

Intellectual Property Policy

Abstract

This Policy sets out the principles for ownership, management, Commercialisation, rights and responsibilities in relation to UTS Intellectual Property generated by UTS staff, students and others connected to the University.

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	Policy takes effect	02/07/2014
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	Policy amendment approved	09/03/2015
	Policy amendment takes effect	23/07/2015
Approved by	Council Meeting 14/3, 18 June 2014 Resolution COU/14-3/67.2	
	Latest amendment: Director, Governance Support Unit (see change history for details)	
Implementation Officer	Director, Research and Innovation Office Deputy Vice-Chancellor (Research) and Provost or their nominee, for corrective action to rectify breaches of the Policy relevant to their portfolios	
Relevant to	All staff, students, UTS appointees and all other persons generating Intellectual Property in which UTS asserts ownership	
Related documents	<p>External documents</p> <p>Australian Code for the Responsible Conduct of Research</p> <p>National Principles of Intellectual Property Management for Publicly Funded Research</p> <p>UTS documents</p> <p>Research-Generated Intellectual Property and Commercialisation Vice-Chancellor's Directive</p> <p>Council Directives for UTS Commercial Activities</p> <p>Enterprise Agreements</p> <p>Handling Staff Grievances Vice-Chancellor's Directive and Handling Staff Grievances — Supervisors' Guidelines</p> <p>Handling Student Complaints Policy and Procedures for Managers</p> <p>Honorary Appointments Vice-Chancellor's Directive</p>	

	Open Access Policy Outside Work Vice-Chancellor's Directive Procurement Policy Research Data Management Vice-Chancellor's Directive Staff Code of Conduct Standing Delegations of Authority Student Rules and UTS General Rules Other external references Australian Commercial Disputes Centre
Legislation	Circuit Layouts Act 1989 (Cwlth) Competition and Consumer Act 2010 (Cwlth) , including Schedule 2 — The Australian Consumer Law Copyright Act 1968 (Cwlth) Copyright Amendment (Moral Rights) Act 2000 (Cwlth) Designs Act 2003 (Cwlth) Patents Act 1990 (Cwlth) Plant Breeder's Rights Act 1994 (Cwlth) Trade Marks Act 1995 (Cwlth)
File number	UR06/482
Superseded documents	Intellectual Property Policy, 2009

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1. Purpose

This Policy aims to:

- create an innovative culture which fosters the creation of Intellectual Property as a means of demonstrating the impact and relevance of the University's research and teaching, promoting opportunities for collaboration and providing our researchers with freedom to operate

- provide a framework for the identification, management and, where appropriate, Commercialisation of University Intellectual Property
- provide a clear understanding of the rights and responsibilities of Staff, other appointees, Contractors and students in the creation, protection and Commercialisation of University Intellectual Property
- assist the University to comply with [National Principles of Intellectual Property Management for Publicly Funded Research](#), the [Australian Code for the Responsible Conduct of Research](#) and other national policies as promulgated from time to time, and
- ensure the University complies with Australian laws and regulations affecting the access to, and the export of, Intellectual Property.

2. Scope

This Policy applies to all staff, including all employees, and other appointees, whether paid or not, including conjoint appointees, emeritus professors, adjunct, visiting appointees, fixed-term, continuing, permanent or casual (collectively 'Staff') and to all students. The Policy also applies to consultants, contractors and other persons generating Intellectual Property in collaboration with University Staff or students, or engaged by the University to undertake a specific activity, and it may also apply from time to time to other persons by agreement (collectively 'Contractors').

3. Definitions

3.1 Intellectual Property

Intellectual Property means all statutory and other rights protected by Australian law and international agreements applying to Australia, as amended from time to time. For the avoidance of doubt these include the following.

3.1.1 Statutory Intellectual Property including:

- [Patents Act 1990 \(Cwlth\)](#), which deals with patents granted for inventions
- [Copyright Act 1968 \(Cwlth\)](#), which deals with copyright in literary works (including computer programs), data, dramatic works, musical works, artistic works (including architectural drawings), films, sound recordings, broadcasts, published editions and certain types of performances. In addition, the Copyright Act confers Moral Rights on creators of certain works and other subject matters, and creates a range of rights over the distribution of information in electronic form
- Plant Breeder's Rights Act 1994 (Cwlth), which deals with new plant varieties
- Designs Act 2003 (Cwlth), which deals with design features of products
- Trade Marks Act 1995 (Cwlth), which deals with trade marks
- Circuit Layouts Act 1989 (Cwlth), which deals with circuit layouts, and
- all other applicable legislation governing Intellectual Property.

