

# Intellectual Property Policy

## Section 1 - Purpose

(1) QUT is committed to providing transformative education and research relevant to our communities.

(2) The purpose of this Policy is to provide clear direction to the University's staff and students with relation to the management and protection of intellectual property, commercialisation of intellectual property and the sharing of net revenues from commercialisation with creators.

## Section 2 - Application

(3) This Policy applies to all QUT staff (whether academic or professional), visitors and any person enrolled as a student of QUT, or in a course or program of study conducted by or on behalf of QUT, at the time they create intellectual property.

## Section 3 - Roles and Responsibilities

| Position   | Responsibility  |
|--|---|
| Vice-President (Business Development)                | Ensures that research innovations with commercial relevance are exploited to their full potential.<br>Oversees the development of and implementation of commercialisation arrangements, including agreements with external parties, creators, contributors and students.<br>Formulates and approves protocols and guidelines to implement this Policy, and for the management of disputes arising under this Policy.  |
| Head of Research Portfolio                           | Develops QUT's research capacity.<br>Promotes research innovations with commercial relevance.<br>Ensures, within their portfolio of responsibilities, that contractual arrangements protect QUT's intellectual property and fulfil QUT's commitments under third party arrangements, and ensures that these are consistent with protocols and guidelines approved under this Policy, in order to ensure that commercial opportunities can be pursued where available.<br>Approves Student Intellectual Property Protocol( <a href="#">Student IP protocol</a> ) with Vice-President (Business Development). |
| Vice-Chancellor and President                        | Makes a final determination on disputes.  |
| Provost/Senior Deputy Vice-Chancellor                | Approves commercialisation of QUT education resources.  |
| Deputy Vice-Chancellor and Vice-President (Academic) | Approves guidelines for licensing of education resources as open education resources or under other types of non-monetised licences.  |
| Academic Supervisor                                  | Identifies circumstances when the assignment of student intellectual property to QUT is appropriate.  |
| Unit Coordinator                                     | Identifies circumstances when the assignment of student intellectual property to QUT is appropriate.  |

| Position   | Responsibility  |
|--|---|
| Persons dealing with QUT intellectual property (all staff, students and visitors generating intellectual property in the course of their QUT employment or association with QUT) | Identify, keep confidential and actively facilitate the commercialisation of QUT intellectual property generated in the course of their employment, enrolment or association with QUT.<br>Fully disclose QUT intellectual property with potential commercial value, to the Business Development portfolio (in the case of QUT intellectual property) or the Executive Dean of Faculty (in the case of education resources).<br>Must comply with the specific requirements of this Policy and other relevant policies such as the <a href="#">Code of Conduct - Staff</a> and <a href="#">QUT Code for Responsible Conduct of Research</a> . |

## Section 4 - Ownership of Intellectual Property generated by Staff

(4) In accordance with general law principles, QUT as an employer owns all intellectual property created by senior staff, academic and professional staff members in the course of their employment. Intellectual property created in pursuance of or incidental to the performance of a staff member's QUT employment contract is considered to have been created in the course of employment whether or not a staff member's express duties include a duty to develop intellectual property.

(5) This ownership exists as a matter of law and does not require any further documentation from staff members. However, staff may be required to formally sign documents to more fully record QUT's ownership of QUT intellectual property, for example, to enable patent applications to be made.

(6) All research data must be managed in accordance with relevant policies, including [Management of Research Data and Primary Materials Policy](#).

(7) Ownership of intellectual property generated by staff during private work outside of their role at the University will not generally be owned by QUT. This is subject to contractual arrangements and use of University resources. Activities of this nature must be considered and approved under the policy on [Outside Work, Private Consultancies and Directorships Policy](#).

## Section 5 - Copyright in Scholarly Works

(8) Provided that QUT does not have contractual obligations to a third party which would prevent QUT affecting such a transfer of rights, the University:

- assigns the right to publish scholarly works to the creator(s) of that work. This assignment is subject to a perpetual, irrevocable, world-wide, royalty-free, non-exclusive licence (including a right to sublicense) in favour of QUT to allow QUT to use that work for educational, research, and commercialisation purposes and make it available via its institutional repository ([Open Access for QUT Research Outputs \(Including Theses\) Policy](#)); and
- grants each staff member a non-exclusive, royalty free, perpetual, irrevocable, world-wide transferable right to use, adapt or modify their scholarly works.

(9) In appropriate circumstances, QUT will sign documents to more fully record the staff member's ownership of the right of publication of the copyright in a scholarly work and QUT's non-exclusive licence to that work.

