



Procedure no. B-P138

**Title: Intellectual Property Procedure**

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**Responsible Officer: Manager Library Services**

**Authorising Officer: Group Manager Education Support**

**Review: Annual (8<sup>th</sup> April 2020)**

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## INTELLECTUAL PROPERTY PROCEDURE

### 1. PURPOSE

The purpose of this Procedure is to clarify the rights and obligations of all parties with respect to Intellectual Property.

### 2. SCOPE

This Procedure encompasses Intellectual Property created within the Institute when a Staff member or student undertakes the making of, discoveries or inventions; writes articles or books; writes computer software; composes music; writes a play; makes a work in multi-media format; creates a work of art; writes teaching materials or manuals; and design questionnaires or forms, but not limited to these examples.

For the purposes of this Procedure 'Intellectual Property' means and includes:

- copyright protected under the Copyright Act, 1968 in literary works (including computer programs), dramatic works, musical works, artistic works, sound recordings, films, television and sound broadcast and recordings, and published editions as defined in the Copyright Act;
- circuit layouts protected under the Circuit Layouts Act 1989;
- designs registered or registrable under the Designs Act 2003;
- patents registered or registrable under the Patents Act 1990;
- plant varieties registered or registrable under the Plant Breeder's Rights Act 1994;
- trade marks registered or registrable under the Trade Marks Act 1995 and trademarks or names protected at common law or under the Trade Practices Act 1975;
- research results or inventions, which are maintained as a commercial secret rather than being registered or otherwise protected by relevant legislation;
- information in Institute databases or collections, which may or may not be classed as literary works, the development and/or maintenance of which as part of their normal duties may be the responsibility of an individual or a joint activity of several individuals or departments;

- works developed for teaching purposes, including but not restricted to, study guides, laboratory manuals, electronic courseware, radio and television broadcasts, audio visual materials and the like which have been developed to further the Institute's teaching and training function;

### 3. DEFINITIONS

This Procedure describes the circumstances under which the Institute is able to determine its rights to ownership of Intellectual Property.

In this Procedure unless the contrary intention is specified:

**'Originator'** means an author, creator or inventor of work or subject matter in which Intellectual Property may or does subsist.

**'Institute'** means Goulburn Ovens Institute of TAFE or associated business names

**'Staff member'** means a person who is employed by the Institute, whether full-time, part-time, contract, sessional or casual.

**'Student'** means any person whose current enrolment application at the Institute has been authorised and accepted.

**'Third Party'** means an individual or contractor who is not a Staff member and who creates or contributes Intellectual Property in the course of their work or research with the Institute; and has not assigned their Intellectual Property to the Institute.

### 4. RESPONSIBILITIES

#### 4.1 Directors are responsible for:

- Assessing external requests for permission to use Institute materials from within their Division, in consultation with the section that created these materials and deciding outcome of request
- Monitoring staff participation within their area in Intellectual Property sharing groups (focus groups, working parties) to ensure protection of Institute Intellectual Property

#### 4.2 The Manager Library Services is responsible for:

- developing, reviewing and implementing a Procedure dealing with Intellectual Property
- will take reasonable steps to ensure the Procedure is communicated to, and where required, explained to, staff and students
- maintain a central register of all Institute Intellectual Property and where required restrict access to Section submitting works

#### 4.3 Staff members are responsible for:

- being familiar and compliant with all relevant Intellectual Property legislation as outlined at the beginning of this Procedure, Licensing and Agreements
- ensuring all Intellectual Property owners are acknowledged where use of their work in Institute publications/works
- acknowledging Intellectual Property ownership which resides with the Institute with a minimum of including a statement of, © GOTAFE {year} located on each page of works, or refer to the GOTAFE course proformas
- ensuring completion of **GOTAFE Services Contract (FFI-17)** with any Third Party consultancies/contractors prior to commencement of work
- confidential information, trade secrets and know how will not be disclosed without prior permission from the CEO
- automatically granting a nonexclusive license to the Institute when they use their privately owned Intellectual Property within the Institute
- ensuring materials that are modified from another section respect moral rights and that all Third Party Intellectual Property (trademarks, text, images, etc.) that are part of the document have permission for use in another section before use
- ensuring Institute Intellectual Property hosted outside Institute network (Wiki, Google docs, DVD's, cloud computing.) are backed up onto Institute drives, are secure from public access, and viewable by direct supervisor
- ensuring that Institute trademarks are not used for anything but Institute business or altered in any way
- will ensure that Sharepoint will be the storage or reference point of all Institute Intellectual Property