For the avoidance of doubt, references to the above legislation include that statute as amended and in force from time to time, any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinated legislation issued under, that legislation or legislative provision.

3.1.2 Confidential information and trade secrets

The general law protects confidential information and trade secrets against unauthorised disclosure. This includes but is not limited to:

- an invention or discovery, before the filing of a patent application
- the contents of a patent application up to the time that a patent is granted
- new commercially valuable knowledge which is intentionally omitted from a patent application and never becomes protected by the grant of a patent, for example, to minimise the prospect of reverse engineering
- research materials, including biological materials, and data
- commercially sensitive information such as confidential reports
- information marked confidential, and
- trade secrets.

3.1.3 Reputation

The common law also protects reputation, including unregistered trade marks, through an action for passing off. There are also general protections in relation to misleading and deceptive conduct under [the Australian Consumer Law](#) or equivalent provisions of state fair trading legislation.

3.2 Biological Material means all biological material including molecules, compounds, reagents, cell lines, antibodies, viruses, proteins, peptides, enzymes, clones and the like.

3.3 Commercialise/Commercialisation in relation to Intellectual Property means to make, sell, copy, adapt, apply, publish, develop, use, assign, license, sub-license, franchise or otherwise utilise the Intellectual Property for the benefit of the University, its Staff and students and to support the transfer of research outcomes to application. Commercialisation may be pursued for the purpose of generating financial or other non-financial commercial gains. The use of Course and Educational Materials by the University, for the purposes of teaching and research in its programs, whether in Australia or overseas, does not constitute Commercialisation of the Intellectual Property.

3.4 Commercialisation Revenues means revenue, net of costs including Commercialisation expenses, available for distribution to inventors, and may include:

- royalties upon sales by a licensee
- royalties from sub-licence fees received from a licensee
- lump sum licence fees
- proceeds of assignment or sale of the Intellectual Property (where a sale occurs)
- signing fees
- milestone payments
- minimum annual payments
- patent prosecution and maintenance expenses which are reimbursed to the University
- dividends upon shares owned by the University in a start up company to which it grants a licence
- net proceeds of sale of shares owned by the University in a start up company to which it grants a licence, and
- damages from infringement proceedings.

3.5 Commissioned Work means a specific work which the University has directed or requested a Staff member to create by means of an agreement or arrangement signed

by a dean or a director, and includes a work written or otherwise created where the Staff member is remunerated over and above the Staff member's usual salary.

It also means specific work the University has contracted a third party (whether or not a Contractor) to produce by means of an agreement under the University's [Procurement Policy](#), consistent with the terms of that agreement.

3.6 Confidential Information is information which is commercially sensitive or, by its subject matter or nature, confidential. It includes all the research and scientific information that is being considered for Commercialisation or has already been Commercialised.

3.7 Contractor has the meaning given to it in section 2 of this Policy.

3.8 Copyright means all rights conferred by the Copyright Act as amended or substituted in relation to, without limitation, literary works, dramatic works, musical works, artistic works, films, sound recordings, broadcasts, published editions and certain types of performances.

3.9 Course and Educational Materials, when not Commissioned Works, means materials used in or in connection with an education course for the provision of lectures, tutorials, seminars, workshops, field or laboratory classes, assessments, practicum and other teaching activities conducted by the University, and includes, without limitation, presentations, overhead transparencies, slides, photographs, maps, diagrams, books and handbooks, manuals, teaching aids, course outlines, exercises, computer programs and multimedia works that serve a teaching function. 'Course and Educational Materials' excludes subject and course design and the related documentation.

3.10 Creative Works mean all copyright works that are artistic in character, including artistic literary works, dramatic works, musical works, films, sound recordings, broadcasts, published editions and certain types of performances.

3.11 Creator/Inventor means the Staff members, Contractors and/or students responsible for creating, inventing or developing the Intellectual Property.