## Section 6 - Intellectual Property in QUT Education Resources

(10) In line with the Ownership of Intellectual Property generated by Staff above, QUT owns the intellectual property in QUT education resources (including online education resources). This ensures the University has the unrestricted ability to use QUT education resources for its teaching, research and training responsibilities.

(11) QUT consents to the use of QUT education resources by staff to fulfil their teaching, research and training responsibilities at QUT. This use does not include the use for commercial purposes outside of their role at QUT, unless approved otherwise by the Provost, nor does it involve a transfer of ownership of QUT intellectual property. Commercialisation of QUT education resources is performed through QUTeX.

(12) Unless subject to confidentiality or separate legal constraint, QUT recognises that staff may personally use knowledge they have developed in the course of their employment at QUT, once that employment ceases. That right does not extend to the reproduction of QUT education resources unless released under a separate license.

(13) Guidelines for licensing of QUT education resources as open education resources or under another types of non-monetised licences are approved by the Deputy Vice-Chancellor and Vice-President (Academic), and this is to be undertaken according to the [Open Educational Resources Policy](#).

## Section 7 - Intellectual Property Generated by Students

(14) Students own the intellectual property that they generate, when solely created, or a share of intellectual property, when jointly created.

(15) In order to participate in certain projects, in particular, where the project is externally funded or where the project has clear commercialisation potential or objectives, students may need to assign their interest in the intellectual property. Where the student is a higher degree research student, the research thesis principal Supervisor is responsible for identifying circumstances when the assignment of student intellectual property is appropriate. Where a student is undertaking coursework, the Unit Coordinator is responsible for identifying circumstances when the assignment of student intellectual property is appropriate.

(16) An assignment of student intellectual property:

- a. will not extend to copyright in the student's thesis (the student will retain ownership of the copyright in the thesis);
- b. will not unreasonably impede the student submitting a thesis or assessment items for examination and assessment or otherwise prevent them from completing the requirements for the award of a degree;
- c. will provide for a student to be eligible to become a creator and/or a contributor along with other QUT creators and/or contributors, and if so, to receive (subject to third party arrangements) a share of net commercialisation revenues; and
- d. will require the student to observe any obligations of confidentiality in relation to the project.

(17) To protect student interests, and in recognition of the different considerations which apply to student intellectual property, a Student Intellectual Property Protocol ([Student IP protocol](#)), approved by the Head of Research Portfolio and the Vice-President (Business Development), sets out the mechanisms to implement these principles.

(18) There is no obligation on the student to assign their intellectual property to complete their study.

(19) Data generated in the course of QUT research projects is generally owned by QUT.

(20) In order to participate in certain work integrated learning (WIL) activities, students may be requested to assign or licence their intellectual property to industry partners. The [Work Integrated Learning Policy](#) and [Work integrated learning protocol](#) (QUT staff access only) provides further details.

### **Licensing of Students' Scholarly Works and Theses**

(21) Students grant QUT a perpetual, worldwide, royalty-free, non-exclusive licence to communicate peer-reviewed articles via the institutional repository and library ([Open Access for QUT Research Outputs \(Including Theses\) Policy](#)).

(22) Students grant QUT a perpetual, worldwide, royalty-free, non-exclusive licence to communicate their submitted thesis via the digital repository and library.

## **Section 8 - Intellectual Property created by visitors (including Adjunct, Conjoint and Honorary Roles)**

(23) Where intellectual property of commercial value is brought to QUT or it is foreseen that commercially valuable intellectual property will be generated by a visitor (that is, any person other than a staff member or student who takes part in any research or scholarly activity at QUT, including a person holding an adjunct, conjoint or honorary role at QUT), ownership and rights relating to intellectual property, should be resolved through negotiation between QUT and the visitor or other third parties such as the visitor's employer before the visit or appointment commences at QUT. This process should be initiated by QUT and may necessitate negotiation between QUT and may necessitate negotiation between QUT and the owner of the intellectual property.

(24) Prior to commencement, QUT will usually expect visitors to assign intellectual property rights to QUT where:

- a. significant QUT resources (access to laboratories, e-Research platforms or research infrastructure or support (academic, technical or professional)) will be used;
- b. the work could be used for developing or delivering QUT courses or training (including online courses);
- c. the work is created as part of an externally funded project or activity that necessitates QUT owning or assigning the intellectual property arising from that project or activity;
- d. the work is created in collaboration with QUT staff (QUT staff assign their intellectual property to QUT as a matter of law in the ordinary course of employment, and students voluntarily assign their rights prior to becoming engaged in certain projects and activities); and
- e. the work will be generated using or incorporating existing QUT material or QUT intellectual property.

(25) This process is outlined in the Visitor Intellectual Property Protocol ([Visitor IP protocol](#)).

