



Intellectual Property Framework

FINAL

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About the Framework

Aim

The intellectual property (IP) of Swimming Australia Limited (SAL) and Stakeholders is a significant asset that needs to be managed accordingly.

This Framework has been developed to assist SAL and Stakeholders to manage their IP effectively.

The Framework identifies and encourages best practice in relation to the creation, use, sharing, protection, and commercialisation of IP. It should also help SAL and Stakeholders determine when professional (for example, legal, financial, or commercial) advice about IP should be sought.

Structure

The Framework consists of:

Part 1

IP Definitions and Principles – these **must be adhered to** by all SAL staff, contractors and agents and are the key elements of an effective IP management system, covering areas such as IP Policy and strategy, creation and rights, identification and recording, publication, commercialisation and reporting. All SAL business units are required to implement the Principles.

Although Stakeholders are not required to comply with the framework and policy, they are strongly encouraged to do so. However, Stakeholders must comply with this framework and the policy when working on national projects where SAL IP is utilised (for example, Junior Excellence, GO Swim, Ready Set Race, etc).

Part 2

Resource Kit – identifies key resources and includes detailed information about the different categories of IP, legal definitions, key contacts, relevant legislation, policies and websites.

Part 1 – IP Definitions and Principles

What is Intellectual Property?

As defined by IP Australia, intellectual property (IP) is a term that describes the application of the mind to develop something new or original. IP can exist in various forms; a new invention, brand, design or artistic creation.

Often described as an intangible asset, protecting and managing IP assets is critical when establishing products and services.

Some IP rights require a formal process of application, examination and registration to obtain full legal recognition (eg, trade marks) while others come into play without the need for a registration process (eg, copyright).

IP includes:

- copyright and related rights, including moral rights, in relation, for example, to books, images, video footage, sound records, brochures, manuals, publications, educational resources, databases, digitised material (including DVD products), software, archives, and manuscripts
- patents, covering, for instance, the invention of new devices or processes
- trade marks, which protect brand and product names.
- designs, such as the design for a product (a chair, for example)

- circuit layout rights, relating to the three-dimensional configuration of electronic circuits, and layout designs for computer chips
- plant breeder's rights, in relation to a new plant variety, for example, and
- trade secrets and confidential information.

IP Australia administers [patents](#), [trade marks](#), [designs](#) and [plant breeder's rights](#) in Australia. Automatic rights for [copyright](#) and [circuit layout rights](#) are looked after under Commonwealth legislation.

The Resource Kit provide definitions and further information.

How are IP rights protected?

IP rights are created in different ways depending on the category. For example, copyright and circuit layout rights are automatic and do not require registration. On the other hand, patents, design, and plant breeder's rights must be registered with IP Australia for the legal rights of ownership to apply.

In the case of trade marks, registration is not compulsory, but is advisable because it can otherwise be both difficult, expensive and time consuming to take legal action. Common law provides protection against the infringement of trade secrets, and for breach of confidentiality agreements.

IP rights can be owned by an individual or jointly. Similarly, an individual or entity can obtain a licence to use the IP, which may or may not have specific conditions of use. For example, a licence can be obtained from the copyright owner of a particular software program for home use only.

Why is IP management important?

IP is a major resource and a valuable asset. It is important that all assets belonging to SAL and Stakeholders, including IP assets, are managed effectively to maximise the benefits to SAL and Stakeholders in achieving their respective strategic goals and objectives. IP ownership and protection underpins operations, without effective management, SAL and Stakeholders are exposed to significant risk.

Managing IP well can bring significant benefits, while failure can be costly. Some real life examples obtained from IP Australia's website are below.

BUYING THE COMPANY BUT NOT THE IP RIGHTS

Volkswagen (VW) paid \$1 billion-plus to buy the Rolls-Royce Motor Company (RRMC) in 1998. However, it turned out that the rights to the Rolls-Royce brand name were not included in the sale. In an extraordinary oversight, VW failed to seek the rights to the Rolls-Royce brand name as part of its pitch for the company.

The situation led to a protracted, expensive and acrimonious legal battle in which VW questioned RRMC's moral right to control the brand name.

The lesson: do your due diligence

The important lesson from this extraordinary case is that bidding for a company does not automatically give the potential purchaser the rights to produce that company's product.

Had VW conducted an extensive due diligence audit, it would have discovered where the IP rights were held and understood the nuances of associated contracts that allowed production of the key asset: the Rolls-Royce car.

COMPETITOR COPYING DESIGNS

An Australian designer with three small retail outlets noticed that direct copies of her dress designs were appearing in another retail outlet close by.

She wanted to take action against the trader, but was advised that without design protection for her original garment she wouldn't be able to pursue the matter.

Only a registered design that has been examined and certified gives you a legally enforceable right to use your product's design and prevent others from using the design without your permission.

The lesson: register designs before releasing them to the market

The designer began filing for registration of her new designs before the styles were released.

Protecting designs by registering them doesn't prevent copying but it does mean you can take court action to enforce your IP rights.

The other trader continued to copy her designs even though they were warned of the design registrations, but the designer can now take court action over the copying.

THE STRATEGY: COVER EVERY BASE

The business targets home owners who want to sell their home privately but also want professional marketing and advertising support. It provides signage, marketing and a conveyancing service - a complete private sale solution.

'The main benefit of this service over traditional real estate agents is that the home owner saves thousands of dollars in commission, whilst still receiving support throughout the sale process', says Dean.