3.12 Materials mean unique materials that are the subject of Intellectual Property including data; biological materials, including such things as cell lines, reagents, viruses, monoclonal antibodies etc.; and new physical sciences materials such as new ceramics, powders, formulations, etc.

3.13 Moral Rights has the meaning ascribed to that term in the Copyright Act as amended by the Copyright Amendment (Moral Rights) Act and recognises three types of moral rights: the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship.

3.14 Publication means research outputs, including:

- books and book chapters
- publications in academic, professional or other journals
- conference presentations
- technical and other reports
- monographs
- abstracts
- poster presentations
- electronic and online publications
- software

- creative works and designs, and
- exhibitions or performances.

3.15 Research Project means a project that has investigation as a primary objective and has the potential to contribute new knowledge, both theoretical and practical, and includes projects undertaken by students, under the supervision of Staff, as part of a research degree program.

3.16 Scholarly Work means copyright material, which is the output of academic Staff members, including research, creative and other outputs in area(s) of a Staff member's expertise. It does not include course and educational materials.

3.17 Staff has the meaning given to it in section 2 of this Policy.

3.18 University means University of Technology, Sydney.

4. Policy principle

In promoting, protecting, managing and Commercialising Intellectual Property, the University does so for the benefit of the community and the University, including its Staff, students and Contractors.

5. Policy statements

5.1 Ownership of Intellectual Property

5.1.1 Intellectual Property created by Staff

Unless otherwise agreed, the University asserts ownership of all Intellectual Property created or developed by Staff in the course of employment, except where specifically excepted by this Policy. Contractors engaged by the University will be subject to this Policy pursuant to a University contractor agreement.

5.1.2 Intellectual Property created by emeritus professors, visiting, adjunct and conjoint appointees

Unless otherwise agreed, the University asserts ownership of all Intellectual Property created by Staff including emeritus professors and visiting, adjunct, honorary and conjoint appointees, where:

- the Intellectual Property is created with substantial contribution or use of University resources
- the Intellectual Property generated has resulted from the use of pre-existing Intellectual Property owned by the University
- the Intellectual Property belongs to a set of Intellectual Property generated by a team of which this person is a member and other members are University Staff, and/or
- the Intellectual Property has been granted to the University and/or generated as a result of funding provided or obtained by the University.

Staff responsible for engaging other Staff and Contractors have a responsibility to bring this Intellectual Property Policy and [Research-Generated Intellectual Property and Commercialisation Vice-Chancellor's Directive](#) to their attention and ensure their understanding of the requirements prior to the engagement being finalised.

5.1.3 Course and Educational Materials, educational software and systems, Creative Works and Scholarly Works created by Staff and Contractors not specifically commissioned or created under an agreement

Subject to any written agreements to the contrary, the University asserts its ownership of Intellectual Property in Course and Educational Materials, educational software and systems, Creative Works and Scholarly Works created by Staff and Contractors; created or developed for specific purposes including but not limited to University offshore activities, translations of materials, educational software and systems developed to deliver course material or to facilitate the assessment of students, and/or with substantial contribution or use of University resources.

The University does not assert ownership of the Intellectual Property in Course and Educational Materials, Creative Works or Scholarly Works created or developed by Staff or Contractors while employed at or contracted to the University, except where these have been developed for specific purposes, subject at all times to the University reserving to itself a non-exclusive, royalty free, perpetual, irrevocable world-wide licence (including the right to sub-license) to use, reproduce, adapt, exploit, distribute, broadcast or perform the materials or works for the purposes of the University, within Australia and elsewhere, whether or not the Staff member remains an employee of the University.

Under this Policy, the University also asserts the right to retain a copy of any such materials or works for its own use and to meet recordkeeping requirements.

Staff and Contractors must provide copies of such Course and Educational Materials, educational software and systems, Creative Works and Scholarly Works if requested to do so by their supervisor, head of school or department, dean, a member of the Senior Executive of the University or the Vice-Chancellor. The University's licence over the Course and Educational Materials, educational software and systems, Creative Works and Scholarly Works is subject to any Moral Rights (see section 5.4 of this Policy).

Guidance on the implementation of the Intellectual Property Policy in relation to Creative Works and Scholarly Works arising from or connected to Research Projects should be sought from the Deputy Vice-Chancellor (Research).

