

STATUTE 8.2-INTELLECTUAL PROPERTY

1. (1) In this Statute, unless the contrary intention appears-

"circuit layout" means a circuit layout as defined by the Circuit Layouts Act 1989 (Cth).

"commercial exploitation" means the application, publication, development, use, assignment, licensing, sub-licensing, franchising, exploitation or other utilisation of intellectual property for the use of generating financial or other commercial gains.

"computer program" means a computer program as defined in the Copyright Act 1968 (Cth).

"confidential information" means information of any kind which, because of its character, is capable of protection by contractual or equitable means, and includes information of a valuable commercial or technical character.

"copyright work" means any "artistic work", "literary work", "dramatic work", "musical work", "sound recording", "cinematograph film", "television broadcast", "sound broadcast" or "published edition of work", as those terms are defined by the Copyright Act 1968 (Cth).

"create" means produce, invent, develop, generate, discover, make, originate or otherwise bring into existence, and "created", "creation" have the corresponding meanings.

"Council" means the University Council, established under the University of Ballarat Act 1993 (Vic).

"design" means a design as defined by the Designs Act 1906 (Cth).

"eligible layout" means an eligible layout as defined by the Circuit Layout Act 1989 (Cth).

"intellectual property" means all intellectual and industrial property, including copyright work, registered and unregistered trade marks or other insignia of origin, design, computer program, circuit layout, eligible layout, patent, plant variety, discovery, invention, confidential information, know-how, trade secret, business method, procedure or improvement and any related right and all other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.

"invention" means an invention (whether or not qualifying for registration) under the Patents Act 1958 (Cth) or the Patents Act 1990 (Cth).

"literary work" means a literary work under the Copyright Act 1968 (Cth) and includes a computer program.

"patent" means a patent within the meaning of the Patent Act 1958 (Cth) or the Patents Act 1990 (Cth) and includes a standard patent or a petty patent.

"person" includes a body politic or corporate as well as an individual.

"plant variety" means a plant variety whether or not qualifying for a grant under the Plant Variety Rights Act 1987 (Cth).

"postgraduate research student" means any student enrolled in a postgraduate research course of the University.

"research" means activities, including consultancy, that involve generation and/or application of knowledge, know-how and/or intellectual property.

"resources" includes administrative support and other human resources.

"staff member" means any employee of the University and any member of the Professoriate, Visiting Teaching or Research staff and Academic Associates appointed under the University Statutes and Regulations.

"student" means any student enrolled in a course of the University that is not a postgraduate research student.

"trade mark" means a trade mark as defined by the Trade Marks Act 1955 (Cth) whether or not registered under that Act.

"Vice-Chancellor" means the Vice-Chancellor or an officer authorised by the Vice-Chancellor to act on his or her behalf for the purpose of this Statute and the Regulations made under this Statute.

- (2) A reference in these Statutes to a Commonwealth Act includes a reference to the Act as amended or replaced from time to time or if the Act is repealed and not amended or replaced, the Act as in force immediately before it is repealed.

Staff Members

2. Subject to section 5-

- (1) Intellectual property created by a staff member-
- (a) in pursuance of the staff member's employment, scholarship or research with the University; or
 - (b) in respect of the creation of which the University has contributed other University owned intellectual property or has made a specific contribution of funding, resources, facilities, apparatus or supervision

will be owned by the University.

- (2) The University will grant a non-exclusive, royalty free licence to reproduce, publish, perform, broadcast, disseminate and otherwise use for teaching and research purposes at the University, any intellectual property created by a staff member in accordance with section 2(1) which does not have any potential for commercial exploitation. The staff

member will, prior to any use pursuant to the licence granted under this clause, obtain written notification from the University that the intellectual property does not have any potential for commercial exploitation.

- (3) The University will negotiate with a staff member who creates any intellectual property in accordance with section 2(1) and which has any potential for commercial exploitation the apportionment of any net profit or other share derived from any commercial exploitation of the intellectual property in accordance with the Regulations. Nothing in this section places any obligation on the University to commercially exploit the intellectual property, which the University may or may not deal with in its absolute discretion.

Postgraduate Research Students

3. Subject to section 5-

- (1) Subject to sub-section 3(4), intellectual property created by a postgraduate research student-
 - (a) in pursuance of the postgraduate research student's studies, scholarship or research with the University; or
 - (b) in respect of the creation of which the University has contributed other University owned intellectual property or has made a specific contribution of funding, resources, facilities, apparatus or supervision

will be owned by the University.