#### 4.4 Students are responsible for:

- being familiar and compliant with Institute Policies and Procedures

### 5. PROCEDURE

#### 5.1 Ownership of Intellectual Property

- 5.1.1 Except as otherwise agreed in writing Intellectual Property generated by a GOTAFE Staff member in the course of employment is wholly owned by the Institute. The Institute does not claim Intellectual Property generated by a Staff member outside their employment other than when Institute resources and facilities are used.
- 5.1.2 Where the Originator is the owner of Intellectual Property created under “the direction and control” of the Institute, the Originator must grant the Institute a non-exclusive and irrevocable licence to use the Intellectual Property for teaching and research without the payment of any fees.
- 5.1.3 If Intellectual Property is jointly created by a Staff member and: a Student(s), and/or a Third Party then, subject to written agreement to the contrary, the Intellectual Property will be jointly owned by the Institute and the student(s) and/or the Third Party (Joint Intellectual Property).
- 5.1.4 Students will own the Intellectual Property that they create in the course of their studies and/or research at the Institute, unless a substantial use of Institute resources (staff assistance, manuals, or equipment/resources) were used in the development. An exception to this rule is if there is an alternative agreement in place before commencement of the project.

5.1.5 If Institute Intellectual Property arises out of or in connection with a project that is the subject of an agreement with a Third Party which provides for the ownership of such Intellectual Property and the Institute has agreed in writing to the provisions of that agreement. The provisions of that agreement will govern authorship of all rights in the Intellectual Property.

#### 5.1.6 Moral Rights

Where the Institute publishes or causes to be published a copyright work owned by the Institute without adaptation or modification, the Institute shall ensure that the authorship is acknowledged in the publication.

## 5.2 Responsibilities of originators

5.2.1 An Originator of Intellectual Property must promptly report in writing to the Institute, any invention or other work which is a patent worthy discovery or invention or Intellectual Property of commercial value.

Information should include:

- details of any pre-existing Intellectual Property used in creating the Intellectual Property;
- whether any person/organisation other than the Institute claims any entitlement or interest in the Intellectual Property;
- details of any Institute resources used to create the Intellectual Property;
- details of any known existing or partial use of commercial exploitation of the Intellectual Property; and
- the details of any provisional patent application that may have been filed with regard to Intellectual Property (**Appendix – Intellectual Property Register Form**)

5.2.2 There is an obligation upon the Originator to consult with the Institute about what needs to be done to protect Intellectual Property which is likely to be commercially significant, and how best to facilitate that commercialisation process.

5.2.3 An Originator must not apply for any form of protection for, or commercially exploit, any Intellectual Property which is the property of the Institute, without the prior approval of the Institute at Director level.

5.2.4 Where the Institute owns Intellectual Property which may be the subject of a patent application or subject to protection of confidential information, the Originator may not disclose it or information about it, other than reasonable disclosure to persons employed by or contracted to the Institute, without prior approval of the Institute.

5.2.5 Originators of Institute Intellectual Property produced for use by the Institute are responsible for ensuring that the Institute is not infringing upon the Intellectual Property rights of others in the reproduction and use of those resources.

5.2.6 New Intellectual Property is to be produced using the Institute courseware proformas found in Policy Central.

### 5.3 Commercialisation of Intellectual Property

The Institute may directly or through an external organisation, use, publish, manufacture, licence, exploit, market, or otherwise use or dispose of the Institutes Intellectual Property for the purpose of generating financial or other commercial return to the Institute.

The Originator agrees that the Institute will be deemed to have an irrevocable authority to act on his or her account and to execute such documents as the Institute deems necessary for the purposes of commercial use of Intellectual Property.

The Originator shall provide all reasonable assistance in this process by, for example, providing information promptly on request, attending meetings with potential licensees and advising on further development.

Costs associated with patents, licences etc. are to be borne by the Institute.

