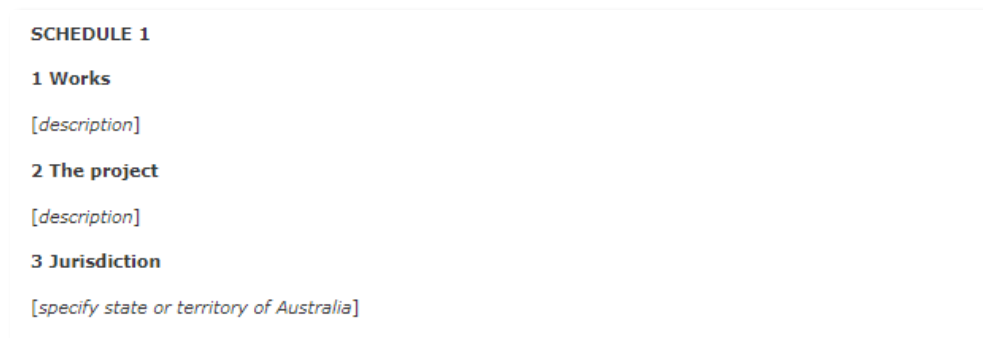
## 9. Schedule tag

### 9.1. Tag

```
<schedule id="SCHEDULE ID">  
  
</schedule>
```

### 9.2. Element of precedent to be tagged

The schedule mark up identifies schedules to the precedent. That is, attachments to the body of the precedent. See below screenshot for an example of how a schedule might look:



## 10. Drafting note tag

### 10.1. Tag

`<draft.note> </draft.note>`

### 10.2. Element of precedent to be tagged

This tag identifies drafting notes. These are usually in italics and contained within square brackets, beginning with the words 'Drafting note' and a colon. However, the words 'drafting note' may be missing. Please ask if you are not sure whether or not content is a drafting note. Make sure that each drafting note is nested within the clause or sub-clause to which it relates.

These are examples of drafting notes in precedents:

#### 8 Execution

Each party to this Deed, and their respective successors and assigns, will be authorised to rely upon the signatures of all the parties (or any amendment to the Deed) which are delivered by facsimile machine or transmitted electronically in either a Tagged Image Format File (**TIFF**) or Portable Document Format (**PDF**) as constituting a duly authorised, irrevocable, actual, current delivery of this Deed (or any amendment) with original ink signatures of each person and entity, provided, however, that each party to this Deed that delivers such an executed counterpart by facsimile, TIFF or PDF to another party, agrees that it will deliver an executed original copy of the Deed (or any amendment) to the party(s) so receiving the previous facsimile, TIFF or PDF copies within [eg 10] business days after the delivery of such facsimile, TIFF or PDF copies but failure to do so will not affect the validity, enforceability or binding effect of this Deed.

*[Drafting note: this signature block is a suggestion only. Amend as appropriate to reflect the nature and legal requirements of the parties.]*

(g) **Net Sales Price** means the arm's length set selling price of the Licensee's gross invoiced sales or licenses of the Goods and Services [optional:

- (i) less all discounts, allowances, transportation charges, packaging costs, insurance and taxes directly based on sale or time of payment; and
- (ii) after deducting allowances made for returned or defective products and trade discounts].

*[Give particular thought to each of these examples and anything else that may impact on this definition as it reflects on how much the Licensor actually receives under this licence. If appropriate provide definitions of each element that is relevant to the calculation of Net Sales Price.]*

## 11. Footnote tag

### 11.1. Tag

```
<footnote id="ID" suppress.label="n"> </footnote>
```

### 11.2. Element of precedent to be tagged

This tag is used to identify footnotes.

1.3 **Goods/Services** means the goods and/or services in respect of which the Trade Mark(s) is/are registered. <sup>2</sup>

<sup>2</sup>. This definition can be changed to include only particular goods and/or services, instead of all the goods and/or services in which the trade mark(s) is/are registered. It is possible to transfer to the Licensee only some of the classes in which the trade mark(s) is/are registered.