



EXCELSIA COLLEGE

— Sydney —

Objects of Excelsia College

Motivated by the Christian faith, as expressed by the Apostles' Creed and Nicene Creed, with fidelity to the Scriptures as the Word of God, the Objects of the College are the advancement of the Christian faith and higher education.

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Document Name

Intellectual Property Policy

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1 Policy Statement

The purpose of this policy is to:

- (a) create an innovative culture within Excelsia College which fosters the creation of Intellectual Property and provides a framework to identify, protect, manage and (where appropriate) commercialise the Intellectual Property for the benefit of the College and the wider community;
- (b) provide clear guidelines setting out the entitlements and responsibilities of the College, its Staff, Affiliates, Students and Visitors with respect to Intellectual Property;
- (c) provide guidance on the management of Intellectual Property within Excelsia College, or between the College and another institution, individual or funding body (as applicable);
- (d) provide guidance on the circumstances in which the College will waive its rights regarding its Intellectual Property, or share the benefits of the ownership of its Intellectual Property with Staff, Affiliates, Students, Visitors and other persons or institutions (as applicable);
- (e) outline a general framework for the distribution of any net revenue arising from the Commercialisation of any Intellectual Property; and
- (f) assist the College to comply with *National Principles of Intellectual Property Management for Publicly Funded Research*, the *Australian Code for the Responsible Conduct of Research*, and other public policies and or legislation that may apply to the College's Intellectual Property and its management.

Ownership of Intellectual Property

1. Intellectual Property created by Staff

Unless otherwise agreed, all Intellectual Property created or developed by Staff in the course of their employment at the College, except where specifically exempt by this Policy, is the property of the College.

2. Intellectual Property created by Visitors and Affiliates

Unless otherwise agreed, all Intellectual Property created by Visitors or Affiliates is the property of the College where the Intellectual Property:

- (a) is created with substantial contribution by the College or use of College Resources;
- (b) has resulted from the use of pre-existing Intellectual Property owned by the College;
- (c) belongs to a set of Intellectual Property generated by a team of which the person is a member and other members are College Staff or Students, and/or
- (d) generated as a result of funding provided or obtained by the College.

3. Intellectual Property created by Students

Unless otherwise agreed, Intellectual Property created by Students is the property of the College where:

- (a) the Intellectual Property consists of teaching materials;
- (b) Students participates in a research team whose members includes College Staff or Visitors;
- (c) the Intellectual Property has been created with substantial contribution by the College or use of College Resources beyond that normally available to Students;

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- (d) the Intellectual Property has been created as the result of pre-existing Intellectual Property owned by the College;
- (e) the Intellectual Property has been created as a result of funding provided or obtained by the College;
- (f) the Intellectual Property is subject of an existing agreement between the College with a third party (for example, Intellectual Property created as part of industry-sponsored research programs); or
- (g) the student creates work specifically commissioned by the College (see Section 4 below).

Notwithstanding (a) to (g) above, where a Student participates in creating Intellectual Property owned by the College:

- (h) the Student may share in Net Commercialisation Revenues, if any, with all other creators/inventors according to this Policy;
- (i) the Student will not be impeded in or from submitting a thesis for examination, or from completing any other requirements necessary for the award of a degree or other qualification.

Where a Student retains ownership of the Intellectual Property in accordance with this Policy, the Student may share such ownership with the College, or other creators, inventors or persons who make a contribution to the creation of the Intellectual Property, depending on the circumstances.

4. Commissioned works

Excelsia College will own all Intellectual Property that it has commissioned a Staff, Affiliate, Student, Visitor and/or other party to create or develop for the College, including any course materials. A commission will be evident if an arrangement or agreement has been signed in writing, and such an agreement may or may not include provision for a financial benefit or non-financial benefit (such as relief from teaching or other duties).

The College, at its discretion, may give a Creator of commissioned works a non-exclusive licence to use the works for teaching purposes, provided that such a licence will not extend to the use of the works for any purpose which is in direct competition to the College.

