

Intellectual property management policy



Authorised by board on: 23 November 2016

Executive Director’s authorisation:

A handwritten signature in black ink, which appears to read "Patrick W. Dae".

Effective date: 23 November 2016

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1. PURPOSE

The purpose of this policy is to support the objectives of Fisheries Research and Development Corporation (FRDC) by providing clear direction to FRDC employees and to Research Providers and investment partners, in respect of the identification, protection and management of IP Rights (IPR) arising from FRDC's Research, Development and Extension (RD&E) investment. This is to ensure that the products and services arising from this investment are delivered to the Australian fishing and aquaculture sectors through the most efficient and appropriate route to adoption.

2. RESPONSIBILITY

Responsibility for this policy resides with Executive Director.

3. DEFINITIONS AND ACRONYMS

Definitions - follow link to [Definitions](#)

Acronyms – follow link to [Acronyms and Abbreviations](#)

4. RISK CATEGORY

Strategic	Operational	Financial	ICT	People
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5. RELEVANT DOCUMENTATION

This section contains links to internally and externally facing documents – access to internally facing documents is restricted to FRDC employees.

Relevant documentation	Document location or web address
Internal	
Intellectual property procedure DRAFT	NEMO-29-637
Intellectual property register	NEMO-29-1690
External	
IP Australia	IP Australia
Primary Industries Research and Development Act (PIRD Act) 1989	ComLaw
Risk policy	Risk Policy

6. PUBLICATION

This policy is to be made available on the FRDC website.

7. BACKGROUND

Nature of IP

FRDC recognises that intellectual capital developed from its RD&E investments can consist of various different forms of knowledge that can be converted to beneficial outcomes and that this can exist in at least four different forms:

- a) *know how, confidential information and trade secrets* - which is practical information relating to innovations that is held by a person or an organisation;
- b) *data* - which is recorded information that is used for the development and in some cases operation for innovations, for example, information which is recorded in documents and databases and used in the operation of software systems;
- c) *intellectual property (IP)* - which consists of the legal rights that exist over intangible assets relating to copyright, trade marks, patents, circuit layouts, registered designs and plant breeder rights (some of which must be registered and some of which exist automatically); and
- d) *moral rights* - which are rights of attribution of authorship.

This policy addresses how FRDC will manage the various forms of intellectual property and related rights to ensure that it has the ability to control the protection and delivery of outcomes developed from its RD&E investments to the Australian fishing and aquaculture sectors.

FRDC's Responsibility under the PIRD Act

Section 11 of the Primary Industries Research and Development Act 1989 (PIRD Act) defines one of the functions of the FRDC to be to disseminate and commercialise, and facilitate the dissemination, adoption and commercialisation of, the results of research and development in relation to the primary industry or class of primary industries in respect of which the Corporation was established.

Section 12 of the PIRD Act gives the FRDC the power to *make intellectual property and other applications, including joint applications, in relation to the results of research and development.*

Section 13 of the PIRD Act gives the FRDC the power to enter into agreements so as to make provision with respect to:

- (i) assigning inventions and interests in inventions
 - (ii) applying for patents for inventions
 - (iii) commercially exploiting patented inventions
 - (iv) granting licences under patented inventions
- being inventions made in the course of undertaking R&D activities

8. POLICY

The FRDC subscribes to the intellectual property principles agreed in the statement of intent that underpins the National Primary Industries RD&E Framework [*Australian Government Intellectual Property Manual and Primary Industries Standing Committee Intellectual Property (IP) Management Principles (2012)*]; and specifically the ten principles developed by the intellectual property working group set up under that framework:

1. *intellectual property management decisions are integral to RD&E investment decisions*
2. *intellectual property management is a means to an end, not an end in itself*
3. *proper intellectual property management facilitates decision making on pathways for impact*
4. *careful partner selection is critical for successful commercialisation*
5. *intellectual property ownership and use rights must be carefully considered*
6. *it is essential to establish at project commencement what degree of freedom to operate is needed*
7. *careful consideration of the risks and available risk management strategies is essential*
8. *intellectual property management must be balanced with potential returns from commercialisation and intellectual property rights must be realistically valued*
9. *consideration of rights to publish should be part of a broader intellectual property strategy*
10. *student's right to publish his/her research outcomes should not be compromised provided such publication will not affect the capacity for Industry to adopt the outcomes of their research.*

In recognition of these principles the FRDC will seek to manage intellectual property in such a way as to achieve the outcomes targeted in its enabling legislation and to maximise the benefit to the fishing and aquaculture industry. In doing so FRDC shall adopt the following policy in regard to IP ownership, IP management and IP adoption and commercialisation.

Ownership of IP

FRDC will jointly own Project Material IP (i.e. IP generated during or as an outcome from the Project) with the Research Provider(s) and other parties investing in its RD&E, as tenants in common in equal shares.