5.1.4 Commissioned Works

The University will own all Intellectual Property that it has commissioned Staff and/or Contractors to create or develop for University purposes. A commission will be evident if an arrangement or agreement has been signed by a dean or director, and it may (or may not) include provision for a financial or non-financial benefit to the Staff member and/or a period of release from teaching duties or a lighter teaching load during a period.

The University will also own all Intellectual Property that it has commissioned any Contractor to create or develop, consistent with the terms and conditions of the relevant procurement agreement.

Where the Commissioned Work uses, adapts or includes existing Course and Educational Materials, educational software and systems, Creative Works and Scholarly Works, the Staff member or other appointee will have the right to use those Course and Educational Materials, educational software and systems, Creative Works and Scholarly Works, subject to the University's Intellectual Property rights, its [Outside Work Vice-Chancellor's Directive](#), the University's licence as set out in section 5.1.3 of this Policy and any relevant Moral Rights.

5.1.5 Pre-existing Intellectual Property

The University does not automatically assert ownership over pre-existing Intellectual Property.

Staff and Contractors should advise the Deputy Vice-Chancellor (Research) in writing of the existence of pre-existing Intellectual Property that the person brings to the University within 30 days of commencing employment or engagement. If no such advice is received by the Deputy Vice-Chancellor (Research), the University shall treat any Intellectual Property created, developed, used or disclosed during the period of employment as University Intellectual Property.

5.1.6 Intellectual Property created by students

The University does not assert ownership of Intellectual Property created by students unless the Intellectual Property:

- i. is the result of work specifically commissioned by the University, and/or
- ii. has been separately assigned to the University under a specific agreement with the student, and/or
- iii. has been jointly developed with University Staff or a Contractor and the student is deemed to be a co-Creator/Inventor, and/or
- iv. is the subject of an existing agreement between the University and a legal entity that funds a student scholarship or student research project.

5.1.7 Students own the copyright in their theses

The Rules of the University require (as a condition of candidature) that the University reserves the right, and under this Policy the University asserts that right to retain the original or copy; and make copies of any drawings, models, designs, plans and specifications, essays, theses or other work executed by a student as part of his/her course, or submitted for any award or competition conducted by the University. Such retention is not to affect any Copyright or other Intellectual Property right that may exist in such student work (refer [Rule 3.9.1](#) of the Student Rules).

In cases where the University exercises, or wishes to exercise, its right under [Rules 3.9.2\(2\) and 3.9.2\(8\)](#), the students shall grant the University a non-exclusive, royalty-free, perpetual, irrevocable, world-wide licence (including the right to sub-license) to make available for consultation, loan or copying, at the discretion of the University Librarian subject to the Rules, any copy of a thesis deposited with the University Library in accordance with Rules [11.19](#) or [12.7](#), subject to any pre-existing confidentiality agreement or research agreement.

The University asserts ownership of Intellectual Property developed by students who are also Staff or Contractors where the Intellectual Property has been developed in their capacity as Staff or Contractor.

If a student participates in creating Intellectual Property owned by the University:

- the student will share in net Commercialisation revenues, if any, with all other Creators/Inventors according to University policies
- the student will retain copyright in any thesis written by them subject to the operation of [Rule 3.9](#) of the Student Rules, and
- the student must not be impeded in submitting a thesis for examination and completing requirements for the award of a degree or other relevant award.

On enrolment, all students undertake to comply with University policies and directives. Without in any way diminishing students' responsibilities, University faculties and Staff should bring the Intellectual Property Policy and [Research-](#)

[Generated Intellectual Property and Commercialisation Vice-Chancellor's Directive](#) to the attention of students who are about to undertake studies prior to the creation of Intellectual Property.

5.2 Commercialisation by the University

5.2.1 Identification and protection of Intellectual Property

Staff, Contractors and students must use reasonable endeavours to identify and disclose in writing to the Deputy Vice-Chancellor (Research) or nominee any Intellectual Property which has been created in the course of his/her employment, appointment or studies, prior to public disclosure, including all relevant details of that Intellectual Property. Staff, Contractors and students must not apply for registration of, or rights associated with, Intellectual Property in their own name unless permitted by written agreement with the University following full disclosure.

5.2.2 Commercialisation by the University

The University will use reasonable endeavours, relevant to the purpose of Commercialisation, to Commercialise Intellectual Property that it considers suitable for Commercialisation.

