

**Policy Title:** Intellectual Property

**Policy Owner:** Deputy Vice-Chancellor (Research)

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## 1. INTENT

1.1 The Policy recognises that:

- (a) the University's ability to attract research funding from industry, business and government is effected by its ability to manage its intellectual property;
- (b) intellectual property generated by the University researchers should be used to maximise the flow of benefits to society, particularly to Australia, to enhance the reputation of the University, and to encourage and assist staff and students in their careers;
- (c) the value of disseminating research findings should be balanced with the need to protect commercially valuable outputs of research activity; and
- (d) the terms specified in contractual relationships with research funding agencies have an impact on the use and control of research outcomes.

1.2 This Policy aims to:

- (a) provide guidance for staff and students on the practices of the University with respect to intellectual property; and
- (b) protect the interests of staff members, students and the University arising from the creation, protection and commercialisation of intellectual property.

## 2. ORGANISATIONAL SCOPE

This policy applies to all staff, affiliated researchers, and students involved in research and research-related activities at ECU.

## 3. DEFINITIONS

TERM	DEFINITION
“Affiliate” means	an Emeritus, Honorary, Adjunct or Visiting Staff member appointed to the position at the University in accordance with University policy.
“Commercial Exploitation” means	the application, publication, development, use, assignment, licensing, sub-licensing, franchising, exploitation, sale or other utilisation of Intellectual Property for the purpose of generating financial or other commercial gains. “Commercially Exploit” has the same meaning.
“Commercialisation Costs” means	all costs and disbursements incurred by the University in connection with the Commercial Exploitation of Intellectual Property. Commercialisation costs include the costs of managing, registering, protecting and enforcing Intellectual Property rights, creation of prototypes, models and samples, research and development, proof of concept development, insurance, legal, financial and technical advice, marketing and travel, and other such expenses associated with carrying out that business activity.
“Commercialisation Revenue” means	the gross revenue actually received and retained by the University from the Commercial Exploitation of Intellectual Property, after the payment of any withholding, goods and services or other taxes, bank fees, transaction fees and other charges. Commercialisation Revenue does not include income received from the provision of research, consultancy or other services and does not include any income derived from the delivery of the University’s fee-paying courses, including courses delivered collaboratively with third party educational institutions in Australia or internationally.
“Computer Program”	has the same meaning as in the <i>Copyright Act 1968</i> (Cth).
“Copyright Work” means	any artistic work, literary work, dramatic work, musical work, sound recording, cinematograph file, television broadcast, sound broadcast or published edition of work within the meaning of the <i>Copyright Act 1968</i> (Cth).
“Creator” means	any of the following: <ul style="list-style-type: none"> <li>(a) in the case of a patentable invention subject to the Patents Act 1990 (Cth) - the Inventor;</li> <li>(b) in the case of a literary or artistic work, or similar, subject to the Copyright Act 1968 (Cth) - the Author;</li> </ul>

