Ownership and Protection of Intellectual Property Created by Queensland Health Employees and Others

1 Purpose

To enable Managers and Directors to make appropriate decisions regarding intellectual property ownership.

To inform Queensland Health employees of their obligations relating to ownership of intellectual property which they create.

To provide information on the appropriate actions to be taken to protect Queensland Health intellectual property in the form of copyright, patents, trade marks, designs and trade secrets.

This procedure is not legal advice. Legal advice should be obtained when appropriate.

2 Scope

This procedure applies to:

- all intellectual property created by Queensland Health employees in the course of their employment
- all of Queensland Health including Health Service Districts, Statewide Services and Corporate Office Divisions
- projects, project plans and contracts.
'Intellectual property' includes:

- copyright in all electronic and hard copy literary works, artistic works, logos, computer software, music, videos, databases, surveys, assessment tools, forms and any other works or subject matter in which copyright subsists and may in the future subsist
- inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniquestrade and service marks (whether registered or unregistered)
- any of the above generated as a result of clinical or non-clinical research and development, training, treatment, diagnosis, education and information and project management.

3 Requirements relating to ownership of intellectual property

3.1 Consider intellectual property early

Decisions regarding intellectual property management will be informed and timely. Informed consideration of intellectual property ownership leads to better outcomes for projects and ultimately for Queensland Health’s end user, the patient. Conversely, mismanagement of intellectual property ownership can lead to missed opportunities and confusion in the future about rights regarding use of intellectual property. To avoid these problems, managers (eg business, unit, research or project managers) should consider and determine the intellectual property ownership position in project planning. Intellectual property management will be integral to Queensland Health operations, including contracts with other parties. Before entering into a contract, consideration should generally be given to whether the contract should include intellectual property clauses, and if so, what the clauses should say.

3.2 Identification of important intellectual property

Generally speaking, any innovative product, process or idea that provides, or could provide, Queensland Health with a better health outcome is likely to constitute important intellectual property. Business, unit, research or project managers are encouraged to identify potentially valuable intellectual property and to maintain a register of that intellectual property. The risk of failing to do so is that over time Queensland Health will fail to amass and consolidate its intangible assets.

3.3 Risk management

Before development of intellectual property or commercialisation, checks should be undertaken to confirm that the activity is unlikely to conflict with existing intellectual property rights of other parties. That is, ‘freedom to operate’ searches should be conducted so as to identify any potential problems with the use of intellectual property.

3.4 Intellectual property ownership and confidentiality

Queensland Health should ensure that intellectual property developed by employees in the course of their employment or contractors is owned by Queensland Health, or the appropriate party, as referred to in this procedure, and where appropriate, is kept confidential until a protection strategy for that intellectual property has been devised.
3.5 Queensland Health ownership of intellectual property

3.5.1 Procedure – Queensland Health employees

Unless otherwise expressly agreed by Queensland Health in writing, this procedure requires each Queensland Health employee to do the following when called upon to do so at any time by Queensland Health:

a) acknowledge the State of Queensland as owner of intellectual property created by the employee in the course of his/her employment by Queensland Health

b) assign to the State of Queensland any intellectual property rights of the employee which may be necessary in order for the State of Queensland to be the owner of the intellectual property rights referred to in (a).

This procedure also requires that, unless otherwise expressly approved by Queensland Health in writing, employees:

c) will not do anything which would prevent the State of Queensland becoming the owner of the intellectual property rights referred to in (a) and

d) will not do anything to prejudice the protection of intellectual property which Queensland Health owns (or is entitled to own), e.g. will not do anything to prejudice the patentability of an invention, or registration of design, in which Queensland Health is entitled to the intellectual property rights.

3.5.2 General legal principles relating to intellectual property ownership

The following are general legal principles relating to ownership of intellectual property.

Where there is no relevant agreement to the contrary, the State of Queensland (Queensland Health) owns:

- intellectual property (including copyright) created by staff in the course of their employment. Intellectual property generated in the ‘course of employment’ essentially means what a staff member is paid to do as included in their position description or as directed by their supervisor. This may include work after hours and that uses non-Queensland Health facilities. This does not include ‘background’ intellectual property generated prior to becoming a Queensland Health employee.

