

Version	4.1
Short description	A policy outlining how Avondale can identify, protect, manage and Commercialise its Intellectual Property
Relevant to	All staff and students
Authority	Academic Board
Policy owner	Provost
Responsible office	Office of the Provost
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Related Avondale documents	Avondale Copyright Policy Code of Conduct Conflict of Interest and Disclosure Policy Conjoint Appointees Policy Consultancy Policy Honorary Senior Research Fellow of Avondale Policy Staff Grievance and Appeals Resolution Student Grievance and Appeals Policy
Related legislation	Copyright Act 1968 (Cth)
Key words	Commercialisation, publication, copyright, patents, collaborative partnerships, conduct, research, indigenous, patent, royalty.

1. BACKGROUND

- 1.1. Avondale is committed to fostering an environment where academic excellence, teaching, learning, scholarship, research, and innovation can flourish and where participants in these endeavours are rewarded for their efforts.

2. PURPOSE

- 2.1. The primary objective of this Policy is to establish flexible mechanisms by which Avondale can identify, protect, manage and Commercialise its Intellectual Property. By successfully meeting this objective, Avondale and its Staff and Students will be in a stronger position to benefit from:
 - a) attraction of industry and government research funding;
 - b) establishment of local and international reputation for research excellence;
 - c) establishment of linkages with other like-minded institutions and bodies;
 - d) generation of financial returns from Commercialisation;
 - e) growth of knowledge-based industries through research and its Commercialisation; and
 - f) generation of national wealth, through new products, services and employment.

3. DEFINITION OF INTELLECTUAL PROPERTY

- 3.1. Intellectual Property can be defined as those rights arising from the output of the human intellect. Intellectual Property rights arise in relation to certain types of subject matter and those rights can be sold, purchased, and licensed. For the avoidance of doubt Intellectual Property includes:
 - a) designs under the *Designs Act 2003* (Cth);
 - b) trademarks under the *Trade Marks Act 1995* (Cth);¹
 - c) new plant varieties under the *Plant Breeder's Rights Act 1994* (Cth);
 - d) copyright under the *Copyright Act 1968* (Cth);
 - e) computer programs under the *Copyright Act 1968* (Cth);
 - f) patents under the *Patents Act 1990* (Cth);
 - g) circuit layouts under the *Circuit Layouts Act 1989* (Cth);
 - h) trade secrets and confidential information (protected by common law); and
 - i) all other rights resulting from intellectual activity in the industrial, commercial, scientific, literary and artistic fields.

4. ASSIGNMENT OF INTELLECTUAL PROPERTY

- 4.1. The protection, management and Commercialisation of Avondale Intellectual Property *depends on its early identification and protection*. Thus, it is essential that research projects are carefully monitored, and their outcomes reviewed by Staff and Avondale officers with

¹ NOTE: Unregistered trademarks are protected under common law or the *Trade Practices Act 1974* (Cth).

specific Intellectual Property expertise. Staff, Students and Visitors should review their research activities regularly, keep detailed project and research records, and fully disclose in a timely fashion the creation of new Intellectual Property with potential commercial value to Avondale. Any unauthorised disclosure of Intellectual Property must be reported. It is recognised that where Intellectual Property has little or no commercial value, Staff may have the substantial freedom to determine how to disseminate research outcomes and the ability to control the publication process.

- 4.2. Avondale Staff members will execute, in a timely manner, all assignments of Intellectual Property necessary to give effect to the ownership provisions set out above and to allow for the use and Commercialisation of the Intellectual Property by Avondale in accordance with this Policy.

5. SCOPE

- 5.1. This Policy applies to all staff, honorary senior research fellows, honorary conjoint appointees, visitors, and all postgraduate Students. The Policy also applies to consultants, and other persons generating Intellectual Property in collaboration with Avondale Staff or Students, or engaged by Avondale to undertake a specific activity, and it may also apply from time to time to other persons by agreement.
- 5.2. Subject to any agreement to the contrary specifically approved by the provost in writing, this Policy shall form part of the terms of employment of all Avondale Staff.

6. DEFINITIONS

For the purposes of this Policy, the following definitions apply:

- 6.1. **Administrative Materials** means any material or documentation in any format (such as policies, procedures, business plans, contracts, unit outlines, course accreditation documents, unit handouts, examination documents, funding applications, reports, promotional brochures, business processes, software) that has been developed for the purposes of Avondale administration, including performance evaluation, marketing, and legal services.
- 6.2. **Avondale** means Avondale University Limited trading as Avondale University and its legal heirs and successors.
- 6.3. **Avondale Intellectual Property** means Intellectual Property which is owned by Avondale according to the terms of this Policy or otherwise as a matter of law.
- 6.4. **Avondale Project** means a self-contained program of work or research administered by or on behalf of Avondale which is funded by:
 - a) an external source; or
 - b) a specific direct allocation of significant infrastructure support or other Avondale resources beyond that which is ordinarily provided by a faculty or other Organisational Unit or Avondale research institute.
- 6.5. **Commercial Benefit** means any benefit that Avondale receives (whether income in-kind or otherwise) from the development of Intellectual Property, including signing fees, royalties, lump sum licence fees, milestone payments, minimum annual payments, reimbursements of patent expenses, dividends, damages from infringement proceedings and proceeds from the sale of shares but excluding research and development funds,

consulting funds, returns from direct investment by Avondale or a commercial company, and any encumbered revenues until the encumbrance is lifted.

