

INTELLECTUAL PROPERTY AND MORAL RIGHTS

1 PURPOSE

The purpose of the CQUniversity Intellectual Property and Moral Rights Policy is to guide the University and the originator of the Intellectual Property in identifying, managing and protecting their legal and moral rights in accordance with the National Principles of Intellectual Property Management for Publicly Funded Research.

All research, teaching and learning activities may generate Intellectual Property and may therefore be the subject of confidentiality and Intellectual Property agreements. The University aims to assist in the development of those agreements by providing a policy and appropriate advice to ensure the best interests of the individual and the institution are protected. Indeed, the University encourages the sharing and publication of knowledge and promotes the processes of inquiry and discovery. In encouraging those activities, it also realises its obligation to provide useful and fair guidance on managing the outcomes of inquiry and discovery. This policy is intended to address the needs of the originator and the institution, to achieve balance between the two and to encourage more exploration and discovery.

The University acknowledges the special significance and value of Indigenous cultural heritage and the Intellectual Property (ICIP) 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 shall be subject to negotiations with the providers of such knowledge, consistent with the National Indigenous Intellectual Property Toolkit. Similarly, the provisions of the *Declaration on the Rights of Indigenous Peoples 2007* shall 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 shall be interpreted and implemented with full cognisance of the particular rights extended to Indigenous Heritage and Indigenous Cultural knowledge.

2 SCOPE

This policy applies to all staff and students of CQUniversity who are involved in the development of Intellectual Property and commercialisation strategies.

3 EFFECTIVE DATE 22 June 2016

4 LEGISLATIVE AUTHORITY

Central Queensland University Act 1998 Qld

5 POLICY STATEMENT

CQUniversity encourages the discovery, sharing and exploitation of innovation and knowledge. The University 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. The act of discovery or 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 of the policy.

Ownership of Intellectual Property - Staff

- 5.1 Subject to this document, the University owns any Intellectual Property developed, acquired or contributed by its staff, in the performance of their duties and or using University facilities and resources. The provisions of this document are deemed to be part of the terms and conditions of employment of all

staff. The University acknowledges its obligation and responsibility to ensure all staff are provided adequate and appropriate information and education regarding Intellectual Property and Moral Rights and the application of these principles.

- 5.2 Any staff member whose research or scholarly work or activities as an employee of the University, undertaken using University resources, leads to an Intellectual Property outcome which might reasonably be regarded as patentable or of other potential commercial value is obliged to advise the Deputy Vice-Chancellor (Research) in writing of the outcome, prior to any publication, dissemination or commercialisation of that outcome (such dissemination of outcomes includes informal discussions or formal seminars and conference presentations). Such written advice shall attract a response from the Deputy Vice-Chancellor (Research) which provides as little delay as possible in to the originator pursuing patent applications, publication options or other dissemination of the outcome. That response from the Deputy Vice-Chancellor (Research) shall also provide advice to the originator on how to protect Intellectual Property and how to prevent unintended dissemination of same.
- 5.3 If the University believes that the Intellectual Property may have commercial potential, it will take the steps necessary to confirm the commercial potential value and protect it and shall do so in a timely manner. If no potential commercial value is identified by the University, then the ownership is assigned to the originator(s), whom may exploit it as they see fit. If the University does not act in a timely manner, ownership of the Intellectual Property will be deemed to have been assigned to the originator

Ownership of Intellectual Property - Student

- 5.4 The University does not claim ownership of Intellectual Property which undergraduate or postgraduate students generate through their studies or associated activities with the University. Where extensive use is made of University facilities and/or background Intellectual Property, the University may seek shared ownership of Intellectual Property with a student. This may involve an agreement which assigns a student's ownership rights to the University and which may be signed prior to commencing the studies. Any reference in this policy to the University having rights to the Intellectual Property of students is understood to be only in the circumstance of the students assigning ownership rights by the above-mentioned written agreement.

Moral Rights

- 5.5 Under Australian civil law and by virtue of the *Copyright Act 1968*, all endeavours shall extend to:
- the right of integrity of authorship of a work. That is, the right to be clearly and publicly named or identified as the originator of a work where it is reproduced, published, performed or exhibited, transmitted or adapted; the right to decline to be named as the originator of a work and the right to have one's name withdrawn as the originator of a work after a period of time which is reasonable in the particular circumstances;
 - the right to take action against false attribution of authorship;
 - the right to object to derogatory treatment of originator's work which prejudicially affects their honour or reputation; and/or
 - the right to ensure that where the work of the originator 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 originator(s).

