

# Intellectual Property Procedure

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## Purpose

The purpose of this procedure is to describe the rights, roles and responsibilities of the University, staff, affiliates and students in relation to intellectual property.

## Scope

This procedure applies to all staff, students and affiliates, including conjoint, adjunct, emeritus, honorary and visiting appointments of the University and its controlled entities.

## Legislative context

- [Federation University Australia Act 2010](#)
- [Federation University Australia Statute 2021](#)
  - Part 7 - Intellectual Property
- [Copyright Act 1968 \(Cth\)](#)
- [Patents Act 1990 \(Cth\)](#)

- [Designs Act 2003 \(Cth\)](#)
- [Plant Breeders Rights, under the Plant Breeders' Rights Act 1994 \(Cth\)](#)
- [Circuits Layouts Act 1989 \(Cth\)](#)

## Definitions

| Term                              | Definition                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Background Intellectual Property  | Any IP created or owned by the University that exists at the time new IP is created.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Commercialise / commercialisation | To exploit commercially and includes: <ul style="list-style-type: none"> <li>a. in relation to an IP right; the exercise of all the rights exclusively granted to the holder of such IP rights by the laws of the jurisdiction in which the IP right subsists, including where permitted the right to sub-license those rights;</li> <li>b. in relation to a product, kit, apparatus, substance, documentation or information resource (or any part of such materials): to make, distribute, market, sell, hire out, lease, supply, or otherwise dispose of it; and</li> <li>c. in relation to a method or process: to use the method or process or to make, distribute, market, sell, hire out, lease, supply, or otherwise dispose of a product, kit or apparatus the use of which is proposed or intended to involve the exercise of the method or process.</li> </ul> |
| Commercialisation revenue         | The gross revenue actually received and retained by Federation University from the Commercialisation and Exploitation of specific IP owned by the University, after the payment of any withholding, goods and services or other taxes, bank fees, transaction fees and other charges.<br>Commercialisation Revenue does not include income received from the provision of research, consultancy or other services.                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Contributor                       | A Staff member, Affiliate or Student who is a Creator or is a person that contributed to the creation, development or invention of the relevant IP, as determined in accordance with the relevant process.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Unit materials                    | All materials produced in the course of, or for use in, teaching in any form and all IP in such materials including but not limited to lectures, lecture notes and material, syllabi, study guides, assessment materials, images, multi-media presentations, web content, case studies and unit software.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Creator                           | Any of the following: <ul style="list-style-type: none"> <li>a. in the case of a patentable invention subject to the <a href="#">Patents Act 1990 (Cth)</a>: the Inventor</li> <li>b. in the case of a literary or artistic work or similar subject to the <a href="#">Copyright Act 1968 (Cth)</a> : the Author</li> <li>c. in the case of designs registrable under the <a href="#">Designs Act 2003 (Cth)</a>: the Designer</li> <li>d. In the case of <a href="#">Plant Breeders Rights, under the Plant Breeders' Rights Act 1994 (Cth)</a>: the Principal Breeder</li> </ul>                                                                                                                                                                                                                                                                                        |

|                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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|                                    | e. in the case of circuit layouts, under the <a href="#">Circuits Layouts Act 1989 (Cth)</a> : the Designer.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Indigenous Traditional Knowledge   | Indigenous Australians' rights to their heritage, consisting of intangible and tangible aspects of the whole body of cultural practices, resources and knowledge systems developed nurtured and refined by Indigenous people and passed on by them as part of expressing their cultural identity, including distinctive signs and symbols, practices, know-how and skills.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Intellectual Property (IP)         | <p>All statutory and other proprietary rights (including right to require information be kept confidential) in respect of inventions, copyright, trademarks, designs, patents, plant breeder's rights, circuit layouts, know-how, trade secrets, data, materials and all other rights as defined by Article 2 of the <i>Convention establishing the World Intellectual Property Organisation of July 1967</i>, whether registered or unregistered, all rights to apply for the same and, for the avoidance of doubt, includes:</p> <ol style="list-style-type: none"> <li>Patents under the <a href="#">Patents Act 1990 (Cth)</a>;</li> <li>Copyright vesting by virtue of the which subsists in original works under the <a href="#">Copyright Act 1968 (Cth)</a> in literary works (, including computer programs and data), dramatic works, musical works, artistic works, films, sound recordings, broadcasts, published editions and certain types of performances;</li> <li>Trade marks registered or registrable under the <a href="#">Trade Marks Act 1995 (Cth)</a>;</li> <li>Designs registered or registrable under the <a href="#">Designs Act 2003 (Cth)</a>;</li> <li>New plant varieties under the <a href="#">Plant Breeder's Rights Act 1994 (Cth)</a>;</li> <li>Circuit layouts (computer chips) under the <a href="#">Circuit Layouts Act 1989 (Cth)</a>; and</li> <li>Trade secrets and other confidential material under Common Law.</li> </ol> |
| Net revenue                        | The monetary amount retained by Federation University from the Commercialisation Revenue received from the commercialisation of IP after the legitimate claims of third parties are satisfied.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Pre-Existing Intellectual Property | Tangible IP that the University agrees is owned by a Staff member, a Student or a third party prior to the date of their employment or enrolment at Federation University.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Specifically Commissioned          | Work requested by the University by agreement, where particular consideration is given. This may include financial consideration or relief from teaching or other duties.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| University Resources               | Resources of the University which includes, without limitation, premises, facilities, funds, services, equipment, paid leave, Staff time and Support Staff.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