TERM	DEFINITION
	<ul style="list-style-type: none"> <li>(c) in the case of designs registrable under the Designs Act 2003 (Cth) - the Designer;</li> <li>(d) in the case of plant breeders' rights, under the Plant Breeders' Rights Act 1994 (Cth) - the Principal Breeder;</li> <li>(e) in the case of circuit layouts, under the Circuit Layouts Act 1999 (Cth) - the Designer;</li> <li>(f) in the case of software and computer code - the software author; and</li> <li>(g) in the case of trade secrets and know how - the contributors to that body of knowledge.</li> </ul>
"Deputy Vice-Chancellor (Research)"	includes any successor to that position or a person acting in the position or his or her nominee.
"Intellectual Property" means	<p>all statutory and other proprietary rights (including rights to require information to be kept confidential) in respect of inventions, copyright, trademarks, designs, patents, plant breeders' rights, circuit layouts, know-how, trade secrets and all other rights as defined by Article 2 of the <i>Convention Establishing the World Intellectual Property Organisation of July 1967</i>, all rights to apply for the same and, for the avoidance of doubt, includes:</p> <ul style="list-style-type: none"> <li>(a) patents under the Patents Act 1990 (Cth);</li> <li>(b) copyright and moral rights vesting by virtue of the Copyright Act 1968 (Cth) in literary works (including computer programs), dramatic works, musical works, artistic works, films, sound recordings, broadcasts, published editions and certain types of performances;</li> <li>(c) trade marks registered under the Trade Marks Act 1995 (Cth);</li> <li>(d) designs registered under the Designs Act 2003 (Cth);</li> <li>(e) new plant varieties under the Plant Breeder's Rights Act 1994 (Cth);</li> <li>(f) circuit layouts (computer chips) under the Circuit Layouts Act 1999 (Cth); and</li> <li>(g) trade secrets and other confidential material under common law.</li> </ul>
"Invention" means	an invention (whether qualifying for registration or otherwise) under the <i>Patents Act 1958</i> (Cth) or the <i>Patents Act 1990</i> (Cth).
"Invention Disclosure Form" means	the invention disclosure form which can be found on the ORI website.
"Line Manager" means	the person having direct line management responsibility for a Staff Member.
"Moral Rights" means	a sub-category of rights under the <i>Copyright Act 1968</i> (Cth) referred to as moral rights, which protect the right of a creator of original copyright works to be recognised as

TERM	DEFINITION
	the creator of those works (right of attribution) and the right to object to the derogatory treatment of those works (right of integrity). These rights are personal rather than proprietary in nature and as such cannot be sold, licensed or assigned. Furthermore, moral rights vest in the creator irrespective of his/her employment status and the ownership of the copyright in the work. The <i>Copyright Amendment (Moral Rights) Act 2000</i> (Cth) sets out these rights in detail.
"Net Revenue" means	the monetary amount retained by the University from the Commercialisation Revenue received from the Commercial Exploitation of Intellectual Property after:  (a) total Commercialisation Costs have been recovered or deducted from Commercialisation Revenue; and (b) the legitimate claims of third parties are satisfied.
"ORI" means	the University's Office of Research and Innovation or any successor office of research at the University.
"Research" means	the creation of new knowledge and/or the use of existing knowledge in a new and creative way so as to generate new concepts, methodologies and understandings. This could include synthesis and analysis of previous research to the extent that it leads to new and creative outcomes.
"Scholarly Works" means	any literary, dramatic, musical or artistic work and includes any journal articles, books, conference papers, manuals, musical composition, creative writing or like publication or any digital or electronic version of these that contains material written by a Staff Member or Affiliate based on that Staff Member's or Affiliate's scholarship, learning or research but does not include:  (a) Teaching Materials; or (b) Computer Programs; (c) any such work produced by a Staff Member in their capacity as a general, rather than an academic, member of staff.
"Specifically Commissioned" means	works which the University has specifically employed or requested a Staff Member or Affiliate to produce, whether in return for special payment or not.
"Specified Agreement" means	an agreement between the University and any party which relates to the ownership or use of Intellectual Property that may arise out of an activity, including research, which is identified in the agreement.
"Staff Member" means	an officer or employee of the University and includes both academic and general staff whether employed on a full- time, part-time, sessional or casual basis.

TERM	DEFINITION
“Student” means	a person enrolled as a student of the University.
“Teaching Materials” means	all versions, whether digital or otherwise, of information, documents and materials created or used for the primary purpose of teaching and education at the University and, without limiting the generality of the foregoing, includes lecture notes that are made available to Students, computer generated presentations, course guides, overhead projector notes, examination scripts, examination marking guides, course databases, websites and multimedia-based courseware.
“Technology Transfer	includes any successor fund for technology transfer at the University.
“University” means	Edith Cowan University.
“University Resources” means	resources of the University which includes without limitation facilities, funds, services, equipment, paid leave, staff time and support staff.

