

# Procedure: Student intellectual property

## Purpose

To provide a procedure to outline the rights and responsibilities of Students, the University and Staff with respect to the ownership and use of intellectual property (IP) generated by Students.

## Procedure

### Relevant Documents:

- \* [Intellectual Property Policy](#)
- \* [IP Protection and Commercialisation Procedure](#);

Definitions relevant to this Procedure can be found in the [Intellectual Property Policy](#).

### IP Created by Students during a research activity

1. Under the [Intellectual Property Policy](#)., Students own any IP that they create. There are some situations in which it is necessary for the Student to agree to assign ownership of their IP to the University. These are where the Student is involved in a research activity:

with third parties that have contractual rights in, or to, IP arising out of that research activity or any related research activities;

involving existing IP that the University may seek to Commercialise;

which may result in IP jointly Created by a Student and Staff and which cannot be used separately; and/or

which involves the provision or procurement of significant investment by the University or the Student's supervisor/s that are not commonly available.

### Theses and assessments

2. Nothing in this Procedure, the Intellectual Property Policy or the IP Protection and Commercialisation Procedure shall restrict the right of a Student to have their thesis or any other form of assessment submitted for examination at the University.

3. Under clause 4(c) of the External Project Funding and Agreements policy, the University will not accept an agreement with a third party where that agreement would limit the ability of a Student to meet examination requirements of the University. For avoidance of doubt, this includes:
  - a. any term purporting to allow external control or veto over the content of the thesis or other form of assessment, and
  - b. any term allowing an external party to delay submission of the thesis or other form of assessment while protection of IP is sought.
4. Where the IP of a third party is contained in material submitted for examination, or where there is a contractual requirement to undertake IP protection/assessment, the University may reach agreement with that third party to require an examiner to keep the IP confidential and/or to have the confidential material in an annex to the thesis that can be withheld from general access for a period after the award of the degree or for the thesis to be held on restricted access for a period of time (see [Procedure: Higher Degree by research -use of confidential or restricted information in theses](#)).

### **Responsibilities of University Staff**

5. Lead Supervisors are responsible for identifying instances where a Student will be working on a research activity that may be subject to IP or confidentiality agreements. The supervisor must then resolve the implications with the appropriate administrative staff before the Student begins work on the research activity. The Research Services Division is the main point of contact in the first instance.
6. Once the Lead Supervisor has resolved matters under clause 5 above the Lead Supervisor must discuss with the Student of any implications before the Student commits to the research activity or begins work. Students must be offered the option to either join the research activity under any required conditions and sign the appropriate agreements, or to pursue other research activities that are not subject to such conditions.

### **IP Assignment**

7. In the normal course of business, IP created in the course of, or arising out of, a Student's employment with the University, will be owned by the University.
8. Where the University wishes to employ a Student and where the employment may overlap with the Student's research, the treatment of IP whilst the Student is employed must be clarified prior to the appointment.

9. Where assignment of IP is required under clause 1 above or where IP protection is being considered under clause 3, the University will may require the Student to give:
  - a. a warranty that the Student will not disclose any confidential information of the University or of any relevant third party;
  - b. a warranty that the Student will, to the best of their knowledge, not infringe any IP rights belonging to the University or any third party;
  - c. a declaration of consent that specific works, or part of such works, in which the Student holds copyright may be published, adapted, supplemented (or otherwise as required by a third party) by the University or any relevant third party.
10. Any obligations accepted by a student under clause 9 must be specified in a written agreement (or written agreements) regarding the above requirements. Required agreement(s) must be entered into prior to commencement of the research activity. Students will not be asked to enter into such a written agreement before they have been given a reasonable period (not less than 30 days) to review, seek external advice and discuss such agreements.
11. Neither the University nor the Student's supervisor can provide advice to Students as to their rights regarding assignment. Students are, however, able to access free legal advice from ANUSA and are strongly encouraged to do so.
12. If the Student does not sign the agreement contemplated in clause 7, it may not be possible for the Student to continue involvement in that research activity. The University will use reasonable endeavours to find alternative research and supervision options.
13. Where a Student is required to assign IP they Create to the University, they will:
  - a. share in the benefits of Commercialisation of IP as if they were Staff in accordance with clauses 21-25 of the [\*IP Protection and Commercialisation Procedure\*](#);
  - b. if permitted under contract with any relevant third parties involved in the research activity, be granted a licence to the IP Created by the Student to them for use in further research and academic publication;
  - c. have their PhD examined (see clauses 2-5 above for further detail).

## **Background IP**

14. Where Students are involved in any research activity envisaged by clause 1, they must declare any Background IP or confidential information which they wish to use in any research activity prior to utilising such Background IP or confidential information in that activity.

15. Where the Student owns such Background IP, a written agreement between the Student and the University must be in place prior to commencement of the research activity to licence or assign the IP to the University. Whether a licence or assignment is required will depend on the nature of the research activity, including the existence of any third party contract terms or obligations.
16. Where the Background IP is owned by a third party the Student must provide any documentation that gives them the right to use the IP to the University. The University will review the documentation and determine the form of agreement necessary for the IP to be used in the research activity.
17. Agreements to govern Background IP must also grant a right to the University and any relevant third parties to use or disclose relevant confidential information that the Student has the right to use or disclose.

## **Research data**

18. Student ownership and use of research data is governed by the [Intellectual Property Policy](#).

## **Indigenous cultural and intellectual property rights**

19. Students working with indigenous peoples or property need to be fully cognisant of the ethical requirements of doing so, and in particular, should take proactive steps to mitigate the risk of using Indigenous Cultural and Intellectual Property in a publication, thesis or assessment, without explicit written consent from those with the authority to give it. Further information on Indigenous Cultural and Intellectual Property rights can be found in the [Intellectual Property Policy](#).

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