## Procedure statement

|                              |                                                                                                                                                                   |
|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Principle                    | demonstrated by:                                                                                                                                                  |
| Protect and commercialise IP | <ul style="list-style-type: none"> <li>protecting the rights of Federation University staff, students, and those affiliated with Federation University</li> </ul> |

|                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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|                                                                | <ul style="list-style-type: none"> <li>• fostering an innovative culture which the creation of IP and entrepreneurial endeavour are valued and rewarded</li> <li>• enabling use and exploitation of Federation University's IP by industry, government and community for local, national and global benefit</li> <li>• facilitating timely transfer of research to industry, government and community.</li> </ul> <p>Federation University will have the sole right to protect and commercialise any IP over which it asserts legal and beneficial ownership and may assign or license such IP to third-parties, with the right to sub-license, unless otherwise agreed in writing.</p> <ul style="list-style-type: none"> <li>• Federation University will endeavour to make decisions about the protection and commercialisation of IP in consultation with creators.</li> <li>• Commercialisation of IP will ensure due reward to individuals who created the IP.</li> </ul> |
| Assert ownership of IP                                         | <p>Federation University asserts ownership of IP as follows:</p> <ul style="list-style-type: none"> <li>• IP created by an employee of Federation University in or during their employment is the property of Federation University.</li> <li>• IP created by an affiliate of Federation University is the property of Federation University where it involves the use of university resources, IP or funding or is generated by a team including Federation University staff.</li> <li>• IP developed by students who are also staff where the IP has been developed as a direct result of their employment.</li> <li>• Where students agree to be involved in research activities that could lead to the development of IP over which Federation University, or a third-party may claim ownership or other rights.</li> </ul>                                                                                                                                                 |
| Recognise moral rights                                         | <p>Federation University recognises the moral rights of the creators of IP in accordance with the <a href="#">Copyright Act 1968 (Cth)</a>. These include the right of fair attribution of authorship or invention, the need for work not to be altered or used in such a way that it harms the reputation of the creator, and an opportunity for the creator to be involved in determining the final outcome of their labours.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Recognise the significance of Indigenous Traditional Knowledge | <p>Federation University recognises the significance of Indigenous Traditional Knowledge. The heritage of Indigenous people is a living one and includes items that may be created in the future, based on that heritage. Consistent with Federation University's recognition of the significance of Indigenous Traditional Knowledge, the University will:</p> <ul style="list-style-type: none"> <li>• not commercialise IP developed using Indigenous Cultural and Traditional Knowledge without the approval and involvement of the holders of such Indigenous Cultural and Traditional Knowledge</li> <li>• ensure the equitable sharing of benefits arising from Indigenous Traditional Knowledge</li> <li>• acknowledge the source of the traditional knowledge from which such IP is derived.</li> </ul>                                                                                                                                                                |

## 1. Pre-Existing Intellectual Property

1.1 Federation University does not assert ownership over pre-existing IP, subject to 1.2.

1.2 Staff and students must advise the Pro Vice-Chancellor, Research and Innovation of the existence of pre-existing IP as soon as possible (within 30 days) following employment or enrolment.

If no such advice is received by the Pro Vice-Chancellor, Research and Innovation, then any IP developed or disclosed during the period of employment or enrolment will be treated as University owned IP.

## 2. Details of Intellectual Property Ownership

### Federation University employees

2.1 Created by staff in the course of their employment by the University, which is in or during their employment is the property of Federation University unless agreed in writing by the Vice-Chancellor and the Pro Vice-Chancellor, Research and Innovation. This includes the generation, creation or realisation of any act, work, research or idea by reason of:

- a. the use of University resources;
- b. participation in any project or course supported by funding obtained or provided by the Federation University;
- c. a unit of research being undertaken at the University, either in collaboration with other staff members or students or any third -party; or
- d. where the creation incorporates or uses Background IP.

