

# Intellectual Property Rights

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## 1.0 Introduction

Wesley Research Institute (WRI/Institute) aims to facilitate a research culture that encourages entrepreneurial initiative and the timely Commercialisation of Intellectual Property Rights. This is critical in ensuring that the Institute's research endeavours can lead to benefit for the broader community, researchers have a pathway for the pursuit of commercial activities and the Institute receives appropriate recognition and financial benefit for its investment in research.

## 2.0 Purpose

The purpose of this policy is to establish the Institute's framework for the management of Intellectual Property Rights, including through publication and the Commercialisation of Intellectual Property Rights.

## 3.0 Scope

This policy is applicable to all staff including permanent, casual, secondment, full-time and part-time arrangements. It is also applicable to honorary appointments and students hosted at the Institute.

Variations from the principles herein may occur for consultancies that are fully funded including all indirect costs.

## 4.0 Principles

### 4.1 Ownership of Intellectual Property Rights

WRI asserts ownership of all Intellectual Property Rights, except as otherwise agreed in writing by the Chief Executive Officer (CEO), which are:

- (a) created by staff in the course of their employment or engagement by WRI; and
- (b) created by honorary fellows, students or Visitors, where:
  - (i) generation of the Intellectual Property Rights has required use of WRI's Resources;
  - (ii) generation of the Intellectual Property Rights has resulted from the use of pre-existing Intellectual Property Rights owned by WRI;
  - (iii) the Intellectual Property Rights belong to a set of Intellectual Property Rights generated by a team organised under the auspices of WRI or led by a member of staff in the course of their employment or engagement by WRI of which the honorary fellow, student or Visitor is a member; or
  - (iv) the Intellectual Property Rights have been generated as a result of funding provided by or obtained by WRI.

The Institute does not assert ownership over:

- (a) Intellectual Property Rights in Scholarly Works; and
- (b) Copyright in Higher Degree Research (HDR) candidate theses.

When the Institute owns Intellectual Property Rights created by a student, the Institute will ensure that its ownership of Intellectual Property Rights does not interfere with the assessment of a student's academic performance. However, each Creator of Scholarly Works and each student grants to the Institute a non-exclusive, perpetual, irrevocable, royalty and fee free, worldwide sublicensable licence to use, reproduce or exploit the Scholarly Works or student theses for the Institute's

purposes, subject to any publisher's rights in such works. Where a publisher's rights limit the licence granted to the Institute in this paragraph, the Creator of the Scholarly Work must use all reasonable endeavours to obtain such licence rights for the Institute from the publisher and notify the Institute if such rights are not able to be obtained.

## **4.2 Reporting of Intellectual Property Rights**

All Creators must fully disclose in writing to the Head of Research Operations and CEO, all Intellectual Property Rights that are conceived, made, or intended to be Commercialised, by them in the course of their employment, appointment, engagement, or studies at the Institute.

Creators must provide all requested information in relation to the Intellectual Property Rights including:

- (a) the date when the work was created;
- (b) the identity of any person(s) who contributed to the work;
- (c) the details of any Background IP that were used in creating the work;
- (d) the details of any person other than the Creator who claims or may claim any entitlement or interest in the Intellectual Property Rights in the work;
- (e) the details of any WRI Resources used to create the work; and
- (f) the details of any known existing, potential use or Commercialisation of the work.

On receiving documentation of new Intellectual Property Rights, the Institute's CEO must confirm within a reasonable period (being no less than 2 months) if the Institute wishes to Commercialise these Intellectual Property Rights.

Creators must take, and must assist WRI in taking, all reasonable steps to protect the Intellectual Property Rights while the CEO makes their assessment.

If WRI elects to proceed with Commercialisation, the Head of Research Operations and CEO will consult with the Creator before determining the appropriate action to be taken. This may include the filing of patent applications, the identification of licensees or the formation of a company to Commercialise the Intellectual Property Rights.

The Creator of Intellectual Property Rights being Commercialised must provide all reasonable assistance in the Commercialisation of Intellectual Property Rights, including by providing information promptly, attending meetings and executing appropriate documents without delay. Note that the dissemination of Intellectual Property Rights in the public domain, such as by publication, presentation or website post, may compromise Commercialisation and as such, Creators must refrain from public dissemination of this information until protection is secured or with the prior written consent of the Institute after consideration of the Institute's:

- (a) Commercialisation strategy; and
- (b) any contractual obligations the Institute may have in respect of those Intellectual Property Rights.

