

**Memorandum of Understanding**

between the

**COMMONWEALTH OF AUSTRALIA**

**STATE OF VICTORIA**

**STATE OF NEW SOUTH WALES**

**STATE OF QUEENSLAND**

**STATE OF SOUTH AUSTRALIA**

**STATE OF TASMANIA**

**NORTHERN TERRITORY**

**AUSTRALIAN CAPITAL TERRITORY**

**STATE OF WESTERN AUSTRALIA**

**TERRITORY OF NORFOLK ISLAND**

**For the establishment and funding of the  
AUSTRALIAN ONLINE GAMBLING COUNSELLING AND SUPPORT  
PROGRAM**

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### Signature Blocks

THIS MEMORANDUM OF UNDERSTANDING is made between the  
COMMONWEALTH OF AUSTRALIA ("the Commonwealth"), as represented by  
and acting through the Department of Families, Housing, Community Services  
and Indigenous Affairs

AND the

STATE OF VICTORIA as represented by and acting through the Department of  
Justice ("Victoria")

AND the

STATE OF NEW SOUTH WALES as represented by and acting through the  
Office of Liquor, Gaming and Racing ("New South Wales")

AND the

STATE OF QUEENSLAND as represented by and acting through Queensland  
Treasury ("Queensland")

AND the

STATE OF SOUTH AUSTRALIA as represented by and acting through the  
Department for Families and Communities ("South Australia")

AND the

STATE OF TASMANIA as represented by and acting through the Department of  
Treasury and Finance ("Tasmania")

AND the

NORTHERN TERRITORY as represented by and acting through the Department  
of Justice ("Northern Territory")

AND the

AUSTRALIAN CAPITAL TERRITORY as represented by and acting through the  
ACT Gambling and Racing Commission ("ACT")

AND the

STATE OF WESTERN AUSTRALIA as represented by and acting through the  
Department of Racing, Gaming and Liquor ("Western Australia")

AND the

TERRITORY OF NORFOLK ISLAND as represented by and acting through the  
Department of Tourism and Health ("Norfolk Island").

**PREAMBLE:**

The objectives of this Memorandum of Understanding are:

- (a) to record the terms on which the Parties have agreed to establish the  
Australian Online Gambling Counselling and Support Program which  
has been initiated as part of the Community and Disability Services  
Ministers (CDSMAC) Gambling Working Party (GWP) efforts to  
enhance problem gambling support and treatment services that are  
effective, accessible and culturally appropriate (Area 3 of the National

Framework on Problem Gambling);

- (b) to set out the basis upon which the Parties agree that they will contribute the Funds required to meet the costs of the Australian Online Gambling Counselling and Support Program;
- (c) to set out the operating and reporting arrangements for the Australian Online Gambling Counselling and Support Program for the Activity Period; and
- (d) to foreshadow a commitment by the Commonwealth to fund an evaluation of the initiative following its implementation.

**IT IS AGREED as follows:**

**1. Interpretation**

**1.1** In this MOU, unless the contrary intention appears:

**'Activities'** means the activities (and "Activity" designates one of those Activities), which are to be undertaken by Victoria as part of the Australian Online Gambling Counselling and Support Program (which activities are set out in clause 2, and 3 and Item A of the Schedule);

**'Activity Period'** means the period specified in Item B of the Schedule during which the primary obligations for conducting the Activities shall be completed (although other obligations stipulated in this MOU continue beyond the Activity Period);

**'Budget'** means the budget for Funds to conduct the Project as outlined in Item A of the Schedule and detailed in the final Project Brief and budget for the financial years 2008/09 to 2010/11;

**'Commencement Date'** when the last of the Parties have signed the MOU;

**'Confidential Information'** means information that:

- a) is by its nature confidential;
- b) is designated by a Party providing the information as confidential; or
- c) the Party receiving the information knows or ought to know is confidential;

but does not include information which:

- d) is or becomes public knowledge other than by breach of this MOU;

- e) was given into the possession of the Party receiving the information before the date of this MOU by another Party to this MOU without restriction in relation to disclosure; or
- f) has been independently developed or acquired by the Party against which another Party claims that the information is confidential;

**'Departmental Officers'** means officers employed by the Parties to this MOU;

**'Funds'** means the funds payable, subject to this MOU, by each of the Parties, in the amounts specified in Item D of the Schedule;

