

# INTELLECTUAL PROPERTY AND MORAL RIGHTS POLICY



## CONTENTS

1	PURPOSE.....	1
2	SCOPE.....	1
3	POLICY STATEMENT .....	1
	Ownership of intellectual property.....	2
	Bringing intellectual property to the University.....	3
	Requesting transfer of intellectual property from the University .....	3
	Employees leaving the University .....	4
	Transfer of ownership .....	4
	Disclosure .....	4
	Moral rights .....	4
	Scholarly works .....	4
	Course materials .....	5
	Artistic/dramatic/musical works .....	5
	Externally funded and collaborative research .....	5
	Intellectual property infringements .....	5
	Dispute resolution .....	6
4	RESPONSIBILITIES .....	6
	Compliance, monitoring and review .....	6
	Reporting.....	6
	Records management.....	6
5	DEFINITIONS .....	6
	Terms and definitions.....	6
6	RELATED LEGISLATION AND DOCUMENTS .....	8
7	FEEDBACK.....	8
8	APPROVAL AND REVIEW DETAILS.....	8

## 1 PURPOSE

- 1.1 This policy outlines how intellectual property and legal and moral rights will be managed and protected at CQUniversity.
- 1.2 This policy should be read in conjunction with the [National Principles of Intellectual Property Management for Publicly Funded Research](#).

## 2 SCOPE

- 2.1 This policy applies to CQUniversity and its controlled entities' employees', affiliates', and students' intellectual property.

## 3 POLICY STATEMENT

- 3.1 The University encourages the discovery, sharing and exploitation of innovation and knowledge, recognises the inherent and commercial value of new and improved ideas and technologies, and welcomes the opportunity to share in the discovery and dissemination of that new knowledge. However, the act of discovery, improvement, sharing and commercialising that knowledge needs to be managed in a way which encourages the individual to keep exploring possibilities and challenging boundaries. Intellectual property is

broadly regarded as a representation of the property of one's mind or intellect. For a detailed list of what might constitute intellectual property, refer to the [Definitions](#) section.

- 3.2 The University acknowledges the special significance and value of Indigenous cultural heritage and the intellectual property, which is generated from, or by, access to and sharing of that knowledge. Any use of products or matter resulting from the use of Indigenous cultural knowledge and intellectual property of Indigenous people will be subject to negotiations with the providers of such knowledge. The provisions of the [United Nations Declaration on the Rights of Indigenous Peoples 2007](#) will apply to Indigenous cultural knowledge and intellectual property used or generated in or by the University and its employees and students. To that extent, this policy will be interpreted and implemented with full cognisance of the particular rights extended to Indigenous Heritage and Indigenous Cultural knowledge.
- 3.3 All employment activities may generate intellectual property and may therefore be the subject of confidentiality and intellectual property agreements. The University will assist in the development of those agreements by providing a policy and appropriate advice to ensure the best interests of the individual and the University are protected. Whilst the University encourages the sharing and publication of knowledge and promotes the processes of inquiry and discovery, it also realises its obligation to provide useful and fair guidance on managing the outcomes of inquiry and discovery. This policy addresses the needs of the creator/s and the University, to achieve balance between the two and to encourage more exploration and discovery.

## Ownership of intellectual property

### Employees

- 3.4 Subject to this policy, the University will own legal and beneficial rights in any intellectual property developed, acquired or contributed by its employees, in the performance of their duties. The provisions of this policy are deemed to be part of the terms and conditions of employment of University employees. The University will ensure employees are provided adequate and appropriate information and education regarding intellectual property and moral rights and the application of these principles.
- 3.5 University ownership of intellectual property created by employees exists as a matter of law and does not require any further documentation from employees. However, employees who are creators may be required to formally sign documents to intellectual property record the University's ownership of the applicable intellectual property more fully, for example, to enable patent applications to be made. At the request of the Vice-Chancellor and President (or other delegated authority of the University), creators will:
- (a) execute, in a timely manner, confirmation/s of assignment and ownership, and other documentation necessary to give effect to the intellectual property ownership and use provisions set out in this policy, and
  - (b) provide other assistance as reasonably requested, such as providing evidence as to date of creation, assisting with intellectual property protection procedures, and assistance with enforcement of intellectual property.