#### 4. POLICY CONTENT

##### 1. Ownership of Intellectual Property Created by Staff Members or Affiliates

###### Ownership

- (1) The University owns all Intellectual Property (other than Moral Rights):
- (a) created by a Staff Member in the course of, or pursuant to, or under the terms of, or incidental to, the Staff Member’s employment with the University. This includes but is not limited to all Intellectual Property created by a Staff Member by reason of the Staff Member’s:
    - (i) use of the University’s Resources; or
    - (ii) participation in any project or program supported by funding obtained or provided by the University; or
    - (iii) research being undertaken at the University, either in collaboration with other Staff Members or any third party, or
  - (b) created by an Affiliate while engaged in an activity which is the subject of a Specified Agreement. This includes but is not limited to all Intellectual Property created by an Affiliate:
    - (i) with the use of the University’s Resources;
    - (ii) with the use of Intellectual Property owned by the University;
    - (iii) where the Intellectual Property is a component of Intellectual Property generated by a team of which the Affiliate is a member and other members are Staff Members; or

- (iv) where the Intellectual Property has been generated as a result of any funding provided by or obtained by the University.

*Assignment of Scholarly Works*

- (2) The University is willing to forgo copyright ownership in a Creator's Scholarly Work (except where the Scholarly Work has been Specifically Commissioned by the University) on the condition that the Creator provides a perpetual, irrevocable, worldwide, royalty-free, non-exclusive licence in favour of the University to allow the University to use that work for teaching and research purposes and to reproduce and communicate that work in any format for teaching and research purposes.
- (3) If the Scholarly Work relates to an unregistered design, unregistered plant variety or an Invention in respect of which a patent has not already been granted, the Staff Member or Affiliate must not publish or otherwise disclose the Scholarly Work to any third party without the written authorisation of the University's Deputy Vice-Chancellor (Research).

*Teaching Materials*

- (4) Where the University owns the Intellectual Property in Teaching Materials in accordance with Section 1(1) above, the Staff Member or Affiliate who created the Teaching Materials shall have, by virtue of this sub-section, a non-exclusive, royalty-free, worldwide, non-transferable licence to use the Teaching Materials for teaching and research purposes, both during and after the term of the Staff Member's employment or Affiliate's affiliation with the University.
- (5) A Staff Member or Affiliate's use of Teaching Materials under the licence granted in Section 1(4) is subject to any relevant contractual arrangements entered into by the University, being contractual arrangements of which the Staff Member or Affiliate has notice.

*Work Done Outside the University*

- (6) Staff Members must report to their Line Manager with information of their participation in all arrangements for work supported or funded by an entity other than the University.
- (7) A Staff Member will be presumed to be working in the course of his or her employment with the University, unless his or her work:
  - (a) is undertaken outside and independently of the University;
  - (b) does not form part of the Staff Member's prescribed duties;
  - (c) does not involve significant use of University resources or facilities including University funding, Staff Members, Students, apparatus or supervision;
  - (d) does not include any use of University-owned Intellectual Property; and
  - (e) is undertaken with the permission of the Staff Member's Line Manager.

- (8) Where the position is unclear, Staff Members are required to seek clarification in writing from the Deputy Vice-Chancellor (Research) to avoid possible disputes.

## **2. Ownership of Intellectual Property Created by Students**

- (1) Subject to this Section 2, Intellectual Property created by a Student during the course of his or her studies at the University is owned by that Student.

### *Assignment*

- (2) Where a Student wishes to receive funds under a scholarship, then the University may require the Student to assign his or her Intellectual Property and agree to confidentiality obligations arising out of the work as a condition of the receipt of the funds under the scholarship.

