Intellectual Property Policy

Section 1 - Key Information

Policy Type and Approval Body	Academic – Academic Board
Accountable Executive – Policy	Pro Vice-Chancellor (Industry Engagement)
Responsible Manager – Policy	Director, Business Development and Commercialisation
Review Date	5 December 2027

Section 2 - Purpose

(1) This Policy sets out the framework for disclosure, assessment and commercialisation of Exploitable Intellectual Property (IP) arising from research and teaching at the University.

(2) The purpose of this Policy and procedure is to:

a. state the principles for the exploitation and other use of Intellectual Property ('IP') in the outcomes of the research and teaching activities of staff members in the course of employment;
b. define the rights of the staff members involved in generating teaching and research outcomes;
c. assist students and honorary appointments to give effect to their obligations in relation to IP generated by them at the University.

Section 3 - Scope

(3) Applies to:

a. all campuses
b. all staff members, students and honorary appointments
c. research and teaching activities

Section 4 - Key Decisions

Key Decisions	Role
Decision to protect and exploit Exploitable IP	IP Officer
Review of decision under this Policy	Deputy Vice-Chancellor (Research and Innovation) (DVC(R&I))

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Section 5 - Policy Statement

(4) Under the Intellectual Property Statute 2009, the University owns IP generated by staff members in the course of employment, except for specified works which the authors own.

(5) The University does not own IP created by students or honorary appointments, except by express assignment.

(6) Staff members have an obligation to:

a. declare any Exploitable IP arising in the course of employment;
b. assist the University to protect and secure title in the IP (including executing formal assignments); and
c. refrain from dealing in the IP.

(7) Students and honorary appointments have an obligation to declare any Exploitable IP arising in the course of studies or work at the University.

Section 6 - Procedures

Part A - Disclosing Exploitable IP

(8) Staff members, students and honorary appointments should obtain and complete the Invention Disclosure Form. This form enables the collection of brief details of any Exploitable IP arising from their research at the University.

(9) Completed forms should then be forwarded to the IP Officer for review. The Invention Disclosure and Assessment form may also be used by staff members, students and honorary appointments who wish to obtain an opinion from the IP Manager as to whether any potentially novel outcomes of research are Exploitable IP.

Part B - Appraisal of Invention Disclosure for Exploitable IP

(10) The IP Officer will ensure that disclosures made are reviewed in accordance with this Policy.

(11) Receipt of disclosures will be acknowledged by the IP Officer within two (2) working days.

(12) The IP Officer will review aspects of patentability, market potential, ownership, technical maturity and the research team provided in the disclosure. Decisions about protecting Exploitable IP, e.g. through patent applications, will be made in consultation with Creators, based on commercial criteria set out in the Invention Disclosure Form.

(13) Persons making disclosures will be provided with responses within thirty (30) days confirming:

a. whether the subject matter is Exploitable IP and prima facie protectable; if protectable, e.g. in the form of a patent application, whether the University will support the cost of external professional patent attorney services and initial patent filing fees; or
b. if the University does not wish to support patent costs, whether the IP might be assigned to the Creator(s) for them to proceed with protection and commercialisation independently (Reversion); or
c. whether a decision regarding the Invention disclosure should be deferred, e.g., pending further research findings; or
d. whether the Creators should proceed with publication.

(14) Students and honorary appointments making disclosures will additionally be asked to assist in determining whether:

a. any staff member is potentially a Creator or co-Creator of the putative Exploitable IP disclosed; or
b. any third party has an interest in the putative Exploitable IP, e.g. through a funding agreement with the University.

(15) If in the opinion of the IP Officer a staff member is a Creator or co-Creator of the subject of the disclosure, or there is an obligation to a third party, the IP Officer will respond to the person making the disclosure confirming the potential interest of the University in any Exploitable IP.

Exploitable IP, Assignment and Reversion

(16) If the University decides to protect and exploit Exploitable IP, the University will require Creators who are staff members to sign an agreement confirming that the ownership of the IP rests with the University. In the case of Creators who are students and honorary appointments, the University will require an assignment of ownership of the IP.

(17) If the University decides not to protect and exploit Exploitable IP, the University may offer the rights to the Creators on agreed conditions, which will usually include the University retaining a right to use the IP for its teaching and research.

