



Department of  
**Jobs, Tourism, Science  
and Innovation**

# Managing 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 IP?

Intellectual property refers to creations of the mind including:



Literary & artistic works



Inventions



Designs & symbols

IP is protected by laws to ensure people are recognised for and/or financially benefit from their creations.

An IP owner may grant a licence for its use or transfer ownership to another party.

In Australia, IP rights are regulated under Commonwealth legislation:

*Circuit Layouts Act 1989*

*Copyright Act 1968*

*Designs Act 2003*

*Patents Act 1990*

*Plant Breeder's Rights Act 1994*

*Trade Marks Act 1995*

### WESTERN AUSTRALIAN GOVERNMENT IP

The activities of WA Government agencies often result in the creation of valuable IP which can benefit the State by:



Improving lives in the community



Diversifying the economy



Attracting investment to the State



Creating jobs & developing priority sectors

The **WA Government IP Policy** provides a framework for agencies to:

- effectively acquire, develop, use and manage IP;
- identify opportunities to facilitate the commercialisation of IP where appropriate; and
- ensure Government IP is maximised to generate public value, knowledge transfer and innovation.

The WA Government IP Policy applies to the public sector as defined under the *Public Sector Management Act 1994* (WA) and activities undertaken using WA Government resources.

### MANAGING WA GOVERNMENT IP

WA Government agencies are required to implement policies and procedures to ensure Government IP is managed in a consistent, transparent and accountable manner throughout its lifecycle.



Identify and register IP assets with significant commercial or operational value.



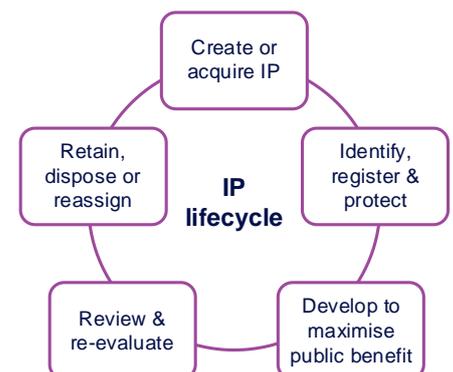
Address ownership and IP rights in contracts and agreements.



Take action to protect commercial or operational value of IP.



Periodically review and evaluate use and value of IP assets.





# 1 What is Intellectual Property?

Intellectual property (IP) refers to creations of the mind such as inventions, literary and artistic works, designs and symbols, names and images used in commerce<sup>1</sup>. IP is protected by laws ensuring people can be recognised for or earn a financial benefit from what they invent or create.

Depending on the contractual arrangements in place, its creator or another party may own IP. The owner may grant a licence for others to use the IP or assign/transfer ownership rights in a similar way to physical property.

In Australia, IP is regulated under the following Commonwealth legislation:

- *Circuit Layouts Act 1989*
- *Copyright Act 1968*
- *Designs Act 2003*
- *Patents Act 1990*
- *Plant Breeder's Rights Act 1994*
- *Trade Marks Act 1995*

Some forms of IP require registration to create IP rights, for example patents or trademarks. In other cases such as copyright, IP is recognised automatically under the legislation.

[IP Australia](#) is the statutory authority responsible for registering trademarks, patents, designs and plant breeder's rights in Australia.

## 2 Western Australian Government IP

The core functions of government often result in the creation of IP<sup>2</sup>.

### Examples of government generated IP



#### Publications and resources

Publications or promotional materials sold or provided free of charge.  
Training materials developed by an agency.  
Databases maintained by an agency.



#### Information and technology

Computer programs developed or licensed by an agency.



#### Research and Inventions

Patented inventions, registered designs and registered plant varieties created by, purchased or licensed to an agency.  
Integrated circuit boards designed by or for an agency.



#### Creative works and brands

Television and radio advertising material developed by or for an agency.  
Artworks and photographs commissioned by the agency and used in promotional materials.  
Trademarks or logos used by an agency regardless of whether these are registered as trademarks or business names.

<sup>1</sup> As defined by the World Intellectual Property Organization.

<sup>2</sup> Examples adapted from State of New South Wales (Premier's Department) (2005), *Intellectual Property Management Framework for the NSW Public Sector*, p.17.



## 2.1 WA Government IP management framework

IP developed and owned by Western Australian Government agencies is a valuable asset with potential economic, social and environmental benefits for the community. WA Government IP is managed through a loose framework of provisions across different legislation including:

- The [Industry and Technology Development Act 1998](#) (WA) which encourages and facilitates the commercialisation of WA Government IP.
- The [State Trading Concerns Act 1916](#) (WA) and supporting regulations which prescribe the IP related activities specific WA Government agencies may undertake.
- The enabling legislation of some WA Government agencies which deals with the development and commercialisation of IP.

For example section 36(3)(f) of the *Health Services Act 2016* (WA) provides that:

*... a health service provider may, for the purpose of performing any of its functions develop and turn to account any technology, software or other intellectual property that relates to its functions and, for that purpose, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights.*

The [Financial Management Act 2006](#) (WA) and the [Financial Management Act \(Net Appropriations\) Determination 2022](#) include provisions that agencies should be aware of in their development and management of IP including for the retention of revenue from the disposal of IP assets.

### 2.1.1 Western Australian Government Intellectual Property Policy

The purpose of the [Western Australian Government Intellectual Property Policy](#) (the IP Policy) is to guide WA Government agencies in the development, protection, management and use of IP and IP rights. The IP Policy applies to the public sector as defined under the [Public Sector Management Act 1994](#) (WA) (the PSM Act) with the exception of entities listed under Schedule 1 of the PSM Act, such as the Water Corporation and Port Authorities. The PSM Act defines the 'public sector' as all agencies (departments and SES organisations), ministerial offices and non-SES organisations.

#### AGENCY TOOL KIT

The WA Government IP Policy is supported by an online toolkit which includes guides, templates and checklists for agencies. Guides in the toolkit include:



##### **Ownership of WA Government IP**

Guidance for agencies to assess and manage ownership arrangements in different settings.



##### **Managing WA Government IP** (this guide)

Information for agencies establishing policies and procedures for IP management.



##### **Commercialising WA Government IP**

Information for agencies about assessing IP commercialisation opportunities and developing commercialisation plans.



##### **Rewarding innovative WA public sector employees**

Guidance for agencies establishing policies and procedures for employee rewards.