**'Intellectual Property'** includes all copyright, all rights in relation to inventions, plant varieties, trade marks (including service marks), designs and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include Moral Rights, the rights of performers or rights in relation to Confidential Information;

**'Material'** includes documents, equipment, software, goods and any medium whatsoever in which information is embodied;

**'MOU'** means this Memorandum of Understanding including the Schedule;

**'MOU Material'** means, all Material:

- a) brought into existence for the purpose of performing or in the carrying out of an Activity;
- b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
- c) copied or derived from Material referred to in paragraphs (a) or (b);

including, but not limited to, all Budgets, reports, statements, certificates or other material produced pursuant to or for the purposes of this MOU;

**'Party'** means each of the Commonwealth, States and Territories, which are signatories to this MOU;

**'Parties'** means collectively the Commonwealth, States and Territories, which are signatories to this MOU;

**'Party Material'** means any Material provided by a Party to another Party for the purposes of this MOU or which is copied or derived from Material so provided;

**'Project'** means the establishment and implementation of the Australian Online Counselling and Support Program in accordance with the Project Brief and Project Contract;

**'Project Brief'** means the specifications and budget for the Project that will require the unanimous approval of the Parties prior to Victoria entering into a Project Contract;

**'Project Contract'** means the funding agreement entered into by Victoria for the purposes of this MOU and expenditure of the Funds;

**'Project Contractor'** means the entity that is signatory to the Project Contract entered into with Victoria for the purposes of delivering the Project; and

**'Working Party'** means the body that will oversee the work of the Secretariat, comprised of the Departmental Officers of member jurisdictions to this MOU.

1.2 The Schedule forms part of this MOU. In the event of any conflict between the terms and conditions contained in the clauses of the MOU and any part of the Schedule then the terms and conditions of the clauses of the MOU shall take precedence.

1.3 This MOU is not intended to create legal relations, or constitute a contractual agreement, between the Parties. It is a memorandum of understanding reached between the Parties on the basis of which the Funds are to be provided to Victoria for the purposes of carrying out the Activity and related matters.

1.4 In the event of ambiguity or uncertainty relating to the interpretation of this MOU, this ambiguity will at the first instance be resolved by the Working Party. If it cannot be resolved in this manner the issue will be resolved in accordance with clause 15.

## **2. Conduct of the Activities**

2.1 Victoria will appoint a project manager to conduct the Activities. For the period of this MOU, Victoria will undertake the following activities:

- (a) carry out the day-to-day administration role and act as the central point of contact for the Project;
- (b) undertake the contract management role with respect to the Project Contract;
- (c) convene meetings of the Working Party as agreed by the Working Party for the purposes of updating Parties on implementation of the Project; and
- (d) facilitate the provision of written progress reports and data reports provided by the Project Contractor under the Project Contract.

**3. Establishment of the Australian Online Gambling Counselling and Support Program**

3.1. Victoria shall prior to undertaking the Project or entering into the Project Contract under this MOU obtain the unanimous approval of the Working Party of the Project Brief. The Project Brief will form the basis of the Project Contract. The Parties agree that the Working Party members shall act cooperatively and in good faith to ensure that unanimous approval can be achieved and that such members will not unreasonably withhold their approval.

3.2. Approval of the Project Brief shall be sought through the following process:

(a) Victoria will liaise with the Parties and negotiate with Turning Point Alcohol and Drug Centre in the development of a Project Brief;

(b) The Project Brief and proposed budget shall be submitted to the Working Party for their consideration and unanimous approval by the Parties prior to the commencement of the Project;

(c) Victoria will use the approved Project Brief as the basis to enter into a Project Contract for delivery of the Project; and

(f) The State of Victoria will enter into the Project Contract as principal for the purposes of this MOU and the expenditure of the Funds.

**4. Managing the Australian Online Gambling Counselling and Support Program**

4.1 Victoria shall manage the Project Contract and monitor the work carried out under the Project Contract.

4.2 Victoria shall provide the Parties with final versions of key developmental outputs in the establishment phase such as the clinical guidelines and proposed website content. Victoria will ensure that these deliverables are in accordance with the principles outlined in the Project Specification. Parties will be required to sign-off on materials concerning their own jurisdiction.

