



Department of
Jobs, Tourism, Science
and Innovation

Commercialising WA Government Intellectual Property

IP Policy: Agency Toolkit



About this document

This guide is part of the *Intellectual Property Toolkit for WA Government Agencies*.

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In summary...

WHAT IS COMMERCIALISATION?

The primary purpose of commercialisation is to generate income through the licensing or sale of intellectual property (IP) to the public or third parties.

Commercialisation pathways include:



Assignment

Transfer IP ownership and rights in exchange for a benefit.



Licensing

Permission for others to use IP under specific terms & conditions.



Joint Ventures

Legal agreement to collaboratively develop IP with another party.



Spin-off companies

Establish a separate company to develop and commercialise the IP.

WHEN TO CONSIDER COMMERCIALISATION

WA Government agencies are encouraged to consider commercialising IP where it will achieve the maximum public benefit for Western Australia.

Factors to consider:



Commercial market for IP



Agency functions & purpose



Risks & benefits



Benefits of open public access



Resource requirements

COMMERCIALISATION PROCESS

Commercialisation requires flexibility and should not be thought of as a “one-size fits all” process. This guide sets out a suggested process to assist agencies commercialising IP.



As part of the commercialisation process agencies must engage with:



Relevant legal & IP experts



Department of Treasury

Options where commercialisation is not pursued:



Agency continues to develop IP & re-assess commercialisation options in the future.



Licence or assign IP for development by other parties to foster innovation & optimise public value.



Consider options to provide open access to IP.



1 What is commercialisation

The Western Australian Government Intellectual Property Policy (the IP Policy) encourages the commercialisation of intellectual property (IP) owned by WA Government agencies to achieve the maximum public benefit for the community and the State.

The primary purpose of commercialisation is to generate income through the licensing or sale of IP to the public or third parties¹. However, the release or commercialisation of government IP can also:

- enhance local industry opportunities;
- improve international competitiveness;
- support research and innovation; and
- promote economic and jobs growth.

The IP Policy provides agencies with high-level guidance regarding the objectives of commercialisation and key factors to consider as part of the decision making process. Agencies should develop their own internal policies and procedures to assist in the commercialisation of IP.

As commercialisation can be a complex process, agencies are required to seek expert advice before commencing with the commercialisation of government IP².

2 Commercialising WA Government IP

2.1 WA Government IP Policy Position Statement

The threshold considerations and guiding principles for the commercialisation of WA Government IP are set out in section 6 of the IP Policy³. The high-level position statement from the Policy is included below:

4. Commercialisation

The commercialisation of State owned IP rights may contribute to beneficial outcomes for the Western Australian community and the State.

Where there is a clear net benefit to the State, an agency may commercialise its IP rights providing it has statutory power under its enabling legislation or the *State Trading Concerns Act 1916 (WA)*.

Agencies are encouraged to consider commercialisation of IP where it is considered appropriate, lawful and financially viable following an appropriate risk assessment, and where commercialisation will achieve maximum public value.

In considering whether to commercialise IP, agencies should look to achieve the maximum public benefit. This should include a consideration of who is best placed to further develop and commercialise the IP – whether this is within Government, by an employee or third party.

The creation of significant and valuable IP is often a collaborative effort and the result of the time and resources of various parties. Where IP created in Government is successfully commercialised, the agency may provide for an appropriate benefit sharing arrangement between all relevant parties.

¹ Adapted from State of Victoria (Department of Treasury and Finance) (2019) *Intellectual Property Guidelines for the Victorian Public Sector*, p. 41.

² WA Government Intellectual Property Policy (2023), p.18.

³ WA Government Intellectual Property Policy (2023), p.16



2.2 Powers to commercialise WA Government IP

The commercialisation of WA Government IP may only be undertaken under a statutory power. An agency may commercialise IP:

- where it has a statutory function to do so; or

For example section 13(2)(h) of the *Public Transport Authority Act 2003 (WA)* provides that:

The Authority may, for the purpose of performing any of its functions under this Act or any other Act, but subject to any limitation imposed by any Act:

(h) develop and turn to account any technology, software or other intellectual property that relates to the function and, for that purpose, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights;

- in accordance with the [State Trading Concerns Act 1916](#) (WA).