The process of Commercialisation will be undertaken in collaboration with the Creators/Inventors and in accordance with the University's policies. It will be the University's decision whether to proceed with, continue or exit from Commercialisation activities.

The [Research-Generated Intellectual Property and Commercialisation Vice-Chancellor's Directive](#) sets out the key administrative decisions and processes for Commercialisation of Research-Generated Intellectual Property, consistent with this Policy, [Council's Directives for UTS Commercial Activities](#) and [UTS Standing Delegations of Authority](#).

Guidance on Commercialisation in relation to Course and Educational Materials should be sought from the Provost.

5.2.3 Distribution of Commercialisation Revenues

If the University Commercialises any Intellectual Property, and Commercial Revenues are received, it will distribute a share of the Commercialisation Revenues to Creators/Inventors that have a recognised interest in the Intellectual Property that has earned that revenue.

Commercialisation Revenues will be distributed in the following manner:

- one third to be shared among all the Creators/Inventors (including Staff, Contractors and/or students)
- one third to the Creator's/Inventor's faculty or institute (distributed pro rata to two or more faculties or institutes, as the case may be) for use as the dean of the faculty or director of the institute determines, following consultation with Staff and in line with the strategic objectives of the faculty or institute, but with the expectation that it will be used to foster research; and
- one third to the University for its general purposes that support the University's research strategy.

The mechanisms used to implement these principles are set out in the [Research-Generated Intellectual Property and Commercialisation Vice-Chancellor's Directive](#).

5.2.4 Commercialisation by Creators/Inventors

If the University decides not to Commercialise any particular Intellectual Property, and if requested by the Creators/Inventors, the University may negotiate with the Creators/Inventors:

- for the licensing or assignment of the Intellectual Property by the University to the Creators/Inventors, and
- in respect to any Commercialisation Revenues received by the Creator/Inventor, the payment to the University of a share of those revenues to compensate the University for the use of or contribution of its facilities and resources including any expenses borne by the University.

5.2.5 Restrictions on Commercialisation

The University reserves the right, and under this Policy may assert the right, not to license or assign any Intellectual Property to the Creators/Inventors under clause 5.2.4 and/or to prohibit the Commercialisation by Creators/Inventors of Intellectual Property which, in the reasonable judgement of the University, is incompatible with the best interests of the University or is otherwise prohibited or controlled.

5.3 Managing Publication and Commercialisation objectives

The University encourages its researchers and students to publish their research outcomes.

The University may require certain Intellectual Property to be kept and maintained in confidence, so as not to adversely affect its Commercialisation prospects. The University may restrict or control Publication as required by law.

The objective to Commercialise Intellectual Property is not to operate to the exclusion of the objective to publish, and the two objectives need to be reconciled and accommodated.

Where both the University's Publication and Commercialisation objectives coincide, publications will proceed in a managed way that allows both the objective of publication to be achieved and the objective of Commercialisation to be realised.

5.3.1 Open Access Publications

The procedures involved in the management of Publication and Commercialisation objectives are set out in the [Research-Generated Intellectual Property and Commercialisation Vice-Chancellor's Directive](#) and the [Open Access Policy](#). In accordance with these policies, the University will make publicly available, Staff, Contractor and student research or scholarly outputs, for the benefit of the community and the University.

Research and scholarly outputs will be collected and stored in the University digital repository, and will not be altered except as permitted or required under law to reproduce, electronically communicate and distribute open access copies including any open access copies of the publisher version of the scholarly work online, for free and non-commercial use.

If there is a restriction in relation to confidential information, those Staff, Contractors or students who are responsible for the Scholarly Work will require consent from the entity imposing the obligation in relation to Research Project confidential information. It is acknowledged that such consent may not be granted, or granted with restrictions subject to funding and other agreements.

5.3.2 Intellectual Property policy and traditional knowledge of Indigenous people

The University acknowledges that the intellectual and cultural property rights of Aboriginal and Torres Strait Islander peoples should be respected and preserved. Where the creation of University Intellectual Property involves the traditional interests or property of Indigenous peoples and/or the use of traditional knowledge, the University, acting through the Deputy Vice-Chancellor (Research) or the Vice-Chancellor (Teaching, Learning and Equity) as appropriate, will take all reasonable steps to consult with the relevant Indigenous groups, to ensure that any decisions taken on the protection, development and Commercialisation of that Intellectual Property conforms with the relevant Indigenous protocols and ethical guidelines.

