

Intellectual Property and Moral Rights

This document is relevant to all WH sites, including Bacchus Marsh, Melton and Caroline Springs

Policy code: P-GC7	Current version: August 2022
Previous version: May 2019	Next review date: August 2025
Section: Growing & Improving Care	Sub-Section: Research & Quality Systems

1. Intent

The purpose of this policy is to ensure Western Health's (WH) staff have a clear understanding of:

- Intellectual Property (IP) rights and moral rights in work created by WH staff during the course of their employment; and
- The WH framework for the distribution of income from any commercialisation of IP rights.

2. Outcomes

2.1 Policy Statement

This policy sets out WH's position in relation to IP and moral rights in work created by WH staff during the course of their employment.

2.2 Policy Details

2.2.1 Intellectual Property Rights

IP rights refer to proprietary, transferrable rights conferred on authors or creators of works including, but not limited to, the following:

- Scientific works;
- Inventions in all fields of human endeavour;
- Scientific discoveries; and
- Industrial designs.

In Australia, intellectual property rights include:

- Copyright, regulated by the *Copyright Act 1968* (Cth);
- Registered designs, regulated by the *Designs Act 2003* (Cth);
- Patents, regulated by the *Patents Act 1990* (Cth); and
- Trademarks, regulated by the *Trade Marks Act 1995* (Cth).

2.2.2 Moral Rights

Moral rights in Australia are personal, non-proprietary, non-transferrable rights that arise automatically in original creative work. Under the *Copyright Act 1968* (Cth) the creator of work has three moral rights:

- To be identified as the author of a work – known as the right of attribution of authorship;
- To take action against false attribution – known as the right not to have authorship falsely attributed; and
- To object to derogatory treatment of their work – known as the right of integrity of authorship.

It is important to keep in mind that moral rights belong to the creator of the work, which may not always be the same as the IP owner of the work. While an employer may own the copyright in the relevant employee's work created as part of their employment, because the employee is the creator, he/she will retain the moral rights to that work unless they have agreed to waive their moral rights. An employee may waive their moral rights in respect of all works (present and future) they create in the course of their employment for example, in the terms of their employment contract or in a mandated policy applicable to all employees.

2.3 Ownership of IP

2.3.1 All IP created during the course of a WH staff member's employment or as a result of using WH resources, facilities or funds, and any income derived from the IP, will be owned WH, unless otherwise agreed in writing between a staff member and Western Health. "Agreed in writing" might include a letter from the relevant Executive Director and Chief Executive Officer to the staff member or an express clause in the staff member's employment contract.

2.4 Moral Rights

2.4.1 WH recognises that there is a distinction between IP rights and moral rights.

2.4.2 WH staff members waive their moral rights in all works (present and future) they create in the course of their employment, unless otherwise contemplated by this policy or agreed in writing between a staff member and their relevant Executive Director. "Agreed in writing" might include a letter from the relevant Executive Director and Chief Executive Officer to the staff member or by an express clause in the staff member's employment contract.

2.5 Copyrighted Material

2.5.1 Where a written work created by a WH staff member during the course of their employment (other than a computer program) is created solely for the purpose of publication in a professional journal, textbook or other academic publication, WH will assign copyright in that work to the creator of the work, or to the publisher, as required.

2.5.2 Any assignment of copyright will be on condition that:

- WH has an automatic, non-exclusive, royalty-free and irrevocable licence to reproduce, publish, disseminate or otherwise use the work for WH's own purposes;
- WH has the right to recover from the creator of the work any costs incurred by WH in providing funding, salary, resources, facilities, apparatus or supervision for the creation of the work; and
- The moral rights of the creator of the work are not waived.

2.6 IP Developed with Third Parties

2.6.1 Where work is created by a WH staff member who is a Joint WH Employee, Visiting Employee and/or WH Student, or the WH staff member intends to engage in research as part of a collaborative venture with another organisation, the WH staff member should notify the WH Office for Research (OFR) and Legal Services as soon as possible to consider IP implications for that work.

2.7 Protection of WH IP by WH Staff

2.7.1 All WH staff have a continuing obligation to protect WH IP. This includes:

- Complying with all WH policies regarding the protection of IP;
- Complying with any guidelines regarding the keeping and maintenance of research data and records published by WH and other policies impacting on the protection of IP;
- Minimising the distribution of WH IP to external parties, particularly commercially-sensitive information;
- Where necessary, seeking authorisation for the distribution of WH IP from the Chief Medical Officer and Chief Executive Officer;
- Providing WH IP in a format which ensures the IP is protected from copying (for example, by email in encrypted format);
- Notifying WH if they become aware of any matter that may constitute an actual or potential breach of WH's IP rights;
- Assisting WH with the enforcement of any IP rights to the extent that they are able (such as providing WH with expertise, documents and materials upon request); and
- Maintaining the confidentiality of all IP in which WH has an interest (both during the course of their employment and after that employment ceases).

2.8 Procedure for Proposed Publications or Communications regarding Innovation

2.8.1 All proposed publications or communications regarding Innovation by WH staff must be provided to the OFR prior to their submission to any external body.

2.8.2 The OFR in consultation with Legal Services will advise the submitting party within twenty-one (21) days of any IP implications.

2.8.3 WH will not unreasonably withhold permission to publish or communicate new information. In addition, WH will make application for IP protection as soon as is reasonably practicable for any Innovation considered appropriate by the OFR.

