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EDUCATE ADVOCATE INNOVATE

INTELLECTUAL PROPERTY POLICY

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1. INTRODUCTION AND PURPOSE

The College needs to be assured, and to ensure, that it can protect and freely use all Intellectual Property ("IP") created by it or for it in the pursuit of its strategic objectives and activities.

The College is committed to excellence in teaching, research and the dissemination of knowledge. As an educational institution, the College recognises that the publication and general use or dealings of academic, and other related, works is essential to the delivery of its educational and research activities.

The adoption of this policy will provide for clarity in the delineation of ownership, commercialisation and general use or dealings with IP.

The purpose of this policy is to provide consistency and certainty over the ownership and use of IP within the College by:-

- i) securing and protecting the College's IP.
- ii) clarifying the rights to access and use the College's IP.
- iii) clarifying the ownership of IP by the College's employees.
- iv) clarifying the use of any College IP material by Employees, Fellows, Trainees and Visitors.
- v) clarifying ownership over IP attributable to Fellows.
- vi) attributing moral rights to original authors/creators.

This policy is therefore directed to ensure that the existing College IP is appropriately protected and that for the future, College IP is treated in accordance with this policy.

Fellows, Trainees, Employees and Visitors may only use the College's IP in accordance with this policy.

2. COLLEGE OWNERSHIP OF INTELLECTUAL PROPERTY

The College owns and controls all IP subject to this policy and the terms of any agreement between the College and any third party in respect of:-

- a) the use of the College's IP; and/or
- b) the use of a third party's IP by the College.

The College will grant to any Specialty Society that authors or otherwise provides Teaching Materials a non-transferable, perpetual royalty free licence to use the Teaching Materials created by that Specialty Society for teaching purposes only, but any such licence does not include the right to sub-licence or otherwise deal with the Teaching Materials in any other manner, or to commercialise the IP in any way.

3. JOINT OWNERSHIP

Some IP in the College's Teaching Materials is jointly owned by the College with third parties including Specialty Societies. Such arrangements are subject to specific written agreements between the College and the third parties as to the terms of the use of such IP.

4. DETERMINING OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

4.1 Employees

Given that resources of the College are ordinarily expended in the course of their employment, the College claims beneficial and legal ownership of all existing and future IP created or developed by employees unless agreed otherwise.

It is the position at law generally that IP created by an employee in the normal course of their employment will be the property of the employer.

It is recognised however by the College that any IP created beyond the course of employment in the employee's own time using their own resources, not the College's, will be owned by the employee.

All College employees are required to sign an agreement as part of their acceptance of employment with the College which recognises that any information obtained, any secret or invention discovered, or any document created during the employee's tenure of employment with the College shall vest in, and become, the property of the College, including all copyright therein.

4.2 Fellows

Ownership of existing or future IP which has been created or developed by Fellows as a result of the full or partial contribution of, or the use of the resources of, the College will be vested in the College unless agreed otherwise. The College may require Fellows who participate in College auspiced activities to sign an agreement or provide a written acknowledgement that such IP vests with the College.

Fellows often provide significant contributions to the development of Teaching Materials for the College. Teaching Materials created in this manner will be regarded as having been created by the Fellows acting as agents for the College. Accordingly the College will assert its rights to the IP of that material, subject only to the licence granted to the authors of teaching materials under clause 7 of this Policy.

In cases where an author of the Teaching Material has requested that joint ownership be recognised, if agreed, the College will prepare an appropriate agreement to document and confirm the rights to the future use of the Teaching Materials.

4.3 Trainees

During their training with the College, Trainees acquire the appropriate information, knowledge and skills to graduate with FRACP or other designation. Ordinarily the College can have no controls or rights over the manner in which an individual Trainee may subsequently use or develop information, knowledge and skills acquired during training.

However where the College (or others) provides specific documentation and other materials to Trainees during the course of their training, that documentation and other materials are subject to copyright protection and therefore must not be utilised by Trainees or others more broadly than intended, without potentially incurring liability.