Section 4 of the *State Trading Concerns Act 1916* (WA) prohibits Government from undertaking certain activities with a view to making a profit or revenue unless authorised. Section 4A(2) provides that:

A trading concern is authorised for the purposes of section 4(2) if —

- (a) the trading concern is carried on by a prescribed financial entity;*
- (b) the trading concern consists of a prescribed activity involving the provision (in the State or elsewhere) of —*
 - (i) goods, information or intellectual property;*
 - (ii) scientific, technical, educational, training, management or advisory services; or*
 - (iii) advertising opportunities or opportunities to participate in arrangements in the nature of advertising or having a purpose similar to advertising; and*
- (c) the amount of any fee or charge imposed by the financial entity in the course of carrying on the trading concern has been approved by the Minister responsible for the financial entity.*

The [State Trading Concerns \(Authorisation\) Regulations 1998](#) (WA) includes a list of WA Government agencies prescribed as “financial entities” and the activities they may undertake with respect to IP.

3 Commercialisation pathways





There are many ways agencies can commercialise IP. For example:

- Seeking royalty payments for the publication of State copyright material.
- Licensing or selling a patent.
- Establishing a spin-off company to develop and market the IP⁴.

The commercialisation pathway taken will depend on the nature of the IP and the size of the potential commercial market. Agencies are required to seek expert advice when developing a commercialisation strategy. The IP Policy also requires agencies to consider who is best placed to develop and commercialise the IP to achieve the best possible outcome. If the agency does not choose to commercialise the IP itself there are options to assign or licence the IP to a third party for this purpose.

⁴ Adapted from State of Victoria (Department of Treasury and Finance) (2019) *Intellectual Property Guidelines for the Victorian Public Sector*, p. 41.

The table below summarises some of the common commercialisation options that agencies may consider⁵:

Option	Description	Considerations
Assignment 	<p>Equivalent to the sale of an asset.</p> <p>Agency transfers its ownership of the IP, and any associated IP rights, to another party for a lump sum payment or other benefit.</p>	<ul style="list-style-type: none"> • Most straightforward commercialisation option but may not be as profitable (to the agency). • May be appropriate where agency is not the party best placed to maximise the potential benefit from the IP. • Agency is not usually entitled to use the IP after its assigned. If continuation of use is required, a license back arrangement should be incorporated into terms of assignment. • When determining purchase price agencies should consider all the costs incurred in the development and protection of the IP, a profit component, and the potential market value of the IP.
Licensing 	<p>Agency gives permission for another party to use the IP on agreed terms and conditions.</p> <p>Agency may receive a percentage of the revenue generated by the licensee from the IP (royalties).</p>	<ul style="list-style-type: none"> • Agency will retain ownership of the IP. • Can be an effective option if the agency does not have the resources or experience to develop and market the IP. • Agreements may be exclusive or non-exclusive and the terms of the IP use by the licensee can be negotiated.
Joint venture 	<p>Agency enters into legal agreement with one or more parties to collaborate on a specific project for a limited term.</p>	<ul style="list-style-type: none"> • May be appropriate where the goal is to attract investment. • Can allow agencies to leverage private sector experience and expertise to develop and market their IP. • Parties to the joint venture are individually responsible for the costs incurred. • Requires careful consideration of the risks and benefits to both the agency and State.
Spin-off companies 	<p>Agency establishes a separate company to commercialise the IP.</p> <p>Agency either licenses or assigns the IP to the spin-off company who then exploits the IP to generate revenue.</p>	<ul style="list-style-type: none"> • Should be considered where the opportunity warrants a stand alone business and independent investment. • May be preferable where IP requires significant additional development and resources. • Shares in the company may be sold to generate funds to develop the IP. • Requires careful consideration of the risks and benefits to both the agency and State.

Additional considerations for joint ventures and spin off companies

Joint ventures and the establishment of spin-off companies are higher risk commercialisation activities requiring careful planning and management. Consequently, agencies are required to seek

⁵ Adapted from Commonwealth of Australia (2012) *Australian Government Intellectual Property Manual*, chapter 10.



appropriate advice from legal and commercialisation experts when considering these commercialisation options.

3.1 Licensing arrangements

Licensing is a common way for government to provide public access to its IP, while retaining control and ownership of the IP asset. Subject to agreed terms, the grant of a licence can enable a third party to undertake a variety of activities including developing, modifying, manufacturing or selling the IP, without infringing the owner’s copyright⁶.