The Agency toolkit is available on the [Department of Jobs, Tourism, Science and Innovation website](#).



### 3 WA Government IP Policy Position Statement: Management and Protection of IP<sup>3</sup>

The responsibilities and guiding principles for agencies managing IP are set out in section 4 of the IP Policy. The high-level position statement is included below:

#### Management and protection of IP

**The effective management and protection of IP recognises the importance of IP as an asset with benefits for the State.**

**Agencies are to manage IP in a responsible, lawful, efficient and effective manner for the benefit of the Western Australian community.**

**IP related decisions, actions, procedures and processes of agencies are to be transparent, accountable, auditable and consistent with the law, this Policy and other relevant Government policies.**

**Agencies are to ensure that internal policies, guidelines and procedures are in place to meet the intent, responsibilities and obligations outlined under this Policy.**

### 4 Agency IP policies and procedures

Agencies must ensure they implement policies and procedures for the effective management of IP throughout its lifecycle. This cycle starts with the creation or acquisition of the IP and ends when the IP expires or is disposed of by the agency<sup>4</sup>.

WA Government agencies are encouraged to develop an agency-level IP policy setting out the agency's approach to<sup>5</sup>:

- the creation, use, commercialisation, disposal of IP and options for granting public access;
- identifying and recording ownership of IP;
- monitoring and protecting IP; and
- ensuring effective IP management.

Agencies are also encouraged to consider the management of IP when developing strategic and project plans to ensure that potential opportunities are identified and appropriately evaluated.

<sup>3</sup> WA Government Intellectual Property Policy (2023), p.10.

<sup>4</sup> Adapted from Commonwealth of Australia (2012) *Australian Government Intellectual Property Manual*, p.70.

<sup>5</sup> *Ibid*, p.55.



## 4.1 Developing an agency-level IP policy

Agencies must ensure that any internal policies, guidelines and procedures align with the intent, responsibilities and obligations of the IP Policy.

The agency IP policy may include guidance regarding<sup>6</sup>:

- the agency's functions and the role of IP in achieving these objectives;
- the objectives of the policy, for example to support the effective identification, management and use of agency IP;
- who the policy applies to, including any application to consultants, contractors or related parties;
- the roles and responsibilities of the officers charged with managing agency IP;
- IP management processes including identification, registration, valuation, protection, review and disposal.
- IP ownership arrangements;
- commercialisation considerations; and
- reporting requirements.



### WA Government IP Toolkit

The [Agency IP policy and procedures checklist](#) can assist agencies developing an IP policy.

## 4.2 Agencies engaged in research activities

Agencies who engage in research activities may need to develop additional policies and procedures for matters such as laboratory notebooks, invention disclosures and patent assessments<sup>7</sup>. This is to ensure that any new IP is appropriately identified and recorded by the agency. Agencies entering research partnerships should also ensure there are appropriate arrangements in place that address IP ownership.

### Support resources for research agencies



#### WA Government IP Toolkit

- [Guide for Ownership of WA Government IP](#)
- [Invention disclosure form \(customisable template\)](#)
- [Laboratory notebook checklist<sup>8</sup>](#)



#### Online resources

- [The Australian Government Intellectual Property Manual](#)
- [Biotechnology Intellectual Property Manual](#)
- [Australian IP Toolkit for Collaboration](#)
- [IP Australia Patent Analytics Hub](#)
- [Higher Education Research Commercialisation Intellectual Property Framework](#)

<sup>6</sup> Adapted from Commonwealth of Australia (2012) *Australian Government Intellectual Property Manual*, p.58-59.

<sup>7</sup> Commonwealth of Australia (2012) *Australian Government Intellectual Property Manual*, p.19.

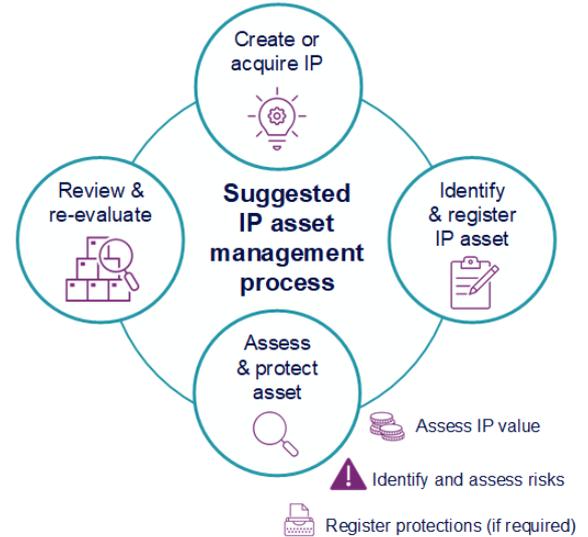
<sup>8</sup> Ibid, p.78.

## 5 Managing IP assets

In most instances, the key elements of the IP management process can be integrated within existing agency systems and processes.

The following section outlines a recommended process for the management of WA Government IP and is intended to guide agencies.

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.



### 5.1 Identify and register IP asset<sup>9</sup>

#### The IP Policy recommends agencies :

- Establish and maintain processes to identify and record IP owned, controlled or used by an agency.

Identifying and recording IP allows an agency to:

- Use its IP to achieve the best possible outcomes for the agency and the State.
- Fulfil financial, record keeping and accountability obligations.
- Ensure resources are applied efficiently and effectively.
- Identify opportunities to licence or provide access to IP for development by external parties.
- Avoid duplication in the acquisition or creation of IP.
- Protect and enforce their IP rights and reduce the risk of infringing the rights of others.<sup>10</sup>

#### 5.1.1 How to identify IP assets

An agency should ensure it actively manages the most significant IP assets (either operationally or commercially) as the priority. For example, where:

- it is mandatory for the agency to record the IP (e.g. required by legislation, policies or standards);
- the value of the IP is significant (including financial, strategic and public value);
- the IP is important to the operations of the agency and achieving its objectives;
- the IP is registrable;
- mismanagement of the IP may result in a breach of law or reputational damage to the agency;
- the agency invested substantial resources to develop the IP; or
- the IP has or may be commercialised.<sup>11</sup>

<sup>9</sup> WA Government Intellectual Property Policy (2023), p.11.

<sup>10</sup> Adapted from Commonwealth of Australia (2012) *Australian Government Intellectual Property Manual*, p.70.