### Students

- 3.6 The University will not normally claim ownership of intellectual property generated through undergraduate or postgraduate students' research, studies or associated activities with the University. However, in some circumstances, the University may seek ownership of intellectual property from a student. This will involve a written agreement which assigns a student's ownership rights to the University. Any reference in this policy to the University having rights to the intellectual property of students will only be in the circumstance of the student/s assigning ownership rights by the above-mentioned written agreement.
- 3.7 The Vice-Chancellor and President (or other delegated authority of the University) may ask students to sign an agreement prior to commencing studies assigning their intellectual property ownership rights to the university where:
- (a) generation of the intellectual property will likely involve substantial use of University resources and/or services (including funding) beyond that normally provided to students in the course of their studies, or
  - (b) generation of the intellectual property will likely result from the use of background intellectual property owned by, or existing within, the University,

- 3.8 The University will take reasonable steps to protect the rights of students to include their research in their thesis and to be able to submit for examination to publish that thesis and materials therein, regardless of potential commercial value, subject to provisions of this policy and the [Research Higher Degree Theses Policy and Procedure](#).
- 3.9 The following provisions will apply to students involved in activities which may lead to the development of intellectual property over which the University or a third party may claim ownership, rights or control:
- (a) the University must ensure students are given full information about the nature of the proposed work and the potential intellectual property issues involved insofar as can reasonably be known
  - (b) the student retains ownership of copyright in their thesis
  - (c) participation in research will not interfere with the assessment of the student's academic performance. In particular, the protection and commercialisation of intellectual property will not be allowed to significantly delay or negatively impact on assessment
  - (d) students will share in net income along with other creators of any intellectual property they generate, and
  - (e) students must observe obligations of confidentiality in relation to the project.
- 3.10 Research candidature supervisors in an area likely to lead to claimable intellectual property must notify the Vice-President (Research) of this potential prior to the commencement of a research award. The Vice-President (Research) will determine whether an intellectual property assignment agreement should be made by the University with a student prior to commencement of the project.
- 3.11 Signing any agreement to relinquish ownership of intellectual property must be a free act by the student and cannot be a condition for enrolment in the University, but may be a pre-requisite for a student to receive a scholarship or be offered involvement in particular research activities. Students are advised to seek external, independent advice prior to relinquishing such ownership.

### **Affiliates of the University**

- 3.12 Where an affiliate holds a substantive appointment at another institution, the University will establish an agreement wherein no claim of ownership will be made for any intellectual property generated by such persons in the course of their employment by the other institution, nor will the other institution claim ownership of any intellectual property arising from the individual's affiliation with the University. Such arrangements will be agreed in writing with the affiliate as part of their terms and conditions of appointment. That agreement will contain details of appropriate procedures for resolution of any dispute or disagreement over ownership of intellectual property between institutions. Resolution procedures will require the services of an external mediator and representatives from both Universities at the level of the Vice-President (Research) or equivalent.
- 3.13 Where a University employee accepts an affiliation at another institution, it is expected that a similar agreement will be established wherein no claim of ownership will be made by that other institution for any intellectual property generated by a University employee and arising from the honorific or visiting appointment in the course of their employment by that other institution. That agreement will contain details of appropriate procedures for resolution of any dispute or disagreement over ownership of intellectual property between institutions. Resolution procedures will require the services of an external mediator and representatives from both Universities at the level of the Vice-President (Research) or equivalent.

### **Bringing intellectual property to the University**

- 3.14 Employees who bring existing intellectual property to the University to be used in the course of employment, must provide evidence of ownership when disclosing that intellectual property. This ensures their ownership and contribution to intellectual property development at the University will be recognised.

### **Requesting transfer of intellectual property from the University**

- 3.15 Should the University decide not to pursue commercial impact activities, the creator/s may request to have the applicable intellectual property assigned to them. The decision to assign intellectual property to a creator/s will be at the discretion of the Vice-President (Research). A request to have intellectual property assigned will not be unreasonably denied.

## Employees leaving the University

- 3.16 Employees who have participated in or contributed to the generation of intellectual property for which the University claims ownership in full or in part may negotiate for assignment of intellectual property ownership in full or in part, either to another institution or to their person. Such negotiations will be conducted by the Vice-President (Research) and would be on a case-by- case basis, taking into account the contributions of the University and the cost of such contributions over the lifetime (to that date) of the research. Any disputes will be settled through the provisions of section 3.41 of this policy.

## Transfer of ownership

- 3.17 Any transfer of ownership will be conducted in accordance with the [Commercialisation for Impact Policy and Procedure](#).
- 3.18 The University reserves its right to transfer the ownership or licence any intellectual property claimed under the provisions to third parties detailed elsewhere in this policy and the Commercialisation for Impact Policy and Procedure.
- 3.19 Any transfer of ownership or licensing arrangement undertaken by the University will be subject to the moral rights and other relevant provisions detailed in this policy.

## Disclosure

- 3.20 Any employee or affiliate whose activities as an employee or affiliate of the University, leads to an intellectual property outcome which might reasonably be regarded as patentable or of other potential commercial value, will notify the [Commercialisation Team](#) of the potential outcome through submitting an [Innovation Disclosure Form](#) prior to any publication, dissemination or commercialisation of that outcome (such dissemination of outcomes includes informal discussions or formal seminars and conference presentations).
- 3.21 Once an Innovation Disclosure Form has been received by the Commercialisation Team, the process outlined in the Commercialisation for Impact Policy and Procedure will commence.

