

## Academic Intellectual Property Policy

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<b>Contacts</b>	policy@top.edu.au		
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### 1 PURPOSE

The Institute acknowledges the importance of facilitating an academic environment that is committed to the advancement and innovation of knowledge. Ownership of Intellectual Property (IP) is an integral component of the research outcomes that are encouraged in this environment. As a higher education provider, the Institute is involved in the creation and dissemination of IP as well as upholding laws that ensure the protection of those who develop original IP.

The purpose of this policy is to provide an understanding regarding the rights and responsibilities associated with ownership of IP. This policy details principles of ownership relevant to the Institute, its employees, academic staff and students. This policy should be read in conjunction with the Institute 's Authorship of and Access to Research Outputs Policy.

This policy reflects the Institute's views relating to IP at the time this policy is published and any changes in the law arising after this policy comes into effect will prevail over this policy if there is any inconsistency. This policy does not attempt to definitively set out all laws relating to intellectual property. Any clauses within this policy that deal with the law relating to IP are general in nature and are not intended to be relied on as legal advice by any person and should not be a substitute for seeking independent legal advice.

### 2 SCOPE

This policy applies to employees of the Institute, its students, academic staff, research assistants, volunteers, agents, contractors, clinical title holders, adjunct, conjoint and honorary appointees, consultants, emeritus professors and any other affiliates of the Institute appointed or engaged by the Institute to perform duties or functions on its behalf.

### 3 DEFINITIONS

**Intellectual Property (IP)** refers to the rights whether statutory, proprietary or otherwise relating to work created from the intellect including but not limited to copyright, trademarks, patents and other creations of the mind or intellect. IP is protected in Australia by various laws and regulations.

**Course of Employment** includes any work undertaken or incidental to that outlined in any relevant employment contract, duty statement, job description, work agreement or other work carried out at the Institute. Work may be inferred as being in the Course of Employment by reason of use of the Institute titles or resources or by involvement of other Institute's employees or by direct derivation from activities or positions within the Institute.

**Commercialisation** means the process of developing, using, exploiting or otherwise dealing with IP for the purpose of extracting value (such as generating a commercial income, return or benefit).

**Moral Rights** are associated with the ownership of IP and ensure rights including: the right of fair attribution of authorship; the right for work not to be altered; and the right of integrity of material.

**Copyright** refers to rights expressed in and protected by the Copyright Act 1968 (Cth) (as amended from time to time) associated with created works including course materials and scholarly publications.

## **4 PROCEDURE**

### **The Institute's ownership of Intellectual Property**

- 4.1 Unless otherwise agreed in writing, the Institute retains ownership of IP that has been created by employees in the Course of Employment at the Institute. This includes, but is not limited to, any copyright in unit teaching materials such as unit outlines, multimedia resources, manuals and handouts created, developed or presented by employees of the Institute in the Course of Employment.
- 4.2 To avoid the possibility of the Institute wrongly claiming IP rights, measures must be taken to ensure that pre-existing IP is dealt with appropriately. Therefore, at the commencement of employment at the Institute, all employees (including academic staff) must disclose any pre-existing IP or agreements with third parties or any external private work outside of their Course of Employment that may be relevant to their employment at the Institute.
- 4.3 At the conclusion of an employees employment, the Institute has the discretion to give permission for future use of unit materials or other IP solely for teaching and scholarly purposes, so long as materials are not used for Commercialisation and prior

written approval from the Institute is obtained. In such cases, when materials are used there must be clear acknowledgement that materials were developed whilst the employee was employed by the Institute. Moral Rights are retained by the Institute.

### **Academic employees' ownership of Intellectual Property**

- 4.4 Any IP developed by employees of the Institute of a scholarly or creative nature in the course of their employment at the Institute (such as academics from research activities) remains with the employees, unless a royalty and/or income sharing agreement is agreed to by both parties. The nature of scholarly or creative IP will include things such as scholarly books, articles, musical and dramatic works, but does not include works which are course materials.