- copyright in works made or first published ‘by, or under the direction or control of’ the State of Queensland [section 176, 177 Copyright Act 1968 (Cth)]. That may include works created by contractors.

The State of Queensland (Queensland Health) may also own intellectual property in the following situations. The terms of relevant agreements will need to be taken into account in deciding who owns the relevant intellectual property:

- through the provisions of funds or grants.

- by other parties such as contractors, for example in contract research. However, most contract research is done under a Contract Research Agreement, which may state alternative intellectual property arrangements.
• collaboratively in partnerships or joint ventures with private companies, other government bodies or educational institutions.

• under the Study and Research Assistance Scheme (SARAS). The exception is that copyright ownership in material that forms part of formal assessment (eg a thesis or assignments) is owned by the employee. The employee grants Queensland Health a perpetual free licence to use the copyright in all formal assessment material.

• by adjunct appointees

• by Queensland Health consultants or service providers.

In the absence of an agreement that states otherwise:

• **Students generally own intellectual property they generate** (unless created in the course of employment, or determined by legislation), eg in research projects (unless they work under an agreement that states otherwise, such as a Student Placement Deed, Funding or Service Agreement or some other agreement).

• **The employing entity generally owns intellectual property created by joint appointees.** In the absence of an agreement that states otherwise, the State will own copyright if created ‘under the direction or control of’ the State within the meaning of section 176 of the Copyright Act 1968 (Cth). Otherwise the employing entity will generally be the owner of the intellectual property in a joint appointment between Queensland Health and another party (for example a university). The employing entity could be Queensland Health or the other party.

• **Intellectual property ownership in collaborative research may depend on contribution.** Ownership of intellectual property may depend on the contribution of the individuals and organisations involved in the collaboration, and whether the research was done in the course of employment and whether the work is made or first published by or under the direction or control of the State. Most collaborative research is done under a Collaborative Research Agreement which clarifies the intellectual property ownership position.

### 3.6 Considerations regarding ownership of intellectual property when entering contracts or other agreements

Prior to executing contracts or other agreements under which intellectual property will be generated, consideration should be given to the intended ownership of the intellectual property. In considering whether the owner should be the State of Queensland (Queensland Health) or another party, it is recommended that consideration be given to which party would be in the best position to be able to protect and manage the use of the intellectual property. There are three options for intellectual property ownership, which are addressed in more detail below:

• **Queensland Health retains full ownership of the intellectual property.**

• **Queensland Health jointly owns intellectual property with one or more other parties.**

• **Intellectual property is fully owned by one or more other parties.**

Further information and recommended practices can be found in Chapter 3 of the Queensland Public Sector Intellectual Property Guidelines.
3.6.1 Queensland Health should generally retain full ownership of intellectual property where:

- Queensland Health is better able to disseminate the resulting intellectual property asset to facilitate knowledge transfer to the public.
- another party’s ownership of intellectual property would be to the detriment of Queensland Health or the development of Queensland. This is particularly relevant but not limited to medical research.
- the other party expressly indicates that they are not interested in owning the intellectual property.
- the other party does not have the capacity to commercialise the intellectual property.
- the resulting intellectual property is applicable to a number of industries but the other party’s resources are confined to a particular industry.
- Queensland Health is engaging a contractor or consultant, which involves the development of a document, report or other new intellectual property, for Queensland Health’s specific purpose (as distinct from any background intellectual property that the contractor or consultant may bring with them to the project).

Where Queensland Health retains full ownership of intellectual property, there is the option to grant another party:

- a non-exclusive or exclusive licence to commercialise intellectual property for an indefinite or a fixed time period.
- permission to use the intellectual property to meet its objectives.

3.6.2 Avoid joint ownership of intellectual property

Joint ownership is generally not preferred because it can lead to complications, especially during the commercialisation process. For example every joint owner has to give permission to the other/s to license, assign or commercialise the intellectual property. Where Queensland Health agrees to joint ownership, contracts should include appropriate provisions relating to the use and management of intellectual property assets. For example, designate a nominal owner for granting permissions to use the intellectual property.