For the avoidance of doubt, Creators of commissioned work will not be entitled to distribution of any Net Commercialisation Revenue set out in this Policy, unless otherwise agreed in writing by the Creator and the College.

5. Exclusions and exemptions

Excelsia College does not assert ownership of:

- (a) pre-existing Intellectual Property generated by a Staff prior to that Staff's employment with the College, provided that the Staff advises the College of the existence of their pre-existing Intellectual Property within 30 days of the commencement of their employment. If no such advice is received by the College then any IP developed or disclosed during the period of employment or enrolment will be deemed as College owned IP in accordance with this Policy;

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- (b) the Intellectual Property in course and educational materials, or creative or scholarly works, developed by a Staff or Visitor where this Intellectual Property was not developed specifically for College purposes; and
- (c) Intellectual Property created by a Student as part of his/her course, or submitted for any award conducted by the College. Without limitation, such Intellectual Property may include drawings, models, designs, plans and specifications, essays, thesis or other work.

Unless the Intellectual Property is specifically commissioned by the College or produced with the assistance of College Resources beyond those normally available to Students, Staff or Visitors, the ownership of Intellectual Property in scholarly books, articles, course materials, or other scholarly works or subject matter generated by Staff, Visitors or Students is retained by the Creator.

Further:

- (d) subject to any pre-existing lawful confidentiality agreement, Creators of such scholarly books, journal articles, course materials, or other scholarly works or subject matter generated, shall grant Excelsia College a non-exclusive, royalty free, perpetual, irrevocable, world-wide licence (including the right to sub-license) to make available for consultation, loan, or copying, any copy of a thesis or any other scholarly or creative work deposited with the College for the purposes of advancing teaching, learning or research;
- (e) upon request to the CEO / Managing Director, Staff, Visitors and Students may be granted permission to use the College's Intellectual Property in course and educational materials, or creative or scholarly works, for non-commercial scholarly, creative or other purposes.

6. Student Research at other Institutions

Where Students may be involved in research carried out at institutions which are affiliated with the College or any other institution independent of the College and where the College does not assert ownership of Intellectual Property, agreement must be reached in writing between the Student and the host institutions regarding the rights of the Student to Intellectual Property.

Commercialisation by Excelsia College

1. General principles

- (a) The College may at its discretion, protect, enforce and Commercialise its Intellectual Property as it sees fit.
- (b) The use of course and educational materials, and/or creative and scholarly works, by the College for the purposes of teaching, learning and research in its programs, whether in Australia or overseas, does not constitute Commercialisation for the purposes of this Policy.
- (c) The process of Commercialisation may be undertaken in consultation with the Creators of any Intellectual Property from time to time at the College's discretion. It is expected that the Creators will use reasonable endeavours to assist.
- (d) The College shall decide, at its absolute discretion, whether to proceed with, continue or exit from any Commercialisation activities.
- (e) Commercialisation revenues may include but are not limited to:

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- (i) royalties upon sales by a licensee,
- (ii) royalties from sub-licence fees received from a licensee,
- (iii) lump sum licence fees,
- (iv) proceeds of assignment or sale of the Intellectual Property (where a sale occurs),
- (v) signing fees,
- (vi) milestone payments,
- (vii) minimum annual payments,
- (viii) patent prosecution and maintenance expenses which are reimbursed to the College,
- (ix) dividends upon shares owned by the College in a start-up company to which it grants a licence; and
- (x) net proceeds of sale of shares owned by the College in a start-up company to which it grants a licence.

2. Identification and Protection of Intellectual Property

Staff, Affiliates, Visitors and Students must use reasonable endeavours to identify and disclose in writing to the College any Intellectual Property which has been created in the course of his/her employment, appointment or studies, prior to public disclosure, including all relevant details of that Intellectual Property. Staff, Affiliates, Visitors and Students must not apply for registration of, or rights associated with, Intellectual Property in their own name unless permitted by written agreement with the College following full disclosure.

