



Government of **Western Australia**
Department of **Commerce**

Western Australian Government
Intellectual Property Policy
2015

TABLE OF CONTENTS

1. Purpose	1
2. Scope.....	1
3. Policy Statement.....	1
4. Principles	2
4.1 General Principles	2
4.2 Key Principles.....	2
5. Context	3
5.1 History of IP Policy in the Western Australian Government.....	3
5.2 IP Legislation and Policy in the Western Australian Government	3
5.3 Identifying and Creating IP Opportunities	4
5.4 Managing IP Assets.....	4
5.5 Commercialising IP Assets	4
5.6 Determining the Benefit to Western Australia from IP Development and Commercialisation	5
6. Review of IP Policy	5
7. Best Practice IP Policy Guidelines and Tool Kit.....	5
8. Definitions	6

1. Purpose

The purpose of this policy is to guide Western Australian Government Agencies in the development, management and use of Intellectual Property (IP) and Intellectual Property Rights (IPR).

2. Scope

The Minister for Commerce has responsibility for the development and review of the Western Australian Government's IP Policy ('IP Policy') under the *Industry and Technology Development Act 1998* ('Act'). Section 6 (g) of the Act states the Minister is to "encourage and facilitate the commercialisation of the intellectual property and other resources of departments of the Public Service or of State agencies or instrumentalities".

The IP Policy:

1. Applies to the Public Sector as defined under the *Public Sector Management Act 1994* (PSMA) except those entities listed under Schedule 1 of the PSMA.
2. Covers activities utilising Government resources which are undertaken by government, the business community under contract, by recipients of government grants, through collaboration with other organisations and any commercial organisations under the control of a government agency unless otherwise specified in their controlling contract.
3. Reflects the recommendations of the *Review of the Western Australian Government Intellectual Property Policy (2012)*.
4. Replaces the *Government Intellectual Property Policy and Best Practice Guidelines (2003)*.

3. Policy Statement

Intellectual property created with Western Australian Government resources is a government asset with a potential source of value to the Western Australian community and economy.

The Western Australian Government will actively seek to optimise the economic, social and environmental benefits to Western Australians from the development, use, commercialisation and disposal of IP – where possible, in conjunction with the business communities and non-for-profit sectors operating in Western Australia.

Western Australian Government Agencies covered by this policy will ensure that:

1. IP assets, including data, created with government resources are identified, captured, suitably protected, responsibly managed, and transparently disposed of according to the key principles outlined in this policy.
2. Rights to IP created with government resources are allocated to optimise the economic, social or environmental benefits for the State from the use, commercialisation and disposal of the IP.
3. Employers and employees are encouraged to meet core operational objectives through creativity and innovation which may result in valuable and useful IP being developed and commercialised.
4. Employees are recognised for their involvement in the development of IP.

4. Principles

4.1 General Principles

Western Australian Government Agencies are required to:

1. Manage IP under their control in a responsible, effective, efficient, fair and ethical manner for the Western Australian community as a whole.
2. Respond to opportunities to 'unlock' IP for commercial use and further exploitation by the private and non-for-profit sectors where this involves acceptable risk.
3. Commercialise, transfer or dispose of IP in an open, accountable, timely and competitive manner consistent with Government legislation, policies and guidelines.
4. Consider IP development and commercialisation as an ancillary non-core business activity except where commercial activities or research driven solutions are an integral aspect of an agency's objectives.
5. Periodically evaluate the overall effectiveness (including costs, risks, and benefits) of their IP policies and practices.

4.2 Key Principles

When developing, managing, and commercialising IP generated using Government financial, physical or human resources, Western Australian Government Agencies will:

1. Lawfully use IP to improve service delivery and operational performance.
2. Preserve and enhance IP asset value while achieving core strategic business objectives.
3. Cooperate with the Western Australian business community to develop and commercialise IP opportunities, including open data access.
4. Ensure IP related risks are known, managed and acceptable for Government.
5. Ensure IP policies, processes and decisions are accountable, transparent and auditable.
6. Adopt best practice for IP development, management, commercialisation and disposal.
7. Recognise, and as appropriate, reward employee achievements – including outstanding extraordinary outcomes.
8. Clearly communicate to staff and stakeholders how the Western Australian IP Policy is applied within the agency.
9. Where considered appropriate adopt Creative Commons Licensing as described in the Australian Governments Open Access and Licensing Framework (AusGOAL) and seek to minimise net costs to the Western Australian Government from copyright use.