The table below outlines the different types of IP licences⁷:

Licence type	Rights to use	Owner rights
Exclusive	Rights to use and commercialise the IP are granted to one person or business only. Licence conditions can restrict use of the IP to a particular geographical area, field of application and/or product type.	Owner has no rights to commercialise the IP.
Sole	Permission to use the IP granted to one person or business .	Owner retains some rights to commercialise the IP.
Non-exclusive	Permission to use the IP granted to more than one person or business.	Owner retains some rights to commercialise the IP.

3.1.1 Licence conditions

The following table sets out some key points to consider when negotiating a licensing agreement⁸. Agencies should seek assistance from the State Solicitor’s Office (SSO) when considering licensing WA Government IP for use by other parties.

Licence Issue	Descriptions / Considerations
Licensed IP rights	<ul style="list-style-type: none"> Details of the IP being licensed and the rights of the parties to use and develop the IP. How will future improvements to the IP made by the licensee be managed with respect to terms for ownership and use.
Scope of licence	<ul style="list-style-type: none"> The type of licence (exclusive or non-exclusive). The rights (if any) of the licensee sub-license its rights to another party.
Field / application of use	<ul style="list-style-type: none"> Definition of the commercial applications the IP rights are licensed for including the geographic territories the licence covers e.g., worldwide or country/region specific.
Diligence	<ul style="list-style-type: none"> Reporting obligations including the need to provide business plans and pathways to market. Termination and other rights for non-performance if appropriate.

⁶ Commonwealth of Australia (2012) *Australian Government Intellectual Property Manual*, p199.

⁷ Information adapted from IP Australia, [Licensing my IP](#), retrieved January 2023.

⁸ Adapted from Department of Education (2022) *Higher Education Research Commercialisation Intellectual Property Framework Practical Guide*, p. 35-37.









Licence Issue	Descriptions / Considerations
Payment terms	<ul style="list-style-type: none"> • Payments for the use of IP under a licence may be collected through royalties or lump sum payments. • Licence should include details of any upfront payment milestones or terms for royalties.
Warranties & liabilities	<ul style="list-style-type: none"> • Warranties on IP ownership rights, rights to licence and freedom to operate. • Liabilities to cover IP rights and commercial risks

3.1.2 Creative Commons licences for copyright works⁹

Creative Commons (CC) licences provide a standardised way for individuals and organisations, including government, to grant public permission to use creative works under copyright law. It can be a useful pathway where an agency considers it in the public interest to encourage widespread use of IP. When considering the use of CC licences, agencies must be mindful that only the copyright holder has power to apply a CC licence and licences cannot be revoked or withdrawn once issued.

There are 6 licence options available which confer different rights for the reuse of the copyright material. **All licences include an Attribution term that requires the user of the material to credit (identify) the original creator of the content.**

Licence type	Terms and restrictions
 Attribution	<ul style="list-style-type: none"> ✓ Can share, copy and redistribute material in any format. ✓ May adapt or build upon material for any purpose. ✓ Commercial use permitted.
 Attribution – Share Alike	<ul style="list-style-type: none"> ✓ Can share, copy and redistribute material in any format. ✓ May adapt or build upon material for any purpose. ✓ Adaptations shared under the original licence terms (Share Alike). ✓ Commercial use permitted.
 Attribution – Non Commercial	<ul style="list-style-type: none"> ✓ Can share, copy and redistribute material in any format. ✓ May adapt or build upon material for any purpose. ✗ No commercial use permitted.
 Attribution – Non commercial – Share Alike	<ul style="list-style-type: none"> ✓ Can share, copy and redistribute material in any format. ✓ May adapt or build upon material for any purpose. ✓ Adaptations shared under the original licence terms (Share Alike). ✗ No commercial use permitted.
 Attribution – No Derivative Works	<ul style="list-style-type: none"> ✓ Can share, copy and redistribute material in any format. ✓ Commercial use permitted. ✗ Adapted or modified materials cannot be distributed (No Derivatives).
 Attribution – Non-Commercial No Derivative Works	<ul style="list-style-type: none"> ✓ Can share, copy and redistribute material in any format. ✗ No commercial use permitted. ✗ Adapted or modified materials cannot be distributed (No Derivatives).

⁹ Information adapted from Creative Commons, [About CC Licenses](#), retrieved February 2023.



Supporting online resources

The [Creative Commons website](#) provides detailed information about the applications of the Creative Commons Licensing system

- [Licence tool](#) - Guidance to determine appropriate licencing arrangements for the material.
- [Creative Commons and Government Guide](#) (2011) - Comprehensive step-by-step guidance for licencing and using government copyright materials under Creative Commons licences.