4.3 Victoria shall, through the Working Party, keep all Parties informed of the progress of the Project Contract and advise of any changes to the scope, cost, or timetable for the Project.

4.4 The Project Contract will require the Project Contractor to provide through Victoria to each Party that contributes to the Funding of the Project Contract the following reports:

- (a) Progress reports that demonstrate and describe progress of the Project in accordance with the Project Brief; and
  - (b) Data reports provided to each Party with agreed service level data at both the national and the jurisdictional level in an agreed format and details of the methods of data analysis in accordance with the Project Brief.
- 4.5 Victoria will seek to ensure (by making provision in the Project Contract) that each report will be made available to each Party who has contributed to the funding of the Project, so that the Working Party is given sufficient opportunity to comment on the Project Contractor's adherence to the scope and requirements of the Project Contract.

#### **5. Payment of Funds & Other Assistance**

- 5.1 The Parties (other than Victoria) shall for the Activity Period pay Victoria the Funds in such amounts as are set out in Item D of the Schedule at such times and in accordance with this MOU.
- 5.2 Victoria shall, for the Activity Period, contribute Funds for the purposes of the Program, in such amounts as are set out in Item D of the Schedule.

#### **6. Funds Use & Accounts**

- 6.1 Victoria may spend the Funds only for the purposes of meeting Project costs through the Project Contract, and in accordance with the terms and conditions of this MOU.
- 6.2 The Working Party may by mutual agreement seek to vary the Project Brief or Project Budget as it sees fit provided always that in doing so it does not affect Victoria's ability to meet its obligations under any Project Contract.
- 6.3 Victoria shall keep proper accounts and record all of its transactions and affairs in relation to the use of the Funds in accordance with usual Victorian Government accounting practice. Victoria will provide Parties with proof of payments made to Turning Point.

#### **7 Invoicing Arrangements**

- 7.1 Jurisdictions that provide Funding for the Australian Online Gambling Counselling and Support Program will make a contribution in advance annually, as specified in Item D of the Schedule.
- 7.2 In accordance with clause 7.1 Victoria will issue tax invoices to the Parties for their contribution to the Funds calculated in accordance with



Item D of the Schedule. Tax invoices issued under this clause will be provided to the contributing Parties at the start of the financial year for which the contribution relates.

**8. Unexpended and Unacquitted Funds**

8.1 At the completion of the Activity Period any of the Funds which have not been expended or which have not been spent to the reasonable satisfaction of the Parties shall be repaid within three months of the end of the Activity Period.

8.2 In the event that any revenue or other income arises (which includes unexpended funds) from the activities of the Australian Online Gambling Counselling and support Program during any year of the Program, the funds are to be applied to the Australian Online Gambling Counselling and Support Program for any Year of Funding.

**9. Entire Record and Variation**

9.1 Any variation of the MOU must be in writing and signed by all Parties.

9.2 Any variation will be negotiated between the Parties in good faith.

**10. Parties' Material**

10.1 Ownership of all Party Material remains vested at all times in the Party that provided the Material. To the extent that any Party Material has been incorporated into the MOU Material or is required for the purposes of using or enjoying the MOU Material by any Party, the owner of the Party Material hereby grants those Parties a perpetual, royalty free, non-exclusive license to use or otherwise deal with that Material in the same way that it may use or otherwise deal with the MOU Material.

10.2 Upon the expiration or earlier termination of this MOU, each Party (other than the Party that provided the Material) shall return all Party Material remaining in its possession to the Party who supplied such Material in each case (except as otherwise agreed by the supplying and receiving Parties).

10.3 Each Party agrees that the Party Material will be used, copied, supplied or reproduced only for the purposes of this MOU.

10.4 Each Party agrees to use the Party Material provided by another Party strictly in accordance with any conditions or restrictions set out by or as notified from time to time in writing by the Party providing the Material upon provision of the Party Material.

## **11. Acknowledgment & Publications**

- 11.1 No Party will claim sole responsibility for the Project. When referring to the Project and activities relating to the Activities and this MOU, all Parties shall acknowledge the financial contributions and other support it has received from the other Parties.
- 11.2 The form of this acknowledgement will be agreed by all Parties, on a case-by-case basis.