Register the business name

Dean was careful to check that the name Real Support was viable before he developed the business's branding any further. 'Our business revolves around branding and advertising and if we had to change our name after we'd started up the business it would be financially devastating', he says.

He therefore conducted searches of all the necessary databases, including the Queensland business name register and the domain name and trade mark databases, before going ahead with Real Support. 'It was actually quite a fast process, as all of the searches could be conducted online through their respective websites', he says.

Trade mark the logo, slogan and business name

Dean was aware that registering a business name in Queensland only gave him a trading name in that state and no IP rights or protection.

He decided that trade mark protection was a sensible option. 'The 'for sale by owner' concept is a new one on the Sunshine Coast, and franchising opportunities will be a real possibility for us down the track. It's therefore really important that our intellectual property is in place - right from the beginning'.

Dean applied to have the Real Support logo, business name and slogan, 'Real support - your complete private sale solution', registered as trade marks through IP Australia.

Secure the domain name

Dean then ensured that the Real Support domain name was secure and ready for business. 'Online real estate is huge now, and competition is fierce, so I wanted to secure our business name as a domain name, to make it easily accessible for users', he says.

Managing IP

Effective IP management involves four key areas:

1. Planning/risk management
2. Responsibility
3. Communication
4. Evaluation and reporting.

1. Planning/risk management

SAL and Stakeholders IP management should be consistent with this Framework and, wherever possible, be incorporated into corporate planning, systems, policies, and objectives.

SAL business units and Stakeholders should adopt a risk management approach when implementing the Framework and ensure the organisation's key IP contact is aware of discussions concerning IP, be it new or existing IP, including third party IP.

2. Responsibility

Management of IP should be a high priority for SAL and Stakeholders and every staff member has a responsibility to be mindful of possible IP implications in their day-to-day operations.

SAL has assigned responsibility for upholding IP rights and infringement management to the IP Administrator. Stakeholders should also nominate a key internal staff contact for IP.

3. Communication

The communication strategy in relation to IP includes:

- incorporating key IP themes into staff meetings and forums
- circulating material on IP within the organisation
- developing standard contract clauses that address IP issues
- providing relevant staff with training in contract management and related IP issues, and

- dedicating part of SAL’s intranet and extranet to IP and providing links to websites which provide more information and updates on developments in IP.

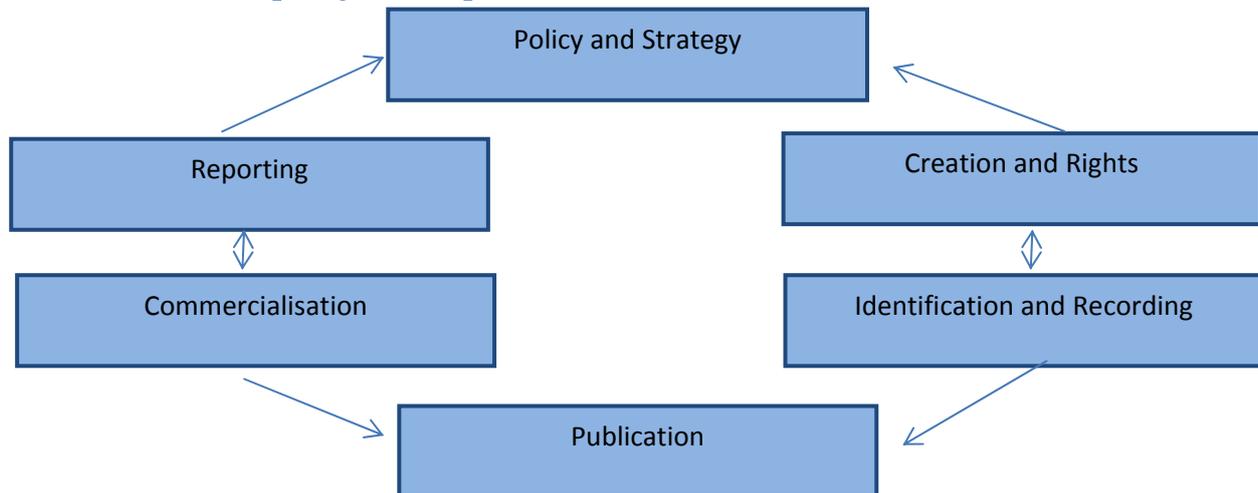
4. Evaluation and Reporting

SAL is currently developing a system to identify, record, report on, and evaluate IP, with aim of continuously improving the effectiveness of its IP management. This includes:

- SAL trade mark register detailing all trade marks SAL owns and in what classes,
- Third party trade mark register detailing all third party trade marks used by SAL, for what purpose and under what terms,
- contracts and licenses register;
- software register,
- business names register, and
- domain names register.

Stakeholders are encouraged to adopt similar registers and SAL is able to provide templates for each of these registers if needed.

Intellectual Property Principles



IP Principles

Policy and Strategy

SAL’s IP Policy is based on this Framework. Stakeholder IP policies and any associated procedures should be also based off the principles within this Framework and their core functions.

Considerations for Stakeholders in development of policy and strategy

In developing and implementing its IP Policy, Stakeholders should take into account the following:

- its core functions and objectives contained within its Strategic Plan
- what significant IP is likely to be created, owned, used, or controlled by the Stakeholder, including its publications (significant IP is described in the ‘Identification and Recording’ section below)
- the need to provide staff with appropriate training, such as a formal training course for staff directly responsible for IP management, or in-house training on general IP issues for other staff, and
- allocating appropriate resources.

