

# Intellectual Property Policy



## Purpose/objective

The purpose of this policy is to encourage innovation and scholarship while clearly articulating the conditions governing the Australasian Academy of Higher Education's ownership of the IP created by its employees.

## Scope

This Policy applies to all employees and students at the Australasian Academy of Higher Education (AAHE). It does not apply to independent contractors.

## Definitions

<b>Intellectual property (IP)</b>	Means all form of intellectual property rights throughout the world including but not limited to present and future copyright, registered and unregistered trademarks, patent, design, rights, trade mark, any other intellectual or industrial property rights, discovery, invention, secret process or improvement in procedure of any kind whether arising from statute, under common law or in equity and confidential information including know-how and trade-secrets
<b>Course of employment</b>	Refers to any work that is undertaken or incidental to that outlined in one's employment contract, duty statement, job description, or work agreement. Work may be inferred as being in the Course of Employment by reason of an AAHE title, resources or by direct derivation from activities or positions within AAHE.
<b>Economic rights</b>	Economic rights allow the owners of IP to derive financial benefit from the use of the works of AAHE's employees.
<b>Moral rights</b>	Moral rights are separate from economic rights. Moral rights allow authors and creators to take certain actions to preserve and protect their link with their work. Creators have three fundamental moral rights: <ol style="list-style-type: none"><li>1. The right to be attributed (or credited) for their work;</li><li>2. The right not to have their work falsely attributed; and</li><li>3. The right not to have their work treated in a derogatory way.</li></ol>
<b>Scholarly works</b>	Refers to any article, book, thesis, creative writing or like publication or any digital or electronic version of these works that contains material based on the creator's scholarship, learning or research. It does not include work that is teaching material.
<b>Teaching materials</b>	Means all versions, digital or otherwise, of information, documents and materials created or used for the purpose of teaching by AAHE, including the permitted adaptation or incorporation of the scholarship, learning or research of the relevant member of academic staff. Teaching materials exclude scholarly works. Teaching materials include, but are not limited to: <ul style="list-style-type: none"><li>• lecture notes that are made available to students;</li><li>• computer-generated presentations;</li></ul>

	<ul style="list-style-type: none"> <li>• course guides;</li> <li>• PowerPoint slides;</li> <li>• examination scripts</li> <li>• examination marking guides;</li> <li>• course databases;</li> <li>• websites;</li> <li>• multimedia-based courseware.</li> </ul> <p>Any works that may be considered to be both scholarly work and teaching material will be treated as teaching material for the purposes of this policy.</p>
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## 1. Policy

- 1.1 AAHE recognises the importance of facilitating an academic environment that is committed to the advancement and innovation of knowledge. As a higher education provider, AAHE is involved in the creation and dissemination of IP while upholding the laws that ensure the protection of those who develop it.<sup>1</sup>
- 1.2 This policy does not attempt to set out definitively all laws relating to intellectual property (IP). Any clauses within this policy that deal with the law relating to IP are general in nature and should not be relied on as legal advice by any person nor should they be regarded as a substitute for independent legal advice.

## 2. Ownership of intellectual property

- 2.1 AAHE employees, students, visiting scholars and outside collaborators all create (IP) in the performance of their duties.
- 2.2 Unless otherwise agreed in writing (see 2.3e below), AAHE retains ownership of all IP created by its employees in the course of their employment at AAHE.
- 2.3 More specifically, AAHE will own from the time of its creation, and/or assert ownership of and/or entitlement to IP, if that IP is:
- a) created by staff in the course of and within the scope of their employment, noting that AAHE and a staff member may enter into an express agreement in writing about IP ownership or other entitlement
  - b) copyright work created by staff in the course of their employment, except for scholarly works unless it is commissioned by AAHE as part of the employee's duties
  - c) work created by or on behalf of AAHE for the specific use of AAHE
  - d) work commissioned by AAHE
  - e) created pursuant to specific sponsored or contract activities, the ownership of which shall be governed (in whole or in part) by the sponsor's regulations or the terms of the contract.
- 2.4 AAHE is deemed to have been granted by the creator(s) of scholarly works a non-exclusive, royalty-free, and irrevocable license to use the copyright in their scholarly works for research and teaching purposes.
- 2.5 Ownership of the IP confers economic rights over the work(s) on AAHE without impinging on the author's moral rights.

<sup>1</sup> See *Copyright Act 1968* <https://www.legislation.gov.au/Series/C1968A00063>

- 2.6 AAHE acknowledges that ownership of IP can be complicated where part-time employees work across multiple organisations. In such cases, employees are required to disclose their external employment arrangements to AAHE and negotiate their IP rights and obligations with AAHE management. It may be, for instance, that IP is shared by multiple institutions.
- 2.6 AAHE does not seek to claim ownership over any IP created by an employee outside of their employment with AAHE provided that no AAHE resources have been used to generate the IP. If AAHE resources are used then AAHE reserves the right to claim a negotiated percentage ownership of that IP.
- 2.7 Students own the IP created in the course of their studies, except when a student participates in a project that:
- (a) builds upon pre-existing AAHE IP; or
  - (b) is carried out for, or in conjunction with, an external party associated with AAHE, such as in the case of work integrated learning.
- 2.8 AAHE staff, affiliates and students must not claim ownership of indigenous knowledges. Where the creation of IP involves indigenous peoples, all reasonable steps must be taken to consult with the relevant Indigenous groups and peoples to ensure that AAHE conforms with all protocols and ethical guidelines.<sup>2</sup>