- 6.6. **Commercialise** means to make, sell, copy, adapt, apply, publish, develop, use, assign, license, sub- license, franchise or otherwise utilise or exploit Intellectual Property for the purpose of generating financial or other commercial gains.
- 6.7. **Commercialisation Costs** means any amount (including, without limitation, any Australian or foreign taxes, charges or other imposts, or any legal costs) Avondale incurs to Protect or Commercialise Intellectual Property, including (but not limited to) costs in relation to registration of Intellectual Property (e.g. patent protection), licensing-in of third-party Intellectual Property, legal counsel, specialised technical services, consultancies, travel and accommodation, production of prototypes, and taxes and other fees, duties and charges.
- 6.8. **Confidential Information** means inventions, discoveries, knowledge, methods, processes, techniques, potential patents, chemical compositions, biological materials trade secrets, and other information of any kind which, because of its confidential character, is capable of protection by contractual or equitable means, and includes information of a valuable commercial or technical character.
- 6.9. **Copyright** is a type of legal protection for people who produce things like writing, images, music and films. It is a legal right to prevent others from doing certain things (such as copying and making available online) without permission. First party copyright material refers to any material created by Avondale staff as part of their employment in which copyright has not been transferred or exclusively licensed to a third party. Third party copyright material includes both licensed and unlicensed third-party copyright material. "Licensed third party copyright material" is any copyright protected material for which the terms of use are governed by a licence or any other form of agreement, e.g. Avondale holds licences for educational copying with the Copyright Agency Limited (CAL) for hard copy and electronic reproduction and communication; and with Screen rights for copying from radio, television and cable. "Unlicensed third-party copyright material" is any copyright material not governed by an agreement between the copyright owner and the user. This includes material copied in reliance upon Parts VA or VB of the *Copyright Act of 1968*.
- 6.10. **Copyright Committee** means the Avondale Copyright Committee.
- 6.11. **Copyright Policy** means the Avondale Copyright Policy.
- 6.12. **Copyright Work** means any 'artistic work', 'literary work', 'dramatic work', 'musical work', 'sound recording', 'cinematograph film', 'television broadcast', 'sound broadcast' or 'published edition of work' as defined by the *Copyright Act 1968 (Cth)*. Monographs and scholarly works including manuscripts, lecture notes and other materials prepared for Teaching Purposes or Scholarly Purposes are also included.
- 6.13. **Course** means any program of study, in whole or part, conducted by or on behalf of Avondale to any Student.
- 6.14. **Course Materials** means:
- a) any Copyright Work created for use in, or in connection with a Course, or unit offered or to be offered by Avondale or affiliated education agency; and
 - b) any materials commissioned by Avondale specifically for use in, or in connection with a Course, or unit offered or to be offered by Avondale or by an affiliated agency unless there is an agreement to the contrary.

- 6.15. **Exceptional Avondale Resources** means resources of Avondale which includes facilities, funds, services, equipment, paid leave, Staff time and support Staff in excess of those normally used or available to Staff for producing Course Materials and/or work-related materials.
- 6.16. **Intellectual Property Officer** means the person responsible on the behalf of Avondale, for the implementation and conduct of the Intellectual Property Policy.
- 6.17. **Intellectual Property Subcommittee** – The Copyright Committee will provide general oversight of Intellectual Property in the period prior to the establishment of an Intellectual Property Subcommittee in its own right. Thus, the Intellectual Property Subcommittee will be a subcommittee of the Copyright Committee pro tem with power to co-opt relevant persons as necessary.
- 6.18. **Moral Rights** means moral rights as defined the *Copyright Act 1968* and includes a right of attribution of authorship, a right not to have authorship falsely attributed, and a right of integrity of authorship.
- 6.19. **Net Revenues** means the revenue remaining after the deduction by Avondale of its Commercialisation Costs from Commercial Benefits.
- 6.20. **Notice Period** is a period of 90 days following Avondale's receipt of a Notification Form during which period Avondale will decide whether to proceed with the Protection or Commercialisation of Intellectual Property. The Notice Period may be extended with the consent of the Staff or Student who gave notice.
- 6.21. **Organisational Unit** means an academic or an administrative unit of Avondale and includes, without limitation, a faculty, department, centre, or an institute of Avondale.
- 6.22. **Protect** means any action that is necessary to protect a claim in connection with Intellectual Property and includes, without limitation, registration anywhere in the world or enforcement or assertion of that Intellectual Property in any legal proceedings.
- 6.23. **Publication** means research outputs, including:
- a) books and book chapters;
 - b) publications in academic, professional or other journals;
 - c) conference presentations;
 - d) technical and other reports;
 - e) monographs;
 - f) abstracts;
 - g) poster presentations;
 - h) electronic and online publications;
 - i) software;
 - j) creative works and designs; and
 - k) exhibitions or performances.
- 6.24. **Research Purposes** means the purpose of research and does not include the purpose of Commercialisation.
- 6.25. **Researcher** means all academic Staff who are employees of Avondale, whether full-time or part-time, but does not include Staff who are consultants or seconded to Avondale if they

are not employees under contract of service and does not include Students except if they are also employed as academic Staff in which case, it will include them in that capacity alone.

- 6.26. **Scholarly Material** means Copyright Work created by Staff based on that Staff member's scholarship, teaching, or research, but does not include work that is a computer program, Teaching Material or Administration Material.
- 6.27. **Scholarly Purposes** means the purposes of scholarship and does not include the purpose of Commercialisation.
- 6.28. **Specifically Commissioned** means where consideration (including financial and or relief time) is provided or offered by Avondale by agreement.
- 6.29. **Staff** means employees of Avondale, including academic and general Staff whether employed on a full-time, part-time, contract, sessional, or casual basis and does not include Visitors, honorary senior research fellows, honorary adjunct appointees, honorary conjoint appointees or honorary employees of another institution or entity who are physically located at Avondale.
- 6.30. **Students** means Avondale Students enrolled in postgraduate coursework courses, postgraduate research courses, postgraduate Students studying in part-time, full-time, by distance education, on- campus and online modes, those Students on approved leave, and those enrolled in single non-award postgraduate units.
- 6.31. **Supervisor** means the research supervisor of a postgraduate research Student or person acting with the authority of Avondale in such a capacity, or the Staff member (normally the Executive Dean or nominee) supervising an undergraduate Student or postgraduate coursework Student in a course of studies.
- 6.32. **Teaching Purposes** means the purposes of teaching and education and does not mean the purposes of Commercialisation.
- 6.33. **Third Party Agreement** means an agreement between Avondale and another person (other than a Staff member or Student) that regulates Intellectual Property and includes, without limitation, agreements with research funding bodies.
- 6.34. **Visitor** means a person who is not a Staff member or Student of Avondale (but who may be a Staff member or Student of an Australian University)², who:
 - a) takes part in research, teaching or other activity that would normally be conducted by a Staff member or Student; or
 - b) visits a part of Avondale in which research or scholarship, or any related activity, is conducted at the time he or she creates any Intellectual Property.