Should WRI give notice to the Creator that it will not proceed with the Commercialisation of the Intellectual Property Rights, the Creator may protect and Commercialise the Intellectual Property Rights at their discretion, on such terms to be agreed that enables the Institute to retain a percentage of the commercial benefit and for the Institute to perform research or use the relevant Intellectual Property Rights for its own purposes.

Creators must consent to confidential reporting of Intellectual Property Rights outcomes to funders such as the National Health and Medical Research Council (NHMRC), which the Institute have an obligation to. Such data includes:

- (a) newly generated Intellectual Property Rights and its status;
- (b) status of Background IP;
- (c) Commercialisation and income generation from the Commercialisation of Intellectual Property Rights; and
- (d) Creator name/s and their relevant contributions.

### 4.3 Commercialisation Return

In the absence of any other agreement between the relevant parties, Net Revenue from Commercialisation of WRI's Intellectual Property Rights will be distributed as follows:

	Less than \$100,000	\$100,000 or greater
Creators	100%	50%
WRI	0%	50%

The CEO, in consultation with the Research Advisory Board, Board and Creators, will determine the distribution of Net Revenue among the Creators and within WRI.

Taxation obligations associated with income received by Creators from Net Revenue disbursement is the full responsibility of the recipients. The Chief Financial Officer (CFO) or delegate is responsible for the management of all Net Revenue received by WRI.

### 4.4 Background Intellectual Property Rights

Background IP owned by or licensed to staff, students or appointees of WRI and made available by those persons to the Institute, must be fully disclosed to their Frontline Leader and Head of Research Operations before the commencement of any associated research activity.

If Background IP is owned by the researcher, an agreement must be in place to licence or assign this to the Institute before the research activity can commence. If Background IP is owned by a third party (a person who this Policy does not apply to), this must be included in the disclosure so that the necessary agreement can be identified and licensed to the Institute prior to the commencement of research activity.

### 4.5 Indigenous Cultural and Intellectual Property (ICIP)

Modern laws on Intellectual Property Rights have requirements that may not be applicable to ICIP, including requirements for work to be new, original or registered in order to be protected for a defined period of time. In contrast, ICIP may be old, community-owned and protected by the relevant community in perpetuity.

If the creation of Intellectual Property Rights involve ICIP, an agreement must describe the management of ICIP (separate from all other Intellectual Property Rights). Furthermore, the following principles must be adhered to:

- (a) an agreement must specify that an Indigenous party owns ICIP except in extenuatingly rare circumstances;
- (b) the Institute must not enter into an agreement where ICIP is assigned or licenced to a third party such as a funder or research collaborator, except in extenuatingly rare circumstances;
- (c) ICIP is not used (obtained, appropriated, claimed, or Commercialised) without prior approval of the appropriate holders of such ICIP under the principle of free, prior, informed consent; and
- (d) there is an equitable sharing of benefits arising from use of ICIP with the appropriate holders of such ICIP.

### 4.6 Moral Rights

Moral Rights are not Intellectual Property Rights. Moral Rights: (a) belong to Creators, (b) cannot be sold or assigned, and include (c) the right of attribution of authorship, (d) the right that a work is not falsely attributed, and (e) the right of integrity of authorship (that is, the right to not have work treated in a derogatory manner, such as unreasonably using a work to harm the reputation of the Creator).

The Institute recognises and must take reasonable steps to respect the moral rights of Creators.

## 5.0 Roles and Responsibilities

All researchers, honorary fellows and students are responsible for understanding and adhering to this policy. Frontline leaders are responsible for the monitoring of this policy's use within their team/s.

The Institute's CEO is responsible for making decisions on the Commercialisation of Intellectual Property Rights. Executive Leadership Team (ELT) will support the CEO in this endeavour. In the case of a dispute between the Creator and/or WRI, the matter is to be escalated to the Research Advisory Board for recommendation to the WRI Board whose decision will be final.