4 IP commercialisation process

The commercialisation of IP requires flexibility and should not be thought of as a one-size fits all process.

The following section outlines a suggested process to guide agencies commercialising IP; however, agencies are:

- encouraged to establish and follow their own policies and procedures in relation to IP management and commercialisation; and
- required to seek expert advice prior to implementing any proposed commercialisation plans.

The supporting templates and checklists are also intended as guides only and may be customised to meet the specific needs of an agency or align with internal policies and procedures.

Key stages in commercialisation process



1. Identify IP with commercial potential

Agencies are required to establish procedures for the identification and management of IP. See [section 4.1](#) for more information.



2. Undertake an opportunity assessment

Conduct an initial assessment of the IP's commercial potential. See [section 4.2](#) for more information about the factors to consider.



3. Identify the party best placed to commercialise the IP

Agencies must consider who is best placed to develop and commercialise the IP to achieve the best possible outcome. See [section 4.3](#) for more information.



4. Develop a commercialisation plan

Complete a detailed assessment process and develop an appropriate commercialisation plan. See [section 4.4](#) for more information.



4.1 Identify IP with commercial potential

The IP policy requires agencies to establish processes to support public sector employees to identify IP with commercialisation potential. This may include the provision of contact points within business units to discuss opportunities or processes to submit invention disclosure forms for consideration.



WA Government IP Toolkit

The [Invention Disclosure Form Template](#) provides a starting point for identifying and providing information about IP that may be of significant value or have commercialisation potential.

4.2 Complete opportunity assessment

When conducting an initial assessment an agency may consider issues such as:

- Whether the agency owns the IP or is entitled to make decisions about its commercialisation (for example has the right under a licence to exploit the IP).
- The agency's functions, strategic priorities, and any establishing legislation.
- The nature of the IP, its suitability for commercialisation and evidence of a commercial market.
- The resource investment required to develop and commercialise the IP.
- Estimated costs of the commercialisation (direct and indirect, initial and ongoing).
- Whether the benefits for the State of commercialisation outweigh the benefits of providing public open access to the IP.
- Risks and how to minimise those risks.



WA Government IP Toolkit

The [Commercialisation Pre-Assessment Checklist](#) can assist agencies to complete this opportunity assessment.

4.3 Assign responsibility for commercialisation

A key guiding principle of the IP Policy is that agencies should identify and facilitate opportunities to obtain the maximum benefit to the State from its IP¹⁰. It is recognised that the WA Government may not always be best placed to develop and commercialise its IP to achieve this maximum benefit.

An agency may consider licensing, or assigning the IP to other parties to develop where an initial assessment indicates that IP has commercial potential but the agency:

- is not well placed to develop the IP for a commercial market; or
- does not wish to pursue the further development and commercialisation of IP for strategic or operational reasons.



WA Government IP Toolkit

For further information about the assessment of ongoing ownership and reassignment to other parties refer to:

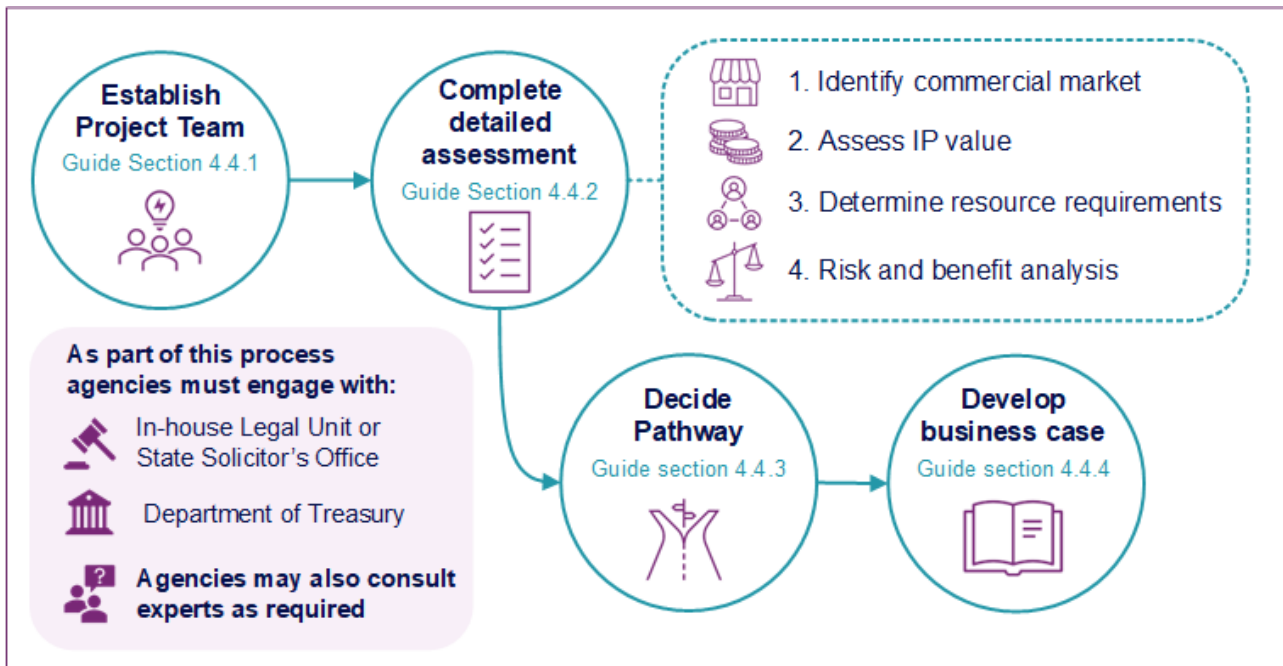
- [WA Government IP Policy](#): Section 5 – Ownership of IP and IP rights.
- [Guide for Ownership of WA Government IP](#).