3.6.3 Ownership of intellectual property by another party may be more appropriate:

- where it results in a cost saving for Queensland Health. It is recommended that Queensland Health should negotiate a better price for services when granting the other party ownership of the intellectual property.
- where it may stimulate economic development through commercialisation. A private contractor may be in a better position for commercialisation, which may ultimately lead to a better product and improved patient outcomes.
- where Queensland Health lacks the financial or other resources required to protect, maintain and disseminate the intellectual property or where doing so is not in line with the goals of a project.
The Policy Statement in section 3.3.2 of the Queensland Public Sector Intellectual Property Guidelines states that where an agency agrees to a consultant/contractor retaining ownership of some or all of the intellectual property rights created by the contractor/consultant during the course of the contract, the agency must ensure that the Queensland Government retains access to the intellectual property that it has paid for.’ See also the statement of Recommended Practice in that section for more detailed recommendations in relation to securing rights of access, support requirements etc.

If Queensland Health enters into an agreement for the development of intellectual property under which another party is to own the intellectual property developed for Queensland Health, the contract should include provisions that allow Queensland Health use of the intellectual property to meet its business objectives, and appropriate warranties.

Where Queensland Health agrees to own none of, or only part of, the intellectual property, provisions in relation to the following should be considered as inclusions in the contract:

- use of the intellectual property in a manner necessary to meet Queensland Health’s objectives
- a warranty for intellectual property ownership where appropriate (ie a warranty that the other party is indeed the owner of the intellectual property)
- access and support so that Queensland Health can continue to use and develop the intellectual property in the future (for example access to source codes for software)
- benefit, eg income, derived from the commercialisation of the intellectual property by the other party, to meet Queensland Health’s core objectives.

4 Protecting Queensland Health intellectual property

The different types of intellectual property (copyright, trade secrets, patents, trade marks and designs) are protected via different means as described below. Before Queensland Health takes steps to protect intellectual property, issues covered in the previous section on ownership should be considered. That would include considering whether Queensland Health owns the relevant intellectual property. In a joint ownership situation, written permission from the other owner/s will be sought and obtained where necessary.

4.1 Protecting and licensing copyright works

Where Queensland Health is the owner of a copyright work, the following steps will be taken to ensure protection, proper dissemination and use and to provide appropriate acknowledgement.

4.1.1 Include a copyright notice in Queensland Health material

Where Queensland Health is the sole owner of the copyright work, state this in a copyright notice (Example 1). If copyright is jointly owned then the copyright notice should reflect this by including the name of the other owner/s (Example 2).
Example 1: where copyright is owned solely by Queensland Health

© State of Queensland (Queensland Health) <insert the year of first publication>

Example 2: where copyright is owned jointly by Queensland Health and another party

© State of Queensland (Queensland Health) and <legal name of other joint owner/s> <insert the year of first publication>

4.1.2 Insert a licence under the Government Information Licensing Framework (GILF) policy

With the introduction of the whole-of-government Government Information Licensing Framework (GILF) policy (www.qgcio.qld.gov.au/qgcio/architectureandstandards/qgea2.0/Pages/azqgeadocs.aspx), it is now mandatory for Queensland Health to apply one of the limited number of licences identified in the policy to all Queensland Health information, including copyright works, that is released to the public. In this way, the GILF policy makes it easy for people who propose to use Queensland Health copyright work to understand the rights Queensland Health is granting for the use of its material. GILF encourages custodians (ie Queensland Health staff) to think more broadly about the range of potential users of Queensland Health copyright works and enables Queensland Health customers to understand how they can re-use that material in a way legally authorised by Queensland Health under the licence it has decided to apply.

Licences under the GILF policy are:

- the six (Australian version) Creative Commons licences (http://creativecommons.org.au/licences) and
- licences created using the Restrictive Licence template. The Restrictive Licence template consists of model clauses and schedules which may be used to develop specifically tailored licences appropriate to circumstances where restrictions on access to and dissemination of information are required, such as where personal or other confidential information is present or where the material is provided on a commercial basis.