7. OWNERSHIP OF INTELLECTUAL PROPERTY

- 7.1. The ownership of any Intellectual Property created by persons affected by this Policy will be determined by the terms of this Policy, unless such persons have entered into an agreement with Avondale that overrides this Policy.

² For example, conjoint appointees, honorary senior research fellows, adjunct appointees, postdoctoral fellows.

Ownership by Avondale of Intellectual Property

- 7.2. Except as otherwise agreed in writing by the Provost, or stated in this Policy, Avondale asserts legal and beneficial ownership of Intellectual Property including the associated copyright to all works created by Staff, Students, Visitors, honorary senior research fellows, honorary adjunct appointees, honorary conjoint appointees, and volunteers where works were created:
- a) in the course of their employment by Avondale; or
 - b) where generation of the Intellectual Property has required use of Avondale resources; or
 - c) in which Avondale has contributed other Avondale owned Intellectual Property or has made a specific contribution of funding other than salary payable pursuant to a contract of employment, scholarship, resources, facilities or apparatus; or
 - d) as a result of being Specifically Commissioned by Avondale to produce the Intellectual Property;
- 7.3. Upon termination of any visit, appointment or involvement with an Avondale Project, a Visitor or person holding an honorary adjunct or honorary conjoint appointment should consult the Intellectual Property Subcommittee of the Copyright Committee if they wish to continue to use or have access to any Avondale Intellectual Property.

Licensing of Staff Intellectual Property

- 7.4. By entering employment with Avondale, Staff members grant to Avondale a perpetual, non-exclusive royalty-free and irrevocable licence to use and adapt Intellectual Property, including Course Materials and Scholarly Materials, artistic, dramatic, musical works and other subject matter created by that person for Avondale's Teaching Purposes, Research Purposes and Scholarly Purposes. This licence includes the right to sub-license and to Commercialise Intellectual Property created because of employment with Avondale. The non-exclusive right to use such material continues should the Staff member leave Avondale employment.

Ownership of Materials Specifically Commissioned

- 7.5. Avondale asserts legal and beneficial Intellectual Property and copyright ownership of all Intellectual Property that it has Specifically Commissioned. Avondale may, at its discretion, give the creator(s) of Specifically Commissioned Intellectual Property a non-exclusive licence to use these materials for Teaching Purposes only provided that such a licence will not extend to use of these materials in direct competition with Avondale.
- 7.6. A commission will be evident if an arrangement or agreement has been signed by the Executive Dean or Director of a Research Centre and it may (or may not) include provision for a financial benefit 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.
- 7.7. Where Specifically Commissioned material uses, adapts, or includes existing Course Materials, Scholarly Materials, artistic, dramatic, musical or other subject matter, the Staff member will have the right to use those materials subject to the conditions as further outlined in this Policy. Where Avondale does not Commercialise commissioned Course Materials the creator may request assignment of the rights to the creator for Commercialisation by that individual (or team) subject to agreement including granting a non-exclusive licence to Avondale for Teaching Purposes.

Ownership of Course Materials

7.8. Course Materials created in the course of employment

- a) If a Staff member creates any Course Material in any medium (including multi-media) in the course of his/her employment at Avondale, Avondale will own the copyright and any other form of Intellectual Property vesting in that Course Material. As such, Avondale has the right to use, reproduce, publish, communicate, perform, broadcast, adapt and disseminate that Course Material for its Teaching Purposes, Research Purposes and Scholarly Purposes. However, Avondale will recognise the Staff member's Moral Rights. Use of Course Material will involve consultation with the Staff member concerned where this is practical.
- b) Where an Avondale Staff member is subsequently employed at another institution, the Course Material he or she created while employed at Avondale must not be used for Teaching Purposes at the other educational institution without the express permission of Avondale and/or until such time as a written agreement is drawn up giving the previous employee of Avondale the right to use the material.

7.9. Course Materials created with the use of Exceptional Avondale Resources

- a) Where Course Materials are or may be created in whole or in part with the use of Exceptional Avondale Resources, a written agreement should be developed between the Staff member and Avondale as soon as practicable which specifies ownership of the Intellectual Property in the Course Materials and rights to revenue in the event of any Commercialisation of the Course Materials and any Intellectual Property generated from the production of the Course Materials.
- b) In the absence of a written agreement, Avondale will own the Course Materials, but the Staff member(s) who provided content for the Course Materials will be entitled to at least 33% of the Net Revenue of any Commercialisation of the Course Materials by Avondale. Where more than one Staff member provided content for the Course Materials, the Net Revenue should be shared in proportions as may be agreed by them or in the absence of a formal agreement, benefits will be equally shared.