## 6.0 Definitions

Term	Definition
Background IP	means Intellectual Property Rights that is created prior to, or independently of the particular research or WRI activity.
Commercialisation or Commercialise	Means any act or process undertaken in dealing with those Intellectual Property Rights for the purpose of gaining a benefit (for example by selling, mortgaging, exchanging, licensing, charging, hiring out or leasing out the Intellectual Property Rights), but does not include research, teaching, or clinical uses by WRI.
Creator	Any staff or person (such as an honorary fellow, student or Visitor) engaged in research under the auspices of, or in the name of, WRI who creates (whether alone or jointly with others) any Intellectual Property Rights, including inventors.
Intellectual Property Rights	Means all rights resulting from intellectual activity whether capable of protection by statute, common law or in equity, including: <ul style="list-style-type: none"> <li>(a) trade secrets and the right to keep information confidential;</li> <li>(b) inventions;</li> <li>(c) copyright;</li> <li>(d) circuit layouts or computer chips;</li> <li>(e) trade marks;</li> <li>(f) designs;</li> <li>(g) plant breeder's rights or new plant varieties ;</li> <li>(h) any right of registration of, provisional applications for, claim of priority from, continuation of or division of the above rights; and</li> <li>(i) all other intellectual property as defined in article 2 of the <i>Convention Establishing the World Intellectual Property Organisation 1967</i>.</li> </ul>
Moral Rights	has the meaning given under the <i>Copyright Act 1968</i> (Cth).
Net Revenue	Means income (not including grant income or consultancy fees) received by WRI from Commercialisation of WRI's Intellectual Property Rights after deducting all costs of Commercialisation of such Intellectual Property Rights, including the costs and expenses relating to the development, protection, marketing, enforcing and administration of the Intellectual Property Rights. All direct and indirect costs associated with future development for Commercialisation of the relevant Intellectual Property Rights or investment in a company into which such Intellectual Property Rights are assigned or licensed, must also be deducted.
Research Advisory Board	A WRI subcommittee responsible for advising on research strategy including protection, management and development of the Institute's Intellectual Property Rights. This may include filing and management of patents, budgets for patents, and Commercialisation of the Institute's Intellectual Property Rights. The Research Advisory Board makes recommendations to the WRI Board.
Resources	Includes all facilities, materials, administrative support and other human resources.
Scholarly Works	A work submitted or accepted for academic publication e.g. article, book, manuscript or manual regardless of format. Scholarly Works exclude any material or work that the Institute may use or licence as part of its research or Commercialisation activities (for

	example, treatment programs, clinical manuals or training materials), but Scholarly Works may be separately created from these materials.
Visitor	Is a person engaged in research, service provision or other Intellectual Property Rights generating activities at WRI and is not staff, an honorary fellow or a student and may include, but is not limited to: a) a visiting scientist at WRI; b) an officer of other bodies (whether corporate or otherwise) visiting WRI; or c) a paid or unpaid officer, consultant, contractor or worker or any other person who provides services to WRI or uses WRI's facilities and equipment and who has access to or a connection or involvement with the identification, acquisition, maintenance or disposal of WRI's projects.

## 7.0 References and Related Documents

### 7.1 References

- 7.1.1 Australian Code for the Responsible Conduct of Research 2018
- 7.1.2 Patents Act 1990
- 7.1.3 Patents Regulations 1991
- 7.1.4 Trade Marks Act 1995
- 7.1.5 Trade Marks Regulations 1995
- 7.1.6 Designs Act 2003
- 7.1.7 Designs Regulations 2004
- 7.1.8 Plant Breeder's Rights Act 1994
- 7.1.9 Plant Breeder's Rights Regulations 1994
- 7.1.10 Copyright Act 1968
- 7.1.11 Ethical Conduct in Research with Aboriginal and Torres Strait Islander Peoples and Communities: Guidelines for Researchers and Stakeholders 2018
- 7.1.12 Terri Janke and Company (on behalf of IP Australia): Indigenous Knowledge, Issues for Protection and Management 2017

### 7.2 Related Documents

- 7.2.1 RS01A Research Governance
- 7.2.2 RS04 Conflict of Interest
- 7.2.3 RS12 Consultancy and Secondary Employment

## 8.0 Version History

Version No.	Approver	Implementation Date	Summary of Change
1.0	Board	12/02/2020	Introduction of Policy
2.0	Andrew Barron	1/03/2024	Revision due to new Institute strategy