<sup>11</sup> Adapted from State of Victoria (Department of Treasury and Finance) (2019), *Intellectual Property Guidelines for the Victorian Public Sector*, p.4 and State of New South Wales (Premier's Department) (2005), *Intellectual Property Management Framework for the NSW Public Sector*, p.16 and WA Government Intellectual Property Policy (2023), p.11.



## 5.1.2 Keeping an IP asset register<sup>12</sup>

### The IP Policy recommends agencies:

- Establish and maintain a register of IP assets which at a minimum, identifies IP that has financial, operational, strategic or public value, or requires statutory registration and renewal.

The IP Policy sets out the minimum requirements for an agency's IP asset register.<sup>13</sup> The information recorded in the register may also depend on the nature and complexity of the agency's activities. It is recommended that the register include the following (where applicable):

- Nature of the IP.
- Registered IP rights.
- Un-registrable rights such as works.
- Circumstances relevant to IP creation including:
  - the employees or third party involved;
  - when IP creation occurred;
  - the purpose of IP creation; and
  - funding;
- Details of where the IP material is located and how it is secured;
- Contact person/s details;
- Registration expiry/renewal dates; and
- If relevant, IP commercialisation or disposal details.

Agencies should also ensure they are aware of and comply with any other obligations to record or report on IP assets. For example, the Treasurer's Instruction below:

### Treasurer's Instruction 410 – Records of public property and other property (extract only)

*This instruction requires a formal register to be established and maintained for public property and other property with a value of \$5,000 or more. In addition, property below that limit shall also be adequately recorded by the agency.*

#### **Treasurer's Instruction**

- (1) *The accountable authority of an agency shall ensure that registers are established and maintained for public property and other property controlled by the agency with a value of \$5,000 or more, which may include copyrights, patents, trademarks, licences and other similar property.*
- (2) *The accountable authority shall ensure that adequate records are maintained for public property and other property controlled by the agency with a value of less than \$5,000.*
- (3) *The accountable authority shall ensure that appropriate measures are taken to protect property that are portable and attractive.*

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



#### **WA Government IP Toolkit**

The [IP asset register checklist](#) provides a suggested list of information for inclusion in an agency IP register.

<sup>12</sup> WA Government Intellectual Property Policy (2023), p.11.

<sup>13</sup> Ibid, p.11-12.



## 5.2 Assess and protect

### 5.2.1 Risk assessment and management

Agencies should ensure that IP assets are considered as part of their broader risk management frameworks. Where risks are identified, the agency should develop and implement appropriate strategies to manage these issues.

The following table includes examples of risks associated with IP along with potential consequences and mitigation strategies<sup>14</sup>.

Risk	Potential Outcome	Management Strategy
Failure to protect the integrity and accuracy of copyright material.	False information being disseminated to the public.	Actively manage significant copyright material (apply Sections 5 & 9 of IP Policy) For example, use of appropriate copyright notices.
Failure to adequately protect confidential IP. <i>e.g. public disclosure of IP prior to registration of protections</i>	Other parties use it inappropriately. IP value reduced or opportunity to register protections lost	Actively manage significant IP by <sup>15</sup> : <ul style="list-style-type: none"> <li>Identifying IP rights requiring registration.</li> <li>Taking appropriate action to register and protect IP where required.</li> <li>Providing suitable training for staff about IP disclosures.</li> </ul>
Rights granted to State IP under inappropriately broad licence.	May result in breach of privacy, public safety etc.	Consider IP Policy (Section 7). Seek legal advice.
Procurement contracts fail to address IP.	Dispute regarding ownership and use of pre-existing and resultant IP.	Ensure that procurement complies with IP Policy (Sections 4 & 5) and State Procurement Guidelines.
Fund research without obtaining access to the resultant IP.	Cannot use IP for the purposes of the project.	Ensure that funding includes an appropriate licence.
Contracts do not address pre-existing IP.	Other party may be reluctant to utilise pre-existing IP.	Contracts should address pre-existing IP.
Contracts seek ownership of IP where licence appropriate.	Time and expense acquiring unnecessary ownership.	Consider scope of use required and apply Section 4 of IP Policy.
State IP not protected or enforced where appropriate.	Use of IP that may damage State's reputation or value of IP.	Monitor third party use of State copyright and apply Section 5 of IP Policy.
Employees moral rights not managed appropriately.	Claim for breach of moral rights.	Seek moral rights consent in appropriate circumstances.
Infringement of third party IP.	Claim for damages and reputational damage to the State.	Monitor and pay for use of third party IP (see Section 9 of IP Policy).

<sup>14</sup> Table adapted from State of Victoria (Department of Treasury and Finance) (2019), *Intellectual Property Guidelines for the Victorian Public Sector*, p.13.

<sup>15</sup> WA Government Intellectual Property Policy (2023), p.12-13.



## 5.2.2 Assess IP value<sup>16</sup>

Understanding the value of the agency's IP assets is important for the effective management of IP. An agency may value an IP asset based on its:

- monetary value (quantitative valuation); or
- strategic importance or public significance (qualitative valuation).

The approach used by an agency will be depend on the reason for valuing the IP. The table below outlines when each valuation approach may be used<sup>17</sup>.

Qualitative valuation	Quantitative valuation
<ul style="list-style-type: none"> <li>• To determine whether to continue with a particular project.</li> <li>• To determine whether to apply for IP protections.</li> <li>• When considering the disposal of the IP asset.</li> <li>• When granting a third party access to the IP.</li> <li>• When considering options to commercialise the IP asset.</li> </ul>	<ul style="list-style-type: none"> <li>• To prepare financial statements.</li> <li>• To determine a sale or purchase price for the IP.</li> <li>• During an organisational merger.</li> <li>• When considering options to commercialise the IP asset.</li> <li>• To determine potential damages in a legal action involving IP.</li> </ul>

### 5.2.2.1 Qualitative valuation

A qualitative IP valuation can assist an agency to:

- determine whether the IP is essential, secondary or surplus to its operations;
- develop an appropriate strategy for the IP development and protection; and/or
- make informed decisions about the management of the IP asset.

When completing a qualitative valuation it is suggested the agency consider whether the IP has:

1. **Strategic and Operational Significance:** the role of the IP in the achievement of the agency's goals and objectives.
2. **Public Benefit:** the economic, social and environmental value of the IP.
3. **Commercial Potential:** general assessment whether the IP may be of interest to parties outside the organisation.