7.10. Licensing

- a) Each staff member, by virtue of their employment and this Policy, grants to Avondale, for use and dissemination in the delivery of Avondale Courses and degrees, a non-exclusive, non-transferable, royalty-free, perpetual licence to use Course Materials that are:
 - brought with the staff member upon employment commencing at Avondale and used in the course of their employment at Avondale; or
 - developed during the staff member's employment at Avondale.
- b) Where the creator of Intellectual Property which was created prior to the commencement of employment with Avondale brings or intends to bring Intellectual Property to Avondale to be used within the course of their duties or otherwise, he/she may be required to assist Avondale in determining whether that Intellectual Property is entirely owned by them by providing Avondale with:
 - an inventory of that Intellectual Property;
 - all documents relating to the ownership of such Intellectual Property, including without limitation any contract, agreement, licensing agreement, or another institution's Intellectual Property policy;

- written warranties that the use of such Intellectual Property does not infringe the rights of any third parties.
- c) In its use of Course Material, Avondale will consider the reputation of the creators. Avondale will use its best endeavours to consult the creators on updates, the appropriateness of continued use of material, and attribution of material so used in Avondale Course and unit delivery.
- d) Avondale also reserves the right to reach an agreement with a Staff member in relation to copyright in Course Materials which varies the terms of this sub-section.
- e) Any licence granted pursuant to this section will be subject to the following conditions:
- the licensee will not do anything that could jeopardise the rights of the licensor including actions that could jeopardise the protection or enforcement of the licensor's rights and Commercialisation such as the disclosure of confidential information or know-how without the consent of the licensor;
 - the licensee will not compete with the licensor in the Commercialisation of the Intellectual Property;
 - the licensee shall not assign, licence or sub-licence or otherwise create rights or obligations for the Intellectual Property without the express written consent of the licensor; and
 - in the absence of the scholarly publication arising as a part of a Staff member's duties (for example, a Faculty study guide) or an overriding contractual obligation with a third party, a Staff member can presently assume, in line with past practice, that he/she will retain ownership of the copyright in Scholarly Material created in the course of his/her employment. Avondale gains an unrestricted

Assignment of Ownership by Avondale

- 7.11 Avondale reserves its right to transfer the ownership of its Intellectual Property to Third Parties in accordance with this Policy, or otherwise, where practicable, following consultations with the creator(s) of the Intellectual Property.³
- 7.12 Avondale will assign its rights to the creator if:
- a) the Intellectual Property Officer decides that Avondale will not become involved in the Commercialisation of the Intellectual Property;
 - b) the Intellectual Property Officer fails to decide on Avondale's involvement in Commercialisation within a timely and fair manner; or
 - c) Avondale, having decided to become involved in Commercialisation, fails to commence any steps necessary to do so within a period of 180 days from the date of notification as received by the Intellectual Property Officer.

Dealings by Staff Members or Students

- 7.13 Except where expressly permitted under this Policy, no Staff member or Student may apply for in their own name, assign, license or otherwise deal with Intellectual Property which is the property of Avondale without the written consent of the Intellectual Property Officer.

³ This does not relate or apply to Course Material and patent revenue distribution.

8 POSTGRADUATE STUDENTS

8.1 Where postgraduate Students are involved in activities that could lead to the development of Intellectual Property over which Avondale or a third party may claim ownership, the following conditions will apply:

- a) participation in the research will not interfere with the assessment of the student's academic performance;
- b) the student's rights in the Intellectual Property in any thesis or publications arising from the research will be protected;
- c) the student will receive consideration and returns commensurate with those provided to Staff, including a say as to the integrity of the Intellectual Property;
- d) the student's future career choices will not be closed by the choice to work in a confidential area of research;
- e) it will be made clear to Students what the nature of the work is before they undertake the activity that leads to the claimable Intellectual Property;
- f) any confidentiality and ownership of Intellectual Property agreement will only be signed by Students after they have been first advised to obtain independent advice;
- g) any delays in publication of the thesis that arise from a confidentiality agreement should be limited to a maximum of two years.

Student Assignment of Intellectual Property to Avondale

8.2 A Student cannot be required by Avondale to assign his or her Intellectual Property:

- a) to qualify for enrolment, or to remain enrolled in a Course, or to complete the requirements of a Course in which he or she has enrolled, under any circumstances; or
- b) otherwise, including where that Student is engaged in or otherwise participates in any third-party activity, unless that Student does so freely and with consent.

Subject to the provisions of any prior agreement between the Student and Avondale, where a Student creates Intellectual Property jointly with a Staff member or a Visitor, Avondale will negotiate with that student in connection with the Commercialisation of that Intellectual Property.

Non-Avondale activity

8.3 If a student wishes to participate in any third-party activity or in any activity that has, or may in future create Intellectual Property that may be the subject of Commercialisation, then before that Student is permitted to begin that activity:

- a) Avondale may, as a condition of the student participating in that activity, require the student to:
 - i. assign his or her Intellectual Property; and
 - ii. give consent with respect to any Moral Right subsisting in a work, to the extent that either of these relate to or affect the activity concerned;
- b) It is the responsibility of (as the case may be):
 - i. the person who oversees that activity (for example, the chief Researcher); and

- ii. the Student's Supervisor, to notify the student about all requirements for participating in that activity including, without limitation:
 - any requirement to assign that Student's Intellectual Property or give consent in relation to any Moral Right he or she may have in the relevant work; and
 - especially where a student is required to assign his or her Intellectual Property or give consent in relation to any Moral Right he or she may have in a work, a recommendation that the student should seek advice (which may include legal advice).

Assignment of Intellectual Property to Avondale

- 8.4 If a student is required to do anything in relation to assigning Intellectual Property to Avondale, then that Student will be given a reasonable period (normally one month) to review all documentation and seek appropriate advice (including legal advice) and respond, which in most cases should not be less than 14 days. However, the response period may be reduced by Avondale, depending on what is reasonable under the circumstances including considering any obligations to third parties that Avondale may have in respect of that activity.
- 8.5 If a student does not agree to do anything required, or else does not respond to a request to do so, on or before the response deadline, then Avondale may decline to permit the student to participate in that activity.

Sharing Commercial Benefits

- 8.6 Students who assign their Intellectual Property to Avondale are, subject to any agreement, entitled to a share of Commercial Benefits from the Commercialisation of the Intellectual Property. Avondale will pay any stamp duty assessable on any instrument that Avondale deems necessary to give effect to that assignment.

Student Ownership of Copyright in Theses

- 8.7 Students own the copyright in their theses and projects. Avondale reserves the right, and under this Policy asserts that right, to retain the original or copy of any drawings, models, designs, plans and specifications, essays, theses, or other work executed by a student as part of his or her Course, or submitted for any award or competition conducted by Avondale. Such retention is not to affect any copyright or other Intellectual Property right that may exist in such Student work. In cases where Avondale exercises, or wishes to exercise, its right, the students shall grant Avondale a non-exclusive, royalty free, perpetual, irrevocable, world-wide licence (including the right to sub- licence) to make available for consultation, loan, or copying, at the discretion of the Adventist Heritage Centre Curator and/or Avondale Librarian subject to their respective operating/circulation rules. Any copy of a thesis deposited is subject to any pre-existing lawful confidentiality agreement.