- (3) Where a Student wishes to participate, or continue to participate, in a project which:

- (a) is externally funded;
- (b) is likely to have potential for, or has potential for, Commercial Exploitation; or
- (c) builds upon pre-existing University-owned Intellectual Property,

then, the University may, as a condition of the Student participating in that project, require the Student to assign his or her Intellectual Property and agree to confidentiality obligations arising out of the work.

- (4) The terms of any assignment of Intellectual Property by a Student will be agreed with the Student. In general, the Student will:

- (a) retain copyright in his or her thesis; and
- (b) have a right to have his or her thesis examined and the right to submit work for publication, subject to obligations of confidentiality in relation to the project.

- (5) Signing an agreement under Section 2(3) must be an act of free will by the Student and will not be a condition in order to qualify for enrolment at the University, or to remain enrolled in a course at the University, or to complete the requirements of a course at the University in which he or she has enrolled, under any circumstances. If a Student prefers not to sign such an agreement, or does not respond to a request to do so, then the University may decline to permit the Student to participate in that project and the University will use its best endeavours to provide the Student with the option of a different research topic.

*Sharing Commercial Benefits*

- (6) Students who assign their Intellectual Property rights to the University in accordance with Section 2 are entitled to a share in the proceeds of any Commercial Exploitation of that Intellectual Property as provided in Section 7.

*Student Research at other Institutions*

- (7) A Student who is involved in research at an institution other than the University (which is not itself party to a joint research project with the University), must advise his or her supervisor of his or her involvement in such research at another institution before a research or thesis topic is approved by the University for the Student, so that suitable arrangements can be made with that institution, if necessary. These arrangements might include obtaining a disclaimer from the institution of any interest in the research, or negotiating a sharing of rights to any Intellectual Property arising from the research.

**3. Securing and Protecting Intellectual Property**

A Creator of Intellectual Property which the University owns or in which the University has an interest under this Policy:

- (1) must, at the request of the University, execute any documents or do any acts or things required by the University, including without limitation execute a deed of assignment, to give effect to the provisions of this Policy; and
- (2) must not deal with the Intellectual Property in any manner that is inconsistent with the University's rights in the Intellectual Property.

**4. Identifying and Reporting Intellectual Property**

- (1) A Creator of Intellectual Property:
  - (a) which the University owns and which the Creator reasonably believes has or is likely to have potential for Commercial Exploitation; and/or
  - (b) who has a legal requirement of disclosure of Intellectual Property under the terms of a research grant or contract with the University or a third party,must promptly disclose its creation to the University by providing full details in an Invention Disclosure Form and must submit that Invention Disclosure Form to ORI.
- (2) The Section 4(1) obligation to report is continuing and ongoing. Any new particulars, data, results, findings and commercial interactions associated with the Intellectual Property disclosed in the original report must also be disclosed to ORI as they occur.



## 5. Non-Disclosure

- (1) The Creators of the Intellectual Property disclosed under Section 4 must not otherwise disclose or use that Intellectual Property without the written authorisation of the University's Deputy Vice-Chancellor (Research) if:
  - (a) the Intellectual Property comprises an Invention, an unregistered design, an unregistered plant variety or a Copyright Work that relates in whole or in part to an Invention, design or plant variety; or
  - (b) the disclosure or use is likely to prejudice the University's ability to protect, prosecute, enforce or Commercially Exploit the Intellectual Property or its rights in the Intellectual Property.
- (2) The Creator must confer with ORI regarding timing of any proposed publications of the Intellectual Property disclosed in the Invention Disclosure Form to ensure that publication and Intellectual Property protection may be achieved without either hindering the other.

## 6. Assessment and Evaluation of Intellectual Property

- (1) Subject to full details having been provided in the Invention Disclosure Form, on receipt of an Invention Disclosure Form which relates to Intellectual Property disclosed under Section 4, ORI will decide within a period of three months of receiving the Invention Disclosure Form whether or not it wishes to proceed with the protection, development or Commercial Exploitation of the Intellectual Property.
- (2) Where it is not practicable to reach a decision within three months, the University will advise the Creator of the reasons why it has been unable to reach a decision and, after consultation with the Creator, may specify a further period of not more than three months within which it expects to reach a decision. Any further period of extension beyond the three months is only available by agreement between the University and the Creator.