3. Distributing Net Commercialisation Revenue

If the College commercialises any Intellectual Property (other than any commissioned work), it will distribute a share of Net Commercialisation Revenues for such Intellectual Property to Creators that have a recognised interest in the Intellectual Property in accordance with this Policy. Net Commercialisation Revenues will normally be distributed in the following manner:

- (a) one-third to be shared among all the Creators (being Staff, Affiliates, Visitors and/or Students, as applicable);
- (b) if applicable, one-third to the Creator's institution (distributed pro rata to two or more institutions as the case may be) with the expectation that any revenue will be used to foster teaching and research, or if no such third-party institution exists, then the faculty of the College relevant to the Creator and the Commercialised work, and
- (c) one-third to the College for its general purposes, with the expectation that it will be used to foster teaching and research.

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4. Commercialisation by Creators

- (a) If the College decides not to Commercialise any Intellectual Property owned by or assigned to the College, the College may at its discretion negotiate with the Creators:
 - (i) for the licensing or assignment of the Intellectual Property by the College to the Creators, and
 - (ii) in respect to any Commercialisation Revenues received by the Creators, the payment to the College of a share of those revenues to reimburse or compensate the College for the use or contribution of its funds, facilities and College Resources.
- (b) The College reserves the right to not grant to the Creators the rights to Commercialise the Intellectual Property which, in the reasonable judgement of the College, is incompatible with the best interests of the College.

Publication of Intellectual Property

- (a) The College encourages its Staff, Affiliates, Visitors and Students to publish their scholarly, research and creative outcomes in accordance with this Policy (**Publications**).
- (b) However, the College may sometimes require that certain Intellectual Property be kept and maintained in confidence, so as not to adversely affect its Commercialisation prospects or other interests. Under certain circumstances, Staff, Affiliates, Students and/or Visitors may be asked to enter into specific confidentiality agreements. Other persons (including any contractors, service providers or agents of the College) may also be asked to protect the Confidential Information as part of their agreements or contracts.
- (c) The objective to Commercialise Intellectual Property is not to operate to the exclusion or significant delay of the objective to publish, and the two objectives need to be reconciled and accommodated in any discussions or proceedings.
- (d) Where both the College's Publication and Commercialisation objectives coincide, Publications will proceed in a managed way that allows both the objective of Publication and the objective of Commercialisation to be realised.

Respecting Third Party Rights

All Staff, Affiliates, Students and/or Visitors are required to respect the rights of third parties in relation to Intellectual Property, and members may be required to provide necessary information and otherwise co-operate in this process. This may involve:

- (a) Correctly identifying the ownership of underlying material for any new development;
- (b) Correctly acknowledging the contribution of third parties;
- (c) Not infringing the Moral Rights of third parties; and
- (d) Not impinging upon the cultural, spiritual or other interests of indigenous people.

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Copyright

All material in which the College owns the copyright must include the following copyright statement, unless it is not practical to do so:

© Copyright Excelsia College (ABN 50 360 319 774) [insert year the work was first published]

Moral Rights

Excelsia College acknowledges the Moral Rights of its Staff, Affiliates, Visitors and Students.

The College may require the Creator to provide written consents or waivers in respect of the Creator's Moral Rights in relation to certain works that may be created, prior or subsequent to commencement of any work in which Moral Rights may subsist.

Disputes

- (a) Where a dispute arises between the College and a Creator concerning the ownership of Intellectual Property, parties will attempt to resolve the matter in accordance with the *Australian Code for the Responsible Conduct of Research* and relevant College policies, guidelines and procedures.
- (b) In the first instance, parties should seek to resolve a dispute at the lowest possible level in accordance with principles set out in the (a). This avenue of resolution may include using such processes as informal discussion and mediation.
- (c) If the dispute is not resolved by discussion or mediation or a similar process within a reasonable timeframe, then it should be submitted for resolution via the provisions of the College's Grievance Policy.
- (d) Notwithstanding (a) to (c) above, any party may elect at any time to have a matter heard by a relevant external body or to refer to a matter for legal advice and/or proceedings.

2 Scope

This Policy applies to all Staff, Affiliates, Students and Visitors of the College. The Policy also applies to other persons generating Intellectual Property in collaboration with the College, or engaged by the College to undertake specific activities.