Student Research at Other Institutions

- 8.8 Where Students are undertaking research as part of a project between Avondale and an external sponsor or on a commercially oriented project, Avondale may request an assignment of the Student's Intellectual Property, in most cases before allowing the student to participate in that project. This permits Avondale to comply with the terms of any contract it may have with the sponsor, and to be able to Commercialise all the Intellectual Property resulting from the project. The assignment of Intellectual Property does not include assignment of the copyright in the student's thesis or in publications authored by them and arising out of their studies. Avondale recognises that Students must retain the ability to

control the reproduction of the text of their thesis to ensure that their careers benefit from publishing the results of their work.

Students and Third-Party Funding Bodies

- 8.9 For a Student whose research program is supported in whole or part by a third-party funding body the ownership of any Intellectual Property developed by the student shall be determined by any agreement between the Student, Avondale and the third-party funding body.

Student Participation in Avondale Projects

- 8.10 A Student who participates in an Avondale Project will be bound by the provisions in this Policy as if he/she was participating in Avondale Project as a Staff member. The student will share in Commercial Benefits, if any, with all other creators according to Avondale policies.
- 8.11 Where the ownership of Intellectual Property generated by a student has been determined as belonging to Avondale, then the student will be accorded the same rights and obligations as a Staff member for the purposes of this Policy.
- 8.12 Where the ownership of Intellectual Property generated by a student has been determined to be the student's, then the student will be entitled to receive payments from the Net Revenues (if any) received by Avondale.
- 8.13 Where clause 8.12 applies:
- a) Avondale will enter into a separate agreement with the student which will set out appropriate entitlements to such proceeds;
 - b) Avondale will ensure that the academic progress of a student affected by this Policy is not hindered by the provisions of this Policy; and
 - c) Avondale will ensure that the examination of theses is not affected by this Policy without the consent of the student.

Supervisors

- 8.14 Supervisors electing to supervise a student in an area likely to lead to claimable Intellectual Property must ensure a confidentiality and Intellectual Property Assignment Agreement is completed with the student before the work is commenced.
- 8.15 Where Intellectual Property with commercial potential has been created jointly by a student and the supervisor or other Avondale staff, Avondale may also request the student to assign their interest in that Intellectual Property (except copyright in the student's thesis) to Avondale. Note that some projects may not be available to Students who choose not to sign a Confidentiality and Intellectual Property Assignment Agreement. The student will then be free to choose another project without prejudice.

9 REPORTING AND COMMERCIALISING INTELLECTUAL PROPERTY

Staff and Student Responsibilities

- 9.1 Staff and Students have responsibilities in relation to Intellectual Property protection including, where appropriate, the maintenance of research laboratory records and the prevention of premature public disclosure of research results prior to obtaining Intellectual Property protection.

Reporting Intellectual Property

- 9.2 Staff and Students who believe they have created any Intellectual Property for which Avondale asserts ownership as outlined in this Policy, must, as soon as possible after its creation:
- a) report that fact to the Executive Dean and to the Intellectual Property Officer (Notification); and
 - b) if directed, complete and return a confidential Intellectual Property notification form (Notification Form) to the Intellectual Property Officer providing full details of the Intellectual Property created and the names of the creators.
- 9.3 A confidential Register of Notifications will be maintained by the Intellectual Property Officer. Avondale will decide as to whether it will Commercialise the Intellectual Property in accordance with the below.
- 9.4 Staff and Students who create exempt Intellectual Property, must provide a copy of the thing to which that Intellectual Property relates to the Executive Dean within 90 days of its creation or modification, or immediately if the Staff or Student wishes to Commercialise the Intellectual Property.
- 9.5 If the Executive Dean considers that the Intellectual Property reported in accordance with this Policy is Intellectual Property over which Avondale asserts ownership, then that Dean of Faculty shall:
- a) notify the creator and the Intellectual Property Officer within 7 days;
 - b) together with the creator take such actions as required to protect the value of the Intellectual Property; and
 - c) provide sufficient disclosure to the Intellectual Property Officer to enable assessment of the value of the Intellectual Property.

Importance of Non-disclosure of New Intellectual Property

- 9.6 For Avondale to comply with National Principles of Intellectual Property Management for Publicly Funded Research (2001), Staff members and Students should be conscious of the need to avoid premature disclosure of research results to third parties prior to completing a Notification Form and consideration of the need to obtain Intellectual Property protection.
- 9.7 Before determination, Staff members, Students, and other related persons should not:
- a) hold any discussions with any person external to Avondale concerning Avondale Intellectual Property before registration, unless required by any funding or Avondale Project agreement; and
 - b) publish any information about any Avondale Intellectual Property before notifying the Intellectual Property Officer. Sometimes, it may be important to protect Intellectual Property that will not have commercial value. In such cases, the Executive Dean will advise if it is necessary or not to complete the Notification Form.
 - c) If the Intellectual Property Officer is advised or believes that the confidentiality of certain information must be maintained for the Intellectual Property to be protected or successfully Commercialised, the Intellectual Property Officer must:
 - i. conduct all consultations in confidence, and
 - ii. recommend a time

Decision Time Frame

- 9.8 Commercialisation is a complex and often lengthy process and requires commitment and diligence from those involved. There are a variety of pathways to Commercialisation and numerous steps involved in the process, which will be unique in almost every case. Staff and Students will use their best endeavours to assist in the Commercialisation of Intellectual Property.
- 9.9 Avondale will decide whether to proceed with the Protection or Commercialisation of Intellectual Property within a period of 90 days of receiving the Notification Form (**Notice Period**).
- 9.10 The Notice Period may be extended with the consent of the Staff or Student who gave notice.
- 9.11 If Avondale makes no decision by the end of a Notice Period (or any extension of it) the creator is free at his or her cost, to Protect or Commercialise the reported Intellectual Property in any manner he or she chooses.