## **12. Intellectual Property Rights**

- 12.1 Subject to this clause 15, Intellectual Property in an item of MOU Material vests in Victoria if it has produced or commissioned that item (including all Material created under a Project Contract and vested in Victoria).
- 12.2 Victoria will use its best endeavours to ensure that Intellectual Property rights resulting from the Project Contract will vest in Victoria.
- 12.3 Victoria warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in the MOU Material in the manner provided for in this Clause 15.
- 12.4 Victoria will grant to each and every contributing Party a permanent, irrevocable, royalty-free, non-exclusive licence (including a right of sublicense) to use, reproduce, and adapt the MOU Material anywhere in the world, where they have secured intellectual property rights. Notwithstanding Part VII of the *Copyright Act 1968*, publication of the MOU Material in accordance with this licence shall not affect such ownership of the Intellectual Property.
- 12.5 If a Party is responsible for some third party bringing a legal action due to a breach of their Intellectual Property rights, and that Party is responsible for that breach, that Party shall be solely responsible for the payment of damages in respect of that breach. The Party responsible for the breach will indemnify the other Parties for any loss arising from that breach.
- 12.6 All licences granted under clause 12.4 survive the expiration or termination of this MOU.

## **13. Disclosure of Information**

- 13.1 A Party receiving Confidential Information shall not, without the prior written approval of the Party who provided it, disclose it to any person other than the Party that provided it, subject to each State or Territory's laws.

- 13.2 The Parties agree that where Confidential information is being provided to a Parliamentary Committee, a request will be made to the Committee that any Confidential information is provided in camera.

#### **14. Termination**

- 14.1 If a Party wishes to terminate its participation in this MOU it must give written notice to the other Parties that it will withdraw from the MOU at least six months before its next Funds payment is due.
- 14.2 A Party that has given a notice of termination under clause 14.1 must continue to fulfill its obligations under the MOU for six-months from the time that it provides notice.
- 14.3 A Party that has given a notice of termination under clause 14.1 will continue to enjoy the benefits of this MOU for only six-months from the time that it provides notice, or, only in relation to Projects undertaken before or during those six-months and not beyond those six-months.
- 14.4 If a Party terminates its participation in the MOU it will not be required to pay compensation for such an early termination, except as clause 14.5 requires.
- 14.5 If Victoria terminates its participation in this MOU, clause 8.1 applies as if the Activity Period had been completed, and the remaining Parties will negotiate an alternative Secretariat arrangement.
- 14.6 If a Party wishes to commence its participation in this MOU it should give written notice to the other Parties that it seeks to join the MOU three months before the next Funds payment is due.

#### **15. Dispute Resolution**

- 15.1 The Departmental Officers will, in the first instance, attempt to resolve any disputes under this MOU including disputes about the application of Funds, performance and compliance with other obligations between themselves. If they are unable to reach agreement, then:
- (a) they will refer the case to their senior management. If agreement is not reached at the officer/organisational level, then:
  - (b) the dispute will be referred to the appropriate Ministers for consideration. The Ministers will consult together with a view to resolving the matter amicably between them.
- 15.2 Where, following consultation at the Ministerial level under clause 15.1, there is no resolution of the matter, and where one or more Parties remain of the opinion that the other Party or Parties have not complied with any one or more of their obligations under this MOU, then the Party or Parties may, at their discretion:

- (a) give a notice to the other Party or Parties requiring the situation to be remedied (in this Clause 15 "a Notice") within the reasonable time stated therein (in this Clause 18 "the Cure Period"), and
  - (b) where, after the Cure Period (or any agreed extension of that period) has expired, and the non-compliance has not been remedied, terminate their participation in this MOU.
- 15.3 If a Notice is given under clause 15.2, a Party may defer all or any part of the payments of its portion of the Funds due under this MOU until the situation is remedied. The relevant Minister will give advance written notice to the other relevant Minister of any intended deferment to which the other relevant Minister will have a reasonable time to respond.
- 15.4 If a Notice is given under clause 15.2 and a Party defers all or any part of the payments of its portions of the Funds due under this MOU, that Party will not enjoy the benefits of this MOU until the situation is remedied and that Party resumes payment of its portion of the Funds in accordance with this MOU.
- 15.5 Notwithstanding the existence of a dispute, each Party will continue to comply with this MOU except as otherwise expressly provided by this MOU.

## **16. Execution of the MOU**

- 16.1 If this MOU is executed in counterparts, each counterpart is deemed to be an original and all counterparts constitute one and the same document.