¹⁰ WA Government Intellectual Property Policy (2023), p.5.

4.4 Develop a commercialisation plan

Where the IP is assessed as suitable for commercialisation and the agency elects to pursue the opportunity, a commercialisation plan and business case should be developed. In developing a commercialisation plan, agencies should engage with the Department of Treasury and either their in-house Legal Unit, the State Solicitor's Office or other experts, as required.

Figure 1: Suggested process for developing agency-led commercialisation plan



4.4.1 Establishing a commercialisation team

Depending on the scale and complexity of the project, an agency may wish to set up a commercialisation team. Where possible it is recommended that the team include the following:

- Technically trained people with knowledge and experience related to the IP asset.
- People with commercialisation expertise or experience who can guide the process, negotiate with parties to develop contracts and agreements and facilitate transfer of the IP.
- Legal experts with experience in preserving IP rights and contracting those rights to other parties.

4.4.2 Detailed assessment and analysis

To identify a suitable commercialisation pathway and inform the development of the commercialisation proposal, agencies should:

1. identify the commercial market for the IP;
2. identify the resources required to support the commercialisation of the IP;
3. determine an approximate value for the IP; and
4. complete a cost/benefit assessment.



WA Government IP Toolkit

The [IP Commercialisation Assessment and Analysis template](#) can help agencies scope a commercialisation plan and assess the risks and benefits.



Identify commercial market

Identifying and understanding the potential commercial market for the IP is essential for the development of the commercialisation proposal. The agency must identify:

- the size of the potential market;
- prospective licensees, buyers and other customers;
- any existing similar products already on the market; and
- the potential financial returns.¹¹

Obtaining this information will require the commercialisation team to research the relevant markets and analyse the information to evaluate the likely demand for the IP and potential revenue to be generated.

When gathering market research data, the agency may consider searching market reports, government statistics, for example the [Australian Bureau of Statistics](#), and trade and industry association publications for information.

There are also links to a number of government statistical sources available on the [business.gov.au](#) website.

Assess IP value¹²

For the purposes of commercialising IP, understanding the costs associated with the development of the asset, expected income, and comparative market data, can form a basis for calculating a suitable price. Refer to the resources below for detailed information about IP valuations.

Supporting resources



WA Government IP Toolkit:

- [Managing WA Government IP Guide](#)
- [IP valuation and risk assessment checklist](#)

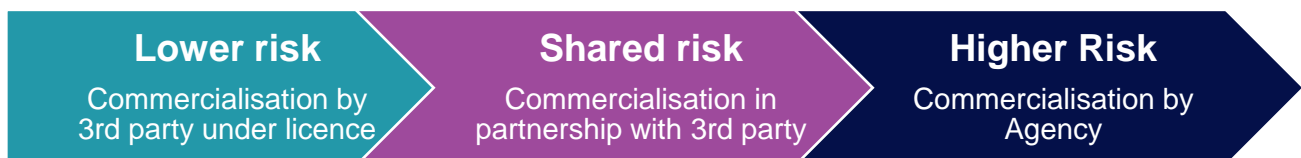


Online resources:

- [The Australian Government Intellectual Property Manual - Chapter 6](#) Detailed guidance for agencies with respect to the assessment and valuation of IP.