### 5.4 Distribution of Benefits derived from Intellectual Property

Where a commercial benefit is derived from Intellectual Property owned by the Institute, no royalty is payable to Originators for material supplied or sold by the Institute.

Where any Third Party Intellectual Property is contained within material, distribution of any commercial benefits must be distributed according to the terms negotiated under the Consultancy/Contractor Agreement.

## 6. BREACH OF INTELLECTUAL PROPERTY PROCEDURE FOR INSTITUTE STAFF AND STUDENTS

Any breach of this Intellectual Property Procedure could result in disciplinary action being taken against an individual Staff member or Student according to the Institute's Discipline Policy or Student Conduct Procedure with potential outcomes ranging from official reprimand to summary dismissal.

## 7. DOCUMENTATION

- [Copyright Procedure – E9-P30](#)
- [Consultancy and Contractor Procedure – B23-P40](#)
- [Consultancy and Contractor agreement – FFI-10](#)
- [Discipline Policy for PACCT Staff – CS34](#)
- [Discipline Procedure for PACCT Staff – CS34-P94](#)
- [Discipline Policy for Employees Other Than PACCT Staff – CS11](#)
- [Discipline Procedure for Employees Other Than PACCT Staff – CS11-P45](#)
- [Employee Code of Conduct Policy – POHR14](#)
- [Electronic Communications Procedure for Staff – CS27-P61](#)
- [Student Code of Conduct Procedure – E6-P27](#)
- [GOTAFE Services Contract– FFI-17](#)

- [Policies and Procedures Staff Acknowledgement Form – FOD-03](#)
- Circuit Layouts Act 1989 (Cth)
- Copyright Act 1968 (Cth) including amendments
- Designs Act 2003 (Cth)
- Patents Act 1990 (Cth)
- Plant Breeder's Rights Act 1994 (Cth)
- Trade Marks Act 1995 (Cth)
- Trade Practices Amendment Act 2001 (Cth)
- Appendix
  - [Intellectual Property Register \(Attached\)](#)

## Intellectual Property Register

Send completed form to Manager Library Services, Shepparton Campus

- **Intellectual Property details (Register No \_\_\_\_\_/06) As attached**

Title of work:  
 Course code:  
 Access limitations: All GOTAFE / Division / Section (please circle)

- **Your details**

Name: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Section: \_\_\_\_\_ Date: \_\_\_\_\_

*(I declare that all information provided is true and accurate at time of completion)*

- **History of Intellectual Property (Running record of input – Moral rights)**

Originator/Author {insert name & changes}	Date
*Original author unknown *Anne Ritter (Manager Library Services) Changes: Completed rewritten, Section 2 no changes	1 <sup>st</sup> November, 2006 2 <sup>nd</sup> November, 2006

- **Third Party Intellectual Property**

Source	Item	Location	Copyright status
(author/editor/producer/Publisher/ publication details/production date/ URL's etc.	(figure number, section heading, CD location (folder) etc.	Page number, etc.	To be provided by Manager Library Services & submitting officer
<b>Example:</b> Smith, J.(1964) <u>Life of a budgie</u> New York, Thompson	Image 43	Page 43	Out of Print Not available for separate purchase Or permission register no3

- **Consultancies OR Contractors**

- **Contract Agreement – FFI017\_Online** (to be used when the Institute is providing services to another individual or organisation)
- **Consultancy/Contractor Agreement – FFI010\_Online** (to be used when organisations are providing services to the Institute)

Details:

Contract No. \_\_\_\_\_ Date: \_\_ / \_\_ /2006

Intellectual Ownership details: Institute and/or Third Party: \_\_\_\_\_

Office use only:

Permission register details Y/N \_\_\_\_\_ Register Number: \_\_\_\_\_

- **Institute Resources used in creation of Intellectual Property**

**Hardware/software:** {list}  
**Other staff:** {names}  
**Equipment:** {list eg. Labs & equip}

- **Commercial exploitation**

Are there any Third Party materials requiring clearance for commercial exploitation?

Details:  
 Location of records of development of Intellectual Property  
 Details:

- **Patents / Trade Mark Applications**

Details:  
 Date of submission of application: \_\_ / \_\_ / \_\_\_\_  
 Submitted by: {insert name}