The IP Policy and implementation strategy should be based on a risk management assessment by the Stakeholder, and the Stakeholder should be able to show how the IP Policy reflects the identified level of risk. States with more significant IP assets would be expected to have a more extensive strategy.

Inclusions

The IP Policy and any related procedures should:

- be integrated with existing organisation systems, policies and objectives
- be aligned with the Stakeholder's asset management obligations
- identify those responsible for implementing IP Policy and for ongoing management
- address third party IP rights and the legal obligation to respect those rights
- provide appropriate guidance and training for staff
- be communicated effectively throughout the organisation, and
- be subject to regular monitoring, review, and improvement as appropriate and approved by the Board.

Creation and Rights

Who owns the rights?

By law, SAL and Stakeholders own any IP developed by their employees in the course of their employment unless it is specifically agreed otherwise. The opposite presumption applies for all contractors, consultants and other third parties, unless expressly otherwise agreed. Thus it is important to cover off IP ownership in an agreement with any third party. In addition, moral rights automatically belong to the creator of material protected by copyright. Moral rights can only be waived or infringed by consent, and not removed. Letters offering employment or contracts of employment should include a general moral rights waiver clause where appropriate.

In all circumstances in which IP might be created or acquired (including employment, out-sourcing, grants, procurement, product development, consulting, and contracting agreements) ownership of IP should be specifically addressed in writing.

Staff should take reasonable steps to ensure that the organisation has the best opportunity to benefit from the IP, whether the ownership of, or rights to, the IP are vested in the organisation (eg SAL), a contracted developer, a collaborative developer, a grant recipient, or other party.

As per SAL employee agreements, staff are required to maintain the confidentiality of secret information both during and after employment. In some cases, a confidentiality agreement may also need to be signed. These reduce the risk of unauthorised disclosure of secret information about the IP.

Staff must immediately consult with the IP Administrator as soon as possible when discussing, or considering discussing, IP issues with third parties. The IP Administrator can then decide whether a confidentiality agreement is necessary. Unauthorised disclosure may, in some circumstances, breach SAL's confidentiality provisions or privacy obligations, or it may destroy the commercial value of the IP asset (particularly where disclosure is made prior to registration, publication or commercialisation).

To license, joint own or own

In most cases it is SAL's preference to own IP, particularly for programs and services it has created and is responsible for delivering. On the rare occasion it may be beneficial for SAL or a Stakeholder to acquire a license for the rights or seek joint ownership, as opposed to owning them outright.

In the case of SAL, the IP Administrator must approve any IP license or joint ownership arrangement prior to it being executed. The CEO is the only person who has the authority under SAL's delegation register to execute this type of arrangement. A considered approach towards managing risk, value and opportunity will ultimately determine if an IP license or joint ownership arrangement is appropriate.

Third party IP

Active steps need to be taken to avoid infringing third party IP rights. For example:

- if you are unsure about whether IP under development may lead to an infringement of third party rights, you should conduct appropriate searches for trade marks, business and domain names, patents, and designs (using, for example, the IP Australia website which has search databases: www.ipaustralia.gov.au). Training can be provided to assist staff in this process.
- if you are aware that the IP SAL or a Stakeholder wishes to use belongs to a third party, you should obtain consent in writing, retain this consent, and add it to the third party IP register.
- where you are unsure of matters regarding IP rights, consult with SAL's IP Administrator who may suggest seeking appropriate legal advice.

Infringements

If a third party infringes, or is likely to infringe, SAL's or a Stakeholder's IP, SAL or the Stakeholder should follow its dispute resolution procedures as appropriate and decide whether to take further action, keeping in mind:

- the core functions of SAL and/ or the Stakeholder
- the kind of IP to be protected and the reasons for the protection, for example, protecting SAL's trade mark/s
- the likely costs involved, based on legal and financial advice
- the ability of SAL to protect the IP, that is, its available resources, and
- the implications of not protecting the IP, for example that failure to protect it would damage the integrity or reputation of SAL and/or the Stakeholder or would jeopardise its competitive advantage.

If you become aware that SAL or a Stakeholder has infringed or is likely to, or even may, infringe a third party's IP, the issue should immediately be raised with SAL's IP Administrator or the relevant Stakeholder's internal IP staff contact who will advise next steps (including seeking legal advice).

General

IP issues must be considered and documented before tenders and bids are called for and before contractors or consultants are engaged.

Non-disclosure or confidentiality agreements should be entered into prior to SAL or a Stakeholder sharing IP with other parties. SAL has a template agreement for this purpose which can be obtained from the IP Administrator.

Identification and Recording

SAL has a register that identifies and records any significant IP it owns, controls, and uses (refer to the Identification and Recording section below for guidance in determining significant IP). SAL's IP Administrator is responsible for maintaining the register. Stakeholders are encouraged to do the same. Staff must ensure they address any issues which emerge in regard to the ownership of the IP. This applies whether the IP is created by staff in course of their duties, contractors, consultants, or others.

All employees should be aware of their responsibility to notify SAL of work that may lead to the creation of IP.

What is significant IP?

- the cost to SAL or the Stakeholder of losing the IP and the cost of alternatives
- IP which is valuable to SAL or the Stakeholder but not in monetary terms, for example the reputation of SAL or the Stakeholder could be at risk or there is a need to protect the integrity of the IP, and
- IP which plays an important role in the operation of SAL, the Stakeholder or in the services and programs it provides.