Assessment

- 9.12 After receiving the Intellectual Property Notification Form, Avondale will determine whether it wishes to Protect and/or Commercialise the Intellectual Property. While this takes place, the creators must take all reasonable steps to protect that Intellectual Property by avoiding public disclosure, such as publication or presentation (including submission of journal or conference abstracts). Avondale encourages Staff and Students to seek advice from the Intellectual Property Officer on how best to do this.
- 9.13 In deciding the Intellectual Property Officer will consider:
- a) the creator's interests in publishing scholarly material;
 - b) the wider obligation of disseminating research findings, while also ensuring that Intellectual Property with commercial value is protected;
 - c) the direct and indirect contribution made by Avondale to the creation of the Intellectual Property;
 - d) the nature of the Intellectual Property and the extent of a patent or other protection methods will assist the development and subsequent Commercialisation of the Intellectual Property;
 - e) whether the grant of a patent is desirable for Avondale to maintain an interest in the further development of the Intellectual Property; and
 - f) the probable Commercial Benefits to Avondale.
- 9.14 All decisions and the associated reasons of the Intellectual Property Officer must be reported to the Intellectual Property Committee.
- 9.15 Where the Intellectual Property Committee is required to assess Avondale Intellectual Property, the Intellectual Property Committee must make reasonable efforts to consult, on a confidential basis, an appropriate expert in the relevant field to obtain an independent evaluation of Avondale Intellectual Property in relation to its Commercialisation. Such consultation must involve the signing of confidentiality agreements.

Notice of Determination Regarding Commercialisation

- 9.16 Notice of determination by Avondale to Protect or Commercialise Intellectual Property Within the **Notice Period**, Avondale will advise the creators in confidence whether:
- a) it has decided to Commercialise the Intellectual Property;
 - b) it has decided not to Commercialise the Intellectual Property; or
 - c) it needs further time to evaluate the commercial prospects and undertake further due diligence.
- 9.17 Regular updates on progress regarding a decision will then be made via the relevant Faculty.
- 9.18 In situations where complex commercial or technical assessment and due diligence is required, Avondale may take up to 18 months to decide on whether to Commercialise. Avondale will consider any external issues, such as proposed publication deadlines and the progress of competing researchers, when determining how and when Intellectual Property should be protected.
- 9.19 If Avondale decides that it wishes to Protect or Commercialise Intellectual Property, then the Intellectual Property Officer must notify:
- a) the Staff member or Student concerned; and
 - b) that Staff or Student's Executive Dean or Head of Department.
- 9.20 Where the decision is made to proceed with the Protection or Commercialisation of Intellectual Property, the contributors/originators will:
- a) be notified within a timely manner and be requested to complete an assignment of their interests in the Intellectual Property to Avondale;
 - b) provide information promptly upon request, attend meetings with potential licensees and advise on further development/s; and
 - c) can participate in processes associated with the Protection and Commercialisation of Intellectual Property that they have helped create.

NOTE: Obligations for Staff members to sign forms, execute agreements, assist in patent processes, and keep information confidential will extend beyond their period of employment.

Reporting Infringements of Avondale Intellectual Property

- 9.21 Any Staff member or Student who becomes aware of the unauthorised use of Avondale Intellectual Property must promptly inform the Intellectual Property Officer or Intellectual Property Committee in writing of the relevant details.

Duty Not to Act Contrary to Avondale's rights

- 9.22 A Staff member or Student who does not own the Intellectual Property vested in a particular work must not:
- a) apply for any form of Protection for that Intellectual Property; or
 - b) Commercialise or otherwise deal with that Intellectual Property; or
 - c) do any act or thing in a manner inconsistent with Avondale's rights under this Policy.

10 EXPLOITATION OF INTELLECTUAL PROPERTY OWNED BY AVONDALE

- 10.1 Avondale will use reasonable endeavours to commercialise Intellectual Property that is considered suitable for commercialisation. The process of commercialisation will be undertaken in collaboration with the creators/inventors, considering cultural and spiritual aspects and act in accordance with Avondale's policies. It will be Avondale's decision whether to proceed with, continue, or exit from commercialisation activities.
- 10.2 Creators who create Intellectual Property over which Avondale asserts ownership, are entitled to a share of any Commercial Benefits that Avondale receives from Commercialisation. The sharing of Commercial Benefits with creators does not apply to any use of Teaching Materials.
- 10.3 Commercialisation arrangements executed prior to the date of this Policy will remain in accordance with the arrangements and policies in force at that time.
- 10.4 The individuals named as creators and the sub-division of the Net Revenues distributed to them shall be based upon the written agreement of creators. Any difficult negotiations on the ownership of Intellectual Property and returns to contributors may be referred to the Provost for advice and mediation.
- 10.5 The Provost will issue operational directives for the key administrative decisions and processes for Commercialisation of Intellectual Property consistent with this Policy, Council's directives for Avondale's commercial activities and Avondale delegations.

Commercialisation Assigned to Staff Members or Students

- 10.6 If Avondale decides not to proceed with the exploitation of the Intellectual Property for a particular notification, subject to the staff member or student having complied with this Policy, the staff member or student may request Avondale to assign the Intellectual Property to them.
- 10.7 Upon assignment, the staff member or student will be free to protect and Commercialise the Intellectual Property at his/her discretion and cost, subject to the interests of any third parties.
- 10.8 It is a condition of assignment of the Intellectual Property to the staff member or Student that Avondale receives a benefit amounting to 30% of any Net Revenue received from Commercialisation.
- 10.9 Avondale retains a non-exclusive right to use the Intellectual Property for Teaching Purposes and Research Purposes. Avondale will complete an agreement to this effect with the Staff member or Student.