In securing intellectual property ownership rights FRDC reserves the right to request assignment of copyright in works created in the course of FRDC-funded research; and/or reserves a right of first refusal to purchase another party's share of any intellectual property rights that arise from a FRDC-funded project.

Through adopting a policy of ownership of project IP outcomes, this will mean that, should unforeseen intellectual property be developed during the life of the project that requires protection and/or commercialisation the Research Provider(s) partner and the FRDC have to unanimously agree on both the strategy and their respective shares of any financial costs or returns that might arise from the activity before such activities could proceed.

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Ownership of Reports

Copyright in all Reports (Milestone Progress Report, Final Report and Financial Report), will be owned by, and will be deemed to vest on its creation in, FRDC. While ensuring the protection for IP developed from projects, the FRDC will encourage wide communication of research, development and extension results, provided that the FRDC is clearly acknowledged.

Moral Rights

FRDC shall acknowledge the moral rights of researchers and other individuals that have developed copyright material produced as a result of funded research, including any project reports. Unless agreed otherwise, FRDC shall not seek an individual to waive their moral rights in such copyright material.

Management of IP

FRDC shall manage intellectual property developed from FRDC-funded research by:

1. adopting a flexible and adaptable and collaborative approach to intellectual property management so that industry benefit is maximised
2. ensuring appropriate procedures are in place to safeguard the copyright and confidentiality of other parties' intellectual property;
3. acknowledging that public research organisations may require information from its investments to be published as part of their purpose or to allow students to complete their theses;
4. ensuring that appropriate procedures are in place to manage intellectual property owners' rights and confidential information when assessing publications;
5. applying appropriate risk management assessment to intellectual property management; including ensuring that an appropriate balance is struck between the merits and risks of protecting and granting access rights to intellectual property

IP register

To ensure accurate reporting of intellectual property, an IP register is to be established for each project. This register will record essential background IP and/or third party IP brought into a project and any new intellectual property proposed to be developed throughout a project (Project Material IP). The role of the IP register will be to:

- a) track ownership and licensing of Project Material IP provided for, or arising from, projects;
- b) record any limitations on the use of background IP or third party IP provided; and
- c) track any dissemination and commercialisation of Project Material IP.

The IP Registers must be regularly updated so that they reflect the current state of all intellectual property used or created in a project. The IP Register for each project will be amalgamated into a master IP Register maintained by FRDC.

Registration of Intellectual Property Rights

FRDC and the Research Provider(s) will be required to consult with each other as to the best methods to obtain protection for Project Material IP (e.g. protection through registration). FRDC and the Research Provider(s) will be required to cooperate with each other and promptly take all necessary steps for the purpose of protecting all Project Material IP that they have agreed will be protected.

IP Adoption and Commercialisation

FRDC will actively exploit its intellectual property with a view to maximising the chances of achieving impact for the Australian fishing and aquaculture sectors and of generating revenue for the FRDC. This applies to all FRDC created intellectual property generated including through its RD&E investments

The FRDC will individually assess its investments to determine the most appropriate adoption pathway (commercialisation or free dissemination). For project outcomes that require third party investment to achieve adoption the default pathway to be considered will be through a process of commercialisation of the intellectual property, if practical and able to optimise fishing and aquaculture use of the intellectual property and deliver a net positive return on FRDC's investment.

Where commercialisation has been agreed as the preferred adoption pathway, the Research Provider and FRDC shall collaborate in the development of a commercial plan for the intellectual property to be commercialised.

Commercialisation plans must be approved by FRDC prior to a Research Provider entering into any agreement with a third party for the exploitation of intellectual property generated from FRDC investments.

Where free dissemination is the preferred pathway, the FRDC will aim to make project results publicly available as soon as possible after completion of a project. Not only will this help ensure that the outcome is useful to the intended audience, it will also preclude third parties from procuring a monopoly over any substantially identical outcome.

FRDC shall manage adoption of intellectual property developed from FRDC-funded research by:

1. fostering awareness amongst research partners on issues relating to the extension of the results of research and intellectual property
2. requiring research partners to have in place a system for the effective management of the extension of the results of research and intellectual property
3. requiring research partners to detail their proposed extension strategy in their research applications, and review them at key milestones
4. reviewing proposed extension strategies for each project
5. forming and documenting a FRDC extension "position" with regard to each investment, and update the position as necessary

6. requiring research partners to keep the FRDC informed of any extension activity
7. working with other groups to develop “products” and/or facilitate extension
8. supporting specific commercialisation arrangements and
9. negotiating commercialisation arrangements that attain the best practical commercial outcome for FRDC and Australian fishing and aquaculture sectors.

9. ATTACHMENTS

#	Description
1	FRDC Project Investment Process – IP and Commercial Assessment

Attachment 1 – FRDC Project Investment Process – IP and Commercial Assessment

FRDC PROJECT INVESTMENT PROCESS - IP AND COMMERCIAL ASSESSMENT

IP Policy Dec 2016