Recording IP

SAL's system for recording IP includes the following. Stakeholders are encouraged to adopt the same approach:

- a description of the IP and its location
- ownership details
- whether contractors or consultants are involved in developing the IP, and, if so, details of the IP clauses in their contracts and the location of the contracts
- the names of those responsible for the day to day management of the IP
- any IP related rights issues, for example, whether the IP is protected, the status of the protection, and the expiry date
- if the IP relates to a SAL trade mark, the trade mark must be recorded in SAL's Trade mark Register
- any potential or current risks associated with the IP
- in cases where IP is licensed out: details of the licence (including the expiry date), licensee, and payments
- where SAL has a licence to use someone else's IP: details of the licence, licensor, expiry date, and payments must be added to SAL's Third Party IP Register
- the costs and revenue associated with IP, and
- any arrangements for the review of the IP.

SAL should take action to resolve any issues which come to light during the identification process, such as taking steps to protect any significant IP not currently protected, for example patents and trade marks or IP created under contract.

As previously mentioned, all employees should be aware of their responsibility to notify SAL of work that may lead to the creation of IP.

Copies of relevant documentation for example, licence agreements should be retained, updated as appropriate, and captured in SAL's Contract Register which can be found on the Common drive (refer to IP Policy for exact location).

IP Audit

Regular IP audits should take place to ensure IP is protected and registers are kept up to date. IP audits should take place at least annually.

Stakeholders are encouraged to undertake an IP audit to assist them in the development of the relevant IP registries. A template to assist in the audit process and the identification of the Stakeholder's IP can be obtained from SAL's IP Administrator.

Publication

A policy and procedures will be established to manage publications and websites.

The policy and procedures governing publications and websites should address, but are not limited to, the following:

- use of logos, trade marks and third party IP
- requirements to respect confidentiality and privacy
- freedom of information obligations
- any risks involved in publishing information over which SAL may wish to establish IP rights in the future
- any approvals required for publication, including web publication, and
- standard labelling and formatting of SAL and Stakeholder publications.
- ensure IP protected before publishing (ie. patent application lodged, logo or name trade marked)

All publications, including websites, should display a copyright statement and, where appropriate, disclaimers.

SAL and Stakeholders should take active steps to ensure that publications do not breach confidentiality, privacy rights, or other third party IP rights.

Publications involving higher risk (for example, those publications that include IP of multiple third parties with strict terms of use) should be subject to more stringent requirements for approval and have a specified review or withdrawal date.

Commercialisation

In making decisions about commercialising SAL IP, SAL must consider what will most benefit the sport of swimming. Note that in some cases it may be in the best interest of SAL for it to transfer the IP to another sporting body, or private industry, either for a fee, a non-commercial fee, or free of charge.

Commercialisation decisions are to be made on the basis of appropriate legal, financial, and commercial IP advice. A decision about commercialising IP should be based on a consideration of SAL’s core functions and the IP concerned. Commercialisation should not dominate or jeopardise SAL’s core business.

Option 1 – Commercialise IP	Option 2 – Transfer IP Rights
<p>A commercialisation strategy should be developed if SAL or a Stakeholder decides, after obtaining appropriate advice, to commercialise a certain piece of IP. The strategy may include the following elements:</p> <ul style="list-style-type: none"> • analysis of the product or technology (including such things as a description of the product or technology, an evaluation of its uniqueness, IP protection, an estimation of how much technical development remains to be done, and proof of technical concept) • market analysis (key customers and competitors, potential distribution channels, key success factors, and any impediments) • partners, collaborators, and strategic alliances (describe who they are, benefits to the project, relevance to the future technical and strategic support needed) • management team (technical and commercial experience of the team, skills to drive the project) • business opportunity (ownership issues, revenue potential by key markets, key risks and sensitivities, anticipated costs of development, production, and distribution);; • funding requirements (how much funding is required, how will funds be used, potential return on investment); and • general due diligence on each of the above. <p>All commercialisation arrangements carry potential risks and reasonable steps should be taken to identify and manage the risks. These may include warranties and legal agreements that limit or indemnify against liability.</p>	<p>In rare circumstances it may be best to transfer commercialisation rights to a third party. If this occurs the following should be considered:</p> <ul style="list-style-type: none"> • conduct due diligence on the third party; • establish clear responsibilities, accountabilities, and agreed outcomes both within SAL or the Stakeholder and with the other parties to the arrangement • ensure that any relevant SAL/Stakeholder records are protected as required by the receiving party • set conditions aimed at ensuring that the IP is used for the benefit of the sport of swimming, and guarantee that if these conditions are not met, SAL or the Stakeholder may reclaim the IP • ensure that all rights which are required to meet the current and future operational requirements of SAL or the Stakeholder are retained, for example: <ul style="list-style-type: none"> a) the right to use the IP for non-commercial operations and internal research and development projects, and b) the ongoing right to use any enhancements made to the IP, such as free software upgrades. • provide the best possible benefits for SAL or the Stakeholder and the sport of swimming through: <ul style="list-style-type: none"> a) ensuring that royalties and licensing fees go to SAL, and b) ensuring that the IP can be used by everyone in the swimming industry rather than by a limited number of companies.