Sharing in the Benefits of Commercialisation

- 10.10 Without limiting Avondale's discretion in undertaking Commercialisation of Intellectual Property, Avondale will consult with the creator of the Intellectual Property before determining the appropriate Commercialisation pathway to be taken. The University recognises that the commercial development of products resulting from use of the traditional knowledge of indigenous peoples should be subject to benefit-sharing negotiations with the providers of such knowledge. The University recognises the need to conform to the relevant Indigenous protocols and ethical guidelines. The Commercialisation pathway may include the filing of patent applications, the identification of possible licensees, and the formation of a limited liability company or some other vehicle to exploit the Intellectual Property.

Distribution of Commercial Benefits

- 10.11 The share of any Net Revenue flowing to a Staff member or Student who is the creator of Intellectual Property Commercialised through Avondale will be 66% or as agreed with the creator(s) prior to Commercialisation.
- 10.12 If it is not practicable to distribute Commercial Benefits in accordance to the guideline stated above, then Avondale, after first consulting with the creator, may determine a mechanism for distributing Commercial Benefits by some other means, which may include, without limitation, Avondale holding Commercial Benefits in trust for the creator.
- 10.13 Where more than one originator is involved in the creation of Intellectual Property the creators must decide how their share of annual Net Revenue is to be divided and inform the Intellectual Property Officer of their decision. In the absence of a formal agreement, benefits will be equally shared between the inventors.
- 10.14 The revenue sharing as outlined above shall not be available to Researchers who are contractually obliged to create Avondale Intellectual Property. Any payments to Researchers in this category, other than payments governed by their engagement contracts, shall be the subject of ad hoc determination by the Provost and the appropriate Dean at the time of receipt of income.

Students

- 10.15 Student creators of Intellectual Property will be treated equivalently to Staff members in determining their share of benefits flowing from the Commercialisation of Intellectual Property.
- 10.16 In determining the share of the Commercial Benefit, Avondale will take the following into account:
 - a) the degree of intellectual input from the advisor, other Avondale Staff and third-parties;
 - b) the nature and extent of any Avondale or third-party Intellectual Property accessed or used by the student; and
 - c) the nature and extent of any use a student makes of Avondale facilities.

Taxation obligations

- 10.17 Taxation obligations associated with Commercial Benefits flowing to creators of Intellectual Property are the responsibility of the individuals involved.

Agreement with Third Parties

- 10.18 Avondale may enter an agreement with another party which provides for the control, ownership and Commercialisation of Intellectual Property. Where ownership of the Intellectual Property does not rest fully with Avondale, the consent of the creator(s) must be obtained before negotiations are commenced.
- 10.19 In negotiating such an agreement, Avondale must as far as practicable use its best endeavours to ensure that the:
 - a) creator(s) in question are consulted, and given the opportunity to participate in any negotiations concerning ownership, Protection or Commercialisation of that reported Intellectual Property;
 - b) negotiations will be undertaken on a case-by-case basis, according to the relevant circumstances;

- c) decisions arising from those negotiations shall be binding on the creator;
- d) terms of the agreement are consistent with the principles set out in this Policy.

10.20 An agreement reached by Avondale with a third party might include actions such as assigning the rights of the Intellectual Property to the Third Party in return for an up-front payment or the payment of royalties.

Collaborative Research Partners

10.21 Notwithstanding the need for Avondale to ensure an equitable return on Intellectual Property, Avondale acknowledges that, in the context of collaborative research, flexibility in the approach to Intellectual Property negotiation is necessary to ensure that the rights of the third-party collaborator are respected.

Assistance to Avondale

10.22 Creators of Intellectual Property being Commercialised by Avondale must provide Avondale with all reasonable assistance in the Commercialisation of the Intellectual Property including the provision of information promptly, attending meetings and executing appropriate documents, as required.

Commercialisation of Specifically Commissioned works

10.23 The procedures outlined in this Section [8](#) do not apply to Specifically Commissioned works. For such works, a contract will be developed prior to the work being commenced, with the assistance of Avondale's legal officers, and a copy of the contract will be maintained on the Intellectual Property Register held by Avondale's Intellectual Property Officer.

Restrictions on Commercialisation

10.24 Avondale reserves the right and under the Policy, asserts that right to prohibit the Commercialisation by creators of Intellectual Property which, in the reasonable judgement of Avondale, is incompatible with the best interests of Avondale.

11 DISPUTE RESOLUTION OR RESOLUTION OF DISAGREEMENTS OVER INTELLECTUAL PROPERTY OWNERSHIP

11.1 Avondale wishes to resolve disputes arising with respect to matters covered by this Intellectual Property Policy quickly but fairly and, wherever possible, to do so without resort to litigation or other public dispute resolution procedures. The intent is to reduce the strains that such disputes and their resolution place on the parties to affect the work and relationship of those involved as little as possible.

Resolution of Disagreements and Disputes

11.2 If a creator has any concerns in relation to the contents or operation of this Intellectual Property Policy, then that person may notify any other originators, and the Intellectual Property Officer about the dispute in writing. The written document(s) must specify full details of the dispute.

11.3 The Executive Dean of the Staff or Student's Faculty will make themselves available to meet as soon as possible to resolve the matters in dispute. A written report of the resolution agreement will be held by the Executive Dean.

11.4 If no agreement is reached at the meeting or it is not held within 14 days of either party giving/receiving notice of the dispute and requesting a meeting, then that dispute will be

referred to the Intellectual Property Officer giving full details of the dispute and any attempts to resolve it.

- 11.5 If no agreement is reached, then the Intellectual Property Officer will appoint a mediator who can assist the parties in resolving their dispute.
- 11.6 If such a dispute cannot be resolved through the assistance of a mediator, the Intellectual Property Officer must appoint an arbitrator to investigate and adjudicate the matters in dispute.
- 11.7 The arbitrator must adopt procedures that ensure that each party is given a fair hearing within a period of one/three months.
- 11.8 Should a student or staff member consider that just and fair procedures have not been followed they may seek redress through the Provost.
- 11.9 In selecting a mediator or arbitrator, the Intellectual Property Officer must choose a person who is acceptable to all parties. If the parties cannot agree within 30 days, the Provost must appoint the mediator or arbitrator.
- 11.10 Either party may request that an external mediator, acceptable to both parties, be involved in the dispute resolution at this stage.
- 11.11 In the event of a continuing grievance, the matter will be determined by an independent expert or independent panel of experts nominated by the Intellectual Property Committee.

