



CHRISTIAN HERITAGE COLLEGE

## **POLICY: Intellectual Property**

<b>Policy Group(s):</b>	Group B: Academic – 2: Staff (Ref: A/1009-0211) Related Groups: Group B: Academic – 1: Students Group B: Academic – 2: Staff		
<b>Related Policy:</b>	Code of Conduct Grievance Policy and Procedures for Domestic Students – Academic Grievances Grievance Policy and Procedures for Domestic Students – Non-Academic Grievances Grievance Policy for Overseas Students		
<b>Commencement Date:</b>	October 2009	<b>Review Date:</b>	February 2016

### **POLICY STATEMENT**

#### **Intent:**

This policy establishes the rights and obligations of the staff and students of Christian Heritage College (CHC) as they relate to the conduct of research, scholarly communication and the maximisation of benefits flowing from the creation of intellectual property. CHC is committed to fostering a research culture within which commercialisation, technology transfer and entrepreneurial endeavour are identified aspects. CHC recognises the importance of commercialising intellectual property in the creation of wealth and other benefits that will support its mission.

This policy is formulated to create an equitable balance between the rights of the originators of the intellectual property and the rights and interests of CHC. The maintenance of the principles of “academic freedom” and simplicity of administration are essential elements of this policy.

This policy seeks to protect and respect the moral rights of originators of intellectual property. CHC recognises the right of originators to participate in discussions regarding the commercialisation and use of intellectual property created by them.

**Scope:** The CHC academic community.

*Restrictions:* Nil

*Exclusions:* Nil

#### **Objectives:**

1. To promote and implement the mission of CHC and objectives of CHC’s Strategic Plan.
2. To foster a corporate and community identity and a collegiate environment within CHC.
3. To protect the integrity and welfare of staff and students.
4. To provide incentives for staff and students to develop and apply intellectual activities.

5. To provide staff and students with fair and reasonable recognition and remuneration associated with the commercialisation of intellectual property.
6. To provide a resource for the academic community of CHC and the greater community.
7. To encourage and develop institutional growth, progress and success through ventures with private and public enterprises.
8. To ensure judicious use of public funds where appropriate.
9. To obtain an appropriate return from the provision of CHC facilities, resources and services.

## Policy Provisions:

### 1. General

1.1 Intellectual Property (IP) is a category of property rights recognised under the laws of Australia and can be defined as those rights arising from the output of the human intellect. IP rights arise in relation to certain types of subject matter and those rights can be sold, purchased and licensed. IP includes any proprietary right arising from:

1.1.1 patent for new or improved products or processes – regulated by the *Patents Act 1990 (Cth)*;

1.1.2 copyright for original material in literary, artistic, dramatic or musical works, and in other works that include films, broadcasts, multimedia and computer programs – regulated by the *Copyright Act 1968 (Cth)*;

1.1.3 registered trademarks for words, symbols, pictures, sounds, smells or a combination of these, to distinguish the goods and services of one trader from those of another – regulated by the *Trademarks Act 1995 (Cth)*;

1.1.4 unregistered trademarks used or intended for use in businesses;

1.1.5 design for the shape or appearance of manufactured goods – regulated by the *Designs Act 1906 (Cth)*;

1.1.6 trade secret including know-how, other confidential or proprietary information and background knowledge – Protected by the Common Law;

1.1.7 circuit layout right (computer chips) for the 3-dimensional configuration of electronic circuits in integrated circuit products or layout designs – regulated by the *Circuit Layouts Rights Act 1989 (Cth)*;

1.1.8 information that is subject to an employee's duty of fidelity to the employer;

1.1.9 all other rights resulting from intellectual activity in the commercial, scientific, literary and artistic fields.

For the further examples of IP please refer to *The National Principles of IP Management for Publicly Funded Research*.

1.2 IP is generally regarded as representing '...the property of your mind or intellect.' (IP Australia (2000).

1.3 In the context of CHC supported research and teaching, IP of most relevance would generally relate to patents, copyright and confidential information (through the exchange of valuable information and material). Of these, patents and teaching materials have the greatest

potential for generating commercial income.

1.4 Until further notice the IP Officer will be the Principal of CHC.

## 2. Ownership of Intellectual Property Generated by Staff

2.1 CHC claims ownership of all IP created by a staff member in the course of their employment with CHC. This includes teaching materials, administration materials and computer programs.

2.2 The ownership of IP by CHC is recognised at law and is conditional upon any further agreements between staff and CHC. However, staff may be required to sign any further documents as required by CHC to more fully record CHC's ownership of IP.