Reporting

Information on the management of IP is to be provided in a timely manner by staff to SAL's IP Administrator in the first instance (or relevant Stakeholder contact) and then if relevant to the CEO, Board or any other appropriate stakeholders.

The identification and recording system should provide reports on the costs, risks, and revenue associated with significant IP owned or controlled by SAL or the Stakeholder, or arising from projects in which SAL or the Stakeholder is involved.

Staff should report relevant IP issues to the IP Administrator including the following:

- acquisitions of IP
- potential or actual infringement of organisational IP
- potential or actual infringement by SAL or the Stakeholder of others' IP
- the proposed sale, disposal, licence or modification of IP, and
- conflicts of interest.

Reports on the costs, results, risks, and revenues related to IP should be provided to SAL's or the Stakeholder's Executive, Board and other relevant parties when appropriate.

IP Management Checklist

Management

- IP management incorporated into planning processes and directly linked to core functions
- Risk management strategy underpins implementation
- Responsibilities assigned to a senior officer or team
- Communication strategy is developed and implemented
- Employment agreements to incorporate provisions relating to IP including ownership and moral rights
- Contractor agreements to incorporate provisions relation to IP including ownership and moral rights
- Yearly IP Audit scheduled
- System of evaluation established

Policy and Strategy

- Policy and procedures created and integrated with existing systems
- Policy and procedures communicated to employees
- Employee manual updated
- Key staff trained
- Approved by Board

Creation and Rights

- All contracts, including employment contracts, address IP rights, where appropriate
- Confidentiality and Non-Disclosure Agreements considered
- Active steps taken to avoid infringing IP rights
- Appropriate control maintained over the IP when rights transferred
- Dispute resolution strategy in place
- Expert financial and legal advice sought when protecting IP rights

Identification and Recording

- IP is identified and recorded as it is created – IP audit
- System for recording IP is linked to reporting system

Publication, including websites

- Publication policy issued
- Risk assessment undertaken and steps taken for higher risk publications
- All publications, including websites, display a copyright statement and, where appropriate, a disclaimer
- Approved by CEO

Commercialisation

- Risk assessment undertaken and steps taken to manage risk
- Due diligence undertaken
- Commercialisation strategy developed
- Commercialisation arrangements ensure that IP is managed consistently with Privacy and Competitive Neutrality obligations
- Rights to commercialise IP are transferred under certain circumstances provided appropriate conditions are met
- Expert financial, legal and commercial IP advice obtained as required or appropriate
- Approved by CEO or Board in accordance with delegations

Reporting

- IP reporting systems in place and line of reporting established
- Periodic reports made to appropriate stakeholders

Audit

- Annual review
- Annual report to Board

Part 2 - Resource Kit

Detailed information about the different categories of Intellectual Property, relevant legislation, key contacts, and related policies and websites

A. Intellectual Property (IP) definitions

a. Copyright and related rights

What is copyright?	Copyright is a type of legal protection for people who express ideas and information in certain forms. The most common forms are: writing, visual images, music, and film. Copyright protects the form or way an idea or information is expressed, not the idea or information itself.
How is copyright obtained?	<p>There is no system of registration for copyright protection in Australia. Copyright protection is free and automatic. There are no forms to fill in, and there are no fees to be paid. Work does not have to be sent in to the Copyright Council or to anyone else.</p> <p>A work is protected automatically from the time it is first written or recorded in some way, provided it has resulted from its creator's skill and effort and is not simply copied from another work. For example, as soon as a poem is written, or a song is recorded, it is protected.</p> <p>From 1 January 2005, the duration of copyright for most works was extended to seventy years from the end of the year of the author's death (up from fifty). Copyright for films and sound recordings has also been extended to seventy years from the end of the year in which the film or recording was first published.</p> <p>Australian copyright works are protected in most other countries, and copyright works from most other countries are protected in Australia.</p>
The copyright owner's exclusive rights	<p>Owners of copyright have a number of exclusive rights over their material. Anyone who wants to use someone else's copyright material in any of these ways generally needs the owner's permission. Different rights apply to different types of material. For example, owners of copyright in literary, dramatic, artistic and musical works have the exclusive right to do the following amongst other things, to:</p> <ul style="list-style-type: none">• reproduce the work (including by photocopying, copying by hand, filming, recording, and scanning)• make the work public for the first time, or• communicate the work to the public (for example, by fax, email, broadcasting, cable or the internet). <p>Copyright owners can "assign" (generally, sell) or license their rights. Assigning rights means someone else becomes the copyright owner; licensing means another person can use the copyright material.</p>
The copyright notice	<p>There is no need to put a "copyright notice" on a work for it to be protected in Australia, although one may be included as a reminder of the copyright protection. There is a formal procedure. The author or publisher may, for example, include a notice such as: © (or "Copyright") together with the copyright owner's name and the year of first publication—for example: © Forbes Carlile 1995.</p>

