

National Principles of Intellectual Property Management for Publicly Funded Researches

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Purpose of the Document

To provide guidance for the ownership, promotion, dissemination, exploitation and, where appropriate, protection of Intellectual Property (IP)¹ generated through Australian Government funded research by public sector institutions².

Intellectual Property (IP) is intangible property that attracts rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. Property protected includes:

- Literary, artistic and scientific works
- Performances of performing artists, phonograms and broadcasts
- Inventions in all fields of human endeavour
- Scientific discoveries
- Industrial designs
- Trade marks, service marks and commercial names and designations
- Protection against unfair competition.

The types of government-funded research that this document provides guidance for include: grants awarded by ARC, NHMRC, and other government research funding schemes.

The following types of research are NOT covered by this document as they should be addressed by internal procedures and agency contracts: research conducted by government departments/agencies for its own purposes (including research conducted by publicly funded research agencies³), and research procured⁴ by government departments/agencies.

The intention of the National Principles is to ensure good management of IP arising from publicly funded research.

The national principles were formed taking into account the need to encourage a culture of collaboration within the research sector and between researchers and industry; and to allow

¹ [The Australian Government Intellectual Property Manual](#)

² A public sector institution is one that is funded by, or majority funded by, government including universities, research institutes, hospitals, etc.

³ Publicly funded research agencies (PFRAs) are Commonwealth research agencies that are subject to either the *Financial Management and Accountability Act 1997* (FMA Act), e.g. DSTO and Geoscience Australia, or the *Commonwealth Authorities and Companies Act 1997* (CAC Act), e.g. CSIRO and ANSTO. The *Statement of Intellectual Property Principles for Australian Government Agencies* (Statement of IP Principles) provides the endorsed Government policy for management of IP in all agencies subject to the FMA Act. The Statement of IP Principles do not apply to agencies subject to the CAC Act but could be considered by these agencies as an expression of good practice in the management of IP.

⁴ Under the *Commonwealth Procurement Rules 2012* (Paragraphs 2.7-2.9), procurement encompasses the whole process of procuring goods and services. It begins when a need has been identified and a decision has been made on the procurement requirement. Procurement continues through the processes of risk assessment, seeking and evaluating alternative solutions, the awarding of a contract, the delivery of and payment for the goods and services and, where relevant, the ongoing management of the contract and consideration of disposal of goods. Procurement does not include:

- a. grants (whether in the form of a contract, conditional gift or deed) [as defined in FMA Regulation 3A]
- b. investments (or divestments)
- c. sales by tender
- d. loans
- e. procurement of goods and services for resale or procurement of goods and services used in the production of goods for resale
- f. any property right not acquired through the expenditure of public money (for example, a right to pursue a legal claim for negligence)
- g. statutory appointment
- h. appointments made by a Minister using the executive power (for example, the appointment of a person to an advisory board)
- i. the engagement of employees - such as under the *Public Service Act 1999*, the *Parliamentary Services Act 1999*, an agency's enabling legislation or the common law concept of employment.

for more effective dissemination of new technologies, processes and ideas, especially to small and medium sized enterprises.

Good intellectual property management will foster the most beneficial use of Australian research and development to secure value for industries, government, researchers and the community.

Principles and Policies

(a) The *Australian Code for the Responsible Conduct of Research*⁵ establishes an overall framework for responsible research practices in Australia.

(b) Australian research institutions will make every reasonable effort to gain benefit for Australia from IP. This may involve for example protection or making the IP publicly available in a timely manner.

(c) Ownership and the associated rights of all IP generated as a result of Australian Government competitively funded research will initially be vested in the research institutions receiving and administering the grants as a way of recognising the inventive contribution made by the research institutions. IP generated as a result of collaborative endeavours between research institutions will vest as agreed between those institutions. The ARC and the NHMRC do not wish to hold a stake in direct ownership of IP nor do they intend to benefit directly from commercial outcomes of the research funded through their financial support.