Although employees retain ownership of IP in scholarly or creative works, they must grant a perpetual, royalty-free licence to the Institute for the use of this material. The Institute will take measures to identify the author of any work created by employees (such as academic staff) that is used for the Institute's purposes. The author retains moral rights to the material.

- 4.5 Indicators that the Institute has a right to claim IP ownership include where work has been created:
- using the Institute 's resources; or
  - on the basis of research with the Institute's colleagues; or
  - because of specific commissioning or instructions by the Institute; or
  - with the support of funding/specific grants obtained by the Institute.

However, this is not an exhaustive list and there may be other indicators or factors that can be taken into consideration.

- 4.6 In the course of their employment at the Institute, employees must respect any IP rights of third parties. Employees (such as academic staff) need to sign an agreement on behalf of the Institute if they wish to incorporate external IP into work at the Institute. Employees (such as academic staff) must abide by copyright guidelines when using material where the copyright is owned by external bodies and/or the Institute. Employees may publish any scholarly material but must acknowledge that it was created at the Institute. If material is co-authored it cannot be published solely by one author. The Institute retains the right to prohibit the use of its name and logo on published work.
- 4.7 Employees (such as academic staff) must maintain the confidentiality of any material owned by the Institute. In using confidential material owned by the Institute, employees must not make copies nor use it for any purpose other than that for which it was provided.

- 4.8 The Institute considers Commercialisation of IP as a positive outcome for the Institute and its reputation. As a general rule, employees may given the opportunity to share in any financial or other benefit from the Commercialisation of IP produced as a result of work completed in the Course of Employment at the Institute. Although specific agreements may be used as a basis for deciding on the nature of reward, generally it will be considered that the net proceeds will be shared between the Institute and an employee on a 50/50 basis. However, this is a general rule only and each case will be investigated and determined on a case-by-case basis and the Institute is not bound to this general rule.

### **Affiliates' ownership of Intellectual Property**

- 4.9 Affiliates of the Institute, including visiting and honorary appointments, must adhere to this policy and ownership of IP guidelines in place for the Institute 's employees. This includes the need to disclose pre-existing IP and agreements with parties external to the Institute prior to commencing any works at the Institute. The rights of IP ownership, including copyright and moral rights, are commensurate with those of the Institute employees.

The Institute will retain ownership of IP in the circumstances outlined for employees as set out above. In addition to these conditions, the Institute will also retain ownership of IP if it has been created by an affiliate with use of background IP owned by the Institute or other indicators specified above.

### **Students' ownership of Intellectual Property**

- 4.10 Prior to their acceptance of an offer, students of the Institute must be provided with access to information regarding rights, obligations and requirements of IP. Any students undertaking any research or higher-degree students are required to participate in research induction that includes information relating to the laws, regulations and policies of IP.
- 4.11 Generally speaking, students at the Institute retain ownership of IP created by them. Students are not employees of the Institute and accordingly have copyright and moral rights for published material arising from their research activities.
- 4.12 Notwithstanding this general position, particular circumstances may preclude student ownership of IP (or the Institute may request such ownership be assigned to the Institute), including where:
- material is used for teaching purposes;
  - a staff member creating the material with the student a co-creator;
  - the material is created, or has the intention of being created for commercial

- benefit or use; or
- there is a specific agreement in place such as one between the Institute and a third party.

However, this is not an exhaustive list and there may be other indicators or factors that can be taken into consideration.

In cases where students agree to be involved in research with employees of the Institute (such as academic staff members or affiliates of the Institute), students should be made aware of IP ownership conditions and, if necessary, an agreement should be signed before research begins.

- 4.13 Research Higher Degree students retain both the moral rights and copyright of their thesis or works. They also have ownership of IP and any publications and Commercialisation arising from the thesis unless there is a pre-existing IP arrangement between the candidate and their supervisor(s) and/or a third party. Such arrangements can recognise background IP. The Institute may request evidence on such arrangements from the students in relevant circumstances.

Should such an IP sharing arrangement be agreed to prior to the commencement of higher degree candidature, it must be updated at six-monthly intervals when the candidate lodges their six-monthly report. The relative percentages of ownership can be varied depending upon the respective input of IP by the participants. Such IP agreements will be held by Student Administrative Services of the Institute and a copy placed on the student's file.