b. Moral Rights

<p>What are moral rights?</p>	<p>Moral rights' belonging to authors or creators are rights which relate to a person's reputation as the author or creator of a work. These moral rights are granted only to individuals, generally last as long as the copyright in the work, and apply to a wide range of works including:</p> <ul style="list-style-type: none"> • literary works such as manuscripts, articles, other text materials, software, and databases • artistic works such as photographs, paintings, drawings, maps, architecture, and sculpture, and • dramatic and musical works and film. <p>The <i>Copyright Act 1968</i> recognises three moral rights:</p> <ol style="list-style-type: none"> 1. the right to be named as the author or creator of the work, known as the right of attribution of ownership 2. the right not to have authorship of the work falsely attributed, known as the right against false attribution, and 3. the right not to have the work altered in a prejudicial way (for example, distorted, mutilated, or materially changed to the detriment of the creator's honour or reputation), known as the right of integrity.
<p>Infringement of moral rights</p>	<p>Remedies available to creators of work in the event of an infringement of their moral rights include damages, injunctions to prevent or stop the particular activity, public apologies, and orders to undo or remove the derogatory material. A possible defence could be that the infringing act was reasonable having regard to all of the relevant circumstances. Section 195AR of the <i>Copyright Act 1968</i> lists various factors to consider—for example, the nature and purpose of the work, relevant industry practice, the difficulty or expense that would have been involved in identifying the creator, and so on.</p>
<p>Consent</p>	<p>Copyright creators can give consent to acts or omissions (whether past or future) which may otherwise infringe their moral rights. Generally, consent may only be given in relation to:</p> <ol style="list-style-type: none"> a) particular works in existence when the consent is given, or b) specified works of a particular description, which are currently being made or are to be created. <p>However, blanket consents may be given by employees to their employers in relation to all works created by the employee in the course of employment (for example, a term in the employment contract).</p> <p>Where the creator is a contractor or consultant, consents must be specific, both in relation to the works and related acts or omissions. (See sections 195AW and 195AV of the <i>Copyright Act 1968</i>.)</p>
<p>Can moral rights be transferred?</p>	<p>Unlike economic rights (such as the right to reproduce a work), which creators can assign (sell, give away, or license), moral rights cannot be assigned. An author who assigned all economic rights in relation to a work would nevertheless retain the moral rights.</p>
<p>How long do moral rights last?</p>	<p>The rights of attribution and false attribution in relation to all works, and the right of integrity in relation to all works except films, last for the same period as copyright protection. Previously, in most cases this was the creator's lifetime plus fifty years. From 1 January 2005, this has been extended to the creator's lifetime plus seventy years. After a creator's death, these rights would be administered by the executor. The right of integrity in relation to films lasts only for the lifetime of the creator.</p>

<i>c. Patents</i>	
What is a patent?	<p>A patent is a right granted for a specified period in relation to a device, substance, method, or process, which is new, inventive, and useful.</p> <p>A patent is legally enforceable and gives the owner exclusive rights to exploit to commercially exploit the invention for the life of the patent. Patents are not granted automatically but must be applied for. All applications for patents are examined to ensure they meet the necessary legal requirements.</p> <p>Patents give effective protection for new technologies that will lead to a product or process with significant long-term commercial gain.</p> <p>The outcomes of primarily mental processes, such as artistic creations, mathematical models, plans, or schemes cannot be patented.</p>
When to go public with inventions	<p>Previously, patents would not be granted if the invention had been demonstrated, sold, or discussed in public before the application for a patent was filed. However, the patents legislation now provides for a grace period, so that under certain conditions an invention can be made public and this will not prevent a valid patent from being granted, provided that a complete application is filed within twelve months of the disclosure. This is to cover those circumstances where the inventor has disclosed the invention before applying for a patent, for example when the inventor has discussed it with a contractor without a confidentiality agreement. The grace period may help a patent application succeed in cases where disclosure of an invention has been made by mistake or is ill timed. However, a grace period should not be used as a general strategy for publicly disclosing an invention before filing a patent application.</p>
Time limit	<p>An Australian standard patent lasts for twenty years, subject to the payment of maintenance fees from the fifth year.</p> <p>An innovation patent, which is innovative but not inventive, lasts for 8 years.</p>
Who administers patents?	<p>IP Australia is the Australian Government agency responsible for granting rights in patents, trade marks, designs, and plant breeder's rights. IP Australia takes applications for patents and assesses whether the invention is new, and whether it meets the legislative requirements.</p>
International patents	<p>Obtaining patents overseas can protect valuable export markets. Most countries have patent systems similar to the Australian system. In addition, Australia is party to a number of international agreements which can reduce the complexity of applying overseas. The IP Australia website — www.ipaustralia.gov.au — contains more information about the process.</p>
Example	<p>The product: Sand Wedge The Sand Wedge is a beach chair with a difference. Compact and lightweight, it's a back pack, beach bag, beach seat and sun lounge all in one.</p> <p>Katherine Drayton says: 'When I made my first Sand Wedge it was really just for me, as I have a spinal condition that made the whole beach experience pretty bad. I showed my idea to family members and they thought it was great and joked about me going on the ABC's 'The New Inventors'.</p> <p>The strategy: patent and more As Katherine developed the concept further, she began to wonder whether it was patentable.</p>

Research

She went on a search mission to see if anyone had invented something that was similar to her concept. She advises: 'Do as much research as you can yourself to begin with because patent attorneys and paid searches can cost a lot of money, and there is no guarantee that your invention will be accepted for registration'.

Expert advice

Finding there was nothing like the Sand Wedge protected in Australia or the US, Katherine decided to go ahead with getting IP protection.

She saw a patent attorney to learn more about patents and what they actually protect. Through the attorney she then filed a provisional patent application, which gave her 12 months to research the product's viability on the market.

Katherine advises: 'As much as possible, keep your idea to yourself while you are deciding what to do; it's hard but important'.