<sup>16</sup> Section content adapted from Commonwealth of Australia (2012) *Australian Government Intellectual Property Manual*, chapter 6.

<sup>17</sup> Adapted from Spruson & Ferguson (2008), *Biotechnology Intellectual Property Management Manual*, p.134 & 137.

### 5.2.2.2 Quantitative valuation

Quantitative valuations involve the assignment of a dollar value to an IP asset. The table below outlines the most common quantitative methods for assessing IP value:

	Description	Considerations
<b>Cost approach</b> 	<ul style="list-style-type: none"> <li>Value based on the costs to create the IP, e.g. materials, labour.</li> <li>Useful to determine the minimum value for outright sale of IP.</li> </ul>	<ul style="list-style-type: none"> <li>Does not take into consideration other factors that may influence value of IP.</li> </ul>
<b>Market approach</b> 	<ul style="list-style-type: none"> <li>Value based on comparable price achieved by similar technologies and IP in the market.</li> <li>Can be applied to various IP types and different developmental stages.</li> </ul>	<ul style="list-style-type: none"> <li>Requires specific and accurate data for comparison e.g., licence fees, royalty rates, which may be difficult to obtain.</li> </ul>
<b>Income approach</b> 	<ul style="list-style-type: none"> <li>Value based on estimated future income generated over effective life of IP asset.</li> </ul>	<ul style="list-style-type: none"> <li>Requires accurate knowledge about competitive and economic environment.</li> <li>Effective life of the IP asset must be assessed.</li> <li>Risks associated with generating income must also be considered</li> </ul>

#### Online resources



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

### 5.2.3 Protection of IP rights<sup>18</sup>

#### The IP Policy requires agencies to:

- Take reasonable and appropriate action to ensure that operational or commercially valuable IP is suitably protected, which may include registration (and renewal) of trade marks, patents, designs and plant breeders' rights or other protective measures such as confidentiality agreements.
- Take appropriate action where State owned IP is infringed by a third party.

Under the WA Government IP Policy, agencies are required to consider the most appropriate form of registration to protect State IP. IP protections create exclusive rights to use and exploit IP for a defined period of time. In most cases these rights can be assigned or licensed to others by the owner.

Some forms of IP protection, such as patents and plant breeder's rights, require a formal registration to create IP rights. Other IP rights such as copyright, moral rights and trade secrets are automatically protected and do not require any registration.

<sup>18</sup> WA Government Intellectual Property Policy (2023), p.12 - 13.

Some registration processes are time consuming and expensive so agencies should carefully consider whether the benefits of registration justify the resource commitment. The table below summarises the most common IP protections and when they may be applied<sup>19</sup>. Refer to the relevant regulator for more detailed information about the IP protection and application processes.

Agencies should be aware that publicly disclosing or using an invention, innovation, new plant variety or trade mark before applications for registration have been lodged could not only destroy or reduce the value of the IP but may also result in the opportunity to seek protection being lost.

	Description	Further information
<b>Copyright</b> 	<ul style="list-style-type: none"> <li>Applies to drawings, art, literature, music, film, broadcasts, computer programs.</li> <li>Protects the owner's original expression of ideas but not the ideas themselves.</li> <li>Protection is automatic and does not require registration.</li> </ul>	<a href="#">Attorney-General's Department</a>
<b>Trademarks</b> 	<ul style="list-style-type: none"> <li>Applies to logos, words, letters, numbers, colours, a phrase, sound, scent, shape, picture, aspect of packaging or branding.</li> <li>Identify the goods or services of a trader as distinctive from those of others.</li> <li>Registration will provide additional protective rights.</li> </ul>	<a href="#">IP Australia - Trademarks</a>
<b>Plant breeder's rights</b> 	<ul style="list-style-type: none"> <li>Applies to new plant varieties.</li> <li>Protects the commercial rights of new plant varieties.</li> <li>Registration is required to protect rights.</li> </ul>	<a href="#">IP Australia - Plant Breeder's Rights</a>
<b>Patents</b> 	<ul style="list-style-type: none"> <li>Applies to new inventions, methods and processes.</li> <li>Protects how an invention works or functions.</li> <li>Registration is required to protect rights.</li> </ul>	<a href="#">IP Australia - Patents</a>
<b>Circuit layouts</b> 	<ul style="list-style-type: none"> <li>Applies to layout designs or plans of integrated circuits used in computer-generated designs.</li> <li>Protects unique protection of the owner's original layout design.</li> <li>Protection is automatic and does not require registration.</li> </ul>	<a href="#">Attorney-General's Department</a>
<b>Registered designs</b> 	<ul style="list-style-type: none"> <li>Product designs, such as footwear, fashion items.</li> <li>The visual appearance of a product, but not the way it works.</li> <li>Registration is required to protect rights.</li> </ul>	<a href="#">IP Australia - Registered Designs</a>

### 5.2.3.1 Trade secrets & confidential information<sup>20</sup>

Trade secrets refer to any confidential information, including secret formulas, processes and methods used in production. Common law provides protection for infringement of trade secrets,

<sup>19</sup> Information adapted from State of Victoria (Department of Treasury and Finance) (2019) *Intellectual Property Guidelines for the Victorian Public Sector*, p.82 and IP Australia, [Types of IP](#), retrieved March 2022.

<sup>20</sup> Information sourced from IP Australia, [Types of IP](#), retrieved October 2022.



breach of confidentiality agreements and passing off trademarks. Proving a breach of confidentiality under common law can be complex and is potentially more costly than defending registered rights.

### 5.2.3.2 Moral rights

The *Copyright Act 1968* provides authors and performers with certain non-economic rights known as moral rights<sup>21</sup>. Moral rights can only be held by individuals and cannot be transferred or re-assigned. These rights include:

- the right to attribution of authorship and performance of one's material (s193);
- the right against false attribution of authorship and performance (s195AC); and
- the right of integrity of authorship and performance (s195AI).

Moral rights are automatic and do not require formal applications or registration by the creator.

#### IP Australia Toolkit

IP Australia provides detailed information about using and applying for IP protections.



#### IP Registration Searches

For patents, trademarks, designs and plant breeders rights



#### Choosing the right IP

Guidance tool to determine appropriate IP protection mechanism.