### *If the University Decides Not to Proceed*

- (3) If the University decides it does not wish to protect, develop or Commercially Exploit the reported Intellectual Property which it has assessed under paragraphs (1) and (2) of this Section 6, the University must notify the Creator of this decision. Upon such notification the Creator shall no longer have an obligation of non-disclosure under Section 5. The Creator may request the University to assign the Intellectual Property to him or her so that the Creator can protect, develop or Commercially Exploit the reported Intellectual Property in any manner the Creator chooses at the Creator's own cost, subject to the interests of any third parties.
- (4) Nothing in Section 6(3) prejudices any right of the University to negotiate conditions to the assignment to:
  - (a) claim a share in any revenue received by the Creator from the Commercial Exploitation of the Intellectual Property; or

- (b) retain a non-exclusive right to use the Intellectual Property for education and research purposes.
- (5) In the case of multiple Creators, any assignment of Intellectual Property in accordance with Section 6(3) will be to all Creators without determination of ownership or proportion of contribution.
- (6) The University reserves the right not to assign Intellectual Property to the Creators under Section 6(3).

*If the University Decides to Proceed*

- (7) If the University decides to protect, develop or Commercially Exploit the reported Intellectual Property which it has assessed under paragraphs (1) and (2) of this Section 6, the University must notify the Creators of this decision and the Creators will be requested to complete a formal assignment of their interests in the Intellectual Property to the University in a contract that specifies the rights that will accrue to the Creators.
- (8) Without limiting the University's discretion in the Commercial Exploitation of Intellectual Property, the University may consult with the Creators of the Intellectual Property before determining the appropriate pathway for Commercial Exploitation. The pathway may include the filing of patent applications, the identification of possible licensees, the formation of a limited liability company or some other vehicle to exploit the Intellectual Property.
- (9) The Creators must provide the University with all reasonable assistance in the exploitation of the Intellectual Property including the assessment, management, protection and Commercial Exploitation of Intellectual Property. The Creators must also assist by attending meetings, executing appropriate documents, and preparing documents that will assist in the protection, development and Commercial Exploitation of Intellectual Property including technical descriptions and evaluations, as required.

**7. Sharing the Proceeds of Commercialisation**

- (1) As a general rule, Net Revenue will be distributed as follows:
  - (a) One half to all the Creators between them;
  - (b) One half to the University, to be shared amongst the Creators' School or Centre at the time the Intellectual Property was developed, and the University's Strategic Initiatives Fund for strategic investment in research or commercialisation.
- (2) Section 7(1) does not apply in respect of any proceeds derived from the Commercial Exploitation of Teaching Materials developed for the purpose of delivering a degree, diploma, course or unit of study regardless of where, by whom and what mode the degree, diploma, course or unit of study is delivered.
- (3) The discretion to vary distribution of the Net Revenue from the general rule in Section 7(1) will be exercised by the Vice-Chancellor on advice from the Deputy Vice-Chancellor (Research).

- (4) Distribution of Net Revenue will be made to the Creators regardless of whether they remain employed or engaged by, or enrolled with, the University.
- (5) Taxation obligations associated with benefits flowing to Creators are the responsibility of the Creators involved. For the avoidance of doubt, benefits may take the form of revenue, equity or shares, a right to convert to equity or shares or other non-cash benefits, dependent upon the path of Commercial Exploitation.

#### *Multiple Creators*

- (6) Net Revenue will be shared between the Creators involved according to the proportionate contribution made by them to the Intellectual Property. Such proportions are as agreed by the Creators. If there is any dispute between the Creators and agreement cannot be reached, the provisions of Section 12 Dispute Resolution apply.
- (7) In the case where there are several Creators who are employed by or study under different Schools or Centres, distribution to relevant Schools or Centres will be made in the same proportions as apply to Creators.