Design registration and trade mark

Within the 12 months Katherine also decided to have her design registered, as a patent protects the way something functions but a registered design protects the way it looks. Trade marking the Sand Wedge logo was the final step in gaining comprehensive IP protection.

d. Trade marks

<p>What is a trade mark?</p>	<p>A trade mark can take the form of a letter, number, word, phrase, sound, smell, shape, logo, picture, aspect of packaging, or any combination of these.</p> <p>It is used to distinguish the goods and services of one trader from those of another. A trade mark is not prima facie registrable if it is not capable of distinguishing the goods or services of a particular trader from those of others in the marketplace. Trade marks which are descriptive of a good's or service's attributes, which conflict with an existing trade mark, or comprise a geographic name or common surname, are also difficult to register. Some of these problems may be overcome however if the trade mark has already been used extensively in the marketplace for a long time.</p> <p>A trade mark must not mislead the public about the nature of the goods and services.</p>
<p>Registration is advisable</p>	<p>A trade mark can be used even though it is not registered. However, registration is advisable. Registration provides the owner with the exclusive and legally enforceable right to use the trade mark within Australia for the goods and services for which it has been registered, and to license or sell it. Action under common law to protect an unregistered trade mark is also possible, but it can be more difficult, expensive and time consuming.</p> <p>A search of existing registered trade marks should be made before using a mark or applying for registration. To infringe or use another's trade mark may result in legal action.</p>
<p>Time limit</p>	<p>Initial registration of a trade mark lasts for ten years. After that time renewal for further periods of ten years can be effected by payment of the appropriate fee.</p> <p>A trade mark can therefore have a long life representing significant business value. However, the mark must be used in a bona fide way so that it does not become subject to removal on the grounds of non-use.</p>
<p>Who administers trade marks?</p>	<p>The Trade Marks Office of IP Australia administers trade marks and applications should be lodged there.</p> <p>Protection against misrepresentation is also provided under trade practices and fair trading legislation, and it is also possible to take action under common law. (Source: IP Australia – www.ipaustralia.gov.au.)</p>
<p>International patents</p>	<p>Obtaining patents overseas can protect valuable export markets. Most countries have patent systems similar to the Australian system. In addition, Australia is party to a number of international agreements which can reduce the complexity of applying overseas. The IP Australia website — www.ipaustralia.gov.au — contains more information about the process.</p>

e. Designs

What is design registration?	<p>A design comprises the visual features of shape, configuration, pattern, or ornamentation which give an article its unique appearance. To be registrable, a design must be new and distinctive.</p> <p>Design registration is intended to stop others from copying the visual appearance of manufactured products. A registered design gives the owner the exclusive and legally enforceable right to use, license, or sell the design. Note: Protection is only for the appearance of the article and not how it works.</p> <p>Designs which are essentially artistic works are covered by copyright legislation and are not eligible for design registration.</p>
Time limit	Initially, protection is for a period of five years, but this can be extended for a further period of five years.
Who administers design registration?	The designs section of IP Australia administers designs, and applications should be lodged there.

f. Circuit layout rights

What are circuit layout rights?	<p>Circuit layout rights are granted automatically to protect original layout designs for integrated circuits and computer chips. The owner does not need to apply for registration. While these rights are based on copyright law principles, they are a separate form of protection.</p> <p>Circuit layouts are usually highly complex and the intellectual effort in creating an original layout may be considerable and of great value. An integrated circuit or chip manufactured from the layout plans is the key to the operation of all kinds of electronic devices, from heart pacemakers to personal computers.</p> <p>The owner of an original circuit layout has the exclusive right to:</p> <ul style="list-style-type: none">• copy the layout in a material form• make integrated circuits from the layout, and• exploit it commercially in Australia. <p>Commercial exploitation may take the form of importation, sale, hire, or distribution of a layout, or an integrated circuit made according to the layout.</p>
Time limit	Rights relating to an original layout hold for ten years from its creation. If commercial exploitation begins within this period, the rights can apply, in addition, for the ten years from the date the commercial activity started. The maximum possible protection period therefore is twenty years.
Who administers circuit layout rights?	The Commonwealth Attorney General's Department administers the legislation for automatic rights to circuit layout rights and should be contacted for advice on matters relating to the Circuit Layout Act 1989.

g. Trade secrets

What is a trade secret?

A trade secret is a special form of confidential information held within a trade or business (for example, a process, method, plan, or formula), the disclosure of which to a competitor would be liable to cause significant harm to the owner.

Note: secrecy does not stop anyone else from inventing the same product or process independently and exploiting it commercially.

Confidentiality Agreements

A confidentiality agreement can be used to stop employees from revealing a trade secret or proprietary knowledge during and after their employment or association with the business.

Trade secrets are difficult to maintain over long periods or when a large number of people are made privy to the secret.

What if someone reveals my trade secret?

Common law provides protection for infringement of trade secrets, breach of confidentiality agreements and passing off trade marks. It should be noted, however, that proving a breach of confidentiality under common law can be complex and is potentially more costly than defending registered rights.