Risks and benefit assessment

The IP Policy requires agencies to consider the costs and risks the State may be exposed to as part of the process of selecting a commercialisation pathway.



¹¹ Adapted from Commonwealth of Australia (2012) *Australian Government Intellectual Property Manual*, chapter 10.

¹² Adapted from Commonwealth of Australia (2012) *Australian Government Intellectual Property Manual*, chapter 6.



An agency proposing the commercialisation of an IP asset should complete a cost-benefit assessment taking into account issues such as:

Impact	Examples
Agency impact	<ul style="list-style-type: none"> • How will commercialisation activities effect the delivery of core agency functions and services? • Do existing staff have the interest and capacity to participate in the commercialisation project? • How will commercialisation contribute to the agency's knowledge base? • Are there any potential legal and reputational risks to the agency and the State?
Economic impact	<ul style="list-style-type: none"> • Is it likely commercialisation will generate a positive financial return for the State and enable the agency to recover investment costs? • Will commercialisation create or limit opportunities to grow sectors and attract investment?
Social and community impact	<ul style="list-style-type: none"> • Does commercialisation maximise the possible benefits of the IP for the community?
Impact on commercial markets and competition	<ul style="list-style-type: none"> • How will the agency's commercialisation of the IP effect existing markets and industries?

A note regarding ongoing risk management

It is important that an agency has appropriate mechanisms in place to effectively manage its risks throughout a commercialisation project. The *Australian Government Intellectual Property Manual* sets out a framework for the identification and management of risks during a commercialisation process, which may assist agencies.



Online resources

Chapter 10 of [The Australian Government Intellectual Property Manual](#) provides detailed guidance for conducting an IP review.

4.4.3 Commercialisation pathway assessment

Agencies should assess which commercialisation pathway is the most appropriate in the circumstances. This analysis should take into consideration:

- information obtained during the assessment phase about the IP including its value and commercial potential;
- any expert advice received;
- the risks and benefits of each commercialisation option; and
- the time and resources required for each commercialisation option, for example licensing is likely to require a smaller resource investment but may require longer term management.



WA Government IP Toolkit

The [IP Commercialisation Assessment and Analysis template](#) can help agencies assess the risks and benefits of different commercialisation pathways.



Legal and advisory services

Agencies should seek expert and legal advice early in the commercialisation process. Some agencies have established commercialisation offices with in-house legal counsel to assist in the development and implementation of commercialisation plans. Agencies also have access to a panel of law firms managed by the SSO.

Expert advice can also include consultants or other agencies with specialised knowledge or expertise. Agencies may also wish to seek advice from patent attorneys, commercial advisors or consultants, technical advisors at the protection and management stage.

4.4.4 Develop business case

Once the commercialisation proposal has been scoped and the risk/benefit assessment completed, it is recommended that the agency prepare a formal business case to support the commercialisation of the IP¹³. Matters to be addressed in the business case may include:

- An outline of the IP including how it was developed and its potential applications.
- The identified commercial market for the IP and likely investors/purchasers.
- The resources required to further develop and commercialise the IP.
- An assessment of the project risks and benefits.
- Timelines and key milestones.
- Estimated costs and revenue projections.



WA Government IP Toolkit

The [IP Commercialisation Business Case Outline](#) may be used as a guide for agencies to develop their own specific template.

4.5 Allocation of commercialisation revenue

When developing a commercialisation plan, the agency should:

- make preparations to ensure any revenue generated by the commercialisation activities is retained; and
- consider how future revenue could be allocated for use, including any arrangements for benefit sharing.

4.5.1 Engage with Treasury to retain commercialisation revenue

The right of an agency to retain commercialisation revenue may be specified under legislation.

For example, revenue derived from the commercialisation of IP by a Health Service Provider can be received into that Health Service Provider's Special Purpose Account, established under Section 64 of the *Health Services Act 2016*. This means that IP commercialisation revenue can be retained by the Health Service Providers.¹⁴

In other cases, the *Financial Management (Net Appropriations) Determination 2022* will apply and a Treasurer's authorisation to retain revenue may be required. Agencies should discuss the retention

¹³ Adapted from Commonwealth of Australia (2012) *Australian Government Intellectual Property Manual*, chapter 10

¹⁴ Example taken from WA Health IP Guidelines – p17 - [Intellectual Property Policy \(health.wa.gov.au\)](https://health.wa.gov.au)



of income and distribution with their budget analyst at the Department of Treasury, including how to apply for an authorisation (if required).