## THE SCHEDULE

### A. Australian Online Gambling Counselling and Support Program.

The Community and Disability Services Ministers (CDSMAC) Gambling Working Party (GWP) was established by CDSMAC (previously CSMAC) in October 2001 to support the development of the National Framework on Problem Gambling (2004 - Dec 2008), which was auspiced by the Ministerial Council on Gambling Officials Group.

The current GWP Work Plan provides the framework for the development of projects and activities that align with the key focus areas, objectives and strategies of the National Framework on Problem Gambling 2004-2008. Area 3 of the National Framework seeks to enhance problem gambling support and treatment services that are effective, accessible and culturally appropriate.

At its meeting of 14 February 2008, developments and issues associated with the broader online counselling environment were discussed in the context of progress made by Victoria and Tasmania. It was agreed that interested members of the group would reconvene out-of-session to discuss options to progress a national approach to the provision of problem gambling online counselling services.

Key drivers in support of a national approach to problem gambling online counselling and support include:

- strategic coherence — State by State approach to online counselling does not recognise the reality of internet usage. Further, it is not technically possible to restrict site access based on State residence, however, it is possible to restrict international access to a site.
- a national approach provides the opportunity to manage the online space and obtain a better market position (for google searches etc). A national approach reduces website "clutter", with the inherent confusion that clients would experience with the introduction of half a dozen new Australian-based problem gambling counselling websites (not to mention international websites).
- a national approach provides for economies of scale in managing the service.
- a single, national website and portal would allow for improved data collection, referral, branding and promotional activity for all States and Territories, while still allowing state-specific materials. A single, national website would also support the national 1800 number for gambling help lines.

This MOU will facilitate the provision of the Australian Online Gambling Counselling and Support Program, including funding, accountability and reporting arrangements.

For a detailed description of the services to be provided, reporting, deliverables and budget, please refer to the Project Brief at Attachment 1. The Project Brief will also form the basis of the Project Contract.

#### **B. Time-Frame & Activity Period**

The Activity Period is from when the last of the Parties have signed the MOU to 30 June 2011.

#### **C. Budget**

The Budget for the Project is contained in the Project Brief at Attachment 1.

#### **D. Funds**

Funds for the Project have been allocated against the following categories:

1. Establishment Costs in 2008/09 - \$166,750 (to be provided by Victoria); and
2. Delivery costs - \$376,053 in 2008/09, \$522,914 in 2009/10 and \$474,722 in 2010/11 (to be shared between all Parties to this MOU except the Commonwealth).
3. Evaluation – The scope and timing of the evaluation is yet to be determined but is expected to be funded by the Commonwealth as a separate budget item.

Table 1 below provides the costs per Year of Funding (GST Exclusive), which have been apportioned on the basis of each jurisdiction's share of national gambling expenditure<sup>1</sup>, together with the cost apportions associated with establishment and delivery outlined above.

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<sup>1</sup> 2005/06 National Gambling Expenditure Data – National Gambling Statistics

**Table 1 – Cost to Parties (GST exclusive)**

New South Wales	<p>40.24% of national gambling expenditure</p> <p><b>Delivery</b></p> <p>2008/09 – \$151,324</p> <p>2009/10 – \$210,421</p> <p>2010/11 - \$191,028</p>
Victoria	<p>25.94% of national gambling expenditure plus outstanding costs attributable to Western Australia that exceed \$10,000 per annum.</p> <p><b>Establishment</b></p> <p>2008/09 - \$166,750</p> <p><b>Delivery</b></p> <p>2008/09 – \$105,749</p> <p>2009/10 – \$150,952</p> <p>2010/11 - \$136,119</p>
Queensland	<p>17.76% of national gambling expenditure</p> <p><b>Delivery</b></p> <p>2008/09 – \$66,787</p> <p>2009/10 – \$92,870</p> <p>2010/11 - \$84,311</p>
Western Australia	<p>\$10,000 per annum</p> <p><b>Delivery</b></p> <p>2008/09 – \$10,000</p> <p>2009/10 – \$10,000</p> <p>2010/11 – \$10,000</p>
South Australia	<p>6.31% of national gambling expenditure</p> <p><b>Delivery</b></p> <p>2008/09 – \$23,729</p> <p>2009/10 – \$32,996</p> <p>2010/11 - \$29,955</p>