Legislation

Subject	Commonwealth Statute/Regulation	Administering Body (see 'Contacts' for further details)
Copyright and related rights	<i>Copyright Act 1968</i> <i>Copyright Regulations 1969</i>	Commonwealth Attorney General's Department
Circuit layout rights	<i>Circuit Layouts Act 1989</i> <i>Circuit Layouts Regulations 1990</i>	Commonwealth Attorney General's Department
Designs	<i>Designs Act 2003</i> <i>Designs Regulations 2004</i>	IP Australia
Patents	<i>Patents Act 1990</i> <i>Patents Regulations 1991</i>	IP Australia
Trade marks	<i>Trade Marks Act 1995</i> <i>Trade Marks Regulations 1995</i>	IP Australia (except for part 13, which is administered by the Australian Customs Service)
Confidential information and trade secrets	Common law	

Contacts

Commercialisation

TBA

Legal

TBA

Sponsor logo use

Katherine Ginbey

Katherine.ginbey@swimming.org.au

02 6219 5640

National Contacts

Copyright

Australian Copyright Council—The Australian Copyright Council is an independent non-profit organisation which provides a range of comprehensive on line information sheets. The Australian Copyright Council may be contacted for advice about issues not covered in its information sheets.

Contact Details:

Australian Copyright Council

245 Chalmers Street

Redfern NSW 2016

Postal address: PO Box 1986 Strawberry Hills NSW 2012

Ph: 02 9318 1788

Fax: 02 9698 3536

Website: www.copyright.org.au

Domain names

au Domain Administration Ltd (auDA)—auDA is an Australian not-for-profit company with responsibility for operating the .au domain for the benefit of all stakeholders. The company:

- develops and implements domain name policy
- licenses second level domain (2LD) for example, gov.au registry operators
- accredits and licenses domain name registrars
- implements consumer safeguards
- runs a centralised WHOIS service – very useful for checking owner details of domain names
- facilitates .au Dispute Resolution Policy, and
- represents .au at the Internet Corporation for Assigned Names and Numbers (ICANN) and other international forums.

Contact Details:

au Domain Registration Ltd

107 Faraday Street

Carlton VIC 3053

Email: info@auda.org.au

Tel: 1300 732 929

Fax: 03 9349 5711

Website: www.auda.org.au

Patents, designs and trade marks

IP Australia—IP Australia is the Australian Government agency that grants rights in patents, trade marks, and designs. Its mission is to ensure that Australians benefit from the effective use of IP, particularly through increased innovation, investment and trade. The IP Australia website provides useful information about patents, trade marks, and designs.

Contact Details:

IP Australia
Head Office
PO Box 200
Woden ACT 2606

Tel: 02 6283 2999
Fax: 6283 7999
Website: www.ipaustralia.gov.au

Websites

Web Address	Details
www.aesharenet.com.au	<p>AEShareNet connects people who are looking for learning materials with those who own them, and automates the negotiation and licensing process. The site also provides a range of useful information on IP, copyright, and licensing in relation to learning materials.</p> <p>AEShareNet is also responsible for administering the “Free for Education” Protocol. By attaching the Licence Mark to particular material the website owner indicates that the material may be used by an individual or organisation for educational purposes. For further information go to www.aesharenet.com.au/Ffe/.</p>
www.ag.gov.au	<p>The Copyright Law Branch of the Information Law and Human Rights Division, Commonwealth Attorney General’s Department, administers Australian copyright law (see National Contacts for more details).</p>
www.austlii.edu.au	<p>The Australasian Legal Information Institute (AustLII) provides online access to Australian legislation and case law.</p>
www.copyright.org.au	<p>The Australian Copyright Council provides a range of comprehensive on-line information sheets on copyright issues (see National Contacts for more details).</p>
www.copyright.com.au	<p>Copyright Agency Limited (CAL) is an Australian copyright management company whose role is to provide a bridge between creators and users of copyright material.</p> <p>CAL represents authors, journalists, visual artists, photographers, and newspaper, magazine and book publishers as their non-exclusive agent to license the copying of their works to the general community.</p> <p>Screenrights undertakes a similar function in relation to radio and television (see www.screen.org). Websites relating to music and recording are: www.apra.com.au and www.aria.com.au.</p>
www.whois.ausregistry.net.au	<p>Operated by au Domain Administration Ltd, ausregistry enables individuals and organisations to search domain name availability and also provides detailed information on owners of domain names.</p>
www.gb.espacenet.com	<p>esp@cenet is a free internet service provided by the European Patent Organisation (EPO) through the EPO and the national offices of its member states. Using esp@cenet it is possible to search all the patent applications published in the past two years (or more in some cases) by any national office in the EPO.</p>
www.findlaw.com.au (Technology & Media Law link under ‘Legal Professionals’)	<p>FindLaw is a free legal information service and provides updates on legal developments. Topics on the site include:</p> <ul style="list-style-type: none"> • News • Precedents • Practical articles • Recent cases

	<ul style="list-style-type: none"> • Recent legislation • Events • Links & Resources.
www.ipaccess.gov.au	IP Access is an Australian Government portal to information about IP and provides a comprehensive resource for anyone doing business in Australia.
www.ipaustralia.gov.au	IP Australia is the federal government agency that grants rights in patents, trade marks, and designs. IP Australia also administers the <i>Plant Breeder's Rights Act 1994</i> . The site provides useful information about patents, trade marks, designs, and plant breeder's rights (see National Contacts for more details).
www.ipmenu.com	IP Menu provides a global listing of IP resources on the internet.
www.psb.gov.au	The Professional Standards Board for Patent and Trade Marks Attorneys is responsible for the registration of Patent and Trade Marks Attorneys. The website includes a database of registered Patent and Trade Marks Attorneys.
www.wipo.int	The World Intellectual Property Organisation (WIPO) is an international organisation dedicated to promoting the use and protection of IP.