5.4 Moral Rights

The University acknowledges the Moral Rights of its Staff, Contractors and students as prescribed by the [Copyright Act](#), namely the right of attribution, the right not to have authorship falsely attributed and the right of integrity, applying in respect of certain copyright subject matter.

The University may require the Creator/Inventor to provide written consents or waivers in respect to the Creator's/Inventor's Moral Rights in relation to certain works (including Commissioned Works, Creative Works and Scholarly Works) that may be created, prior to commencement of any work in which Moral Rights may subsist.

5.5 Disputes

Where a dispute arises between the University and a Creator/Inventor or student about the ownership of Intellectual Property, parties will attempt to resolve the matter in accordance with the [Australian Code for the Responsible Conduct of Research](#) and the following University policies, guidelines and procedures:

- [Enterprise Agreements](#) (section on General Industrial Grievance)
- [Handling Staff Grievances Vice-Chancellor's Directive](#)
- [Handling Staff Grievances - Supervisor Guidelines](#)
- [Policy on Handling Student Complaints](#) and
- [Handling Student Complaints — Procedures for Managers](#).

In the first instance, parties should seek to resolve a dispute at the lowest possible level in accordance with principles set out in the above documents. This may include using avenues such as mediation.

If the dispute is not resolved within a reasonable timeframe by mediation, then it should be submitted to expedited arbitration administered by and in accordance with the arbitration rules of the [Australian Commercial Disputes Centre](#) or similar body. Failing agreement about the arbitrator, the Australian Commercial Disputes Centre would, after consultation and with the agreement of all parties concerned, appoint a person who is not the same person as the mediator. A report detailing the findings of the proceedings will be provided to all parties concerned.

6. Roles and responsibilities

Accountable Officers

The **Vice-Chancellor** has overall accountability for the enforcement of the Policy.

The **Deputy Vice-Chancellor (Research)** is responsible for the Policy in relation to all Intellectual Property other than Course and Educational Materials.

The **Provost** is responsible for the Policy in relation to Course and Educational Materials.

Implementation Officers

Director, Research and Innovation Office: responsibilities include but are not limited to providing education to the University community about the operation of the Policy.

The **Deputy Vice-Chancellor (Research) or nominee, or Provost or nominee**, as appropriate, are responsible for authorising corrective action to rectify breaches of the Policy.

Breaches of this Policy will be dealt with in accordance with the relevant [Enterprise Agreement](#) and the [Code of Conduct](#).

7. Version control and change history

Date	Version	Approved by, resolution no. (date)	Amendment
16/08/2004	2	Council, COU/04/105	The paragraph, 'Further Action', was added.
15/08/2007	3	Council, COU/07-4/80 (15/08/2007)	Update, reformat and HEEWR compliance.
17/06/2009	4	Council, COU/09-3/55 (17/06/2009)	Updated for the Australian Code for the Responsible Conduct of Research (2007), arrangements with UniQuest and emeritus appointments.
02/07/2014 (effective date)	5	Council, COU/14-3/67.2 (18/06/2014)	Major changes include: <ul style="list-style-type: none"> • changes to clause 5.6 • pre-existing Intellectual Property content changed to reflect Intellectual Policy intent and to the definition of Background Intellectual Property, which has been extended to include statutory rights • other minor amendments made to the Policy, such as clarifications and improvements to readability.
25/08/2014 (effective date)	5.1	Director, Governance Support Unit (GSU) (11/08/2014)	GSU administrative changes (under Delegation 3.17): Amended the Accountable Officer and Implementation Officer in relation to Course and Educational Materials to align with the Standing Delegations of Authority and the Council Directives for UTS Commercial Activities.

11/02/2015 (effective date)	5.2	Director, Governance Support Unit (GSU) (11/12/2014)	Changes (approved under Delegation 3.17) to implement 2014 Senior Executive restructure.
23/07/2015 (effective date)	5.3	Director, Governance Support Unit (GSU) (09/03/2015)	Changes (approved under Delegation 3.17) to update references to the UTS General Rules (G4).