#### IP Australia educational resources

Includes webinars, case studies



#### Patent Analytics Hub

Provides cost-effective patent analytics report services to government agencies and publicly-funded research organisations, such as universities, medical research institutes and cooperative research centres.

### 5.2.4 Protection of Crown Copyright

Copyright is the most common form of IP created and used by government agencies. 'Crown Copyright' refers to any work created by or under the direction of the State.

#### Examples of Crown Copyright:



Correspondence



Websites, software  
& some databases



Education &  
training materials



Artwork, photographs  
& advertising



Reports &  
publications

Agencies can use a Copyright Notice on relevant works to alert parties to the State's copyright ownership. These notices may also include the permissions relating to the use of the work.

#### Example of a Copyright Notice

*Materials contained on this website, including website pages, documents, images, audio and video, are protected by copyright law. Unless otherwise stated, copyright in those materials resides with the State of Western Australia.*

*You may copy, distribute, display, download or print the material on this website for your own personal use, for non-commercial educational purposes or for non-commercial use within your organisation, provided you attribute the source of the information and reference any copyright or licence conditions.*

<sup>21</sup> Department of Infrastructure, Transport, Regional Development, Communication and the Arts, [For copyright owners](#) – retrieved July 2022.

## 5.3 Review and re-evaluate<sup>22</sup>

### The IP Policy recommends agencies periodically:<sup>23</sup>

- review and evaluate the IP's ongoing use, value and associated risks of State owned IP and third party IP licensed to the State;
- review IP protections by assessing the need for registration (or renewal) or whether other protective measures should be implemented; and
- consider whether third party IP licensed to it is still required (or is no longer required) and follow the relevant process set out in the licence to renew (or allow to expire).

As part of the IP management cycle, agencies should complete a review process to systematically identify and record IP assets acquired, created and developed and ensure appropriate arrangements remain in place for the ownership of the IP and rights of use.

The IP review and re-evaluation process can help an agency to:

- Identify IP assets that need protection and management and those that may need to be disposed of.
- Identify risks associated with its IP.
- Determine the value of its IP portfolio.
- Make informed decisions on potential transactions.

The frequency and complexity of reviews will be determined by the agency and should be provided for in the internal policy. In some instances, the review may require the assistance of an IP professional.

The *Australian Government Intellectual Property Manual* sets out a detailed process for conducting an IP review that may be used by an agency. The key steps in this process are outlined below.

**Figure 1: Australian Government method for conducting an IP review<sup>24</sup>**

SCOPE	IDENTIFY	ANALYSE	REPORT
<ul style="list-style-type: none"><li>• Identify key objectives for the review.</li><li>• Determine the extent of the IP review.</li><li>• Conduct preliminary information gathering.</li></ul>	<ul style="list-style-type: none"><li>• Identify existing IP assets in the possession or control of the agency.</li><li>• Identify related documents.</li></ul>	<ul style="list-style-type: none"><li>• Assessing ownership and other rights in the IP.</li></ul>	<ul style="list-style-type: none"><li>• Collate, analyse and report outcomes of the previous stages.</li></ul>



### Online resources

Chapter 4 of [The Australian Government Intellectual Property Manual](#) provides detailed guidance for conducting an IP review.

<sup>22</sup> Section content adapted from Commonwealth of Australia (2012) *Australian Government Intellectual Property Manual*, chapter 4.

<sup>23</sup> WA Government Intellectual Property Policy (2023), p.13.

<sup>24</sup> Commonwealth of Australia (2012) *Australian Government Intellectual Property Manual*, p.74.



## 5.4 Disposal

The responsibilities and guiding principles for the disposal of IP (including assignment and licensing) are set out in section 7 of the IP Policy. The high-level position statement is included below<sup>25</sup> :

7. IP Disposal
<p><b>Agencies may dispose of State IP where appropriate and where it provides a clear benefit to the State.</b></p> <p><b>Disposal of IP rights must be consistent with an agency’s enabling legislation and the <i>State Trading Concerns Act 1916 (WA)</i>.</b></p> <p><b>Disposal of IP rights should be in a manner that is lawful, open, accountable, ethical, efficient and where practicable, competitive and maximises a value outcome for the State.</b></p>

As the priorities and objectives of an agency can change, there may come a time when it is appropriate to dispose of or reassign an IP asset. Disposal can include vesting or assigning ownership of the IP, the grant of a licence to the IP or a fee for access.

For example, disposal or re-assignment of IP may be considered where the IP asset<sup>26</sup>:

- Is surplus to requirements.
- Is not being used by other Government bodies.
- Has reached the end of its usefulness, has expired, is no longer serviceable or has become public property (patents & plant breeder’s rights).
- Can be better exploited by a third party.

Section 7 of the IP Policy outlines a number of considerations for agencies to determine whether IP disposal is appropriate. These can include:<sup>27</sup>

FINANCIAL CONSIDERATIONS	IMPACTS OF DISPOSAL	COMMERCIALISATION OPPORTUNITIES
<ul style="list-style-type: none"> <li>•The value of the IP rights.</li> <li>•The benefits, risks and costs of disposal.</li> </ul>	<ul style="list-style-type: none"> <li>•Impact on agency functions, other Government agencies, WA community.</li> <li>•Potential anti-competitive consequences for industries.</li> </ul>	<ul style="list-style-type: none"> <li>•Whether agency is likely to develop or commercialise the IP.</li> <li>•Whether there is another party better placed to develop or commercialise the IP.</li> </ul>

The benefits to the State of IP disposal can include:

- reduced costs and effective risk management;
- revenue to the State;
- Increased innovation and economic activity from commercialisation of products and services; and/or
- increased community access to IP.

<sup>25</sup> WA Government Intellectual Property Policy (2023), p.21.

<sup>26</sup> Adapted from State of Victoria (Department of Treasury and Finance) (2019), *Intellectual Property Guidelines for the Victorian Public Sector*, p. 17.

<sup>27</sup> WA Government Intellectual Property Policy (2023), p.21-22.



As IP is a State Government asset, agencies must ensure any decisions regarding disposals are consistent with the requirements for the disposal of any other asset. In particular WA Government agencies must dispose of goods in a manner that is ethical, equitable, efficient, and, where practical, maximises a value for money outcome for government<sup>28</sup>.