Tasmania	1.63% of national gambling expenditure <b>Delivery</b> 2008/09 – \$6,130 2009/10 – \$8,523 2010/11 - \$7,738
Australian Capital Territory	1.46% of national gambling expenditure <b>Delivery</b> 2008/09 – \$5,490 2009/10 – \$7,635 2010/11 – \$6,931
Northern Territory	1.82% of national gambling expenditure <b>Delivery</b> 2008/09 – \$6,844 2009/10 – \$9,517 2010/11 - \$8,640

If a jurisdiction withdraws from the MOU prior to its conclusion on 30 June 2011, the remaining Parties will proportionately increase the funding they make available to Victoria based on their contribution to the Program.

Each Party will be sent a tax invoice for its Funds at the commencement of each financial year.

#### **E. Departments**

Commonwealth –	Department of Families, Housing, Community Services and Indigenous Affairs
New South Wales –	Office of Liquor, Gaming and Racing
Victoria –	Department of Justice
Queensland –	Queensland Treasury
South Australia –	Department for Families and Communities
Western Australia –	Department of Racing, Gaming and Liquor
Tasmania –	Department of Treasury and Finance
Australian Capital Territory –	ACT Gambling and Racing Commission
Northern Territory –	Department of Justice
Norfolk Island -	Department of Tourism and Health




Signed as a Memorandum of Understanding

SIGNED for and on behalf of )

The COMMONWEALTH OF AUSTRALIA )

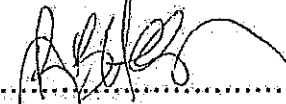
By )

 )

Minister for Families, Housing, )

Community Services and Indigenous Affairs

In the presence of:

  
..... [WITNESS]

24.9.08  
..... [DATE]

The STATE OF VICTORIA )

By )

Minister for Gaming )

In the presence of:

→ TONY ROBINSON

..... *Kate Stewart* ..... [WITNESS]  
(KATE STEWART)

..... 2 - 2 - 09 ..... [DATE]

The STATE OF NEW SOUTH WALES )

By *Keyfoss* )

Minister for Gaming and Racing )

In the presence of:

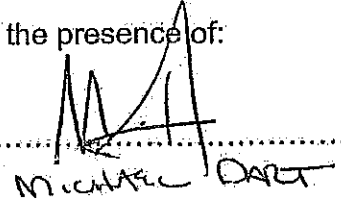
*[Signature]* ..... [WITNESS]

*16/10/08* ..... [DATE]

The STATE OF QUEENSLAND )  
By the )  
the )  
Minister for Treasury )



In the presence of:  
..... [WITNESS]



Michael Dart


..... 12.10.08 ..... [DATE]

The STATE OF SOUTH AUSTRALIA )

By  )

Minister for Families and Communities )

In the presence of:

  
Kendall Crowe ..... [WITNESS]


14.11.08 ..... [DATE]

The STATE OF WESTERN AUSTRALIA )

By  )

Minister for Racing and Gaming )

In the presence of:

 [WITNESS]

7/10/08 [DATE]


The STATE OF TASMANIA

By

)  
)   
)

Minister for Treasury

In the presence of:

.....  ..... [WITNESS]

..... *SARAH HAZELL* .....  
..... *18-9-08* ..... [DATE]

The NORTHERN TERRITORY )

By )

Minister for Racing, Gaming and Licencing )

In the presence of:

*Michael Cole* ..... [WITNESS]

*10/9/08* ..... [DATE]

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke.



The AUSTRALIAN CAPITAL TERRITORY)

By )

*Handwritten signature*

Treasurer )

In the presence of:

*Diki Pufed* ..... [WITNESS]

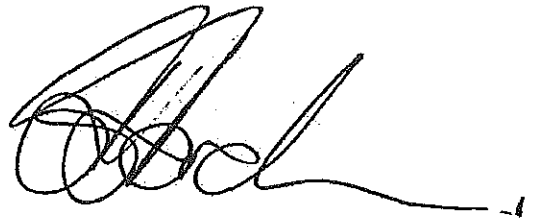
*9-9-08* ..... [DATE]


TERRITORY OF NORFOLK ISLAND )

By Geoffrey Robert Gardner )

Minister for Tourism and Health )

In the presence of:



 [WITNESS]

R G McAlpine

..... [DATE]