



Australian Government

Department of Defence

DEFENCE INTELLECTUAL PROPERTY POLICY 2008

Endorsed by the Secretary and Chief of the Defence Force on 1 July 2008

INTRODUCTION

1. This document contains the *Defence Intellectual Property Policy 2008 (Defence IP Policy 2008)*.
2. The policy is applicable to and must be complied with by the whole of the Defence portfolio.

Background

3. On 11 May 2007 the Attorney-General's Department released the *Intellectual Property Principles for Australian Government agencies (Australian Government (AG) IP Principles)*. The 15 principles in this document provide the corporate framework for Intellectual Property (IP) management in Australian Government agencies. This framework includes policies on creating, acquiring, sharing, commercialising, disposing of, and public access to, IP.
4. All Australian Government agencies governed by the *Financial Management and Accountability Act 1997 (FMA Act)* are required to implement and comply with the AG IP Principles by 1 July 2008.
5. DMO Legal was tasked to review the existing Defence IP policy to ascertain what changes were necessary to ensure that Defence implemented the AG IP Principles by 1 July 2008. Defence's existing IP policy was set out in *Developing and Sustaining Defence Capability: Defence Intellectual Property Policy 2003*.
6. As part of the review process, consultations were undertaken with key stakeholder groups during the first half of 2008.

Defence IP Policy 2008

7. DMO Legal adopted the AG IP Principles and tailored these to produce the principles contained in the *Defence IP Policy 2008*. Where appropriate, sub-principles have been formulated to emphasise particular aspects of the head principle.
8. The 15 principles that comprise the *Defence IP Policy 2008* set out general responsibilities and procedures for managing IP within the Defence portfolio, and seek to:
 - ensure Defence and all its agencies comply with Australian Government policy and legislation;
 - provide guidance on how Defence will secure and manage IP;
 - emphasise the importance of IP in the development and sustainment of national Defence capability;
 - recognise the broader contributions of industry and the various agencies within Defence to the generation of IP in the development and sustainment of Defence capability;
 - recognise that IP is a valuable asset which should be managed in an effective, efficient and ethical manner; and
 - promote continuous improvement of IP management practices within Defence.

9. While all Defence groups and organisations need to comply with the *Defence IP Policy 2008*, they may apply their own processes and procedures under the policy consistent with their functions and business objectives.

Defence IP Manual

10. The *Defence IP Manual* is designed to provide detailed guidance on dealing with IP in Defence. A revised version of this manual is due to be released by the end of 2008.

Implementation of Policy

11. The *Defence IP Policy 2008* needs to be implemented across Defence. To this end, the new policy is supported by the *Defence IP Implementation Plan*. This Plan outlines how Defence will go about undertaking activities to implement the new policy.

12. The *Defence IP Implementation Plan* allows for each Defence group or organisation to develop its own Implementation Action Plan, provided that each of these Actions Plans is consistent with the *Defence IP Implementation Plan*.

Ongoing Management of IP in Defence

13. Once the new IP policy has been implemented, the *Defence IP Management Plan* will set out the ongoing Defence IP management framework.

Further Information

14. Further information on the *Defence IP Policy 2008* can be obtained from DMO Legal, via the DMO Contracting Help Desk, on 1800 100 605 or at contracting@defence.gov.au.

DEFENCE INTELLECTUAL PROPERTY PRINCIPLES

GENERAL PRINCIPLES

1. *Defence is responsible for managing IP in its control or custody in an effective, efficient and ethical manner.*
 - Defence will manage IP in its custody and control as a valuable resource.
 - Defence's IP arrangements should reflect value for money, promote best practice to develop and sustain Defence capability, and, where practicable, ensure that Defence does not pay for ownership or licensing of IP more than once.
2. *Defence will periodically evaluate the overall effectiveness, including cost, risks, and benefits of this policy and the plans and practices it has in place for the management and use of IP.*
 - If appropriate, Defence will make changes to this policy and the plans and practices consistent with the outcomes or recommendations of the periodic evaluation.

CORPORATE FRAMEWORK

3. *Defence will have IP management plans and practices which reflect its objectives and this policy.*
4. *Implementation of this policy will be supported by appropriate training and resources, including access to expert advice.*
5. *Defence will maintain appropriate systems and processes to identify and record IP.*
 - The systems to identify and record IP will complement or be linked to current Defence record management systems but will generally not duplicate asset and record management systems.
 - In recording IP, Defence will pay particular attention to any IP identified as having public, strategic or significant financial value.
6. *Defence will have plans and practices to ensure that IP is protected in an appropriate manner.*
7. *Defence will have plans and practices in place to reduce the risk of infringement of the IP rights of others.*

CREATING AND ACQUIRING IP

8. *Defence will maintain a flexible approach in considering options for ownership, management and use of IP.*

- In considering its options, Defence will be mindful of:
 - its activities and in particular the need to properly equip and sustain the Australian Defence Force;
 - opportunities for obtaining appropriate value in all IP arrangements;
 - opportunities for financial savings in procurement contracts including through obtaining only those IP rights required to meet the objectives of the procurement;
 - the costs of managing and administering IP assets and the potential for some IP assets to depreciate in value;
 - the desirability of making IP available to entities that are able to use such IP to create jobs and commercial opportunities; and
 - relevant Government policy objectives.

9. *Defence will recognise innovation and creativity in the development of IP in an appropriate manner.*

- Defence will investigate options for recognising staff contributions to innovation and creativity as appropriate.

10. *Defence contracts and other agreements will address IP issues where relevant.*

- Defence will obtain IP rights that are appropriate to its capability needs and objectives for the life of the capability.
- Defence will recognise IP issues at an early stage in developing a capability and address IP issues on a whole-of-life basis.
- Defence will consider reasonable approaches to IP issues from suppliers that are consistent with its capability needs and objectives for the life of the capability.
- Defence will maintain, update and develop, as required, its contracting templates and other contracting tools to ensure that it obtains appropriate ownership and licensing rights to IP.

SHARING, COMMERCIALISATION, DISPOSAL AND PUBLIC ACCESS TO IP

11. *Where relevant, and subject to security and confidentiality requirements, Defence will encourage public use of, and easy access to, Defence copyright material that has been published for the purpose of:*

- *informing and advising the public of government policy and activities;*
- *providing information that will enable the public and organisations to understand their own obligations and responsibilities to Government; or*
- *complying with public accountability requirements.*

12. *Subject to relevant security and confidentiality requirements, and value for money issues, Defence will be mindful of opportunities to share IP for which it is responsible with other agencies.*

13. *Defence will consider opportunities for commercial use and exploitation of IP.*

- Defence will ensure that its IP arrangements with Australian industry enhance the development and sustainment of national Defence capability.
- Subject to ownership and licencing restrictions, Defence will consider the costs and benefits that may be realised through the transfer and uptake of IP, including commercialisation by the private sector.

14. *Commercialisation of Defence IP should not be a core Defence business activity except where it is an integral part of achieving the relevant Defence area's objectives.*

- When Defence considers opportunities to engage in commercialisation, it will be mindful of the resource implications.
- Commercialisation of Defence IP is subject to national security and Defence strategic implications.

15. *Where IP is commercialised or disposed of, Defence must do so in an accountable manner consistent with Australian Government legislation, policies and guidelines.*

- Defence will take into account security, costs/benefit, legal and other risks and value for money considerations before commercialising IP. An emphasis will be placed on avoiding risks that are disproportionate to the potential rewards.
- Defence will be mindful of fairness principles and consider the potential impact on industry from such an activity.