Note: Restrictive licences developed without the use of the Restrictive Licence template under GILF are not encouraged but may be appropriate in some limited circumstances.

Creative Commons licences used under GILF

The GILF policy has adopted the six open content Creative Commons licences, as developed by Creative Commons Australia, to apply to the release of Queensland Government information protected by copyright. (As at the date of this procedure being released, the version of the Creative Commons licences which has been adopted by the GILF policy is Australian v2.5.) These six Creative Commons licences are a legal means of sharing and at the same time protecting the integrity of copyright works and information. Creative Commons Australia (ccAustralia) is the organisation that supports Creative Commons in Australia and administers the Australian Creative Commons licences. Established in 2002.
Queensland Health: Intellectual Property Policy

and hosted at Queensland University of Technology in Brisbane, ccAustralia is devoted to the promotion of Creative Commons in Australia. Creative Commons is an international nonprofit organisation that develops flexible copyright management tools designed to facilitate open access to copyright works, particularly those distributed in digital form. See further at http://creativecommons.org.au/government.

The six Creative Commons licences used under the GILF policy contain combinations of four “baseline” licence conditions, each of which is represented by a unique symbol (see following table). The four “baseline” licence conditions are as follows:

- Attribution (BY): lets others copy, distribute, display, and perform the copyrighted work, and derivative works based upon it, but only if they give credit in the requested way.
- Share alike (SA): allows others to distribute derivative works only under an identical licence.
- Non-commercial (NC): lets others copy, distribute, display, and perform the work, and derivative works based upon it, but for non-commercial purposes only.
- No derivatives (ND): lets others copy, distribute, display, and perform only verbatim copies of the work, not derivative works based upon it.

When a Creative Commons licence is applied to copyright works being made available online, a link is provided to the associated website displaying the full text of the licence (this text is referred to as the Legal Code). The Legal Code includes disclaimer, limitation of liability and limitation of warranty provisions but no indemnity provision.

The least restrictive Creative Commons licence, consistent with Queensland Health achieving its business or operational objectives, is to be applied to Queensland Health copyright works for release. Where possible, the Creative Commons Attribution (BY) licence should be used (Examples 3 and 4). Application of all six Creative Commons licences under GILF policy to copyright works, including the least restrictive Attribution (BY) licence, permits due acknowledgement of the State of Queensland (Queensland Health) as the copyright owner, as well as of the individual authors or unit/s that developed the material where this is appropriate.

Use of Creative Commons licences that include the ‘share alike’ (SA), ‘non-commercial’ (NC) or ‘no derivatives’ (ND) conditions is at the discretion of the approving officer (refer to table for approval required). The decision to include these conditions should be based on consideration of issues such as the nature of the content of the work to be licensed, the project objectives and the needs of other contributors, particularly where these are external parties.

As supported under the GILF policy, Queensland Health considers the six Creative Commons licences to be the preferred method for managing Queensland Health copyright works in the vast majority of cases (eg where no restrictive factors such as personal or other confidential information, or a statutory constraint, are present or where Queensland Health does not intend to commercialise the material).

Note that Creative Commons licences are unsuitable for application to software. To distribute software on an open source basis it is necessary to choose an open source software licence (such as GNU GPL, see www.gnu.org).

Creative Commons licences can be revoked, depending on the circumstances. Generally they cannot be revoked on material that has already been released and is being used. It is possible however to “turn off the tap” to access in practice, by making the material available for future use by licensing it...
under a different Creative Commons licence which grants narrower rights of re-use of the copyright works, or a restrictive licence produced by using the GILF Restrictive Licence template.

**Restrictive Licence template used under GILF**

In a limited number of situations, for example where restrictive factors are present or Queensland Health intends to commercialise its copyright works, the Restrictive Licence template developed under GILF may be used as a starting point for developing a restrictive licence tailored to particular circumstances. The Restrictive Licence template is designed so that the model clauses and Schedules can be used to produce a licence which suits the parties’ particular requirements (as negotiated or in accordance with statutory requirements).