Acceptable academic practice includes the recognition of such moral rights.

The University undertakes to respect and protect the moral rights of originators of and contributors to intellectual Property.

Scholarly Works

- 5.6 Provided there is not identifiable potential or actual commercial benefit arising there from, the University will generally assign ownership of copyright Intellectual Property in publicly published research and scholarly books, journal articles, conference papers and proceedings, textbooks, audio-visual materials, computer programs, software or other academic works authored by University staff or students and using University resources or during the course of employment with the University to the originators.

However, where such works are specifically commissioned by the University or where the net income from the work exceeds the threshold in [Appendix A](#), the University will normally claim ownership and share resulting income with the originators according to [Appendix A](#). Similarly, the University may claim copyright in Intellectual Property including software and teaching materials, where the Deputy Vice-Chancellor (Research) demonstrates that the software or teaching material has a potential commercial value.

- 5.7 The University has mandated submission for all scholarly works via the University's Institutional Repository policy. Such submissions are governed by current Copyright Policy. Authors should submit all scholarly works to the repository and ensure compliance with relevant copyright law.

Course Materials

- 5.8 The University will normally retain ownership in course materials and teaching materials developed by staff members during the course of their employment and using University resources. The University will provide to the originator of such materials:
- free and non-exclusive use of such materials during and after the originator's association with the University; and
 - when the net income from commercialisation of the Intellectual Property exceeds the threshold in [Appendix A](#), the University shall determine a schedule of income distribution as part of a legally binding agreement.
 - The University will claim ownership of course materials which have been specifically commissioned from staff and students of the University and developed to further its teaching function and which are subject to a specific commission agreement.

Artistic/Dramatic/Musical Works

- 5.9 The net income derived per annum from copyright of artistic, dramatic or musical works generated by staff as part of their employment with the University shall remain with the originator of the work until net income per annum from commercialisation of that work exceeds the threshold in [Appendix A](#). The originator will be responsible for advising the University if the income received is above the schedule so that a schedule of income distribution may be drawn as part of a legally binding agreement.
- 5.10 Artistic works created prior to employment with the University shall remain the property of the originator. Artistic works generated during employment with the University shall remain the property of the originator except that the Intellectual Property in an artistic work specifically commissioned by the University shall remain with the University. Artistic works created after a period of employment with the University, but using background Intellectual Property belonging to the University, shall be the subject of negotiation with the University regarding ownership and commercialisation.
- 5.11 The University shall reserve and maintain the right to use artistic, dramatic or musical works created, composed or recorded by staff in the course of their employment with the University for any non-commercial purposes after due consultation with the originator(s). Any use of the work shall acknowledge the originator of the work and the University and will respect the Moral Rights of the originator.
- 5.12 The net income derived per annum from copyright of artistic, dramatic or musical works generated by staff as part of their employment with the University shall remain with the originator of the work until net income per annum from commercialisation of that work exceeds the threshold in [Appendix A](#). The originator will be responsible for advising the University if the income received is above the schedule so that a schedule of income distribution may be drawn as part of a legally binding agreement.

Externally Funded and Collaborative Research

- 5.13 The University aims to ensure that where any of its Intellectual Property is deemed worthy of commercialisation; ownership by the University of that Intellectual Property is protected and not inadvertently assigned to an external party during collaborative research activities. In order to protect the interests of the University and University staff, research efforts involving the University and another party may be subject to a

formal written agreement, signed by the University. Any Intellectual Property matters included in such an agreement must be within the provisions of this policy.

- 5.14 An agreement between the University and an external party shall not alter or affect in any way the distribution of Intellectual Property and income there from, which would otherwise prevail between staff and students of the University and the University.
- 5.15 Where Intellectual Property ownership is to be shared between the University and another external party other than the University or its staff, that sharing should be in pro-rata accord with the contributions made by each party. Such contributions shall include in kind contributions as well as direct and indirect costs, including staff time, use of facilities and purchase of materials and use of background Intellectual Property. To that end, where an external party fully funds and resources a commissioned research project, it is likely that the external party shall retain Intellectual Property ownership rights. Alternative arrangements regarding allocation of shares and contributions should be clearly documented and signed by the University where they represent a significant deviation from the intentions of this clause.
- 5.16 In any collaborative or externally funded project, the rights of the author or originator to:
- a) publish;
 - b) access; or
 - c) utilise.