2.3 CHC does not own IP created by staff outside the course of their employment.

2.4 If staff bring existing IP to CHC to be used in the course of their employment, at the commencement of their employment staff must disclose the existence of such IP to CHC and provide evidence of ownership at the time of disclosure. Staff should provide by way of evidence:

2.4.1 an inventory of the IP being disclosed; and

2.4.2 all documents relating to the ownership of the IP, including any contracts, licensing agreements or other relevant documents.

2.5 A staff member who creates any scholarly works during the course of their employment with CHC is the right to publish such works except where an agreement to the contrary has been negotiated between CHC and the staff member. the right of a staff member to publish scholarly works is subject to the operation of the *Copyright Act 1968* (Cth).

2.6 Staff members grant CHC without charge a royalty-free, non-exclusive and irrevocable licence to use the IP in those materials for its education, research and academic purposes, and to reproduce and communicate such materials online for non-commercial purposes.

2.7 In the case of teaching materials created by a staff member in the course of fulfilling their employment with CHC, CHC:

2.7.1 will own the copyright and other form of IP vesting in the material;

2.7.2 has the right to use, reproduce, publish, communicate, perform, broadcast, adapt and disseminate that material for its education, research and academic purposes;

2.7.3 will recognise the staff member's moral rights of attribution and integrity and as such, should involve the staff member in consultation regarding 2.7.2 above;

2.7.4 will grant to the staff member without charge a royalty-free, non-exclusive and irrevocable licence to use the IP in those materials (excluding the contribution of others to collaboratively-produced materials) for teaching, research and professional purposes; however such right does not extend to the reproduction of CHC teaching materials;

2.7.5 will ensure the staff member receives a portion of any commercial gain made from the exploitation of materials according to Provision 6; and

2.7.6 asserts the ownership of any third-party material will be governed by any contract between CHC and the third-party.

2.8 If staff teaching materials are used during the course of a staff member's employment at CHC, the staff member grants to CHC a royalty-free, non-exclusive and irrevocable licence to

use staff teaching materials for education, research and academic purposes.

- 2.9 If a staff member creates a computer program in the course of their employment at CHC, CHC will own the copyright and any other form of IP vesting in that work.

### 3. Ownership of Intellectual Property Generated by Students

3.1 Unless there is a written agreement to the contrary, enrolled students at CHC own the IP created by them in pursuit of their studies, and, for the sake of certainty, students own the copyright of their theses. Students grant CHC without charge a royalty-free, non-exclusive and irrevocable licence to use the IP subject to any pre-existing lawful confidentiality agreement binding the student.

3.2 CHC may assert an interest in that IP where:

3.2.1 generation of the IP has involved substantial use of CHC resources and/or services beyond that which is ordinarily provided to students; or

3.2.2 generation of the IP has resulted from use of pre-existing IP owned by CHC; or

3.2.3 the IP forms part of IP generated by a team of staff and students of which the student is directly or indirectly a member; or

3.2.4 the IP has been generated as the result of project specific funding provided or obtained by CHC;

3.2.5 where the student's supervisor makes a contribution to the IP and CHC is entitled to ownership of the IP in the supervisor's contribution and, in such cases, the IP will be jointly owned by the student and CHC; or

3.3 Where CHC asserts an interest under provision 3.2 if the student reasonably considers that the assertion of ownership by CHC is unfair CHC agrees to negotiate on a case by case basis in accordance with the principles of this policy. Any such assertion by CHC will be made upfront.

3.4 Where the student is also a staff member and the subject matter of their study is also the work they undertake in the course of their employment at CHC, CHC will own the IP in accordance with the relevant provisions of this policy.

3.5 Normally CHC would not consider assisting a student to patent an invention or register other IP created by the student unless the student was prepared to assign the patent rights or other IP rights to CHC in accordance with this policy. If a student is a member of a team responsible for a patentable invention, the student is to be considered as a member of staff in the consideration of IP patent rights.

3.6 Provision 3.2 also will apply to visitors undertaking research or other activities at CHC.

3.7 Where CHC asserts or has an interest in the commercial exploitation of IP created by a student, CHC will seek to protect the rights of the student by:

3.7.1 offering a proportion of the commercial returns resulting from the commercial exploitation of the IP as outlined in Provisions 6 and 7;

3.7.2 providing due acknowledgment and attribution; and

3.7.3 offering an input into the development of the IP.

3.8 Where CHC asserts or has an interest in the commercial exploitation of IP generated by a student under Provision 3.2, CHC will ensure:

- 3.8.1 that the claim will not be allowed to interfere with the assessment of the student's academic performance or their academic progression; and
- 3.8.2 that the student is treated fairly in accordance with the provisions of this policy.
- 3.9 Where CHC is the owner of IP created by a student, CHC will assign its rights to the student if:
  - 3.9.1 the IP Officer decides that CHC will not become involved in the commercial exploitation of the IP;
  - 3.9.2 the IP Officer fails to make a decision on CHC's involvement in commercial exploitation, as required by Provision 5.2; or
  - 3.9.3 CHC, having decided to become involved in commercial exploitation, fails to commence any steps necessary to do so within a period of six months from the date of notification under Provision 6.