### Affiliates

2.2. Unless agreed in writing by the Vice-Chancellor and the Pro Vice-Chancellor, Research and Innovation, IP created by affiliates is the property of Federation University where:

- a. generation of the IP has required use of University Resources;
- b. generation of the IP has resulted from the use of Background IP owned by the Federation University;
- c. the IP is a component of IP generated by a team of which this person is a member and other members are members of Federation University;
- d. the IP has been generated as a result of any funding provided by or obtained by Federation University;
- e. requires the use of the existing University IP.

### Students

2.3. Unless agreed in writing by the Vice-Chancellor and the Pro Vice-Chancellor, Research and Innovation, Federation University asserts legal and beneficial ownership of IP developed by students who are also staff where the IP has been developed as a direct result of their employment.

2.4. Where students agree to be involved in research activities that could lead to the development of IP over which Federation University or a third-party may claim ownership or other rights:

- a. the supervisor or unit coordinator will make it clear to students what the nature of the work and the conditions of their involvement are before they undertake the research activity;
- b. participation in the research will not interfere with the assessment of the student's academic performance;
- c. any confidentiality and/or IP assignment agreement should only be signed by students after they have been first advised to obtain independent advice;
- d. the student must formally assign, in advance, all right, title and interest they may have in any IP to the University before the student will be permitted to engage in such research;

- e. the student's copyright and moral rights in any thesis or publications arising from the research will be retained by the student, unless subject to a third-party agreement;
- f. the student will receive consideration and other rights commensurate with those that a staff member would otherwise have under the procedure, unless subject to a third-party agreement;
- g. subject to the confidentiality provisions that may be contained in any third-party agreement, the student's future career choices will not be restricted by the choice to work in a confidential area of research;
- h. any delays in publication of the thesis or any part thereof that arise from a confidentiality and/or assignment agreement will be limited to a maximum of two years, unless otherwise approved by the Pro Vice-Chancellor, Research and Innovation.

2.5. Where students may be involved in research carried out at institutions which are affiliated with Federation University or at other institutions independent of Federation University and where Federation University does not assert ownership of IP, agreement must be reached in writing between the student and the host institutions regarding the rights of the student to IP.

## **Unit Materials and scholarly works**

2.6 Federation University does not assert ownership of any IP in scholarly books, journal articles, or other scholarly works or subject matter generated (whether in written or any other form) by staff or students, except where the work is specifically commissioned by Federation University or produced with the assistance of university resources.

2.7. The Creator grants to Federation University a perpetual, royalty free, non-exclusive licence to use such scholarly books, journal articles, unit materials, or other scholarly works or subject matter generated by that creator for Federation University's teaching and research purposes. The non-exclusive licence to use such scholarly books, journal articles, unit materials, or other scholarly works or subject matter persists should the creator leave Federation University. This licence is subject to any overriding contractual obligations the creator owes to third-parties (for example, a publisher of a journal article), provided the creator informs the University of such obligations.

2.8. In the absence of a specific agreement to the contrary, the creator of the unit materials has a non-exclusive, non-transferable, free licence to use such works for the purpose of their own teaching, education or research at other educational institutions, but may not:

- a) sub-license or assign such materials; or
- b) use them to generate royalties or licence fees.

2.9. Federation University may, at its discretion, give the creator(s) of specifically commissioned unit materials a non-exclusive licence to use the unit materials for teaching purposes, provided that such a licence will not extend to the use of the unit materials for any purpose which is in direct competition with Federation University.

2.10. Where Federation University does not wish to commercialise specifically commissioned unit materials and advises the creator(s) accordingly, the creator(s) may request the assignment of the ownership rights of those unit materials to the creator(s) or any one of them. Federation University will retain a non-exclusive licence for educational purposes.

## **Artistic, musical, dramatic or creative works**

2.11. Federation University does not assert any right or claim to ownership of the IP in artistic, musical, dramatic or other creative works created or composed by its staff or students, except where these works have been specifically commissioned by Federation University or are created in whole or in part with the use of university resources.

2.12. Any work which may be considered to be both creative work and unit materials will be treated as unit materials for the purposes of this procedure.

### 3. Assignment of Intellectual Property Rights

3.1 At the request of Federation University, staff and students must assign to the University all IP in a timely manner and execute all such deeds of assignment and other documentation necessary to give effect to the IP ownership, protection, use, and commercialisation provisions set out in this procedure.

3.2 No staff member or student may act on behalf of Federation University, or act in their own name, to assign, license, protect or otherwise deal with IP which is the property of Federation University or over which Federation University asserts rights under this procedure, unless specifically delegated to do so in writing.

3.3 Where a student owns IP and there are no other staff or student creators, a student may in their own name, assign, license, protect or otherwise deal with that IP in accordance with the Procedure for Disclosing and Exploiting Intellectual Property.