## Moral rights

- 3.22 The University will always use best endeavours to respect and protect the moral rights of creators and contributors to intellectual property.
- 3.23 Under Australian civil law and by virtue of the [Copyright Act 1968](#) (Cwlth), endeavours will extend to:
- (a) the right of integrity of authorship of a work. That is, the right to be clearly and publicly named or identified as the creator of a work where it is reproduced, published, performed or exhibited, transmitted or adapted; the right to decline to be named as the creator of a work and the right to have one's name withdrawn as the creator of a work after a period of time which is reasonable in the particular circumstances
  - (b) the right to take action against false attribution of authorship
  - (c) the right to object to derogatory treatment of the creator's work which prejudicially affects their honour or reputation, and/or
  - (d) the right to ensure that where the work of the creator is revised or altered, such alteration or revision is not done in such a way as to harm the academic or personal reputation of the creator/s.
- 3.24 Acceptable academic practice includes the recognition of such moral rights.

## Scholarly works

- 3.25 The University will assign ownership of copyright in scholarly works to the work's creator/s. The University will not claim any portion of revenue as a result of publishing arrangements between external parties and creators.
- 3.26 However, the University will claim ownership of any scholarly works specifically commissioned by the University.

- 3.27 The University has mandated submission for scholarly works via the [Open Access for Research Outputs Policy](#). Such submissions are governed by the [Copyright Policy](#). Authors should submit scholarly works to the repository and ensure compliance with relevant copyright law.

### **Course materials**

- 3.28 The University will retain ownership in course materials developed by employees during their course of employment.
- 3.29 University ownership of the intellectual property in course materials ensures the University has the unrestricted ability to use these course materials for its teaching, research and training responsibilities.
- 3.30 The University consents to the use of course materials by employees to fulfil their teaching, research and training responsibilities at the University. This right does not include any use for commercial purposes nor does it involve a transfer of ownership of University intellectual property.
- 3.31 In the absence of an obligation of confidentiality or separate legal constraint, the University recognises that employees may personally use knowledge they have developed in the course of their employment at the University, once that employment ceases. Upon request, the University will agree to grant to the creator of course materials a perpetual, personal, royalty free, non-exclusive, non-transferable licence to use such course material generated by that creator for teaching, educational and research purposes at other educational institutions. The creator may not sublicense the course material to others to generate royalties, license fees or other pecuniary benefits.
- 3.32 Any commercialisation of course materials will be conducted in accordance with the Commercialisation for Impact Policy and Procedure.

### **Artistic/dramatic/musical works**

- 3.33 Artistic works will remain the property of the creator/s except when that the intellectual property in an artistic work was specifically commissioned or created in their course of employment by the University. In these cases, the artistic works will remain with the University.
- 3.34 Any commercialisation of artistic materials will be conducted in accordance with the Commercialisation for Impact Policy and Procedure.
- 3.35 Artistic works created after a period of employment with the University, but using Intellectual Property belonging to the University, will be the subject of negotiation with the University regarding use.

### **Externally funded and collaborative research**

- 3.36 In order to protect the interests of the University and its employees, research efforts involving the University and another party will be subject to a formal written agreement that will govern the ownership and handling of intellectual property. The Vice President (Research) will be responsible for approving such agreements.
- 3.37 In any collaborative or externally funded project, the University will use its best endeavours to preserve the rights of the author or creator/s in relation to intellectual property to:
- publish in scholarly journals
  - access, or
  - utilise for further research and education.
- 3.38 Ownership of intellectual property does not remove the right of inventors to be named as inventors/creators on any patent application arising to protect the intellectual property.

### **Intellectual property infringements**

- 3.39 An employee, student or affiliate who believes intellectual property rights have been infringed will refer the matter to the Vice-President (Research) who will provide advice to the employee, student or affiliate and recommend actions.

- 3.40 Where a party external to the University expresses any intention to contest a claim about intellectual property assigned in all or part to the University or an employee or student, this will be brought to the attention of the Vice-President (Research).

## Dispute resolution

- 3.41 Unresolved matters pertinent to the matters covered by this policy will be referred to the Vice-President (Research). Where the applicant is not satisfied with the Vice-President (Research)'s decision, the applicant may request an internal review by the Vice-Chancellor and President.

## 4 RESPONSIBILITIES

### Compliance, monitoring and review

- 4.1 The Vice-President (Research) is responsible for implementing, monitoring, reviewing and ensuring compliance with this policy.