Example uses include the exchange of information between Queensland Health and another party where contractual arrangements apply, the granting of access to Queensland Health information systems, or authorising a party to distribute Queensland Health information. A restrictive licence produced using the template can also include terms providing for fee payment for a commercial return, and also an indemnity. When finalised, the restrictive licence is signed by the parties to the licence.

The Restrictive Licence template is available on the GILF website (www.gilf.gov.au).

Use of a Restrictive Licence produced through use of the template will be approved by a contract delegate for the commercialisation of intellectual property, eg the Chief Executive Officer, Centre for Healthcare Improvement.

Note that whereas Creative Commons licences are only applicable to copyright works, a restrictive licence produced using the Restrictive Licence template may be applied to material that is not protected by copyright. For example, if certain raw data is not protected by copyright and restrictions on its use are required because it contains personal or confidential information.

**Licensing Review**

To choose an appropriate licence used under the GILF policy, Queensland Health officers will need to work through the online Licensing Review on the GILF website (www.gilf.gov.au). The Licensing Review assists users to identify and clarify certain intellectual property and other issues about the information they intend to release to the public. It aids users in applying licences appropriately in different circumstances eg where Queensland Health (ie the State of Queensland) is the copyright owner or has the right to license the material in Australia. The Licensing Review is not legal advice, and may not be able to deal with certain complex circumstances in which case further advice or assistance will need to be sought. As mentioned above, unless there is a defendable reason why not to do so, the Creative Commons Attribution (BY) licence should be used on Queensland Health copyright works (Examples 3 and 4). The Licensing Review produces a report but this report is not stored in the system. Units should keep a record of licences applied to Queensland Health copyright works.

**Applying a licence used under GILF**

It is mandatory to apply a licence marking and, in the case of Creative Commons licences, the associated website address to Queensland Health copyright works made publicly available (Example 3). Optional inclusions are the associated licence descriptions and copyright statement (see table). The word ‘authors’ in the copyright statement can, in appropriate circumstances, optionally be replaced with the copyright owner [eg State of Queensland (Queensland Health)] and the name of the individual authors or unit that developed the material where appropriate (Example 4). (See also section 4.1.7 of this procedure relating to authors and moral rights.)
### Table: Part A – Creative Commons licences used under GILF

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<th>Mandatory</th>
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<tr>
<td><strong>Creative Commons Attribution (BY)</strong></td>
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<tr>
<td><img src="http://creativecommons.org/licenses/by/2.5/au" alt="Creative Commons Attribution (BY) icon" /></td>
<td>License: This work is licensed under a Creative Commons Attribution 2.5 Australia licence. To view a copy of this licence, visit <a href="http://creativecommons.org/licenses/by/2.5/au">http://creativecommons.org/licenses/by/2.5/au</a></td>
<td>Business, Program, Project, Research or Unit Manager</td>
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<tr>
<td>Copyright statement: In essence, you are free to copy, communicate and adapt the work, as long as you attribute the authors and abide by the licence terms.</td>
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<td><strong>Creative Commons Attribution – Non-Commercial (BY-NC)</strong></td>
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A copyright “work” is as defined in the Scope of the policy.

Note that the word “authors” can, in appropriate circumstances, be optionally substituted with the copyright owner/s and, if appropriate, the name of the unit/s that developed the work or names of individual contributors. (See section 4.1.7 of this procedure relating to authors and moral rights.)

Table: Part B – Restrictive licences produced using the GILF Restrictive Licence template

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<th>Mandatory</th>
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<th>Approval Required</th>
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<tr>
<td>GILF Restrictive Licence template</td>
<td></td>
<td>Contract signing delegate for commercial exploitation of intellectual property eg Chief Executive Officer, Centre for Healthcare Improvement</td>
</tr>
<tr>
<td><img src="image" alt="Restrictive Licence" /></td>
<td>Copyright statement: Use of this work is limited according to agreed permissions and restrictions.</td>
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</tr>
<tr>
<td>(Hyperlink generally not practicable.)²</td>
<td>Licence: This work is licensed under a Government Information Licensing Framework Restrictive Licence.</td>
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A restrictive licence is produced by using the model clauses and Schedule in the Restrictive Licence template [http://www.gilf.gov.au/restrictive-licence-template](http://www.gilf.gov.au/restrictive-licence-template). Apart from certain limited situations where use of other restrictive licences has been approved, it is mandatory to use the Restrictive Licence template as the basis for producing a restrictive licence, in conjunction with the Restrictive Licence marking. In most cases it is not practicable to have a link to the terms of a specific restrictive licence as negotiated by the parties using the Restrictive Licence template. The web address for the Restrictive Licence template should not itself be used in conjunction with the Restrictive Licence marking.