IP agreements should only be signed by the student-candidate after they have been given the opportunity to received independent advice from an independent legal expert. The Institute may offer to pay or contribute to the cost of the candidate obtaining such advice but is not obligated to do so. Should any conflict arise between the candidate and any supervisor or third party as to the percentage ownership of IP then the Institute's normal dispute resolution procedures should be followed in seeking a resolution to the issue.

### **Indigenous Knowledge Rights**

- 4.14 The Institute and any of its employees, affiliates and students or otherwise must not claim ownership of over indigenous knowledges. Where the creation of IP involves knowledge of indigenous peoples all reasonable steps must be taken to consult with the relevant Indigenous groups and peoples to ensure that the Institute conforms with all protocols and ethical guidelines.

### **Conflict resolution (Summary at Schedule A)**

- 4.15 If a dispute arises out of or in connection with this policy or involving IP, then either party may give the other a written notice (such as a letter) addressed to the other

party for discussion and resolution at a mutually convenient time. The notice must be written and give particulars of the dispute. The parties must then meet within **7 days** of the written notice of the dispute to discuss and attempt to resolve the matter.

- 4.16 If the dispute is not resolved at that meeting, either party may refer the dispute to the Institute's Vice President of Regulatory & Compliance. This must be done within **7 days** of the meeting contemplated above. After notification of a dispute, the Institute may retain an appropriate adviser to better inform itself about the dispute and its subject matter.
- 4.17 Where an adviser is appointed as provided above, the Institute staff and affiliates must co-operate with the adviser, and provide relevant information or assistance on request. Where an adviser provides any advice, that advice will be the property of the Institute alone and, except where statutorily required to do so, the Institute is not obliged to follow the advice, provide copies of the advice (including any report or written opinion) to any party to the dispute, or disclose the substance of the advice to any party to the dispute.
- 4.18 The Institute's Vice President of Regulatory & Compliance will attempt to resolve the dispute through alternative dispute resolution, including but not limited to mediation. The form of alternative dispute resolution process to be adopted will be determined by the Vice President of Regulatory & Compliance.
- 4.19 If the dispute is not resolved, then either party may request that the dispute be referred to the Institute's Vice President of Internal Affairs who will appoint an independent expert to determine the matter. The expert will act as an expert and not as an arbitrator, and the expert's determination will be final and binding as between the parties.
- 4.20 Both parties will provide the expert with such information as the expert may reasonably require for the purposes of the expert's determination. If a claim is made for information to be confidential to either of party then, provided in the opinion of the expert that person has properly claimed the same as confidential, the expert must not disclose the same to the other person or to any third party.
- 4.21 Nothing in this clause will restrict, at any time while the above dispute resolution procedures are in progress or before or after they are invoked, either party's freedom to commence legal proceedings (whether arbitration, tribunal or court proceedings) to preserve any legal right or remedy or to protect any IP right of ownership.
- 4.22 A summary of the dispute resolution procedure is set out in the flow chart at **Schedule A**.

## **Breach of this policy**

- 4.23 Any person whether they are an employee of the Institute, academic staff, research assistant, student, contractor, affiliate or otherwise who becomes aware of any unauthorised use or dealing in the Institute’s IP must report the unauthorised use or dealing to the Institute academic management including the Dean of the relevant part of the Institute or alternatively, the management staff of the Institute including the Vice President of Internal Affairs and Vice President of Regulatory.

## 5 RELATED DOCUMENTS

- i. Authorship of and Access to Research Outputs Policy
- ii. Workplace Grievance Policy
- iii. Copyright Guidelines
- iv. Code of Conduct for Research
- v. Student Grievance Mediation Policy and procedures

## 6 VERSION CONTROL

Historical Version	Approved by	Approval Date
2016.11	Academic Board	9 November 2016
2013.05	Academic Board	31 May 2013

## SCHEDULE A – Dispute resolution of intellectual property dispute