As part of Trainees agreeing to participate in the College's training programs, including those of its Faculties and Chapters, they acknowledge that specific documentation and other materials provided during the course of the training programs are owned by the College and subject to IP protection.

4.4 Divisions, Faculties and Chapters

Divisions, Faculties and Chapters are part of the College legal entity and do not have independent legal status. IP used or developed by the Divisions, Faculties and Chapters is therefore College IP and must be used or otherwise dealt with in accordance with this policy.

It is recognised that Divisions, Faculties and Chapters may store and permit the use of some IP by related Colleges, Specialty Societies, medical societies and other medical related bodies.

Divisions, Faculties and Chapters that use, communicate or otherwise share IP with third parties must ensure that:-

- a) the requirements of this policy are met in full at all times;
- b) where possible:-
 - i) all copyright carries the description “© Copyright RACP - All rights reserved.”; and
 - ii) those third parties using the College’s IP do so under explicit written arrangements such as a licence, memoranda of understanding or other written agreement.

4.5 Visitors

Visitors are not employees of the College and accordingly will not be covered by the usual position at law.

In particular commercial contractors and consultants must have formal agreements in place that clarify the position in relation to IP and ensure that any IP developed will become the property of the College, unless agreed otherwise in specific circumstances.

If ownership of IP is not addressed in any contractual arrangements with a visitor, or no specific contractual arrangements are made with a visitor engaged by the College, then any IP developed by a visitor will be the property of the College.

Further, to protect the College’s interests to the extent possible, visitors who develop IP for the College may be required to confirm to the College that they have not breached any other person’s, or organisation’s, IP in developing that IP for the College.

4.6 Research

The College (primarily through its Research and Education Foundation) funds and supports significant research projects and other similar activities. The circumstances under which research may be conducted may differ, and the rights of ownership of any IP arising from that research will be determined on a case by case basis.

The College does not assert ownership of any IP generated from research through competitive research grants or scholarships funded primarily through the Research & Education Foundation.

5. PERMITTED DEALINGS WITH INTELLECTUAL PROPERTY

5.1 Employees, Fellows and Trainees

Generally Employees, Fellows and Trainees are permitted to deal with any IP belonging to the College, save for situations where dealing are predominately of a commercial or financial purpose or beyond the meaning of dealing as defined in this policy.

Employees, Fellows and Trainees of the College may communicate IP to other Employees, Fellows and Trainees of the College for the purposes of administration, research, review, training, studying, assessment or other expressly agreed purpose.

In some cases it may be necessary to require those accessing the IP to sign a formal acknowledgement or licence agreement.

5.2 The College

To the extent that the College does not own the IP the College retains a non-exclusive, royalty free, perpetual licence to use and develop that IP anywhere in the world in any manner the College thinks fit, including a right to commercialise it, only subject to any obligation the College may have in relation to any moral right in that work.

6. NOTIFICATION OF AND CONSENT TO DEALINGS WITH INTELLECTUAL PROPERTY

Should Employees, Fellows, Trainees or Visitors be required to engage in dealings other than as defined by this policy, or dealings of a commercial or financial nature with IP in which the College may have an interest, then notification seeking the College's consent must be provided to the College.

In such circumstances where the College provides its consent a formal agreement or acknowledgement will be required.

All works provided must carry the appropriate copyright description.

Notification seeking consent must be provided to the College prior to dealing with any IP in which the College may have an interest providing a full and frank disclosure of the purpose of the proposed dealing.

Upon the College receiving notification, and prior to providing its consent or otherwise the College may enter into discussions with the relevant parties to ascertain whether the intended dealings will be permitted, and expressly agree in writing the manner and extent to which such intended dealings may proceed, if consent is provided.

7. LICENCE TO AUTHORS OF TEACHING MATERIALS

The College asserts ownership of all IP subject only to:-

- a) the terms of any agreement between the College and any third party; and
- b) the grant to the author of any Teaching Materials a non-transferable, perpetual royalty free licence to use the teaching material created by that author for teaching purposes only, but any such licence does not include the right to sub-licence or otherwise deal with the Teaching Materials in any other manner, or to commercialise the IP in any way.