4.1.3 Sourcing the licence markings

Creative Commons licences


High resolution (.svg, .png and .eps) Creative Commons licence markings for offline copyright works can be downloaded from the Creative Commons website: [www.creativecommons.org/about/downloads](http://www.creativecommons.org/about/downloads).

Restrictive Licence template used under GILF

A high resolution marking for offline copyright works is not available.

### 4.1.4 Placement

For longer documents, with a title page or front cover (e.g., strategies, manuals, and guides), placement should be on the inside of the front cover, at the end of the page and justified or left-aligned (to fit with other text on the page).

For shorter documents (e.g., pamphlets, fact sheets, and PowerPoint presentations), placement should be on the last page and centred, or alternatively in the footer of the last page and on the right-hand side.

Where space is limited (e.g., posters and CD covers), placement should be where convenient, but preferably on the bottom, centred or on the right-hand side.

Where space is extremely limited (e.g., media advertisements), discretion may be used in application of a copyright notice and licence.

For web sites, placement should be at the bottom of the page, centred or on the right-hand side.

### 4.1.5 Size and spacing

Font size and spacing will depend on the Normal style text used and the type of copyright work.

As a general guide, the font should be the same as Normal style for the document, but 1-2 points smaller in size, and paragraph spacing should be less than for Normal style.

For longer documents, font size may be the same or 1-2 points smaller in size compared to Normal style and paragraph spacing may be the same or less than for Normal style.

### 4.1.6 Include contact details for the Intellectual Property Officer and the unit that developed the material

For all licences under GILF except the least restrictive Attribution (BY) licence, include contact details for the Intellectual Property Officer for copyright queries (Example 5).

It is not unusual to receive requests for copies of educational, training packages, health information pamphlets, and other Queensland Health copyright works. It is recommended that in addition to the copyright notice, contact details are supplied of the Queensland Health unit who developed the material or of another party supplier of the copyright work (Example 5).

**Example 3: use of the Creative Commons Attribution (BY) licence where space is limited**

![Creative Commons Attribution (BY) licence icon](http://creativecommons.org/licenses/by/2.5/au)

© State of Queensland (Queensland Health) 2010

**Example 4: use of the Creative Commons Attribution (BY) licence where space is not limited**
4.1.7 Author details

Where appropriate, for example in significant works in accordance with the Queensland Health Moral Rights policy (www.health.qld.gov.au/ohmr/html/rcpu/intel_prop.asp), include names of authors (Example 6). If there are many authors an alternative is to name the unit or centre that developed the material (Example 7).

Example 6: naming individual authors where appropriate, eg in significant works

Written by <officer name, officer title, unit name> and <officer name, officer title, unit name>.

Example 7: name of unit/s that developed the material, where space is limited or where there are many authors

Developed by <unit name>.

4.1.8 Version number and control

If a publication is updated, it is appropriate to include details (Example 8). Where information may be superseded, you may wish to state the currency (Example 9). It is suggested that major revisions are reflected by whole number increments (ie version 2.0 follows version 1.0) and minor revisions by decimal place increments (ie version 1.1 follows version 1.0).
### 4.1.9 Depositing copyright works

In accordance with the *Copyright Act 1968* (Cth) and the *Public Records Act 2002* (Qld), publishers are required to deposit copies of their publications with the National Library of Australia, the State Library of Queensland and the Queensland Parliamentary Library. The Central Library can do this on your behalf. Send four (4) copies of your publication to Central Library, who will also catalogue the publication on HealthCat and generate an international standard book number (ISBN) if required. Contact Central Library: email centlib@health.qld.gov.au, phone 3234 0931. An ISBN, where required, should be generated prior to publication on the Queensland Health internet site.