Financial Management (Net Appropriations) Determination 2022

Made by the Treasurer under section 23(2) of the Financial Management Act 2006 (the Act).

Prescribed receipts that are not to be retained by departments

The following prescribed receipts are not to be retained by a department:

...

(e) money received by a department in a financial year from the annual income stream of an intellectual property asset, unless:

- i. the total amount received is less than \$15,000; or
- ii. the Treasurer specifically authorises the department to retain the money; or
- iii. the money is received by the department principally assisting the Minister in the administration of the Fire and Emergency Services Act 1998 in the course of exercising its functions and powers under that Act; and




...

Note: the above extract is current as of January 2023. See the [Department of Treasury Financial Administration Bookcase](#) for most up to date information.

4.5.2 Sharing benefits

Benefit sharing involves the allocation of shares of net revenue from the commercialisation of IP to various parties by agreement. Agencies should consider in advance how they might share any benefits from the commercialisation of IP with relevant parties. Options for benefit sharing can include royalty payments, equity shares in a spin-off company or joint venture arrangement or licensing revenue.

The IP Policy outlines a suggested approach to the sharing of net proceeds from the successful commercialisation of IP providing for a one third division share between relevant parties, including through arrangements with public sector employees, third parties and contractors.¹⁵ Relevant parties to a benefit sharing arrangement may include:

 IP CREATOR	 BUSINESS UNIT	 AGENCY
<ul style="list-style-type: none"> •The inventor(s) of the IP. •Where there are multiple contributors to the IP, any allocated revenue share would be divided between the parties by agreement. 	<ul style="list-style-type: none"> •Reinvest funds in the business unit, team or branch where the IP originated. •Funds may be used to support further research and facilities. 	<ul style="list-style-type: none"> •A revenue portion to be retained by the WA Government agency owning the IP. •Could be used for administrative purposes or reinvested in research and innovation activities.

Note: The award of any monetary payment, including a benefit share, to a WA public sector employee is at the discretion of the relevant Minister or Treasurer in accordance with section 80 of the *Financial Management Act 2006 (WA)*. There is no legal entitlement for benefit sharing with employees and the WA Government Intellectual Property Policy does not create any legal entitlement. Agencies should consider the individual circumstances of each commercialisation opportunity and the merits of different benefit sharing arrangements.

¹⁵ WA Government Intellectual Property Policy (2023), pp. 19-20.



Further information

- [WA Government IP Policy](#): Section 6 – Commercialisation: Sharing Benefits¹⁶
- [Guide for Rewarding innovative WA public sector employees](#).

4.6 Obtain approval to commercialise

WA Government IP Policy Position Guidance: ¹⁷

Agency internal policies and procedures should clearly identify the key decision making authority required for IP related decisions and approvals.

The Agency's IP policies and procedures should set out the requirements for the approval of commercialisation proposals including:

- the decision maker(s) for commercialisation activities; and
- the key project stages or milestone points where a decision or approval is required.

When developing these procedures, an agency may wish to adopt a tiered approvals approach with different decision-making levels determined by the nature or scale of the commercialisation activity. Agencies are encouraged to consult with the Department of Treasury to determine the appropriate decision making authority for complex and high value commercialisation proposals. Supporting resources

Flowcharts

- [Overview of suggested commercialisation process](#)

Templates and checklists

- [Invention Disclosure Form template](#)
- [Opportunity assessment checklist](#)
- [Commercialisation assessment and analysis checklist](#)
- [Business case outline](#)

Agency guides

- [Managing WA Government IP](#)
- [Ownership of WA Government IP](#)
- [Rewarding innovative WA public sector employees](#)

Online resources

- [IP Australia: Commercialise your IP](#)
- [Australian Government Intellectual Property Manual](#)

¹⁶ WA Government Intellectual Property Policy (2023), p.19.

¹⁷ WA Government Intellectual Property Policy (2023), p.11.

Flowchart: Overview of commercialisation process

1. Identify IP with commercial potential



Agency procedures are required to include processes for identifying and disclosing IP with commercial potential.



Refer to [section 4.1](#) of the guide for Commercialising WA Government IP.