#### *Transitional Provisions – Revenue Distribution*

- (8) Arrangements regarding sharing the Net Revenue executed prior to the date of this Policy will remain in accordance with the arrangements and policies in force at that time.

### **8. Agreements**

The University may enter into an agreement with a Creator or any other person (including a Creator who is a Student) regarding the ownership, licensing, use or Commercial Exploitation of Intellectual Property.

### **9. Intellectual Property From Previous Employment**

Where a Staff Member or Affiliate brings Intellectual Property to the University generated in the course of previous employment, and in respect of which that previous employer or the Staff Member or Affiliate has a claim of ownership, and where that claim of ownership could reasonably be expected to impact upon or limit the Staff Member or Affiliate's ability to perform research or related tasks under his or her contract with the University, then this must be disclosed to ORI so all issues of ownership are clarified and settled before the Staff Member or Affiliate uses that Intellectual Property in the course of his or her work at the University.

### **10. Indigenous Works**

Where the creation of the University Intellectual Property involves the traditional interests or property of Indigenous peoples and/or the use of traditional knowledge, the University will take all reasonable steps to consult with the relevant groups within the University, including relevant Indigenous Australian staff, to ensure that any decisions taken on the protection, development and Commercial Exploitation of that Intellectual Property conforms with the relevant Indigenous protocols and ethical guidelines.

## 11. Infringement of University Intellectual Property

A Staff Member, Affiliate or Student who becomes aware of any unauthorised use of Intellectual Property owned by the University must promptly inform the Deputy Vice-Chancellor (Research) of the relevant details in writing.

## 12. Dispute Resolution

- (1) In the event of a dispute arising between the University and a Creator or between Creators concerning any matter relating to this Policy, then, except where there is a written agreement between the University and the Creators to the contrary, the dispute shall be referred to a panel of three people ("Panel").
- (2) The Panel shall be made up of:
  - (a) one person nominated by the Vice- Chancellor;
  - (b) one person nominated by the Creators; and
  - (c) an independent Chair nominated by mutual agreement between the Vice-Chancellor and the Creators involved in the dispute.
- (3) ORI shall be responsible for convening such a Panel without unnecessary delay.

The Panel shall consider evidence provided to it by all concerned parties and can request further information to be provided to assist it in its decision making. The Panel shall produce a written report containing its decision as soon as practicable and having regard to the urgency of any such dispute.

## 5. ACCOUNTABILITIES AND RESPONSIBILITIES

In relation to this policy, the following positions are responsible for the following

### *Policy Owner*

The Policy Owner, being the Deputy Vice-Chancellor (Research) has overall responsibility for the content of this policy and its operation in ECU.

ECU students, staff and Council Members are required to comply with the content of this policy and to seek guidance in the event of uncertainty as to its application.

## 6. CONTACT INFORMATION

For queries relating to this document please contact:

Policy Owner	Deputy Vice-Chancellor (Research)
All Enquiries Contact:	Director, Office of Research and Innovation
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## 7. APPROVAL HISTORY

Policy approved by:	Vice-Chancellor
Date policy first approved:	10 October 2011
Date last modified:	27 November 2017
Revision history:	<p>20 November 2015 – minor amendments made as a result of the academic organisational restructure, approved by the Policy Owner.</p> <p>24 August 2016 – minor amendment to include in the Definition Table – “Scholarly Works”; this was inadvertently deleted from the table when the policy was previously amended. Approved by the Vice Chancellor.</p> <p>27 November 2017 – amendments refer to the details of intellectual property ownership to the agreement or arrangement that governs the administration of the scholarship. Endorsed by Academic Board and approved by the Vice-Chancellor.</p>
Next revision due:	October 2020
HPRM file reference	SUB/31523