Intellectual property generated as part of the project should be ensured through the formal written agreements which must be consistent with these principles. Intellectual Property ownership agreements with external parties should specifically provide that any patents (or applications for patents) arising from the funded project shall be co-authored by all the inventors/originators.

- 5.17 Commercialisation of products or matter resulting from the use of Indigenous cultural knowledge and Intellectual Property of Indigenous people shall be subject to negotiations with the providers of such knowledge, consistent with the *Declaration on the Rights of Indigenous Peoples* shall apply to Indigenous cultural knowledge and Intellectual Property unless the Deputy Vice-Chancellor (Research) demonstrates that such provisions are unreasonable in the particular circumstances.

Adjunct Academic or Visiting Appointees

- 5.18 Subject to the provisions at Item 5.20, adjunct academic appointees, visiting fellows and other individuals working at the University and making significant use of the University's resources and facilities shall be treated for the purposes of these Principles, for the period of the appointment, as if they were CQUniversity academic staff.
- 5.19 Where an honorific or visiting appointee holds a substantive appointment at another institution, CQUniversity will establish an agreement wherein no claim of ownership shall 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 adjunct or visiting appointment at CQUniversity. Such arrangements will be agreed in writing with the appointee 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. Normally, such procedure shall require the services of an external mediator and representatives from both Universities at the level of Deputy Vice-Chancellor (Research) or equivalent.
- 5.20 Where a member of CQUniversity staff accepts an honorific or visiting appointment at another institution, it is expected that a similar agreement shall be established wherein no claim of ownership shall be made by that other institution for any Intellectual Property generated by member of CQUniversity staff 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. Normally, such procedure shall require the services of an external mediator and representatives from both Universities at the level of Deputy Vice-Chancellor (Research) or equivalent.

Transfer of Ownership

- 5.21 CQUniversity reserves its right to transfer the ownership of any Intellectual Property claimed under the provisions to third parties detailed elsewhere in this document, and following consultation where possible with all originators of the Intellectual Property. In undertaking such consultation, all reasonable efforts shall be made to contact the originators.
- 5.22 Any transfer of ownership undertaken by the University shall be subject to the Moral Rights and other relevant provisions detailed in this document. In the event that the originators should object to the proposal of transfer by the University, such objection should be referred to the Vice-Chancellor for resolution.

Involvement of Students in Activities Likely to Lead to the Generation of Intellectual Property

- 5.23 CQUniversity may ask students to sign an agreement prior to commencing studies assigning their Intellectual Property ownership rights to the University where:
- generation of the Intellectual Property is likely to involve substantial use of University resources and/or services (including funding) beyond that normally provided to students in the course of their studies; or
 - generation of the Intellectual Property is likely to result from the use of Background Intellectual Property owned by, or existing within, the University; or
 - the Intellectual Property results from collaboration, either formal or informal, in a research project, other than the thesis topic, with University staff.

The University will take all reasonable steps to protect the rights of students to include their research in their thesis and to be able to publish that thesis and materials therein, regardless of potential commercial value, subject to provisions of this document.

- 5.24 The following provisions 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:
- the University must ensure that the 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;
 - participation in the research should not interfere with the assessment of the student's academic performance. In particular, the protection and commercialisation of Intellectual Property should not be allowed to significantly delay or negatively impact on assessment;
 - students will receive relevantly similar provisions to those for staff in any Intellectual Property they generate; and
 - the research candidature supervisors of a student in an area likely to lead to claimable Intellectual Property must notify the Deputy Vice-Chancellor (Research) of this potential prior to the commencement of the research award. It will be the responsibility of the Deputy Vice-Chancellor (Research) to determine whether or not an Intellectual Property assignment agreement should be made by the University with the student prior to commencement of the project.
- 5.25 Signing any agreement to relinquish ownership of Intellectual Property which a student may generate through participation in projects must be a free act by the student and cannot be a condition for enrolment in the University. Students are advised to seek external, independent advice prior to relinquishing such ownership.

Dispute Resolution

- 5.26 All unresolved matters pertinent to the matters covered by this policy shall be referred to the Deputy Vice-Chancellor (Research). Where the applicant is not satisfied with the ruling of the Deputy Vice-Chancellor (Research), they are entitled to put their case before the Research Committee of Academic Board as detailed at Item 10.4.

5.27 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 a staff member or student, this should be brought to the attention of the Deputy Vice-Chancellor (Research). Likewise, a staff member or student who believes that either their or the University's Intellectual Property rights have been infringed shall refer this matter to the Deputy Vice-Chancellor (Research) who shall provide advice to the staff member(s) and recommend actions. Where the applicant is not satisfied with the ruling of the Deputy Vice-Chancellor (Research), they are entitled to put their case before the Research Committee of Academic Board.