2. Complete an initial opportunity assessment

Factors to consider as part of the initial assessment may include:



Ownership arrangements



IP suitability & commercial markets



Agency functions & purpose



Costs, risks & benefits analysis



Resource requirements



Refer to [section 4.2](#) of the guide for Commercialising WA Government IP.



Agency Toolkit: Commercialisation pre-assessment checklist



What if the IP is not suitable for commercialisation?



Agency could continue to develop IP and re-assess options in the future.



Agency can consider options to provide open access to IP to foster innovation.



3. Decide who is the best party to develop and commercialise the IP

Options available can include:



Agency-led & resourced project.



Licence a 3rd party to develop and commercialise.



Assign the IP to a more appropriate 3rd party to commercialise.



Refer to [section 4.3](#) of the guide for *Commercialising WA Government IP* and [section 5.3](#) of the guide for *Ownership of WA Government IP*.



4. Develop and implement agency commercialisation plan



Establish a commercialisation team.

Team skills may include technical knowledge of the IP, expertise in IP commercialisation and legal expertise.



Complete a detailed assessment of the IP.

Identify the commercial market, assess the IP value, determine resource requirements and complete a risk/benefit analysis.



Decide on commercialisation pathway.

Options may include licensing, establishing a spin off company or a joint venture.



Make arrangements for commercialisation revenue.

Engage with Treasury to ensure any commercialisation revenue can be retained and consider how revenue could be allocated, including benefit sharing with IP creator and business units.



Develop a business case.

Business case should be prepared and approved in accordance with Agency's policy and procedures.



Refer to [sections 4.4](#) and [4.5](#) of the guide for *Commercialising WA Government IP*.



Agency Toolkit: IP Commercialisation Assessment & Analysis checklist and Commercialisation Business Case Outline



Agencies are encouraged to consult experts as required throughout the process, including the Department of Treasury, in-house legal counsel, the State Solicitor's Office or other IP legal experts when developing commercialisation plans.



Refer to agency policies and procedures for approval requirements.



IP Commercialisation Business Case Outline

There is no prescribed template for an IP commercialisation business case. The following outline is intended as a guide for agencies to develop an appropriate proposal¹⁸.

Executive summary

- High level summary of IP features, key proposals and benefits of commercialisation.

Details of intellectual property

- Background information about how IP developed including details of any relevant research partnerships or funding arrangements.
- Key features of the IP, its potential applications and benefits to the community and State.
- Details of any further development required for commercialisation.
- Ownership arrangements and confirmation of any registered IP protections.

Commercial market analysis

- Details of the proposed commercial market including:
 - Description of the industry;
 - Trends in the market;
 - Market size; and
 - Competitors and similar existing products.
- Information about any potential investors identified or prospective customer base.

Commercialisation proposal

- Details of the proposed commercialisation pathway including:
 - Reasons for proposed approach;
 - Key elements of strategy; and
 - Expert and commercialisation advice obtained to support strategy.

Costs and resource requirements

- Outline the estimated costs to commercialise the IP asset. For example:
 - Costs required for further development of IP;
 - Registration of IP protections;
 - Engagement of commercialisation/expert consultants;
 - Marketing strategies; and
 - Development of prototypes, pilot plants and processes and scale up facilities.
- Estimated revenue from commercialisation.

¹⁸ Content adapted from:

- Commonwealth of Australia (2012) *Australian Government Intellectual Property Manual*, chapter 10; and
- Queensland Government (2007) *Attachment to Rewards for Creating Commercially Valuable Intellectual Property*.



- Outline staff resources required to support implementation of commercialisation proposal.
- Arrangements for the retention of any commercialisation revenue, including any consultations with Department of Treasury

Milestones and timelines for key deliverables

- Outline key milestones to be completed with expected completion dates or timeframes. Agency may wish to summarise information in a table form:

Milestone description	Target completion date	Dependencies

Risks and benefits assessment

- Outline the key risks associated with the commercialisation project and how they will be addressed. Agency may wish to summarise information in a table form:

Risk	Probability	Impact	Mitigation strategy

- Outline the key benefits of the commercialisation at an agency, community and State level. Agency may wish to summarise information in a table form:

Factor	Key benefits
Economic	
Public health and safety	
Social and community	
Environmental	
Commercial	

Strategic alignment

- Include confirmation that proposal aligns to agency’s functions, policies and any enabling legislation.
- Outline how the project links to the agencies’ and/or government’s strategic plans and objectives.

Recommendations and approvals

- Refer to Agency’s policies and procedures for designated decision makers and approval requirements.



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