### 3 Assignment of authorship

- 3.1 AAHE follows the conventions of attribution of authorship set out in the Authorship Guide, a guide supporting the [Australian Code for the Responsible Conduct of Research](#). Authorship must be based on a substantial contribution to both of the following:
- a) has made a substantial intellectual contribution to the publication, and
  - b) is accountable for the published output.
- 3.2 The senior author must offer authorship to all people, including research trainees, who meet the criteria for authorship listed above. Those offered authorship must accept or decline in writing.
- 3.3 The order of authorship should be a joint decision of all co-authors and should be decided and recorded as early as possible during the project and updated throughout the project. Seniority should not be a consideration in deciding author order. A student should be the first-named author on publications arising out of their thesis where they have had a leading role in the conception and design, or analysis and interpretation of data.
- 3.4 Where there is more than one author, a corresponding author must be appointed who will be responsible for:
- managing the publication output
  - corresponding on behalf of the co-authors
  - maintaining records associated with the authorship agreement (and any agreed changes to the authorship agreement), and maintaining records associated with the publication.

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<sup>2</sup> See AIATSIS ethical guidelines: <https://aiatsis.gov.au/research/ethical-research>

# Intellectual Property Procedure

## 1 Disclosure

- 1.1 AAHE employees must disclose any pre-existing IP or agreements with third parties or any external private work outside of their course of their employment that may be relevant to their intellectual property rights at AAHE. Employees who bring existing IP to AAHE for use in their work with AAHE must disclose the IP and provide evidence of ownership.
- 1.2 An employee can be required to sign an agreement formally to record AAHE's ownership of AAHE Intellectual Property (IP), particularly where the work is patentable or commercialisable.
- 1.3 Where AAHE owns teaching materials or other copyright work created by a staff member, that staff member may request a license to use the IP in their work outside AAHE. AAHE reserves the right to grant a non-exclusive licence on conditions, or not to grant a licence, if it considers that AAHE's interests, including commercialisation of the IP would be adversely affected by such a grant.

## 2 Commercialisation

- 2.1 An AAHE employee who creates any IP reasonably capable of commercialisation and to which AAHE is entitled must, as soon as possible after its creation:
  - report that fact to the Chief Operating Officer (COO); and
  - provide full details of the IP created and the names of the originator(s) in a form prescribed by AAHE through the office of the COO; and
  - provide sufficient details in the disclosure to enable the COO to make an assessment of the value of the IP; and
  - take all reasonable steps to protect the IP pending a decision by AAHE. No public disclosures such as publication or presentations or submissions to journals or conference abstracts should be made unless authorised by the COO.
- 2.2 Where there is any doubt as to whether IP may be capable of commercialisation, it is the responsibility of the originator to seek clarification from the COO.

## 3 Reporting

The COO must report to the CEO:

- all details of IP disclosures
- strategies for commercialisation (where relevant) and IP protections
- the status of any commercial agreements associated with AAHE's IP.

## 4 Protection of AAHE IP

The COO shall be responsible for recommending strategies for the protection of AAHE's IP. Any decision relating to commercialisation will be made on the basis of appropriate legal, financial and commercial advice. Where possible the COO will consult with the originator(s) but shall be under no obligation to do so.

## 5 Copyright compliance

Copyright compliance is managed by the Registrar under the *Copyright Act 1968*. Contractual arrangements under that Act with Copyright Australia Limited allow AAHE to reproduce and communicate copyright material for educational purposes under specific conditions.

## 6 Dispute resolution

- 6.1 If a dispute arises as to the operation of this policy, or as to any matter on which the operation of this policy relies, the CEO will appoint a mediator to assist the parties in resolving the dispute.
- 6.2 If the dispute cannot be resolved through the assistance of a mediator, the CEO will appoint a suitably qualified person to conduct an investigation into the dispute. Such appointment(s) or persons may be external to AAHE and where more than one person is appointed to an investigation one of those persons will be an external appointment.
- 6.3 The person(s) conducting the investigation will act expeditiously and will have access to all persons and relevant information to fully investigate the matter consistent with the principles of natural justice. The investigation may entail gathering evidence and interviewing the parties to the dispute. The parties to the dispute may make submissions in writing to the investigator(s). Confidentiality will be respected at all times during the investigation process, within the constraints of needing to investigate the matter fully.
- 6.4 The outcomes of the investigation together with recommendations will be forwarded to the CEO for consideration. The CEO will review the outcomes but is not bound to accept the recommendation of the investigation. Following receipt of the investigation the CEO shall make a finding on the dispute which shall be in writing and shall be final and binding on all parties to the dispute.

## Related documents and relevant legislation

Copyright Act 1968

AIATSIS Act 1989

Australian Government IP Australia (<https://www.ipaustralia.gov.au/>)

## Document information

**Document owner:** Academic Board

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1	Board of Directors	14/10/21	1/10/23	