- (2) The University will grant a non-exclusive, royalty free licence to reproduce, publish, perform, broadcast, disseminate and otherwise use for study, scholarship or research purposes at the University any intellectual property created by a postgraduate research student in accordance with section 3(1) but which does not have any potential for commercial exploitation. The postgraduate research student will, prior to any use pursuant to the licence granted under this clause, obtain written notification from the University that the intellectual property does not have any potential for commercial exploitation.
- (3) The University will negotiate with a postgraduate research student who creates any intellectual property in accordance with section 3(1) and which has any potential for commercial exploitation the apportionment of any net profit or other share derived from any commercial exploitation of the intellectual property in accordance with the Regulations. Nothing in this section places any obligation on the University to commercially exploit the intellectual property, which the University may deal with or otherwise in its absolute discretion.
- (4) The postgraduate research student will own copyright in his or her thesis. The University may delay publication of, and limit public access to, a thesis containing confidential information for a reasonable period and require examination in confidence of such theses.

Students

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4. (1) Subject to sections 4(2) and 5, any intellectual property created by a student in pursuance of the student's studies, scholarship or research with the University will be owned by the student.
- (2) Any intellectual property created by a student in collaboration with a staff member and/or postgraduate research student-
- (a) in pursuance of the student's studies, scholarship or research with the University; or
- (b) in respect of the creation of which the University has contributed other University owned intellectual property or has made a specific contribution of funding, resources, facilities, apparatus or supervision
- will be owned by the University.
- (3) The University will grant a non-exclusive, royalty free licence to reproduce, publish, perform, broadcast, disseminate and otherwise use for study, scholarship or research purposes at the University any intellectual property created by a student in accordance with section 4(2) but which does not have any potential for commercial exploitation. The student will, prior to any use pursuant to the licence granted under this clause, obtain written notification from the University that the intellectual property does not have any potential for commercial exploitation.
- (4) The University will negotiate with a student who creates any intellectual property in accordance with section 4(2) and which has any potential for commercial exploitation the apportionment of any net profit or other share derived from any commercial exploitation of the intellectual property in accordance with the Regulations. Nothing in this section places any obligation on the University to commercially exploit the intellectual property, which the University may deal with or otherwise in its absolute discretion.

Third Party Agreements and Intellectual Property Ownership and Protection

5. (1) The Vice-Chancellor may enter into an agreement with any person in relation to the creation, ownership, licensing, use or commercial exploitation of intellectual property.
- (2) An agreement made under sub-section 5(1) prevails over any provision in this Statute, or Regulations made under this Statute, which is inconsistent with the agreement and intellectual property will be owned in accordance with the agreement, subject to sections 3(4) and 5(6).
- (3) A staff member or postgraduate research student or student must, if required by the Vice-Chancellor, execute any document or do anything reasonably required by the University in relation to intellectual property created by the staff member or postgraduate research student or student in accordance with sections 2(1), 3(1) or 4(2) respectively to demonstrate, prove or assign intellectual property ownership to any person or secure intellectual property protection.

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- (4) Subject to sub-section 5(2), a staff member, postgraduate research student or student will not-
- (a) disclose or use intellectual property owned by the University if the disclosure or use would prejudice the protection, enforcement or commercial exploitation of the intellectual property (excepting reasonable disclosure to persons employed by or contracted to the University where the intellectual property relates to a computer program); or
 - (b) apply for any form of protection for, or commercially exploit or otherwise deal with any intellectual property in a manner inconsistent with the University's rights.
- (5) Subject to sub-section 5(2)-
- (a) the University shall ensure that the staff member or postgraduate research student or student as appropriate is acknowledged as the author, creator or inventor of the intellectual property;
 - (b) all applications (whether in Australia or overseas) for registration of any intellectual property to which this section applies must be in the name of the University.
- (6) Nothing in this section will affect a postgraduate research student's ownership of copyright in his or her thesis. The University may delay publication of, and limit public access to, a thesis containing confidential information for a reasonable period and require examination in confidence of such theses.

Intellectual Property Officer

6. The Vice-Chancellor may appoint an Intellectual Property Officer who shall have the duties, responsibilities and powers conferred by this Statute, or the Regulations made under this Statute, and any authority delegated by the Vice-Chancellor.

Intellectual Property Committee

7. The Council may establish an Intellectual Property Committee which shall have such composition, function and powers as are determined by this Statute or the Regulations made under this Statute.

Regulations

8. (1) The Council may at any time make Regulations, not inconsistent with this Statute, prescribing all matters which by this Statute are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Statute and by later Regulation revoke or amend any such Regulations.
- (2) Regulations made under this Statute shall be promulgated by being exhibited on the official notice boards of the University and after being so promulgated shall remain so exhibited for at least fourteen days during which time the University is operating.

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