8. COPYRIGHT

All documents for which copyright is claimed should carry the description "© Copyright RACP - All rights reserved."

A document that does not carry such a description is still protected by copyright.

9. MORAL RIGHTS OF AUTHORS

The College recognises that the moral rights in IP should be vested in the original creators or authors of works. The author has the right to be identified as the author of the IP as well as of any reproductions and adaptations of the IP. The author has the right not to have the IP subject to derogatory treatment such as material distortion, alteration, mutilation of the IP or any other action that is prejudicial to the author's honour and reputation.

10. PROHIBITED DEALINGS WITH INTELLECTUAL PROPERTY

Unless by prior agreement, or in accordance with this policy, dealings with the College's IP, or IP in which the College may have an interest are generally prohibited, particularly when those dealings are of a financial or commercial nature.

Prohibited dealings in relation to the College's IP include, but are not limited to, distributing or licensing or communicating IP in any form to third parties without the College's consent; publishing IP in any form; making copies or reproductions of IP in any form; making adaptations of IP; entering into commercial arrangements; or causing IP to be heard or seen in public, other than as part of the College's usual activities and processes.

11. DEFINITIONS

In this policy the following terms have the following meaning:-

"College"	means The Royal Australasian College of Physicians (ACN 000 039 047).
"Deal" or "Dealings"	means viewing, listening, reproducing or copying, communicating to Employees, Fellows, Trainees and Visitors for the purposes of employment, education and training or other expressly agreed purposes. Deal or Dealings do not include financial or commercial purposes unless agreed otherwise.
"Employees"	means persons who are employed under contracts of employment by the College whether on a full-time, part-time, casual, temporary or other basis.
"Fellow"	means any Fellow of the College inclusive of any of its Faculties and Chapters.
"Intellectual Property" or "IP"	means anything matter or right that may give rise to any intellectual property interest, including any interests under the Copyright Act 1968, Design Act 2003, Patents Act 1990 and/or Trade Marks Act 1995 or at common law, that is:- a) created or acquired by the College or on its behalf; b) created by any Employee; c) created by any Fellow, Trainee or Visitor in creating, authoring, contributing to, or presenting any Teaching Materials; d) generated from any research project funded or auspiced by the College; AND without limitation it includes: e) copyright related to literary or scientific works, computer programs, website copy, multi-media subject matter or Teaching Materials; BUT it does not include any moral right (as defined in the Copyright Act 1968).
"Resources"	means financial resources, non-financial resources such as the College's premises, equipment, tools, human resources or general academic resources and any valuable consideration provided.
"Specialty Society"	means any society of medical specialists affiliated with the College now or in the future. Specialty Societies bring together research and clinical scientists and physicians who are actively involved in the study of a particular specialty, eg cardiology, geriatrics. Each Society is run independently of the College but provides guidance to the College in the matters in which the Societies have specific expertise, such as input into the content of the College's advance training Teaching Materials.

- “Teaching Materials” means any curricula, syllabus or educational program and includes all educational materials, educational software, educational management systems, learning and assessment strategies, all course content and all performance management and monitoring and evaluation frameworks.
- “Third Party” means parties other than “Employees”, “Fellows”, “Trainees”, “Visitors” and the “College” as the case may be.
- “Trainees” means any Trainee of the College inclusive of any of its Faculties and Chapters.
- “Use” means use of IP includes, but is not limited to, all rights that are legally attached with the type/types of IP at hand, communicated to persons in any form, all dealings as defined in this policy, and any licensing or assignment to third parties. The purpose of use may include research, teaching, review, training, commercial exploitation, trading and financial.
- “Visitors” means a person or other entity such as a consultant, contractor or volunteer who is not an Employee, Fellow or Trainee of the College at the time he or she creates any IP, or provides Teaching Materials or takes part in any teaching for the College, or any other College activity.

Approved by the Board of the College on the 10th day of December 2010.