5. Context

5.1 History of IP Policy in the Western Australian Government

The Western Australian Government first introduced an IP Policy in 1987 in recognition of the increasing importance and value of Government IP to the State and future economic growth and government service delivery.

The Western Australian Government has subsequently revised and refined its approach to IP a number of times. The current approved IP Policy was published in 2003. IP Laws in Australia, Commonwealth programs that result in IP development and approaches in other jurisdictions have continued to change since that time.

A review of the IP Policy undertaken in 2011 recommended:

1. Promoting economic development through an IP policy encouraging technology transfer.
2. Emphasising plain English style and principles in the IP Policy.
3. De-emphasising agency revenue retention and employee cash rewards as incentives to encourage IP commercialisation in the whole-of-government policy while allowing for greater flexibility in recognition and reward for extraordinary achievement (where appropriate) via mechanisms such as an endorsed net benefit sharing arrangements facilitated in consultation with a number of agencies including Treasury.
4. Recognising the importance of government digital information and use of the AusGOAL Framework where an agency considers it appropriate to achieving their business goals.

5.2 IP Legislation and Policy in the Western Australian Government

Section 6 (g) of the *Industry and Technology Development Act 1998* stipulates that IP opportunities in the Western Australian Government should be identified, assessed, developed and managed in a timely and efficient manner through to commercialisation where appropriate.

Where commercialisation is not appropriate, IP should be disposed of in the least restrictive legal manner appropriate for Government assets and information in the operating context.

The following steps describe an IP life cycle:

1. Identifying and creating IP opportunities through fostering creativity and innovation;
2. Managing the IP asset including registering and applying for protection (e.g. patents);
3. Commercialising the IP with regard to the risks and benefits to Government; and
4. Responsibly disposing of the IP for the benefit of Western Australia.

The following legislation covers IP in the Western Australia Government context:

Western Australia

Public Sector Management Act 1994
State Supply Commission Act 1991
Financial Management Act 2006
State Trading Concerns (Authorisation) Amendment Regulations 1998
State Trading Concerns Act 1916

Commonwealth

Circuit Layouts Act 1989
Copyright Act 1968
Designs Act 2003
Intellectual Property Laws Amendment (Raising the Bar) Act 2012
Patents Act 1990
Plant Breeder's Rights Act 1994
Trade Marks Act 1995

5.3 Identifying and Creating IP Opportunities

Western Australian Government resources can be utilised in many innovative and creative activities.

These activities may involve the development of new technologies, the innovative application of existing technologies, scientific research, or other creative activities which generate valuable IP opportunities.

Valuable IP assets may include patentable inventions, copyright material (including data made available via an open data policy), plant breeding, valuable trade secrets, registered designs, or trademarks.

Typical examples of valuable IP developed in government include computer software and “apps”, educational and training packages, new tools or scientific processes, inventions and new plant varieties.

5.4 Managing IP Assets

Government IP is a State asset and must be managed responsibly throughout its life cycle.

Responsible management of IP involves maintaining adequate documentation of IP (e.g. registers) and providing suitable evidence for audit and future policy evaluation and review.

Examples of responsible IP asset management may involve commercialisation, assigning IP rights to developers in return for concessions in development costs and licensing, allowing other WA government agencies to use the IP, or applying appropriate open access license conditions to the release of government information.

Agencies are encouraged to develop agency-level IP policies in alignment with this policy to manage IP processes and stakeholder interaction – e.g. in respect to employee incentives and reward systems where appropriate or promoting a commercialization opportunity.

5.5 Utilising IP Assets

Government IP can be identified, developed, managed, protected and commercialised to provide economic, social and environmental benefits for industry, businesses, not-for-profit organisations and communities in Western Australia.

The benefits of IP commercialisation include raising revenue, enhancing local industry opportunities, reducing risk, improving international competitiveness, and promoting a reputation which attracts further development of innovative and technological solutions to Western Australia.

Disposal or transfer of IP is also considered one form of asset management and disposal which may benefit Government through reduced development costs, improved management of risk, better licensing conditions and assist not-for profit organisations to improve services in western Australia.

When technology or specialist knowledge is created commercialisation can commence with applying for protection (e.g. a provisional patent) and conclude with mutually beneficial agreements with other parties through licensing or transfer of ownership.

A process to assist IP registration and protection (e.g. provisional patent applications) is included in the *Intellectual Property Guidelines and Tool Kit*. Increasing the number of provisional patents also increases the probability of attracting further commercialisation opportunities to Western Australia.