<table>
<thead>
<tr>
<th>Check list for protecting and licensing Queensland Health copyright works</th>
<th>Yes</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confirm that the copyright is owned fully by the State of Queensland (Queensland Health), or that the State of Queensland (Queensland Health) is otherwise legally entitled to license the work.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Add the basic copyright notice including the year of first publication, eg © State of Queensland (Queensland Health) &lt;insert the year of first publication&gt; (or, in the case of a subsequent version of the work: © State of Queensland (Queensland Health) &lt;insert the year of first publication of original version&gt; - &lt;insert the year of first publication of subsequent version&gt;).</td>
<td></td>
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</tr>
<tr>
<td>Work through the Licensing Review on the GILF website (<a href="http://www.gilf.gov.au">www.gilf.gov.au</a>) to choose a licence under GILF.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gain appropriate approval for the licence proposed following the Licensing Review.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Add the approved licence marking and web address (if a Creative Commons licence) to the copyright work.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Add the Intellectual Property Officer contact details for copyright enquiries (not required)</td>
<td></td>
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</table>
4.2 Protecting a trade secret

There are no formal procedures for protecting a trade secret (otherwise known as confidential information). As the name suggests, a trade secret will not be disclosed. Measures to avoid disclosure include:

- Storing information in a secure location, for example locked filing cabinets or password-protected electronic folders
- Not disclosing the information, except after execution of a confidentiality agreement.

The Queensland Health Information Security Specification on Information Handling and Exchange provides further guidance on handling of confidential information.

4.3 Protecting an invention via a patent

Protecting intellectual property rights through a patent can involve considerable time, effort and expense. Patent protection should only be pursued if there is a high probability that the rights could form part of a successful business strategy that leads to improved human health. Disclosing details of an invention too early can jeopardise the ability to patent it. The first steps to patent protection in Queensland Health are to:

- Keep your invention quiet. It should not be disclosed to anyone other than Queensland Health staff closely associated with the research project including support staff such as the Intellectual Property Officer, co-inventing collaborators and legal advisers retained to advise on intellectual property and commercialisation. You should discuss it with others only on a strictly confidential basis, preferably following execution of a confidentiality agreement. Disclosure includes informal discussion, conference abstracts, seminars and posters.
- Keep records in a laboratory notebook.
- Contact the IP Officer early to allow time for determination of patentability, inventorship, ownership and a commercial assessment of the invention.
- Complete the following forms, available to download from the Queensland Health intellectual property website, and submit them to the Intellectual Property Officer for review:
4.4 Protecting a trade mark

4.4.1 Protection for an unregistered trade mark
Trade marks can be protected under common law, the Trade Practices Act 1974 (Cth) or the Copyright Act 1968 (Cth).

4.4.2 Protection through trade mark registration
There are significant advantages for trade mark registration (under the Trade Marks Act 1995 (Cth)), which gives protection for 10 years and can be renewed indefinitely.

To apply for registration, your trade mark will satisfy the following criteria:

- There will be a valid and defendable reason to use and register the trade mark for the Queensland Government.
- The trade mark will meet with Queensland Government corporate identity guidelines.
- The trade mark will not infringe any other trade mark currently registered or in use within Australia.
- The trade mark will be capable of achieving registration.

4.4.3 Valid and defendable reason to register
To justify trade mark registration, the project should:

- Be long term (minimum three years), because the minimum time to achieve registration is seven and a half months.
- Involve a significant financial investment and also have the funds for trade mark registration.
- Have a commercial or business reason to drive the need for trade mark protection. For example there could be threat of competition, or interest from third parties for the relevant product or service.
- In addition, the decision to register a trade mark needs to be approved by the Director or Department Director or Chair.
4.4.4 **A trade mark will be unique**

Before applying to register a trade mark you need to conduct a search to check that there are not similar trade marks already in use or already registered for similar services or products. Searches may include the following:


4.4.5 **A trade mark will be distinctive**

Your trade mark will be something that other traders don’t need to use in the normal course of their trade. A trade mark may not be able to be registered if it is:

- Descriptive of the product or service, for example QUALITY PROJECT MANAGEMENT for project management software, on its own, would be unlikely to be registrable.
- A short combination of numbers or letters on their own, for example QPM3 might be difficult to register.
- A common surname such as SMITH or JACKSON would be unlikely to be accepted for registration.