The agency's IP policies and procedures should include guidance about the decision making process to be followed for the disposal of IP assets.

Agencies should also have processes in place to ensure employees involved in the disposal of IP make conflict of interest declarations and raise any concerns immediately.

### 5.4.1 Reassignment to IP creators or third parties

It is recognised that an agency may not always be best placed to develop and commercialise its IP to achieve the maximum public benefit. In some instances, an agency may elect not to pursue the further development and commercialisation of IP for strategic or operational reasons.

A key guiding principle of the IP Policy is that WA Government agencies should identify and facilitate opportunities to obtain the maximum benefit to the State from its IP. As part of its evaluation process, an agency should consider whether it is appropriate to assign or transfer ownership of an IP asset to:

- a current or former WA public sector employee to develop or commercialise for the benefit of the State; or
- a third party where this will optimise public value or foster innovation.

The IP Policy outlines a number of conditions and considerations for agencies in assessing proposed assignees.<sup>29</sup>

When assessing the suitability of a proposed assignee or licensee, an agency should take into consideration all relevant factors including the recipient's:

- ability, skills, management capability and financial standing;
- ability to make effective use of the IP for the purpose proposed; and
- past performance.



#### Further information

- [WA Government IP Policy: Section 4 – Ownership of IP.](#)
- [Guide for Ownership of WA Government IP.](#)

<sup>28</sup> State of Western Australia (Department of Finance) (2022), *Western Australian Procurement Rules – Procurement Direction 2021/02*, p. 28.

<sup>29</sup> WA Government Intellectual Property Policy (2023), p.22-23

## 6 Using third party IP

### Under the IP Policy:

- Agencies should ensure any use of third party IP respects the owner's IP rights, avoids infringement and is consistent with the law and any contractual obligations.<sup>30</sup>

The use of IP generally requires the permission of the owner. Where a government agency needs to use third party IP, the agency must ensure it complies with the relevant laws and any contractual requirements, and does not infringe on the rights of the IP owner.

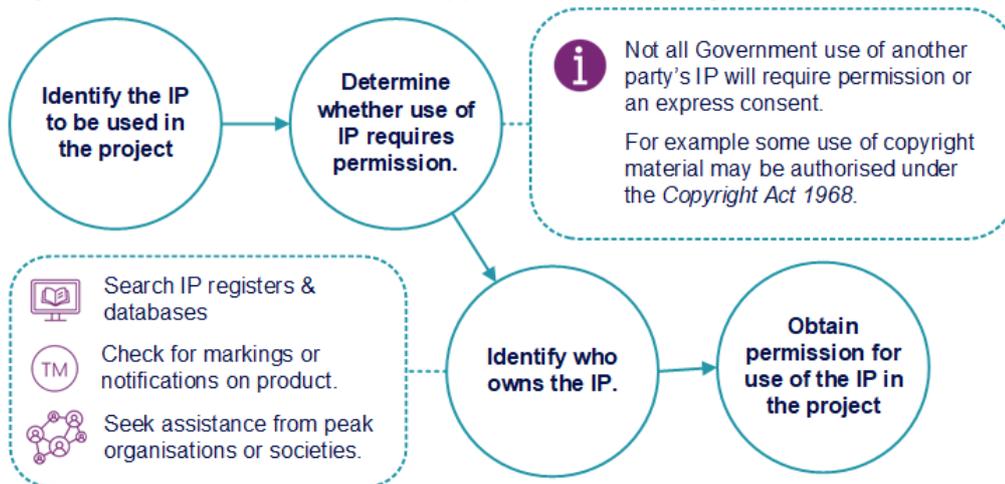
Examples of government use of third party IP<sup>31</sup>:

- Providing the information of a third party to the public in a fact sheet.
- Reproducing a photograph on an entity's website.
- Uploading music on an entity's website.

Where permission to use third party IP is required, it may be obtained by the agency itself or in some cases through the State's appointed contractor.

The *Australian Government Intellectual Property Manual* sets out a detailed process to determine whether it is necessary to obtain permission to use another party's IP and, if so, how to obtain that permission. This is outlined in **Figure 2** below.

**Figure 2: Australian Government approach for obtaining IP permission from other parties<sup>32</sup>**



### Online resources



[The Australian Government Intellectual Property Manual - Chapter 8](#)

Detailed guidance for agencies with respect to the use of IP belonging to other parties in Government projects.

<sup>30</sup> WA Government Intellectual Property Policy (2023), p.10.

<sup>31</sup> Commonwealth of Australia (2012) *Australian Government Intellectual Property Manual*, p.164.

<sup>32</sup> Adapted from Commonwealth of Australia (2012) *Australian Government Intellectual Property Manual*, p.165-169.



## 6.1 Special rights of Government

Commonwealth and State Governments have greater rights to access and use IP and may in some cases use another party’s IP without first obtaining permission. These rights are commonly referred to as “Crown Use” and provide that Government will not be infringing an IP owner’s rights if the use is ‘for the services of the Commonwealth or a State’.<sup>33</sup>

If Government exercises these powers they must<sup>34</sup>:

- inform the owner of the IP rights as soon as possible;
- provide details of the IP use, unless this would be contrary to public interests; and
- reimburse the IP creator for the IP use.

The table below provides an overview of the Crown use provisions for different types of IP<sup>35</sup>.

Type of IP	Crown use provision
<b>Copyright</b>	The <i>Copyright Act 1968</i> (Cth) (sections 183 and 183A) provides that the Commonwealth or a State does not infringe copyright by anything done ‘for the service of the Commonwealth or a State’ (but terms for that use must be determined).
<b>Patents</b>	The <i>Patents Act 1990</i> (Cth) (section 163) provides that there will not be an infringement of a patent if the Commonwealth or State uses an invention for the services of the Commonwealth or a State in a manner that is ‘necessary for the proper provision of those services within Australia’.
<b>Designs</b>	The <i>Designs Act 2003</i> (Cth) (section 96) provides there will not an infringement of a design if the Commonwealth or a State uses a design for the services of the Commonwealth or a State in a manner that is ‘necessary for the proper provision of those services within Australia’.

*Note: Crown use of patents or designs is unlikely to occur often.*

### 6.1.1 Government use of copyright material<sup>36</sup>

There will be times where government may wish to use third party copyright materials. Agencies may use copyright material through statutory licences, direct licences, for example subscriptions; and Creative Commons licences and other freely available materials where copyright has expired.