5.6 Benefit to Western Australia from IP Development, Commercialisation and Transfer

Benefits to Western Australia from IP development, commercialisation and transfer may include:

1. Western Australia's small-to-medium business improving competitiveness through access to IP related opportunities, including open data opportunities, initiated by the Western Australian Government.
2. Employment opportunities and enhanced human capital in Western Australia through expanding knowledge based businesses.
3. Private capital investment in knowledge-based industries that also promote research and development infrastructure and training opportunities in Western Australia.
4. Broadening sources of revenues for the Western Australia economy from the local commercialisation of IP developed with Western Australian Government resources.
5. Government efficiency and effectiveness delivered through improved IP related productivity and sharing development across the public sector.
6. Improved ability for the Government to meet policy goals and development objectives.
7. Facilitating improved service delivery through Government agencies and the not-for-profit sector delivering positive social and environmental outcomes in Western Australia

6. Review of IP Policy

The Government Intellectual Property Policy will be reviewed every five years following approval.

Effectiveness of the Government Intellectual Property Policy will be evaluated against a number of benchmarking criteria with respect to the State's relative position in comparison with other Australian States and international indexes.

The guidelines and tool kit provided to support this policy will be reviewed annually to reflect emerging trends in innovation and IP commercialisation encouragement and facilitation.

Agencies involved in substantial IP development and commercialisation should ensure their IP policies conform to this whole-of-government IP policy and facilitate review on a timely basis to ensure the agency policies remain relevant

7. Best Practice IP Policy Guidelines and Tool Kit

Best Practice IP Policy guidelines, associated materials and services to assist agencies with implementing IP policy are available in a web-based 'tool kit'.

The tool kit provides information on the following:

1. IP management, including examples of identifying, protecting, recording and disposing of IP.
2. Models of IP policies and processes from leading WA Government agencies.
3. Frequently asked questions based on real enquiries and educational pamphlets.
4. Identifying IP opportunities generated from grant funding and commercial contracting.
5. Framework for managing organisational and human resource incentive systems.
6. Managing IP related risks and allocating IP rights openly and fairly in a competitive manner.
7. Sources of assistance including commercial services, training and model contracts.
8. Links to other related IP legislation and policies, including the State open data policy.
9. Networks, seminars, workshops and events associated with promoting awareness of IP.

8. Definitions

The following terms are defined for the purposes of this policy:

Allocating IP rights	The vesting or assigning ownership to IP, including vesting or granting of licenses to IP for the purpose of commercialisation.
AusGOAL	<p>A specific Australian orientated implementation of the international <i>Creative Commons</i> licensing framework developed by the Queensland Government for the Australian Public Sector environment (see www.ausgoal.gov.au)</p> <p><i>Creative Commons</i> is a non-profit organisation providing standard copyright licenses to the public to facilitate easy communication in standard language which rights are reserved and which rights are waived (see www.creativecommons.org)</p>
Benefit(s) to Western Australia	<p>Achieving economic, social or environmental benefits for people living and working in Western Australia.</p> <p>Optimising the benefit(s) to Western Australia includes identifying and weighing all interests which are positively or negatively affected by the government agency's actions. The factors set out in "Determining the Benefit to Western Australia" indicate how proposed IP related actions may be interpreted to potentially benefit Western Australia.</p>
Business Community	Businesses of all sizes operating in Western Australia, including startup companies and universities and research institutes when they are engaged in business related activities.
Collaborative Development	Occurs when a person or organisation jointly develops IP with Government employees in the course of their employment by a Government Agency.
Commercialise / Commercialisation / Commercialising	The commercial exploitation of the results of innovation and creativity which includes the licensing or sale of IP (or rights to IP) for a commercial benefit to the owner of the asset. Includes the use, manufacture, sale, hire or other exploitation of a product or process providing a service incorporating that IP, or to license, sub-license, joint venture or make any other similar arrangement with any third party to do any of those things. 'Commercialise' may also include the dissemination for no commercial benefit as an appropriate option for specific IP items. In this context, 'disposal' means removing the need to manage IP as an agency asset through commercialisation or dissemination.
Copyright Act 1968 (Commonwealth)	The provisions of the <i>Copyright Act 1968</i> relating use and ownership of copyright by "agencies of the Crown" (see Part VII ss. 176-183F) place government agencies in a wholly different position from non-government agencies with regard to ownership and use of copyright (see www.austlii.edu.au/au/legis/cth/consol_act/ca1968133/)
Government	<p>For this policy, unless otherwise specified, the Government of Western Australia.</p> <p>Government purposes include any purposes associated with the operations of government agencies including the delivery of services to the community and other ancillary purposes associated with meeting stated goals and expected outcomes.</p> <p>Other related terms used in this policy and associated guidelines include:</p> <ul style="list-style-type: none"> • <i>Government agency</i>: Public Sector agencies as defined under the <i>Public Sector Management Act 1994</i>. All agencies, departments and public authorities forming the system of Western Australian Government are within the scope of this policy except those listed under Schedule 1 of the <i>Public Sector Management Act 1994</i>. • <i>Government contract</i>: A contract between a government agency and a contracted developer for the provision of goods or services to the agency or to a third party which may result in the development of IP. A contracted developer is a non-government person or organisation contracted by a government agency to develop, or to provide services that would be likely to result in the development of, IP under a government contract. • <i>Government Intellectual Property (IP) Policy</i>: unless otherwise specified, the "IP Policy" or "the Policy" refers to the content of this policy statement – including statements of intent, key principles, definitions and associated text on context, responsible management and optimising benefits to Western Australia.