NOTE: The Intellectual Property Officer cannot participate as a member of the Intellectual Property Committee on a review. The Intellectual Property Committee must commence a review of a decision of the Intellectual Property Officer within 14 days of receiving a request and complete the review as soon as practicable thereafter. After providing the originator with an opportunity to be heard, the committee must either confirm or vary the decision or action of the Intellectual Property Officer and must notify the originator within 14 days of its decision.

Confidentiality of Disputes

- 11.12 All matters associated with the resolution of disagreements or disputes under Avondale's relevant *Grievance and Appeals Resolution Policies* will be held confidential.

12 DEPOSIT COPIES

- 12.11 Two copies of all Intellectual Property created by Staff and/or Students including Visitors and research fellows generated while associated with Avondale must be supplied by the creator to be deposited with The Adventist Heritage Centre and the Avondale Library.

13 INTELLECTUAL PROPERTY EDUCATION AND IMPLEMENTATION

Education

- 13.1 Avondale will establish an Intellectual Property education program with the following objectives:
 - a) to alert Staff and Students to their rights, responsibilities and opportunities in relation to Intellectual Property;
 - b) to alert Staff and Students to any changes in this Intellectual Property Policy, and
 - c) to generate a better understanding of Intellectual Property issues.

13.2 Avondale will seek the cooperation of Avondale Postgraduate Student Association and the Avondale Student Association in providing independent advice for Students on Intellectual Property matters and Avondale will advise Students to seek such independent advice before they commence activities that may create Intellectual Property. Avondale will include references to this Policy in the relevant documentation provided to graduate Students.

Implementation, Responsible Officers

13.3 The Provost is the responsible officer for the control and administration of Avondale's Intellectual Property Policy and has delegated authority from the Council to submit patent applications in the name of Avondale. They will be assisted by an Intellectual Property Officer.

13.4 The Intellectual Property Officer is required to:

- a) oversee the implementation of this Intellectual Property Policy, especially the requirements related to information and education set out in this section;
- b) establish and maintain a record of Intellectual Property agreements, rights and obligations which exist when a member of Staff commences employment with Avondale;
- c) conduct a review of this Intellectual Property Policy at periodic intervals and as circumstances demand; and
- d) provide general advice to Avondale Council on Intellectual Property issues.

13.5 Avondale Council may make regulations for and with respect to:

- a) ownership, licensing and use of Intellectual Property;
- b) re-languishment of Avondale ownership of or other rights to Intellectual Property;
- c) developing Intellectual Property or securing its protection, including any related administrative action;
- d) Commercialisation of Intellectual Property;
- e) appointment of income generated by Intellectual Property;
- f) the composition, function and powers of the Intellectual Property Committee;
- g) the duties, responsibilities, and powers of the Intellectual Property Officer.

13.6 Authorised signatories on Intellectual Property matters

- a) The sole authorised signatories on behalf of Avondale on matters related to Intellectual Property shall be Avondale Vice-Chancellor or the Provost or the Intellectual Property Officer or Avondale's legal expert. Contracts and agreements executed under seal are subject to Avondale's normal procedures.

13.7 Responsibilities

- a) Person/area affected - Staff members or persons participating in an Avondale project whether as a student, visitor, adjunct appointee, or contractor
- b) Compliance with policy - All staff, students, visitors, conjoint appointees, adjunct appointees and contractors
- c) Enforcement of policy - Provost
- d) Monitoring/evaluation of policy - Provost and Copyright Committee in the interim

- e) Development/revision of policy – Provost and Copyright Committee in the interim
- f) Implementation⁴ of policy related to course & educational materials - Provost
- g) All other - Provost
- h) Education (initial & ongoing) - Intellectual Property Officer
- i) Approval authority - Academic Board
- j) Rectifying breaches of policy⁵ - Provost

14 DOCUMENTATION

- Confidentiality and Intellectual Property Assignment Agreement
- Intellectual Property Register
- IP Education Program
- Notification Form
- Register of Notifications
- Student IP Application

15 EXCEPTIONS TO THIS POLICY

- 15.1 Avondale reserves the right to modify and/or add to this Policy at any time, provided that such change will only apply to works, inventions, and other subject-matter in which Intellectual Property rights subsist that come into being after the effective date of the change. The Provost, after consultation with the Vice-Chancellor, may vary or depart from the terms of this Policy to achieve its objectives in special cases or unforeseen circumstances.

16 ACKNOWLEDGEMENT OF SOURCES

- 16.1 Adapted from the IP policies of the University of Newcastle, the University of New South Wales, Universities Australia - Ownership of Intellectual Property in Universities Policy and Good Practice Guide (2002); Code of Conduct for the Responsible Practice of Research; the National Health and Medical Research Council (NHMRC), and the Interim Guidelines: Intellectual Property Management for Health and Medical Research (2001); and the IP Australia website (www.ipaustralia.gov.au). This policy is also consistent with the National Principles of Intellectual Property Management for Publicly Funded Research (2001).

Table of amendments

Version Number	4.1	Replaces Version	4.0
Implementation Date	18 October 2018	Scheduled Review Date	May 2023
Approving Body	Academic Board	Approval Date	18 October 2018
Policy Owner	Provost	Date first introduced	8 March 2006

⁴ Implementation includes providing education to Avondale community about the operation of the policy

⁵ For example, conjoint appointees, honorary senior research fellows, adjunct appointees, postdoctoral fellows.

Short description of amendment	V4.1 <i>March 2023: updated branding, nomenclature and position titles, as relevant.</i> V4.0 Formatting adjustments and review.
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