Where the University takes legal action as a result of a reference by a staff member under clause 10.2 in relation to Intellectual Property partly or wholly owned by the University, the University will meet all costs of such action.

5.28 In the instance of a dispute or objection arising regarding Intellectual Property belonging to or involving the University which has not been resolved by the Deputy Vice-Chancellor (Research) under clause 10.1 or 10.2, that matter may be referred to the Research Committee of Academic Board.

Signing on Behalf of CQUniversity

5.29 In normal circumstances, any signatory activities regarding Intellectual Property on behalf of the University shall be delegated by the Vice-Chancellor to the Deputy Vice-Chancellor (Research), or another officer of the University designated by the Vice-Chancellor.

Staff Leaving CQUniversity

5.30 Members of staff 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 shall be conducted by the Deputy Vice-Chancellor (Research) and would be on a case-by-case basis, taking into account the contributions of CQUniversity and the cost of such contributions over the lifetime (to that date) of the research. Any disputes shall be settled through the provisions of clause 10 of this document.

Schedules for Distribution of Income

5.31 Where income is derived from the commercialisation of any scholarly or artistic products where the commercialisation has not been carried out by any agency of CQUniversity (for example, the publication of a text by a commercial publisher), the return to the author is usually a fraction or part of the sale price.

5.32 When the total net income (after all costs have been recovered) from the commercialisation of any particular Intellectual Property exceeds the financial threshold of \$20,000 the University shall require the staff member to declare the income received to the Deputy Vice-Chancellor (Research). The distribution of additional income shall be in accordance with the table shown in [Appendix A](#) or as otherwise agreed by the originators and the Deputy Vice-Chancellor (Research).

6 RESPONSIBILITIES

Compliance, Monitoring and Review

6.1 The Deputy Vice-Chancellor (Research) is responsible for ensuring the policy document complies with relevant legislation and University requirements, and it is implemented and monitored, e.g. adherence to the policy document, changing policy environment or emerging issues; and is reviewed to evaluate its continuing effectiveness, e.g. external and internal compliance, achieving its purpose, relevancy.)

Reporting

6.2 The Research Division will provide an annual report to the Research Committee of Academic Board regarding commercialisation income distributed and any breaches of this Policy.

Records Management

6.3 All records relevant to this document are to be maintained in a recognised University recordkeeping system.

7 DEFINITIONS

Course Materials

Course materials are those works generated by staff of the University, in the course of their employment with the University. Those works shall include but not be restricted to:

- a) materials (however defined), developed by staff 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;
- e) such other forms of material (including web pages) as provided to students or developed by staff in the course of delivering a course, unit or program of study.

Resources

Resources is 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
- g) Any other inputs made directly or indirectly by the University to support the creative process.

Originator

The originator of a work is the person(s) who generate the Intellectual Property in question. A work may have more than one originator.

Net Income

Net income is the financial proceeds from the sale, royalty, licensing or other income received from the commercial exploitation of the Intellectual Property, less legal and other fees and expenses in establishing and protecting the Intellectual Property and in negotiating and concluding any licensing or other agreements relating to the work in question.

Moral Rights

Moral rights are a series of provisions which mean the originator 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 originator. Moral rights are articulated and employed under the provisions of the *Copyright Act 1968*.

Refer to the University [glossary](#) for the definition of other terms used in this policy.

8 RELATED LEGISLATION AND DOCUMENTS

Related Policy Document Suite

[Copyright Policy](#)

Related Legislation and Supporting Documents

[Copyright Act 1968](#)

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

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

Approval and Review	Details
Approval Authority	Academic Board
Advisory Committee to Approval Authority	Research Committee of Academic Board
Administrator	Deputy Vice-Chancellor (Research)
Next Review Date	25/05/2019

Approval and Amendment History	Details
Original Approval Authority and Date	Academic Board 25/05/2016
Amendment Authority and Date	

This document combines the existing Moral Rights Principles, Intellectual Property Policy, and Intellectual Property Principles

Appendix A

	Originator	School	Research Division	University
First \$20,000 per annum	100%	0%	0%	0%
\$20,001 - \$80,000 per annum	50%	20%	10%	20%
\$90,001 - \$150,000 per annum	40%	20%	15%	25%
Further Amounts	35%	15%	20%	30%

*The above values will be indexed at 1 July each year according to the increase in the CPI over the previous twelve month period.