The State has a special statutory licence under the *Copyright Act 1968* (Cth) which provides that the State’s use of copyright materials without prior consent will not infringe the owner’s copyright provided that:

- the use of the copyright material is for the benefit of the State; and
- the use is covered by the State’s agreement with a collecting authority; or
- where the use is not covered by the State’s agreement with a collecting society or an authorised body, the copyright owner is remunerated by the agency. Where possible remuneration arrangements should be agreed before the agency uses the material.

<sup>33</sup> Commonwealth of Australia (2012) *Australian Government Intellectual Property Manual*, p.171.

<sup>34</sup> Adapted from IP Australia, [Who Owns Intellectual Property?](#), retrieved February 2023.

<sup>35</sup> Table reproduced from the Commonwealth of Australia (2012) *Australian Government Intellectual Property Manual*, p.171.

<sup>36</sup> Information adapted from Australian Government (Attorney General’s Department), [Government use of copyright material](#), retrieved February 2023.



## Collecting societies

A 'collecting society' acts as a central contact point to collect licence fees for the reuse of copyright material on behalf of IP creators who have membership of the organisation. The collecting society is responsible for distributing the royalty payments to these IP creators.

The Attorney-General's Department of the Australian Government manage two main agreements between Commonwealth agencies and copyright collecting societies for copying of copyright materials:

- The agreement with [Screenrights](#), which covers the copying of film, television and radio content.
- The agreement with [Copyright Agency](#), which covers the copying of written material (including text, images and print music) in digital and hard copy.

Agencies can email [copyright@ag.gov.au](mailto:copyright@ag.gov.au) for assistance and information about these arrangements.

## Use of music

There is no whole-of-government agreement covering the use of music and agencies are required to establish their own arrangements through a direct licence or arrangement.

[OneMusic Australia](#) provides joint Australasian Performing Right Association and Australasian Mechanical Copyright Owners Society (APRA-AMCOS) and the Phonographic Performance Company of Australia (PPCA) licences that covers government use of music.

Agencies can obtain further information by emailing [government@onemusic.com.au](mailto:government@onemusic.com.au).

# 7 Supporting resources

## Templates and checklists

- [Agency IP policy and procedures checklist](#)
- [Laboratory notes checklist](#)
- [Invention disclosure form template](#)
- [IP Asset register checklist](#)
- [Significant IP asset identification checklist](#)

## Agency guides

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



## Agency IP policy and procedures checklist

### About this checklist:

- Agencies are required to ensure there are internal policies and guidelines in place to meet the intent, responsibilities and obligations outlined under the [WA Government IP Policy](#).
- This checklist is a guide to assist agencies developing intellectual property (IP) policies and procedures.
- Information identified in **bold** corresponds to recommendations under the WA Government IP Policy.<sup>37</sup>.

### Policy objectives

- Outline the key objectives of the agency's IP policy.  
*For example to support the effective identification, management and use of agency IP for the benefit of the Western Australian community.*
- Outline the agency's functions and the role of IP in achieving these objectives.  
*This may include information about any agency specific legislation related to the development, use or commercialisation of IP.*

### Policy scope

- Identify who the policy applies to, including any application to consultants, contracted or related parties.

### Key roles and responsibilities

- Identify who has overarching responsibility for ensuring the agency meets its obligations under the WA Government IP Policy.

Unless otherwise delegated, the WA Government IP Policy provides that the Director General or the Chief Executive Officer to ensure that the IP Policy is considered in the management of IP within their agency.

- Set out the roles and responsibilities related to IP management for key positions and business areas within the agency.
- **Clearly identify the key decision-making authorities required for IP decisions and approvals.**

The WA Government IP Policy specifically identifies decision making or approval requirements for the following:

- Joint ownership arrangements for IP assets,
- Undertaking of commercialisation activities,
- Commercialisation revenue sharing arrangements,
- The disposal of IP that is confidential, sensitive or incorporates licensed third party IP.
- The reward of employees who develop significant, inventive and valuable IP.

<sup>37</sup> WA Government Intellectual Property Policy (2023).



## Management and protection of IP

- The policy should set out processes to identify and register IP owned, controlled and used by an agency. Processes to be addressed include:
  - The identification of IP developed by employees, contractors, collaborators and researchers.
  - The maintenance of a register of IP assets with financial, operational, strategic or public value.  
*Consideration: the agency may wish to include guidance notes to assist in the assessment of 'significant IP' for inclusion in the register. Refer to the guidance in Section 5 of the IP Policy.*
  - Periodic review and audit of IP assets.
- Set out any requirements or processes with respect to the assessment, registration and management of IP protections.
- Identify the process to be followed where the agency's IP rights are infringed.  
*For example: how will be instances of possible infringement be reported, who will responsible for taking action and what actions will the agency consider.*



Section 5 of the WA Government IP Policy sets out a number of requirements for agencies related to the protection of IP assets and enforcement of IP rights.

## Ownership arrangements

- Establish procedures to identify, record and clarify ownership of agency IP.
- Provide guidance the agency's IP ownership arrangements for relevant settings such as:
  - Employment and secondment contracts which are likely to include research functions, duties to invent or innovate or result in the creation of IP.
  - Contractors and suppliers.
  - Collaborative research projects and joint initiatives that are likely to result in the creation of IP.
  - Funding and grants.  
*Consideration: agency policies should reinforce the requirements of the WA Government IP Policy to ensure IP ownership and rights are clearly addressed in all relevant agreements and contracts.*
- Set out processes for the review of ongoing IP ownership arrangements.  
*Consideration: these processes may be linked to the periodic review and audit of the agency's IP assets.*



Sections 4 and 7 of the WA Government IP Policy provides guidance regarding the assignment of ownership in different settings and factors for determining ongoing ownership arrangements.

The [Guide for Ownership of WA Government IP](#) may assist agencies developing supporting policies and procedures.



## Commercialisation

- Outline the processes for commercialising agency IP assets. Issues to consider may include:
  - How employees will identify and report IP with commercial potential.
  - Who will be responsible for the assessment of commercialisation opportunities?
  - The key issues to be assessed when considering whether it is appropriate to commercialise the agency's IP.
  - The key considerations for the assignment or licensing of IP to third parties to develop and/or commercialise the IP.
  - Requirements to seek relevant legal and expert advice to support commercialisation activities.
  - Who is responsible for making decisions regarding the commercialisation of agency IP?