This Policy is incorporated by reference in the provisions of the contract of employment of Staff, in the conditions of enrolment of Students, in letters of appointment of Affiliates or Visitors and in service contracts with consultants and other persons contracting with the College from time to time.

Provisions of any relevant laws or statutes take precedence over the provisions of this Policy. Relevant statutes (and any amendments) pertaining to this Policy include, but are not limited to, those in the:

- (a) Patents Act, 1990;
- (b) Copyright Act, 1968;
- (c) Designs Act, 2003;
- (d) Trade Marks Act, 1995;
- (e) Circuits Layouts Act 1989;

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- (f) Plant Breeders' Rights Act 1994; and
- (g) Competition and Consumer Act 2010.

3 Responsibility

The CEO /Managing Director will own and manage this Policy in accordance with the College's legal, commercial, ethical and other responsibilities. Any conflicts emerging in the application of this Policy may require resolution by the Board of Directors.

4 Definitions

For the purpose of this Policy, the following definitions apply:

Affiliate means consultants and contractors to the College; holders of offices in College or affiliated entities, members of Board of Directors of the College, members of College Committees; and any other persons appointed or engaged by the College to perform duties or functions on its behalf. An Affiliate is not a Visitor for the purposes of this Policy.

Commercialise or Commercialisation means, in relation to Intellectual Property, the exercise of all the rights granted to the holder of such rights by the laws of the jurisdiction in which the Intellectual Property right subsists, including the right to make, sell, copy, adapt, apply, publish, develop, use, assign, license, sub-license, franchise, market, lease, dispose of or otherwise utilise or exploit Intellectual Property for the purpose of generating financial or other commercial gains.

Commercialisation Costs means, in relation to Intellectual Property owned or assigned to the College, all costs and disbursements incurred by the College in connection with the Commercialisation of the Intellectual Property. This includes the cost of managing, registering, protecting and enforcing the Intellectual Property rights, creation of prototypes, research and development, proofs of concept, insurance, legal and financial advice, marketing, travel and all such expenses.

Confidential Information means information which is commercially sensitive or, by its subject matter or nature, confidential. It includes all information that is in connection with or in relation to Intellectual Property of the College under this Policy, the research and scientific information that is being considered for Intellectual Property protection or Commercialisation or has already been Commercialised, but does not include information that is lawfully known to the public.

Creator means the Staff, Affiliate, Student or Visitor responsible for creating the Intellectual Property, or otherwise makes a contribution to the Intellectual Property, whether alone or jointly with another person, including any of the following:

- (a) in the case of a patentable invention subject to the *Patents Act 1990*, the "inventor";
- (b) in the case of a literary or artistic work or similar subject to the *Copyright Act 1968*, the "author";
- (c) in the case of designs registrable under the *Designs Act 2003*, the "designer";
- (d) In the case of Plant Breeders Rights, under the *Plant Breeders' Rights Act 1994*, the "principal breeder";
- (e) in the case of circuit layouts, under the *Circuits Layouts Act 1989*, the "designer";

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- (f) in the case of software and computer code: the software author; and
- (g) in the case of trade secrets and know how: the contributors to that body of knowledge.

Gross Commercialisation Revenue means, in relation to Intellectual Property owned or assigned to the College, the gross revenue actually received and retained by the College from the Commercialisation of the Intellectual Property, after the payment of any taxes, fees and other charges. Gross Commercial Revenue does not include income received from the provision of research, consultancy or other services.

College or Excelsia College means Excelsia College ABN 50 360 319 774.

College Resources means resources of the College which includes, without limitation, pre-existing Intellectual Property, premises, facilities, funds, services, equipment, paid leave, Staff time and support Staff.

Intellectual Property means all statutory and other proprietary rights in respect of, without limitation, ideas, concepts, theories, discoveries, formulas, inventions, designs, software, brand names, confidential information, plant breeder's rights, circuit layouts, know-how, trade secrets, works of an artistic, literary, or musical nature and all other rights as defined by Article 2 of the *Convention Establishing the World Intellectual Property Organisation, July 1967*.