Trade marks are assessed as whole entities rather than their separate parts, so combining a word that is difficult to register with another unique word, picture or symbol can achieve distinctiveness. In the example above the words QUALITY PROJECT MANAGEMENT combined with a picture of a pineapple would be more likely to achieve registration than the words on their own.

### Requirements for making an application for trade mark registration

- **A valid and defendable reason** to use and register a trade mark for the Queensland Government.
- **Approval** from your Director or Department Director or Chair.
- **Funds** to register the trade mark. The basic fees include an application fee and a registration fee. Additional fees are required when applying for a trade mark in more than one class of goods or services.
- **Access** to a [corporate credit card](http://www.ipaustralia.gov.au) to pay application and registration fees.
- Identification of the goods and services that will be supplied in association with your trade mark and how they fit into the Nice Classification list (available at: [www.ipaustralia.gov.au/trademarks/search_index.shtml](http://www.ipaustralia.gov.au/trademarks/search_index.shtml)).
- **Search results** for identical or similar trade marks for the same kind of product or service that would prevent use and registration.
4.4.6 Application process

Once you have fulfilled the above requirements, contact the Intellectual Property Officer who will coordinate your application.

4.5 Protecting a design

Design registration provides protection for the appearance of a product. It does not protect its functionality. Protection is initially for five years, which can be renewed for another five year period with a maximum protection of ten years. Design registration can be used in conjunction with patent registration to protect the appearance as well as the functionality of a product.

Before pursuing design registration:

- Keep your design quiet. Do not disclose to anyone outside of Queensland Health without executing a confidentiality agreement.
- Search the existing design records to ascertain if your design is new and distinctive, as required for registration.
- Report to the Intellectual Property Officer.

5 Supporting Documents

- Queensland Health Intellectual Property Policy
- Queensland Health Standard: Intellectual Property
- Queensland Health Procedure: Management of Intellectual Property Purchased by Queensland Health

6 Definition of Terms

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<tr>
<th>Term</th>
<th>Definition</th>
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<tr>
<td>Queensland Health employees</td>
<td>Health service employees, general managers, managers for districts, health</td>
</tr>
<tr>
<td></td>
<td>executives and chief executives as defined by the Health Services Act 1991</td>
</tr>
<tr>
<td></td>
<td>(Qld) and public service employees and officers as defined by the Public</td>
</tr>
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<td></td>
<td>Service Act 2008 (Qld) who work for Queensland Health. This includes those</td>
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<td></td>
<td>employed in tenured, temporary, full time, part time and casual positions.</td>
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### Intellectual property

Intellectual property captures the creative, intellectual or administrative effort involved in developing or improving a wide range of intangible assets. The definition of intellectual property is elaborated under Scope (s 3).

<table>
<thead>
<tr>
<th>Commercialisation of intellectual property</th>
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<tbody>
<tr>
<td>Queensland Health commercialises intellectual property primarily to deliver better health outcomes. Additionally commercialisation can result in economic benefits, directly or indirectly, and a raised profile for the individual creators of the intellectual property and for Queensland Health.</td>
</tr>
<tr>
<td>Commercialisation is the act of making a product, process or service, resulting from intellectual property developed in a unit, laboratory or health care facility, available to that or other units, health care facilities, agencies, organisations or geographical regions. This is achieved through its development, manufacture, use, sale, hire or other method of exploitation. Commercialisation also includes permitting or licensing any other party to do any of these things.</td>
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</table>

### 7 Document Custodian

Principal Project Officer (Intellectual Property)

Office of Health and Medical Research, Centre for Healthcare Improvement, Queensland Health

147-163 Charlotte St, Brisbane Qld 4000

Phone: (07) 3234 1479

Email: IP_Officer@health.qld.gov.au