## **Section 9 - Commercialisation and Commercialisation Revenue**

### **Obligations of Creators and Contributors**

(26) All creators of and contributors to QUT intellectual property with commercialisation potential must identify, keep confidential, be involved in and facilitate the commercialisation of intellectual property. In particular, all have a specific duty to fully disclose QUT intellectual property with potential commercial value, to the relevant Executive

Dean in the case of education resources or to the Business Development portfolio in the case of other QUT intellectual property.

### **Commercialisation of QUT Intellectual Property (Education Resources)**

(27) Any commercialisation of QUT education resources will be done by QUT as determined by the Provost or nominee.

(28) Any distribution to creators and contributors from net commercialisation revenue received from commercialisation of education resources will be determined by the Provost or nominee.

### **Commercialisation of QUT Intellectual Property (other than Education Resources)**

(29) Commercialisation of QUT intellectual property (other than education resources) will be pursued through the Business Development portfolio, which has the specific function of protecting and commercialising intellectual property developed at QUT (other than as noted above) and supporting creators in the recognition and identification of commercialisable intellectual property. Staff are not permitted (in their private capacity) to protect intellectual property developed in the course of their employment at QUT.

(30) In the absence of any other agreement reached between the relevant parties the University will ensure that net commercialisation revenue (excluding that derived from the commercialisation of education resources) is distributed as follows:

- a. one third between all of the creators and contributors; and
- b. two thirds to the University centrally.

(31) The Vice-President (Business Development) will determine the proportionate distribution of revenue among the creators and contributors.

(32) Subject to any existing agreements regarding revenue distributions, this Policy will apply in relation to all net commercialisation revenue received by QUT after this Policy comes into effect, including under agreements made before this Policy comes into effect. Distribution to a contributor under this Policy shall not be affected by the death, resignation or retirement of the contributor.

(33) The [Commercialisation IP protocol](#) and [Commercialisation Revenue Protocol](#), approved by the Vice-President (Business Development), set out the obligations of creators and contributors, set out the mechanisms to implement these principles and define the commercialisation expenses, revenue and net commercialisation revenue which are taken into account in determining the revenue to be distributed.

## **Section 10 - Transfer of Rights**

(34) Decisions on the transfer of QUT rights to creators (outgoing) and of third party rights to QUT (incoming) will be managed in accordance with the Transfer of Rights Protocol (QUT staff and student access only) approved by the Vice-President (Business Development).

(35) Where the University determines it will not further pursue commercialisation of QUT intellectual property, the Vice-President (Business Development) may decide to grant rights to creators, subject to any contractual obligations to a third party.

(36) This decision to not further pursue commercialisation will be taken after assessing the commercialisation prospects for the intellectual property. This decision by the Vice-President (Business Development), may only be made where:

- a. there has been full disclosure by the creators regarding the intellectual property;
- b. the creators have fully cooperated with the assessment of the intellectual property by the University; and
- c. there has been consultation with the relevant Faculty Executive Dean.

(37) In general, the transfer of rights to creators will not be considered where:

- a. a determination is made that the intellectual property requires further work before a proper assessment of commercialisation prospects; or
- b. where there are significant negative impacts on future QUT research activities or the interests of other creators and/or contributors.

(38) QUT may, at its option, impose a condition requiring the payment of a royalty to QUT by the creators in the event of future successful commercialisation outcomes.

## Section 11 - Moral Rights

(39) The moral rights of the creator of works as specified in the [Copyright Act 1968](#) (Cth) are, in summary:

- a. the right of attribution of authorship in respect of the work;
- b. the right not to have authorship of the work falsely attributed; and
- c. the right of integrity of authorship in respect of the work.

(40) QUT shall take reasonable steps to respect moral rights and to ensure that others respect moral rights. However, QUT is not obliged to take any action if the moral rights of authors are infringed.

(41) QUT recognises that staff and students may retain moral rights in copyright works owned by QUT and may, in appropriate circumstances, ask creators to consent to certain uses of their work, where moral rights may be affected.

(42) Further information on moral rights is available in the Moral Rights Guidelines.

## Section 12 - Traditional Knowledge

(43) Where the creation of QUT intellectual property involves the traditional interests or property of Aboriginal and Torres Strait Islander peoples and/or the use of traditional knowledge, QUT will take all reasonable steps to consult with the relevant Aboriginal and Torres Strait Islander groups and communities to ensure that any decisions taken on the protection, development and commercialisation of that intellectual property conforms with relevant Aboriginal and Torres Strait Islander protocols and ethical guidelines.

## Section 13 - Dispute Resolution

(44) Determinations on matters relating to this [Policy] are made by the Vice-President (Business Development).