(d) Research institutions must have policies⁶, relating to the ownership and availability for exploitation of IP generated as a result of Australian Government competitive funding. These policies will foster the most valuable use of this IP by industry and commercial ventures, governments, and the research sector by means including:

- Making the IP openly accessible through licensing and accessibility arrangements which allow for its use and re-use, including potentially for commercial exploitation
- Protecting the IP through licensing and accessibility arrangements which provide exclusive opportunities to undertake commercial exploitation.

(e) These policies must:

- Be approved by the institution's governing body
- Ensure that there is clean and clear ownership of IP so as to maximise its chance of promotion, dissemination and exploitation, including exclusive arrangements for commercial exploitation where appropriate
- Make clear to all staff their responsibilities in relation to IP management including, where appropriate, the maintenance of research records (including lab books where possible, and field notebooks) and the handling of research results prior to promoting and disseminating the IP or obtaining IP protection

⁵ National Health and Medical Research Council, Australian Research Council, Universities Australia (2007) [Australian Code for the Responsible Conduct of Research](#).

⁶ These policies should reflect and be consistent with the *Australian Code for the Responsible Conduct of Research* requirements as set out in Part A, Chapter 1 "General Principles of Responsible Research"

- Provide means to help researchers identify IP that should be protected and/or commercialised, or IP that could benefit innovation/the economy of Australia by being made freely available⁷
- Take note of the rights and needs of all stakeholders involved in the research supported by public funds
- Have agreements with employees and grant holders on ownership and/or associated rights of IP and keep records of those agreements
- Define the ways in which benefits from the development and exploitation of the IP will be allocated
- Uphold the academic requirement to publish
- Take into account the different circumstances for ownership of IP generated by students during their course of study, research and training
- Have ways of addressing cases where IP impinges, or potentially impinges, on the cultural, spiritual or other aspects of indigenous peoples^{8 9 10}
- Provide guidance in relation to potential conflicts concerning IP management, ownership, promotion, dissemination, exploitation and, where appropriate, protection of IP
- Provide guidance on the licensing of copyright, in particular, the criteria for publishing under the terms of open access licences.

(f) For Australia to reap the benefits of the IP, research institutions in receipt of research funding from the Australian Government must assist in the management of IP by providing:

- Assistance to researchers in fulfilling their obligations and responsibilities¹¹ as well as rewarding and encouraging their participation in any subsequent exploitation process
- Support for researchers so that they can recognise when their discoveries may provide benefit through promotion and open dissemination or when they may have potential commercial or other public value
- Advice to the creators of the IP on the options available for either commercialising the IP, or making the IP freely available
- Regular reviews of IP development and associated commercial activities and outcomes arising from publicly funded research
- Systems to:
 - Identify where data, including datasets and databases, generated by Australian Government funded research, constitutes IP
 - Support the management of the data from which the IP was derived—including data which constitutes intellectual property, and data which does not constitute intellectual property— in order to maximise the benefits from the research, including the documentation and safe storage for future use
- Systems to record, manage and report on the IP held by that institution
- Guidance to researchers in assessing existing IP in the field that is likely to affect their research.

⁷ Noting that some funding programs already have explicit IP requirements.

⁸ [National Statement on Ethical Conduct in Human Research](#) ('the Statement'), with particular reference to Chapter 2.2 "General requirements for consent" and Chapter 3.2 "Databanks"

⁹ [Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research](#)

¹⁰ [Keeping research on track: a guide for Aboriginal and Torres Strait Islander peoples about health research ethics](#)

¹¹ For example, the *Australian Code for the Responsible Conduct of Research*

(g) While not mandatory to the procurement of research by the Australian Government, the Principles outlined in this document, the *Australian Code for the Responsible Conduct of Research*, and the Statement of Intellectual Property Principles for Australian Government Agencies, may be usefully applied to the procurement process.

Accountability

Research institutions in receipt of public funds for the purpose of conducting research must, if requested, assist in Government reporting activities to understand and document the IP arising from publicly funded research¹².

The Australian Government has released the [Australian IP Toolkit for Collaboration](#). This Toolkit is available to help simplify and improve the way businesses and researchers work together.

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¹² For example, the *National Survey of Research Commercialisation*.