### Reporting

- 4.2 The Research Division will provide an annual report to the Research Committee regarding commercialisation income distributed and any breaches of this policy.

### Records management

- 4.3 Employees must manage records in accordance with the [Records Management Policy and Procedure](#). This includes retaining these records in a recognised University recordkeeping information system.
- 4.4 University records must be retained for the minimum periods specified in the relevant [Retention and Disposal Schedule](#). Before disposing of any records, approval must be sought from the Records and Privacy Team (email [records@cqu.edu.au](mailto:records@cqu.edu.au)).

## 5 DEFINITIONS

- 5.1 Terms not defined in this document may be in the University [glossary](#).

### Terms and definitions

**Affiliate:** a person who is not a University employee or student who:

- a) takes part in any research, teaching or other activity that would normally be conducted by employees or students
- b) makes significant use of the University's resources and facilities
- c) visits a part of the University in which research or scholarship, or any related activity, is conducted, or
- d) is designated as an adjunct employee or a visiting research fellow.

**Background intellectual property:** pre-existing or separately created intellectual property.

**Commercialisation team:** appointed by the Chief Operating Officer and Vice-President (Research), including but not limited to:

- Director Office of Research
- Solicitor (Research)
- Senior Executive Officer, Corporate Services.

**Commercial impact activities:** protecting, developing and dealing with University intellectual property through manufacture, licence, hire, collaboration directly with or through a third party, sale, spin-off and other means of exploitation.

**Contributor/s:** individuals who have assisted in reducing the intellectual property to practice, but have not provided significant intellectual or creative input.

**Creator/s:** individuals whose intellectual and creative input were critical to the creation of the intellectual property in its current form. These individuals have conceived or contributed an element essential to the innovation, either independently or jointly with others, during the evolution of the innovation or its reduction to practice. Co-authors of publications may not necessarily be creators.

**Course materials:** works generated by employees, in the course of their employment with the University. Those works will include but not be restricted to:

- a) materials (however defined), developed as part of a learning package or program and utilising University resources, including lecture notes, study guides, resource materials, course outlines, unit profiles, illustrations and designs included therein
- b) computer programs or software designed and provided for the teaching of a course of study
- c) literary, dramatic, musical or artistic works incorporated as part of a learning package or program
- d) audio, video or other materials produced for and provided as part of a learning package or program, and
- e) such other forms of material (including web pages) as provided to students or developed by employees in the course of delivering a course, unit or program of study.

**Intellectual property:** intangible property that attracts rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. Property protected includes but is not limited to:

- a) literary, artistic and scientific works
- b) performances of performing artists, phonograms and broadcasts
- c) inventions in all fields of human endeavour
- d) copyright in computer software code
- e) scientific discoveries
- f) industrial designs
- g) trade marks, service marks and commercial names and designations, and
- h) protection against unfair competition.

**Resources:** any of the following, utilised during the course of employment with the University, or as a candidate or student during their period of attachment:

- a) equipment
- b) accommodation
- c) administrative facilities
- d) support services and facilities
- e) utilities
- f) existing background intellectual property, or
- g) any other inputs made directly or indirectly by the University to support the creative process.

**Moral rights:** a series of provisions which mean the creator of a work is entitled to control how their work is utilised by others. Those rights include the right of integrity of authorship; the right to take action against false attribution of ownership; the right to object to certain treatment of a work and the right to ensure that revisions of a work do not harm the academic or personal reputation of the Creator. Moral rights are articulated and employed under the provisions of the *Copyright Act*.

**Scholarly works:** any article, book or book chapter/s, manual, or creative writing or any digital or electronic version of these that contains material written by employees or affiliates but does not include work that is a computer program, software algorithm, course materials, or administration material or work produced at the request of a third party under contract with the University.

## 6 RELATED LEGISLATION AND DOCUMENTS

[Commercialisation for Impact Policy and Procedure](#)

[Copyright Act 1968](#) (Cwlth)

[Copyright Policy](#)

[Designs Act 2003](#) (Cwlth)

[Innovation Disclosure Form](#)

[National Principals of Intellectual Property Management for Publicly Funded Research](#)

[Open Access for Research Outputs Policy](#)

[Patents Act 1990](#) (Cwlth)

[Plant Breeder's Rights Act 1994](#) (Cwlth)

[Research Higher Degree Theses Policy and Procedure](#)

[Trademarks Act 1995](#) (Cwlth)

[United Nations Declaration on the Rights of Indigenous Peoples 2007](#)

## 7 FEEDBACK

7.1 Feedback about this document can be emailed to [policy@cqu.edu.au](mailto:policy@cqu.edu.au).

## 8 APPROVAL AND REVIEW DETAILS

Approval and Review	Details
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