Section 6 of the WA Government IP Policy provides guidance regarding the commencement and pursuit of commercialisation activities.

The [Guide for Commercialising WA Government IP](#) includes a suggested process that may be used as starting point to develop agency policies and procedures.

- **Include procedures for:**
  - **Handling the net proceeds of commercialisation.**

*Consideration: this may include any options for benefit sharing arrangements with the inventor(s) of the IP and the business unit which originated the IP.*
  - **Seeking a Treasurer's authorisation to retain revenue under the Financial Management (Net Appropriations) Determination 2022 when required.**

## Disposals

- Outline the process for disposing of agency IP assets. Issues to consider may include:
  - When will the disposal of IP be considered.
  - What factors will be considered as part of the assessment process.
  - Who is responsible for making decisions regarding the disposal of IP assets?
  - References to any of relevant agency policies and guidelines related to the disposal of assets.



Section 7 of the WA Government IP Policy provides guidance regarding the disposal of IP assets.



## Training and employee support

- **Include procedures to ensure employees are aware of their obligations in relation to IP and confidential information.**
- Set out training requirements for agency employees.

The WA Government IP Policy requires agencies to:

1. Provide suitable training to employees regarding IP related issues;
2. Disseminate information to employees relating to the State's ownership of IP and their obligations of confidence related to IP development and use.
3. Implement measures to ensure compliance with this Policy, any enabling legislation, other Government policies and any agency level policies and procedures.

## Recognising employee contributions



The implementation of **Section 8** of the WA Government IP Policy relating to employee recognition for IP creation is at the discretion of the agency.

- The agency may develop guidelines, procedures and policies to provide for non-monetary rewards and incentives, which comply with the intent and principles of the WA Government IP Policy.
- The requirements for the payment of any monetary rewards are set out in Section 8 of the WA Government IP Policy. The agency may adopt internal policies and procedures to support the implementation of these requirements.
- The agency may decide to address employee rewards in the IP policy or as a stand-alone document.



### Further information

1. WA Government IP Policy: Section 8 – Employee recognition for IP Creation.
2. [Guide for Rewarding Innovative WA Public Sector Employees](#) (includes a checklist for developing an employee rewards policy).



## Agency IP asset register checklist

### About this checklist:

- The WA Government IP Policy requires an agency to maintain a register of IP assets with significant commercial or operational values and sets out some required inclusions in the register.
- This checklist provides a suggested list of information that could be included in an agency's IP asset register. Agencies should customise the asset register based on nature of the agency's activities and IP held. Information specifically suggested for inclusion under the IP Policy has been clearly identified.
- Agencies must ensure IP assets with a value of \$5,000 or more are registered in accordance with the requirements of [Treasurer's Instruction 410 – Records of Public Property and Other Property](#).

### Details of the IP

- Identification or reference number for each IP asset
- Date of IP creation or acquisition
- Description of the IP asset
- Business area responsible for IP asset\*
- Details of the IP creator or inventor
- Details of IP owner, noting any relevant agreements for joint ownership
- Details of the IP creator or inventor
- Date of IP disposal

### Details of any registered IP protections

- Type of protection, e.g. plant breeders rights or trademark
- Registration date and expiry dates
- Registration or reference number

### Licensing details

- Licensee or lessor details
- Commencement and expiry dates
- Payment arrangements (if any)

### Asset valuation

- IP asset valuation
- Date of valuation
- Valuation method

### Commercialisation arrangements

- Details of any commercialisation activities
- Details of revenue received (if any)
- Details of any benefit sharing arrangements

### Legal matters (if any)

- Note any disputes regarding IP assets and status of matters, e.g. in progress, closed.

### Audit details

- Date of last and next review/audit date

\* Denotes a recommendation of the WA Government IP Policy



## Significant IP asset identification checklist

### About this checklist:

- This checklist may assist agencies to identify significant IP assets that may require protection and risk management plans.

### Significance of IP Asset

WA Government agencies are required to actively manage intellectual property assets that:

- are critical to deliverables or core functions; and/or
- have significant financial, strategic or public value.

#### PART A

If the answer to any of the following questions is “Yes” then the IP asset is considered to be significant and should be registered and actively managed by the agency.

Where the answers are “No” or “Unsure”, further assessment should be undertaken (see Part B) to determine whether an active management strategy is required.

**Is the IP critical to the delivery of a core agency function?**  Yes  No  Unsure

**Would a failure to manage the IP constitute a breach of law?**  Yes  No  Unsure

**Does the IP have a value of \$5,000 or more?<sup>38</sup>**  Yes  No  Unsure

#### PART B

The following questions are intended as a guide in the assessment of an IP asset’s significance and potential value to the agency. The importance assigned to these issues may vary depending on the nature of the IP and the agency’s activities and functions.

#### Public benefits and contributions to objectives

**Does the IP contribute significantly to achieving the agency’s objectives?**  Yes  No  Unsure

**Can the IP be used to achieve significant social or public benefits for the community?**  Yes  No  Unsure

*For example education and training, foster innovation or industry development.*

<sup>38</sup> May be deemed “significant IP” due to requirement under Treasurer’s Instruction 410 – Records of public property and other property to establish and maintain a register of IP assets with a value of \$5,000 or more.



### Impacts of mismanagement

Would the failure to adequately manage the IP asset result in any of the following:

Reputational damage to the agency?  Yes  No  Unsure

Infringement of third party IP?  Yes  No  Unsure

Contravene the terms of contract or licence agreement?  Yes  No  Unsure

Risk of a loss by the agency?  Yes  No  Unsure

### Commercial and financial value of the IP

Has the agency invested significant resources in the development or acquisition of the IP?  Yes  No  Unsure

Does the agency receive revenue as result of the commercialisation of the IP  Yes  No  Unsure

*For example licence fees or royalties.*

Does the IP have unique features that would be of interest to commercial market?  Yes  No  Unsure

### IP Protection

Would the IP require a registrable protection?  Yes  No  Unsure

*For example patent, plant breeders' rights and trademarks require registration, copyright protection does not.*

### Outcome of assessment

**IP assessed as significant and requires active management by the agency?**  Yes  No



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