2.9 Commercialisation of IP

2.9.1 All WH staff have a continuing obligation to report the creation of IP to their line manager who then must consult with their relevant Executive Director and Director of the Office for Research regarding the potential commercialisation of that IP. If that potential is likely to be realised the Executive Director will inform the Chief Financial Officer and Chief Executive Officer who will report to the Finance Committee as required.

2.9.2 Where WH owns the IP, only WH has the right to deal with IP rights. WH will undertake any application for protection of the IP rights as required.

2.9.3 Where IP is jointly owned by WH and other parties, the IP will be dealt with according to the terms of any agreements that WH has in place or puts in place with those parties as set out in *Section 2.13*.

2.10 Commercialisation of WH IP by WH Staff

2.10.1 Where WH decides it does not wish to provide funds for the protection and/or commercialisation of IP, it shall provide the relevant WH staff member with a sixty (60) days first right to negotiate the terms under which WH will assign the IP to them, provided all costs to WH to the date of the IP assignment, are met by the WH staff member.

2.10.2 If such rights are assigned, conditions of the assignment will include an ongoing right/licence for WH to use the Innovation in-house at no cost to WH (if appropriate).

2.10.3 In the event of the WH staff member indicating that they are not proceeding with protection and/or commercialisation of the IP, WH will retain all IP rights in the work.

2.11 Naming of Inventors/Interested Parties

2.11.1 Within sixty (60) days of WH determining to proceed with the protection of IP, the OFR shall arrange a meeting of all current and former WH staff claiming an interest in the IP.

2.11.2 The meeting will be chaired by an independent patent attorney and each staff member claiming an interest in the Innovation will have the ability to put their case to the attorney.

2.11.3 The attorney will within thirty (30) days of the meeting issue a formal opinion outlining his/her determination as to the Inventors and the contribution of each Inventor to the invention. The attorney's opinion will be binding on WH and WH staff. The cost of obtaining the opinion will be paid by WH.

2.12 License of Copyrighted Material to Others

2.12.1 WH understands that external organisations may have a reasonable wish to use WH copyrighted material for their own purposes. In such cases, WH may, on a case-by-case basis, grant a licence to the organisation to reproduce the copyrighted work. This licence may include particular conditions however, in general, the following rules apply:

- The copyrighted material must be reproduced fairly, and not out of context or in any way that would adversely affect WH's reputation and standing;
- WH ownership of the copyrighted material is acknowledged; and
- Where the copyright work will be used by the external organisation to generate profit, WH will require the payment of a reasonable royalty or licence fee.

2.12.2 All requests for licensing of WH copyrighted material must be made in writing to the relevant Executive Director.

2.13 Intellectual Property Produced in Partnership with Other Organisations, Agencies or Persons

2.13.1 When WH creates or enhances intellectual property in partnership with another organisation, person or entity, WH will develop an agreement with the relevant partner organisations, with adequate provisions to provide for the ownership, protection, management and commercialisation of intellectual property. Relevant approvals will need to be sought for the terms of the agreement and intellectual property provisions in accordance with the policy: *P-RS1 Delegations of Authority* and procedure: *OP-RS4 Contract Execution and Management*.

2.14 Risk

2.14.1 If IP is jointly owned, the OFR in consultation with the other parties will undertake consideration of risk, and relevant costs associated with addressing how the identified risks will be shared between the parties.

2.14.2 At the discretion of the Executive or Board (as required by the policy: *P-RS1 Delegations of Authority*), WH may relinquish its ownership of its portion of the IP to the other party in lieu of alternate commercialisation arrangements such as a 'royalty fee' arrangement.

3. Applicability

This policy applies to all WH staff.

4. Accountability

The OFR and Legal Services are jointly responsible for the implementation of this policy.

5. Associated Procedures/Instructions

In support of this policy, the following Manuals, Procedures, Instructions, Guidelines, and/or Forms apply:

P-GC7	Research and Ethics
P-RS1	Delegations of Authority
OP-RS4	Contract Execution and Management

6. Definitions and Abbreviations

For purposes of this policy, unless otherwise stated, the following definitions/abbreviations shall apply:

Confidential Information	Refers to information or data that during the course of their employment the WH staff member may make, create or have access to including but not limited to such things as data within laboratory note books, samples, reagents, reports and the like.
Innovation	Refers to a new or improved product or method of production in any process, invention, design, artistic or literary work (or other copyright work), information, know-how, etc. with potential commercial application.
Inventor	In relation to an Innovation, means the person(s) who conceived the Innovation.
IP	Refers to all kinds of IP which may be printed and written or in electronic format. IP does not include Moral Rights.
Moral rights	Means the rights of creators of creative works to attribution and integrity.
WH staff	Means any individual who is employed directly by WH; is indirectly employed through WH (for example on grant funds administered by WH); is jointly appointed by WH and one or more third parties (<u>Joint WH Employee</u>); utilises the facilities of the WH by agreement (<u>Visiting Employee</u>); or any student who uses the facilities of WH as part of their research activities, and WH has agreed with the student's teaching institution in advance, that work created by the student as part of those activities will be covered by this policy (WH Student).

7. References

WH policies (corporate and unit specific), Australian and State laws and regulations, or other references directly applicable to the procedure

8. Document History

Number of previous revisions: 4

Previous issue dates: June 2002, June 2009, February 2016 and May 2019

Documents superseded or combined:

Code	Name
P-RE2.1	Intellectual Property and Moral Rights

9. Sponsor

Chief Financial Officer

10. Authorisation Authority

Western Health Board of Directors