#### 4. Use of Intellectual Property by Non-Owners

- 4.1 This provision outlines the conditions associated with the provision of a licence:
  - 4.1.1 to CHC where CHC has assigned its rights to IP to another party; or
  - 4.1.2 to another party where CHC is the owner of IP as described in this policy.
- 4.2 Where a person is the owner of IP created in the course of employment with CHC, that person, to the fullest extent permitted by law grants to CHC without charge a royalty-free, non-exclusive and irrevocable licence to use the IP for teaching, research or professional purposes.
- 4.3 Any licence granted pursuant to Provision 4 will be subject to the following conditions:
  - 4.3.1 the licensee will not do anything that could jeopardise the rights of the licensor including actions that could jeopardise the protection or enforcement of the licensor's rights and commercial exploitation such as the disclosure of confidential information or know-how without the consent of the licensor;
  - 4.3.2 the licensee will not compete with the licensor in the commercialisation of the IP; and
  - 4.3.3 the licensee shall not assign, licence or sub-licence or otherwise create rights or obligations for the IP without the express written consent of the licensor.

#### 5. Moral Rights

- 5.1 A sub-category under the *Copyright Act 1968* (Cth) are Moral Rights, which protect the right of a creator of original copyright works to be recognised as the creator of those works (Right of Attribution) and the right to object to the derogatory treatment of those work (Right of Integrity) and the right not to have authorship of the work falsely attributed. These rights are personal rather than proprietary in nature and as such cannot be sold, licensed or assigned. Furthermore, moral rights vest in the creator irrespective of his/her employment status and the ownership of the copyright in the work. The *Copyright Amendment (Moral Rights) Act 2000* (Cth) sets out these rights in detail.
- 5.2 CHC shall take reasonable steps to respect the moral rights of an originator to be acknowledged as the creator of IP and to endeavour to ensure that others respect that right.
- 5.3 Where CHC uses IP created by an originator it shall take reasonable steps to consult with the

originator before modifying or adapting that IP, except in the case of teaching materials in which it is the owner of the copyright. In such cases, CHC may modify or adapt the materials at its sole discretion for the purpose of producing modified or adapted teaching materials.

- 5.4 Where an originator wishes not to be acknowledged as the creator of the IP which has been adapted or modified, CHC shall take reasonable steps to respect that wish, and to endeavour to ensure that others respect it.

## **6. Commercial Exploitation and Patenting**

- 6.1 Where originators of IP take steps or wish to negotiate with a third party for the commercial exploitation of IP in which CHC has an interest, the matter must be notified immediately to the IP Officer.

- 6.2 Once the IP Officer is notified under Provision 6.1, the IP Officer must decide within three months whether or not CHC wishes to become involved in the process of commercial exploitation.

- 6.3 In making a decision under Provision 6.2, the IP Officer must consult in confidence with the originator and other relevant parties.

- 6.4 In making a decision under Provision 6.2, the IP Officer will take into account:

6.4.1 the direct and indirect contribution made by CHC to the development of the IP;

6.4.2 the nature of the IP and the copyright, extent of patent or other protection desirable;

6.4.3 whether the grant of patent or other protection will assist the development and subsequent commercial exploitation of the IP;

6.4.4 whether it is desirable for CHC to maintain an interest in the further development of the IP; and

6.4.5 the probable commercial returns to CHC.

- 6.5 If the IP Officer is advised or believes that the confidentiality of certain information must be maintained for the IP to be protected or successfully exploited, the IP Officer must:

6.5.1 conduct all consultation in confidence; and

6.5.2 recommend a time and procedures for the release of the IP.

- 6.6 All decisions and the associated reasons taken by the IP Officer must be reported to CHC Council.

## **7. Distribution of Financial Returns**

- 7.1 Where CHC derives any financial return from the commercial exploitation of IP, CHC will deduct its direct costs for developing, creating, protecting, marketing and administering the IP and distribute the net revenues received by CHC in the proportions 50% Originator : 25% School : 25% CHC or as agreed with the originator prior to the development of the IP.

- 7.2 Where more than one originator is involved in the creation of IP the originators must decide how their share of annual net revenue is to be divided and inform the IP Officer of their decision.

## **8. Agreements with Third Parties**

- 8.1 CHC may enter an agreement with another party which provides for the control, ownership and exploitation of IP. Where ownership of the IP does not rest fully with CHC, the consent

of the originator(s) must be obtained before negotiations are commenced.

