



## PHOTOGRAPHERS RELEASE EXPLANATORY NOTES

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### USING THE EXPLANATORY NOTES

The Explanatory Notes give details about some of the clauses in this **sample Release**, or about the law involved.

The Explanatory Notes **do not** form part of the Release and should not be included in your final version. It may be useful to separate the Explanatory Notes from the actual Release when you are redrafting it.

The Explanatory Notes provide general information only, and are not legal advice on any specific situation. You can contact Arts Law for specific legal advice.

### INTRODUCTION

The purpose of a Photographer Subject's Release is to ensure that both parties are clear about their rights and obligations in relation to the photograph.

This release agreement imposes an obligation on the photographer to make a payment and therefore needs to be signed by both parties. It is very important that any agreement you make is in writing and signed by all parties. This way the other party cannot claim that they didn't know what their rights and obligations were, and it is more difficult to dispute the terms of the agreement. Book, newspaper and magazine publishers are also likely to require a warranty from a photographer that the photographer has all necessary releases to use a photograph before they will publish it. The best evidence that you have such a release is if it is in writing.

### PARTIES

The Release must clearly identify the name, address and preferably the telephone number and email addresses of the subject and the photographer (parties). Throughout the rest of the document, the parties are referred to or "defined" by the terms "I" or "Me" for the subject providing the release and "You" for the photographer because this is easier. You could use other terms though, or even a short form of the parties' names.

If a party has an ABN, ACN, ARBN or ICN the number must be included. The ABN is also important for GST purposes.

### PHOTOGRAPHS (CLAUSE 1)

Clause 1 deals with details of the photo shoot, such as the date and location.



If the photographs have already been taken, you will need to change this section. We also recommend that you attach a copy of each photo to the agreement and insert words like these:

“A copy of each Photograph is contained in annexure A to this Release.”

### **RIGHTS (CLAUSES 2 AND 3)**

This Release requires the subject to acknowledge the photographer’s ownership of the copyright in the photographs. The photographer can then choose between two alternatives for clause 3. The first alternative for clause 3 is preferable for the photographer because it ensures the photographer maintains broad rights over the use of the photograph. The second alternative for clause 3 gives the subject some control over the use of the photographs.

### **NAME AND BIOGRAPHY (CLAUSE 4)**

There are two alternatives. The first gives the photographer permission to use the subject’s name and biography at the photographer’s discretion. The second alternative binds the photographer not to use the subjects name and biography.

### **PAYMENT (CLAUSE 5)**

This release creates a contractual relationship between the parties because each party takes on an obligation (consideration) in return for the other party’s obligation – the photographer provides payment and the subject agrees to be photographed.

Contracts require each party to give consideration which can be money or something else. The amount can be very small.

In any payment clause ensure that it is clear whether the amount is exclusive or inclusive of GST and, if the currency is not in Australian Dollars, that this is clearly stated eg US\$300. If the subject is not to be paid, but the photographer makes other promises to him or her, you should replace the words at the beginning with the following:

*“In consideration of the promises made in this Release.”*

There are two alternatives provided for when payment is due. *Alternative 1* provides for payment when something happens. *Alternative 2* provides for payment only when the Release is signed. The subject should ensure that any money owing to them on signing the contract is paid when they sign.

The parties to the agreement will need to consider their obligations in relation to taxation and other statutory fees and charges. You may wish to obtain specific professional advice on your GST and tax position under this document and generally.

If the photographer is not making a payment or making any other promise to benefit the subject, then the Release needs to be varied. Clauses 5, 6, 7, 8 and 9 can be deleted and the Release signed solely by the subject. Such a Release is not a contract but can be used by the photographer to demonstrate that the subject agreed to be photographed and was aware how the photographer intends to use the photos. Importantly the photographer does not get the benefit of the release from liability in clause 8. Such a release would either require consideration or would need to be contained in a more formal legal document called a ‘deed’ to be enforceable



Arts Law recommends that a photographer provides “consideration” to a subject and that an agreement be used. If you are varying the agreement because no fee is payable, Arts Law recommends that you get advice on the release as varied.

### ***Representations and warranties (clauses 6 and 7)***

It is important that the parties think about the representations, warranties and any indemnity (including its scope) that they are asked to make. To warrant something is to promise that a statement of fact is true.

Clause 6 requires the photographer to warrant that the photographer has received all necessary permissions from the land owner and/or tenant of the property in which the photographs will be taken. The subject receives an assurance that he or she will not be trespassing if he or she enters private property as instructed by the photographer in order to be photographed.

To indemnify someone is to compensate them for loss suffered as a result of your errors or if a third party sues them as a result of your actions. Clause 7 requires the photographer to indemnify the subject against all losses, liabilities and expenses that the subject incurs because the photographer did not get permission to take photographs on that property.

### **RELEASE (CLAUSE 8)**

A release of this nature is usually obtained to benefit the photographer as it means that the subject gives up any rights they may have to sue the photographer arising out of, or in connection with, the subsequent use of the Photographs. It may be particularly important when the subject’s name or image is to be used for commercial purposes.

### **SIGNING THE RELEASE**

If you are an individual, sign your name and write in the date of signing where indicated at the bottom of the Release. This is sometimes called “executing” the document.

If you are signing on behalf of a company or association, you must consult the organisation’s rules and relevant laws to determine who is authorised to sign. It may also be necessary to stamp or “affix” the document with the company or association’s seal if this is required under its constitution or articles of association.

If someone else is signing on behalf of either party as their agent, you should insert the following sentence into the signature section:

*“I am the authorised agent for ...”*

If any of the parties is under the age of eighteen, their parent or legal guardian will need to sign the agreement “on behalf” of the child. This does not mean that the parent or legal guardian becomes a party to the agreement in his or her own right.

If there is a change to the document at the last minute before executing, you can either retype it, or make the change in handwriting and have each party initial next to the change before signing at the end. You may also wish to initial each page to make sure no new pages are inserted after you have signed, but this is not strictly necessary.

If you are going to photograph many subjects, you could include a schedule at the end of one agreement for all of them to read and sign. That way, you only have one document with



all the signatures on it, instead of many. This will only work if there is no risk that one of the subjects will lose or damage the one agreement that everyone has signed.

### **KEEP RECORDS OF YOUR AGREEMENT**

Executing the document is evidence that you agree to what is written there. You will usually be bound to perform the document as it is written. For this reason it is a good idea to get the same number of identical originals as there are parties to it, which are signed by all parties. Each party then keeps a fully signed original. At the very least, however, make sure you have a *copy* of the original document so that you can remember what you have signed.

### **STAMP DUTY**

Stamp duty, or duty, is a tax which is enforced and collected by State and Territory governments on certain 'instruments' (that is, documents) and transactions relating to property such as partnership interests or shares, or in some cases, intellectual property such as copyright. You should check with the office of state revenue in your State or Territory as to what duty, if any, may be payable on your document or transaction.