3.4 Students are required to assign their IP rights to Federation University where the IP:

- a. consists of unit materials;
- b. has been assigned to Federation University under a specific agreement;
- c. has been jointly developed with staff and the student is deemed to be a co-creator;
- d. is the subject of an existing agreement between Federation University and a third-party.

3.5 Students involved in research activities that could lead to the development of IP over which Federation University or a third-party may claim ownership or other rights must formally assign, in advance, all IP to Federation University before engaging in research, in return for the same IP benefits that a staff member would have under the procedure, unless subject to a third-party agreement.

3.6 Supervisors electing to supervise a student in an area whose research activities are covered by third-party agreements must ensure a confidentiality and IP assignment agreement is completed between Federation University and the student before the work is commenced.

3.7 Some projects may not be available to students who choose not to sign a confidentiality and/or IP assignment agreement.

3.8 Despite any contrary provision in this procedure, all existing legally binding contracts, deeds and agreements entered into by Federation University at the effective date of this procedure, will remain in full force and effect. Their terms will prevail in the event that a conflict arises with this procedure.

3.9 Federation University may assign its rights, title and interests in IP owned by it to third-parties in accordance with this procedure.

### 4. Protection and Commercialisation of Intellectual Property

4.1 Where a staff member, student or affiliate develops IP over which Federation University asserts ownership rights they must follow the process outlined in the Invention Disclosure Form.

4.2 Federation University will decide whether or not to proceed with the protection or commercialisation of IP owned by Federation University. The University is under no obligation to protect or commercialise any IP. The terms on which Federation University protects its IP will be at the absolute discretion of the University. The University will endeavour to make decisions regarding protection or commercialisation of such IP in consultation with the relevant creators.

- 4.3 Creators must use their best endeavours to assist Federation University in its commercialisation efforts.
- 4.4 Where there is more than one creator, the Pro Vice-Chancellor, Research and Innovation will, in the absence of agreement by the creators, determine the proportions to be paid to the individual creators. Distribution to a creator shall not be affected by the death, resignation or retirement of the staff member.
- 4.5 Where creators may personally hold equity in companies that have a license or assignment to Federation University-owned IP, they will be required to forego any other creators' entitlements in relation to the same IP.
- 4.6 If Indigenous Traditional Knowledge is involved in any proposed commercialisation activities, the University must consult with the Manager, Aboriginal Education Centre to ensure appropriate recognition and protection is given to Indigenous Traditional Knowledge and its owners.
- 4.7 Staff, students and affiliates must complete all required documentation to allow Federation University to protect, commercialise and exploit any IP.
- 4.8 If a creator fails to complete any documentation or any other action necessary for the commercialisation of IP owned by the University, the Vice-Chancellor has the right to execute all such documents and do all such acts as their attorney.
- 4.9 This power of attorney does not extend to instances where failure to complete documentation is a result of conflicts as to ownership of the IP, or where there is a dispute between the creators and Federation University. In these instances, the Section dealing with the Resolution of Disputes will apply.
- 4.10 Federation University is responsible for administering all trade marks, domain names and business names relating to University activities. All trade mark applications must be made in the University's name.
- 4.11 In addition, any use of the University's name, logo or coat of arms must be approved by the relevant delegate before any application is made.

## 5. Attribution

- 5.1 The University has a Designated Officer in relation to Copyright (Director, Library and Learning Spaces) that oversees the appropriate use of Copyright materials.
- 5.2 University-owned Copyright must be appropriately attributed. © Copyright Federation University Australia [year]

## 6. Dispute Resolution

- 6.1 Disputes between Staff, between Students or between Staff and Students arising under this Procedure concerning:
- the ownership of intellectual property; or
  - the division of any income arising from the commercialisation of intellectual property will be dealt with under the [Staff Grievance Procedure](#), or the [Complaints Management Procedure](#), as appropriate.

## Supporting documents

- [Corporate Governance Policy](#)
- [Students and Support for Students Policy](#)
- [Academic Governance Policy](#)

- [Research and Research Training Policy](#)
- [Disbursement of Net Revenue from Intellectual Property Commercialisation Procedure](#)
- [Disclosing and Exploiting Intellectual Property Procedure](#)

## Responsibility

- The Chief Operating Officer, as the Approval Authority, is responsible for monitoring the implementation, outcomes and scheduled review of this procedure and its accompanying documents.
- The Head of Legal, as the Document Owner, is responsible for maintaining the content of this procedure as delegated by the Chief Operating Officer.

## Promulgation

This procedure will be communicated throughout the University via:

1. A FedNews announcement and on the 'Recently Approved Documents' page on the University's Policy Central website.

## Implementation

This procedure will be implemented throughout the University via:

1. A FedNews announcement and on the 'Recently Approved Documents' page on the University's Policy Central website.