In the context of Excelsia College, Intellectual Property includes but is not limited to:

- (a) **Course and Educational Materials**, including any materials used in, or in connection with, the provision of lectures, tutorials, seminars, workshops, field classes, on-line courses and syllabus, units, assessments, practicum and other teaching activities conducted by the College. Without limitation, such materials may include slides, photographs, maps, diagrams, books and handbooks, manuals, teaching aids, course outlines, exercises, computer programs, software, digital or multimedia works that serve a teaching and/or learning function.
- (b) **Creative Works** including any processes, products or materials used in, or in connection with, rehearsals, performances, exhibitions, displays, shows and events of an artistic kind. Without limitation, such processes, products or materials may include literary works, dramatic works, musical works, dance works, costumes, stage designs and materials, films, sound recordings, broadcasts, written programs, and performance technologies.
- (c) **Products of research and scholarship** including inventions or discoveries, commercially valuable knowledge, research materials, research data, novel research methodologies, and written materials such as books, book chapters, journal articles, conference papers, online publications, reports, handbooks, and other written works.
- (d) **Confidential Information and trade secrets** includes but is not limited to invention or discovery, before the filing of a patent application, the contents of a patent application before a patent is granted, new commercially valuable knowledge which is intentionally omitted from a patent application, for example to minimise the prospect of reverse engineering, research materials, including biological materials, and data, commercially sensitive information such as confidential reports, information marked confidential and trade secrets.

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Moral Rights has the meaning in the Copyright Act 1968 as amended by the Copyright Amendment (Moral Rights) Act 2000 and recognises three types of moral rights: the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship.

Net Commercialisation Revenue means, in relation to Intellectual Property owned or assigned to the College, the monetary amount retained by the College from the Gross Commercialisation Revenue received after Commercialisation of the Intellectual Property after:

- (a) total Commercialisation Costs have been recovered or deducted from Gross Commercialisation Revenue for the Intellectual Property; and
- (b) the legitimate claims of third parties are satisfied.

Staff means an employee of the College, whether part-time, full time, continuing, permanent or casual, including all officers or employees that carry out academic, professional, technical or administrative work.

Student means any person enrolled in a course at Excelsia College and includes undergraduate or postgraduate courses and any exchange student.

Visitor means a person who is not a Staff member or Student of the College, who takes part in any research, teaching or other activity that would normally be conducted by a Staff member or Student, or visits a part of the College in which research or scholarship, or any related activity, is conducted and includes persons appointed pursuant to conjoint, adjunct, emeritus, honorary and visiting appointments made or approved by the College from time to time.

5 Principles

Excelsia College is committed to:

- managing intellectual property in its custody in an ethical and effective manner, in accordance with all relevant legislation and College policy;
- reviewing its management of intellectual property periodically

6 Related Documents and References

National Principles of Intellectual Property Management for Publicly Funded Research Australian Code for the Responsible Conduct of Research

[Copyright Act 1968](#)

[Copyright Amendment \(Moral Rights\) Act 2000](#) [Designs Act 2003](#)

[Patents Act 1990](#)

[Trade Marks Act 1995](#)

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[Competition and Consumer Act 2010](#)

FRA-RES-01 Research Framework

GOV-EC-RES-02 Research Code of Practice

GOV-GS-STA-01 Staff Code of Conduct

PO-STU-06 Student Grievance Policy and Procedure

PPR-STA-19 Staff Grievance Policy and Procedure

7 Mapped to HESF

The content of this policy is mapped to the HESF

2.4 Student Grievances and Complaints

4.1 Clarification of ownership and management of intellectual property

7.2 Information to give access to current academic governance policies and requirements

8 Other

N/A

9 Document History

This Policy has been amended as follows:

Version	Amendments / Date / Notes
2	Reviewed by legal counsel to ensure compliance with legislation. Reviewed by Quality (September 2020) – migrated to new policy template; mapped to HESF;

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