

# Intellectual Property considerations and allied health students on placement

November 2017



## 1. Intellectual property

Intellectual property represents the creative, intellectual or administrative effort involved in developing or improving a wide range of assets. The Queensland Health Student Placement Deed (2017) includes intellectual property provisions for pre-entry students on placement and covers models of placement that include student projects and resource development.

### 1.2 Definitions

Student clinical placements within the Department of Health (**Department**) or Health Hospital and Health Services (**HHSs**) are subject to the Queensland Health Student Placement Deed (2017). This Deed is the overarching legal agreement between the Department, on behalf of all HHSs, and each Education Provider. The Student Placement Deed has defined '*intellectual property rights*' and '*student material*' and '*placements*' as follows:

**Intellectual Property Rights:** means all registered and unregistered rights in Australia and throughout the world and includes property such as copyright; trade or service marks; designs, semi-conductors and circuit layouts, source codes and object codes, trade, business and company names, indications of source or appellations of origin, logo, trade secrets, know-how and confidential information and rights to register any of these or the right to bring action for infringement of these. It excludes moral rights.

**Placement:** means clinical or other health education:

- related to a course or module of study provided by the Education Provider;
- other than placement for the purposes of conducting research (for example, for a PhD or Masters degree);
- is completed by the Student in a Facility as part of the Student's course or module of study;
- that is to be organised by the Education Provider Placement Contact Person and Queensland Health;
- that is to be documented in the form of a Placement Schedule; and
- that must be carried out and completed by the Students and managed by the parties in accordance with the terms of this Deed.

**Student Material:** means any material, including but not limited to original works, documents, computer software and data stored by any means created in whole or in part by a Student whilst on Placement.

## 2. Student Placement Deed and Schedule

### 2.1 Student Placement Deed

The intellectual property provisions for students on placement are detailed in clause 18 of The Queensland Student Placement Deed (2017). Key points contained within this clause include:

- Where a Student creates Student Material for the sole purpose of assessment related to their course or module, the Student will own the Intellectual Property Rights in that Student Material, subject to the provision of certain licence rights to the Department.

### **However**

- where a student creates material:
  - that contains or is based upon existing material of Queensland Health;
  - that was produced by the student in conjunction or consultation with an employee, contractor or agent of Queensland Health; or
  - as a result of Queensland Government funding,

then the Intellectual Property Rights in the student material will vest, on creation, in the Department.

That is, students can only own the Intellectual Property Rights of student material if it has been created by the student:

- for the sole purpose of assessment
- without any consultation or input from HHS employees (e.g. staff supervising students)
- without basing it on existing Queensland Health material and
- without the assistance of Queensland Government funding

Otherwise the Intellectual Property Rights will lie with the Department.

## **2.2 Student Placement Schedule**

The student placement schedule is a legal requirement of the Student Placement Deed and is the operational document that must be completed between an Education Provider and the Department or an HHS or facility on a frequent basis (typically annually or more frequently as negotiated). All courses or modules of study that incorporate clinical or health education activities undertaken by students within HHS facilities that fall under the definition of a clinical placement within the Student Placement Deed (see section 1.2 above) need to be listed within the Schedule. This will ensure that the provisions of the Student Placement Deed related to intellectual property are applied to the activities of those courses or modules of study.

## **3. Delegation for negotiating and signing intellectual property agreements**

A student may present at placement with the intent to negotiate on intellectual property rights and/or establish a written intellectual property agreement using a separate agreement document and/or contract. Clinical educators need to be aware of their HHS policy or procedures on such agreements or contracts. HHSs will have in place instruments of delegation that nominate contract signing delegations for specific documents. It is unlikely that a clinical educator will be an authorised delegate for signing any contract and the required delegate information should be checked with operational managers.

If HHS operational managers determine that an Intellectual Property Agreement is required, then it is recommended that negotiation between the appropriate HHS staff, the student and university commence well in advance of the student placement.

## **4. Student Research**

The definition of a placement within the Student Placement Deed includes clinical or other health education. Students on placement may be supervised whilst conducting health education activities as whole or part of their student placement. The intellectual property provisions of the Student Placement Deed therefore extend to these activities. Please note that students completing quality assurance

activities<sup>1</sup> that result in materials that are intended for academic publication or are of potential commercial value should be reviewed with their HHS Research Governance Officer to check the intellectual property rights of students and the HHS.

Where students are undertaking research<sup>2</sup> at a HHS as part of their clinical placement, then intellectual property arrangements must be carefully considered, decided and finalised prior to the student commencing their placement. HHS staff are encouraged to seek advice from their local Research Governance Officer to determine if a formal research agreement is required detailing all aspects of the research including dissemination and use of research outputs.

If the HHS determines that a formal research agreement is required but a student refuses to sign it; the student remains bound by Intellectual Property terms of the Student Placement Deed - however it will be up to the Hospital and Health Service to decide whether to proceed with the research aspect of the student placement.

## Useful links and references

Queensland Health, Health and Medical Research Unit – For researchers, available at [https://www.health.qld.gov.au/ohmr/html/regu/for\\_researcher](https://www.health.qld.gov.au/ohmr/html/regu/for_researcher)

Queensland Health (2015) National Code of Conduct for Health Care Workers (Queensland), available at <https://www.health.qld.gov.au/system-governance/policies-standards/national-code-of-conduct>.

Queensland Health (2017) Student Placement Deed available at <https://www.health.qld.gov.au/employment/clinical-placement/education-providers/group-a-documents>

Guidelines for completing a Schedule at:

[https://www.health.qld.gov.au/\\_data/assets/pdf\\_file/0029/629705/schedule-guidelines.pdf](https://www.health.qld.gov.au/_data/assets/pdf_file/0029/629705/schedule-guidelines.pdf)

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For further information contact Allied Health Professions' Office of Queensland, PO Box 2368, Fortitude Valley BC QLD 4006, email [allied\\_health\\_advisory@health.qld.gov.au](mailto:allied_health_advisory@health.qld.gov.au), ph 07 3328 9298.

For permissions beyond the scope of this licence contact: Intellectual Property Officer, Queensland Health, GPO Box 48, Brisbane Qld 4001, email [ip\\_officer@health.qld.gov.au](mailto:ip_officer@health.qld.gov.au), phone (07) 3328 9862.

<sup>1</sup> A quality assurance activity (QA) is a clinical governance activity that is a requirement of the compulsory *National Safety and Quality Health Service Standards* and an associated *Australian Health Service and Quality Accreditation (AHSSQA)* Scheme.

<sup>2</sup> Research is any work that is performed as part of an ethics approved research project where agreements governing IP for research collaboration between HHS staff, students and university collaborators are subject to procedures or governance set out by the HHS Research Governance Office (RGO) in accordance with information from the [Health and Medical Research Unit of Queensland Health](#).