Part C - Managing and Protecting Exploitable IP

(18) Subject to budget and expenditure limits, the IP Officer may decide on initial provisional patent filings. The University will not normally invest in protection beyond the provisional patent stage except with the approval of the Deputy Vice-Chancellor (Research and Innovation) based on a business case or evidence of commercial interest or risk sharing with another organisation.

(19) Once a provisional patent application has been filed, the IP Officer will consult with the Creator(s) regarding the persons to be named as inventors using the Inventorship Enquiry Form.

(20) The University will also seek to secure its rights in the ownership of the Exploitable IP by seeking a confirmatory assignment of ownership from each of the inventors.

(21) The University may also obtain confidentiality undertakings and assignments from any students involved in projects that involve or potentially involve Exploitable IP.

Part D - Commercialisation of Exploitable IP

(22) The University will support the Commercial Exploitation of Exploitable IP in consultation with the Creators having due regard for the preferences of Creators, ensuring fair terms for commercial rights to the Exploitable Intellectual Property through agreements with third parties, such as assignments, licences or collaborative research funding agreements.

(23) The aims of Commercial Exploitation are, in order of priority:

a. to obtain support for research activities;
b. to obtain a fair return for the skill and effort of staff members and the investment of the University; and
c. to apply knowledge for public good.

Part E - Publication of Exploitable IP

(24) Staff members, students and honorary appointments are encouraged to communicate the results of their research by submitting works for publication but must avoid undermining Exploitable IP through premature disclosure.

(25) Once Exploitable IP has been declared to the University, the University will keep any delay in publication to the time reasonably necessary to assess and protect the Exploitable IP.

(26) The University will maintain management arrangements to ensure prompt appraisals by professional staff. The University will not enter into contracts with third parties which prevent or delay publication except with the consent of the authors.

(27) In the case of research students, the University will not agree to a delay which will prejudice completion of the student's thesis or damage future career prospects.

(28) A delay in public disclosure of Exploitable IP may be required for a reasonable period to enable due assessment of commercial potential and protection options. Normally the period of any such delay will not exceed three months.

(29) Creators of Exploitable IP will be provided with professional advice about drafts of publications to reduce the risk of prejudicial disclosure.

Part F - Reversion of IP to Creators

(30) If the University declines to protect and commercialise Exploitable IP in response to a disclosure, Creators are entitled to request an assignment of rights from the University on reasonable terms. The University may approve or decline the request and impose any conditions on its approval.

(31) A decision to defer consideration of a disclosure on reasonable grounds or to decline or delay protection or commercialisation of Exploitable IP does not give rise to an entitlement to require assignment.

Part G - Commercialisation Proceeds

(32) If the University receives Commercialisation Proceeds from the Commercial Exploitation of Exploitable IP other than Teaching Materials, Creators of that Exploitable IP will be entitled to a share of the Commercialisation Proceeds in accordance with the portions and processes set out in this Part G.

(33) Commericalisation Proceeds shall be distributed annually in the portions defined as follows:

Recipient	Share
Creators	50%
Schools	25%
Central	25%

(34) If there is more than one recognised Creator of Exploitable IP, the Creators' share is shared between those Creators in accordance with their creative contributions to that Exploitable IP. The IP Officer may determine an equitable share based on the Creators' creative contributions.

(35) If a Creator personally holds or agrees to take equity in a company that has a licence or assignment from the University to exploit the Exploitable IP, then that Creator forgoes their rights to Commercialisation Proceeds in relation to that Exploitable IP . The University is not obliged to offer equity to a Creator in lieu of proceeds. Any equity taken by a Creator will be subject to applicable legal terms directly between the Creator and that company. Creators must disclose any such equity to the University.

(36) The Business Development and Commercialisation (BD&C) team will contact each of the Creators to advise on the amount payable and period for which the commercialisation proceeds relate to. Each Creator will need to complete a Commercialisation Proceeds Distribution Form specifying how they would like their share to be disbursed, noting that

there may be tax implications that apply. The options available are:

a. Payments made to a personal bank account - the Creator will need to complete a Statement of Supplier form from the Australian Tax Office - selecting the option “not entitled to an ABN” and submit to the Business Development and Commercialisation (BD&C) team.
b. Payments made to a separate entity with an ABN - the Creator will need to submit an invoice with the ABN to the Business Development and Commercialisation (BD&C) team.
c. Payments to an internal research account i.e. a specified WBS.
d. A combination of the above.