(45) A person who does not agree with an intellectual policy determination, action or inaction on a matter relating to this Policy must in the first instance notify the Vice-President (Business Development) in writing of the dispute. The Vice-President (Business Development) will respond to that notice promptly.

(46) If the concerned person is dissatisfied with the reply (or if the reply is not timely) the person should advise the Vice-Chancellor and President in writing of the unresolved dispute.

(47) The Vice-Chancellor and President (or the Vice-Chancellor and President's nominee) shall meet with the person and the Vice-President (Business Development) normally within five (5) working days from the date of being advised in writing of the unresolved dispute.

(48) Prior to the meeting, the Vice-Chancellor and President shall advise the person of their right to be accompanied by a representative at that meeting. A representative for the purposes of this Policy means a person chosen by the affected staff member to assist or represent them. At the choice of the staff member this person may be a union officer or official. The representative excludes a person who is currently practicing as a solicitor or barrister.

(49) The Vice-Chancellor and President (or nominee) may seek assistance in investigating a dispute, as appropriate. That advice may be sought from:

- a. the Business Development portfolio on matters relating to exploitation or commercialisation of QUT intellectual property; or
- b. a panel of up to 3 people, to report on matters raised by the dispute. This panel will be composed of such persons, from within and external to QUT, who by reason of their collective skills and expertise are able to consider the specific issue raised, and provide advice to the Vice-Chancellor and President (or nominee), as applicable.

(50) The Vice-Chancellor and President shall respond to the written notice of dispute within thirty working days of receipt of the notice or shall inform the person of an alternative timeline for resolution. The final response of the Vice-Chancellor and President to the written notice of dispute shall conclude the matter.

## Section 14 - Breaches of the Policy

(51) Any breach of this [Policy or associated protocols by a staff member may be subject to disciplinary action in accordance with QUT's provisions on [Disciplinary Action for Misconduct and Serious Misconduct Policy - Senior Staff](#), or the relevant [Enterprise Agreement for academic or professional staff](#).

(52) Any breach of this Policy or associated protocols by a student may be subject to disciplinary action in accordance with QUT's [Management of Student Misconduct Policy](#).

## Section 15 - Conflict of Interest

(53) The management of any potential conflict of interest shall be undertaken in accordance with QUT's [Conflict of Interest Policy](#).

## Section 16 - Definitions

| Term                       | Definition   |
|----------------------------|--|
| Commercialisation Expenses | Means the expenses incurred by QUT in the production, development, protection, marketing and commercialisation of QUT intellectual property.   |
| Commercialisation Revenue  | Means the gross cash revenue received by QUT from the commercialisation of QUT intellectual property and does not include payments pursuant to a research or consulting agreement or payments used to subscribe for equity in a company. |
| Contributor                | Means any other staff member, student or visitor who has substantially assisted with the development of QUT intellectual property other than a creator, as determined by the Vice-President (Business Development).                      |

| Term                          | Definition   |
|-------------------------------|--|
| Creator                       | Means a staff member, student or visitor who creates QUT intellectual property, and includes inventors of patentable subject matter, authors of works and makers of other subject matter subject to copyright and designers of industrial designs.   |
| Intellectual Property         | Under this Policy covers registrable and non-registrable intellectual property rights and proprietary knowledge such as confidential information, know-how and trade secrets.  |
| Net Commercialisation Revenue | Means commercialisation revenue less commercialisation expenses in relation to a particular item or related items of intellectual property.  |
| QUT Intellectual Property     | Is intellectual property owned by, assigned or licensed to QUT. This includes intellectual property created by staff during their course of employment at QUT or assigned to QUT by staff, students, visitors or third parties.  |
| Scholarly Works               | Are QUT intellectual property in the form of articles (refereed or un-refereed), books or book chapters, manuals, musical compositions or creative writing, or any digital or electronic version of these. Computer programs, education resources or administration material are not treated as scholarly works under this Policy. |

## Section 17 - Delegations

(54) Refer to [Register of Authorities and Delegations](#)F (C040, C041, C055, C056, C057, C171, VC012) (QUT staff access only).



## Status and Details

|                           |  |
|---------------------------|--|
| <b>Status</b>             | Current  |
| <b>Effective Date</b>     | 19th August 2021   |
| <b>Review Date</b>        | 1st September 2024   |
| <b>Approval Authority</b> | QUT Council  |
| <b>Approval Date</b>      | 19th August 2021   |
| <b>Expiry Date</b>        | Not Applicable   |
| <b>Policy Owner</b>       | Kate Taylor<br>Executive Director, Industry Engagement             |
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