8.2 In negotiating such an agreement, CHC must as far as practicable use its best endeavours to ensure that the:

8.2.1 originator(s) in question are consulted; and

8.2.2 terms of the agreement are consistent with the principles set out in this policy.

8.3 An agreement reached by CHC with a third party might include actions such as assigning the rights to the IP to the third party in return for an up-front payment or the payment of royalties.

## 9. Dispute Resolution

9.1 If a dispute arises in relation to the contents or operation of this policy or any related matter, the IP Officer must appoint a mediator who can assist the parties in resolving their dispute.

9.2 If such a dispute cannot be resolved through the assistance of a mediator, the IP Officer must appoint an arbitrator to investigate and adjudicate the matters in dispute.

9.3 The arbitrator must adopt procedures that ensure that each party is given a fair hearing. Should a staff member, student or visitor consider that just and fair procedures have not been followed they may seek redress through the Registrar who must act reasonably but whose decision is final.

9.4 In selecting a mediator or arbitrator, the IP Officer must choose a person who is acceptable to all parties. If the parties cannot agree within 30 days, the Registrar must appoint the mediator or arbitrator.

## 10. Information and Education

10.1 CHC will establish an IP education program with the following objectives:

10.1.1 to alert staff and students to their rights, responsibilities and opportunities in relation to IP;

10.1.2 to alert staff and students to any changes in this policy; and

10.1.3 to generate a better understanding of IP issues.

10.2 CHC will provide advice for students on IP matters and CHC will advise students to seek independent advice before they commence activities that may create IP. CHC will include references to this policy in the relevant documentation provided to graduate students.

10.3 The IP Officer will be required to:

10.3.1 oversee the implementation of this policy especially the requirements related to information and education set out in this Provision;

10.3.2 establish and maintain a record of IP, rights, obligations and, where applicable, agreements which exist when a member of staff commences employment with CHC;

10.3.3 conduct a review of this policy at periodic intervals and as circumstances demand; and

10.3.4 provide generally advice to CHC Council on IP issues.

## Supporting Procedures and Guidelines:

1.

## POLICY FURTHER INFORMATION

Relevant Commonwealth/State  
Legislation

## ACCOUNTABILITIES

<b>Implementation:</b>	IP Officer
<b>Compliance:</b>	IP Officer
<b>Monitoring and Evaluation:</b>	Academic Board
<b>Development/Review:</b>	Academic Board; Research Committee
<b>Approval Authority:</b>	Academic Board
<b>Interpretation &amp; Advice:</b>	IP Officer

## WHO SHOULD KNOW THIS POLICY?

Students  
Staff

## EFFECTIVENESS OF THIS POLICY

<b>Performance Indicators:</b>	<ul style="list-style-type: none"><li>• The number of disputes</li><li>• The number of disputes resolved</li></ul>
<b>Other</b>	This policy draws substantially on the AVCC Paper "Ownership of IP in Universities" (1995) and The National Principles of IP Management for Publicly Funded Research
<b>Definitions and Acronyms:</b>	<p>CHC – Christian Heritage College</p> <p>Computer programs – means an expression in any language, code or notation of a set of instructions intended (either directly, or after conversion to another language, code or notation and/or reproduction in a different material form) to cause a device having digital information processing capabilities to perform a particular function.</p> <p>Teaching materials – means all information, documents, materials or digital objects created or used for the purposes of teaching and education at CHC and may include lecture notes that are made available to students, computer-generated</p>

presentations, unit outlines, study guides, overhead transparencies, slides, photographs, maps, diagrams, handbooks, manuals, unit outlines, exercise, promotional and advertising brochures examination scripts, examination marking guides, unit data bases, websites and other multimedia items.

IP (Intellectual Property) – is generally regarded as representing ‘...the property of your mind or intellect.’ (IP Australia (2000).

Originator – includes an author, creator or inventor of IP.

Scholarly Works – includes any article, book, manual, creative writing or like publication any digital or electronic version of these that contains material written by staff based on the staff member’s scholarship, learning or research, but does not include computer programs, teaching material or administration material.

Staff – means an employee of CHC and includes academic staff (including those on Study Leave or Sabbatical) and general staff whether employed on a fulltime, parttime, fractional, sessional or casual basis at the time they create IP.

Staff Teaching Materials – means teaching materials in which a staff member owns the IP and the existence of which has been or ought to have been disclosed to CHC in accordance with sub-provision 2.4.1.

**APPROVAL – section maintained by the Registrar**

Reference No.	Approved	Date	Committee/Board	Resolution No. / Minute Ref.
A/1009	Approved	19/11/2009	Academic Board	4.2

**REVISION HISTORY – section maintained by the Registrar**

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0211	Approved	17/02/2011	Academic Board	4.1