(37) Once all information has been received, the Royalty Distribution form will be approved by the Deputy Vice-Chancellor (Research and Innovation) (DVC(R&I)) and then all paperwork will be sent to the appropriate financial delegate for payment processing separate from payroll.

Part H - Dealing in Teaching Materials

(38) Teaching materials developed for La Trobe subjects and courses are owned by the University, although staff continue to have entitlement for use and re-use in other contexts, including in teaching work but not for commercial sale or licensing purposes.

(39) The University encourages the authors of teaching materials to consider making such materials publicly and freely available, e.g. via the internet, or publishing commercially providing that those materials are not subject to a prior third party agreement, such as a contract for the design or delivery of a course or training program.

(40) Staff members may make those teaching materials of which they are the authors freely and publicly available without approval, provided that, where teaching materials have been co-authored, all authors are consulted and agree.

(41) Proposals to deal in, i.e., to license or assign to another party, rights in teaching materials must be approved by the author’s Dean. Contracts involving such transactions, such as licence agreements or contracts to deliver teaching services, must be approved in accordance with policies and procedures related to licensing of teaching materials (See Educational Partnerships Policy and Educational Partnerships Procedure – Third Party Arrangements).

(42) Any commercial proceeds from dealing in teaching materials will be available to the authors’ Schools or Centres as discretionary income.

(43) In accordance with section 7(2) of the Intellectual Property Statute 2009, a Staff member is not entitled to Commercialisation Proceeds for Teaching Materials.

Part I - Primary Reviews of Decisions

(44) Without derogating from any other right of appeal or review under University legislation, any person who has an interest in a decision made under this Policy or these procedures may request the Deputy Vice-Chancellor (Research and Innovation) to review the decision.

Section 7 - Definitions

(45) For the purpose of this Policy and Procedures:

a. Commercial Exploitation: has the meaning given in the Intellectual Property Statute 2009: the application, publication, development, use, assignment, licensing, sub-licensing, franchising, exploitation, sale or other

utilisation of IP for the purpose of generating financial or other commercial gains.

b. Commercialisation Proceeds: means net commercialiasation revenue received by the University, calculated from the gross revenue received by the University as a result of the Commercialisation Exploitation of Exploitable IP, minus payment of any withholding, goods and services or other taxes, bank fees, transaction fees, third party proceeds and other charges. Net commercialisation revenue does not include revenue received from the provision of research, consultancy, training or other services.
c. Creator: means a student, staff member or honorary appointment who creates IP whether in conjunction with others or otherwise that is owned by the University.
d. Exploitable IP: means IP which may be the subject of Commercial Exploitation by the University.
e. Honorary appointment: means any person who is appointed to an honorary position at the University in order to pursue research and other scholarly activities at the University and includes visiting researchers (refer to the Honorary Appointments Policy).
f. Intellectual Property or IP: means any rights in relation to copyright, designs, inventions, plant varieties, trade marks (including service marks), confidential information, trade secrets, know-how, circuit layouts and patent rights, whether registered or unregistered.
g. IP Officer: means the Director, Business Development and Commercialisation.
h. Specified Work: has the meaning given in the Intellectual Property Statute 2009 and include any literary, dramatic, musical or artistic works but do not include:
    i. teaching materials,
    ii. computer programs, or
    iii. copyright works subject to an agreement between the University and a third party.
i. Staff member: means a member of the full-time, part-time or casual academic or general staff, whether holding a permanent or other position.
j. Student: means a person enrolled in a course or subject at the University and includes a post-graduate student.
k. Teaching materials: has the meaning given in the Intellectual Property Statute 2009 and includes works developed by a staff member and made available to a student in any format.

Section 8 - Authority and Associated Information

(46) This Policy is made under the La Trobe University Act 2009.

Status and Details

Status	Current
Effective Date	5th December 2024
Review Date	5th December 2027
Approval Authority	University Council
Approval Date	5th December 2024
Expiry Date	Not Applicable
Responsible Manager - Policy	Jan Bingley Director, Business Development and Commercialisation
Enquiries Contact	Research Office

Glossary Terms and Definitions

"student" - Student is defined in the La Trobe University Act 2009 as: (a) a person enrolled at the University in a course leading to a degree or other award; or (b) a person who is designated as a student or is of a class of persons designated as students by the Council.

"staff" - Staff means any person employed by the University as per the definition in the La Trobe University Act 2009 (Vic).

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