	<ul style="list-style-type: none"> • <i>Government IP support</i>: The services provided by the Department of Commerce through the Industry, Science and Innovation Division. • <i>Government resources</i>: Any financial, physical or human resources under the control of the Western Australian Government. • <i>Government grant</i>: A grant recipient is a non-Government person or organisation receiving funds from the Western Australian Government in the form of a grant (as distinct from a contract for services or a loan).
Guidelines and Tool Kit	The package of supporting guidelines, tools and services provided by the Department of Commerce and published at www.commerce.wa.gov.au .
Innovation	According to the Oslo Manual Guidelines recognised by OECD countries: “Innovation is the implementation of a new or significantly improved product (good or service), process, new marketing method or a new organisational method in business practices, workplace organisation or external relations.”
Intellectual Property (IP) / Intellectual Property Rights (IPR)	<p>The legal rights which result from intellectual activity in the industrial, scientific, literary, artistic, musical and dramatic fields, and include all rights, including without limitation:</p> <ol style="list-style-type: none"> 1. patents, copyright, moral rights, rights in circuit layouts, plant breeders’ rights, registered designs, trademarks, and the right to have trade secrets kept confidential; 2. any application or right to apply for registration of any of those rights; and 3. any rights which may be introduced or come into existence through international and national laws.
Management / Manage / Managing	All activities related to the identification, protection, securing, recording, contracting, and allocating of IP – including human resource management issues related to encouraging and facilitating IP development and commercialisation.
Net benefit sharing arrangement	An appropriate mechanism of agreement between all relevant parties which may involve support from the Minister responsible for the <i>Industry and Technology Development Act 1998</i> (Section 3) and be in accord with the agreed monetary rewards frameworks associated with this policy and endorsed by Cabinet. Comprehensive net benefit sharing arrangements may also encompass <i>CEO Performance Agreements</i> identifying specific agency goals and commitments in respect to IP development and commercialisation mechanisms – e.g. relating to encouraging, facilitating and appropriately rewarding desired outcomes.
Outstanding outcomes	‘Outstanding’ means ‘something special’ or ‘out of the ordinary’ and more than ‘substantial’, ‘significant’ or ‘good’. The outcome benefit must be something more than one would normally expect to arise from the duties for which the employee is paid.
Revenue retention	<p>In some situations government agencies may retain a percentage of net proceeds resulting from the commercialisation of their IP. Revenue can be retained by an agency having specific legislative powers to retain revenues or by having agreed net appropriation arrangements under section 23 of the <i>Financial Management Act 2006</i>.</p> <p>Arrangements for the retention of revenue or net proceeds resulting from IP commercialisation may be considered on a case-by-case basis by the Treasurer under the <i>Financial Management Act 2006</i> in accord with the agreed monetary rewards framework associated with this policy, to be developed in consultation with a number of agencies including Treasury and endorsed by Cabinet.</p>
Rights recipient	A non-government person or organisation being allocated rights to IP which has been developed with government resources or grants.
Unlocking IP	<p>“Locking up” IP refers to the protective management of IP, where exclusive rights are asserted and the use of, and access to, IP are restricted.</p> <p>“Unlocking” IP refers to an open management style that favours a wider dissemination and sharing of the information, knowledge, ideas and rights which may be normally protected by IP laws. Unlocking should encourage delivery to market rather than strategic capture by vested interests resulting in no reasonable market access to the IP.</p>