# TABLE OF CONTENTS

EXECUTIVE SUMMARY ......................................................................................... i
  Summary of Recommendations ........................................................................ ii
INTRODUCTION – BACKGROUND OVERVIEW ..................................................... 1
OVERVIEW OF LITERATURE .............................................................................. 3
FINDINGS AND DISCUSSION ............................................................................. 5
  1. WA GIPP (2003) Recognition .................................................................. 5
  2. Rewards and Incentives .......................................................................... 7
  3. Risk Aversion and Organisational Culture ............................................. 10
  4. WA GIPP – Agency Performance Evaluation ........................................ 11
  5. Copyright ................................................................................................. 12
  6. Conclusions ............................................................................................ 14
RECOMMENDATIONS ....................................................................................... 16
NEXT STEPS ...................................................................................................... 20
APPENDICIES .................................................................................................. 21
  APPENDIX B – Contributing Agencies and Corporations ....................... 23
  APPENDIX C – Intellectual Property .......................................................... 24
  APPENDIX D – Global and Australian Trends ............................................. 30
  APPENDIX E – Scope, Methodology and Evaluation Criteria .................. 42
  APPENDIX F – Sample Proposed Staff Questionnaire ............................... 46
  APPENDIX G – Resource Agreement Based Rewards System ................ 51
  APPENDIX H – Glossary of Terms and Definitions .................................... 54
  APPENDIX I – References & Endnotes ....................................................... 58
STRUCTURE OF THE REPORT

This report contains seven main sections including the appendices as a whole.

- Executive summary and outline of recommendations
- Introduction and background overview
- Overview of literature
- Review findings and discussion
- Recommendations and conclusions
- Next steps
- Appendices (A – H)
  - A: A copy of the Western Australian (WA) Government Intellectual Property Policy (GIPP) statement endorsed by the WA Cabinet (circa. 2003) outlining the three core policy statements; the key operating principles; and the ‘indicative factors’ to be used to guide decision makers.
  - B: A list of participating WA Public Sector (Western Australian Public Sector) agencies and Corporations to this review.
  - C: An overview of intellectual property (IP) definitions; IP protection in Western Australia; and the Western Australia GIPP (2003).
  - D: A literature-based summary of findings from a review of publically available online material provided for broad context on international and national (Australian State and Commonwealth) issues and trends for cross-referencing with recommendations.
  - E: An outline of the methodology (including the evaluation criteria) applied for this review.
  - F: By way of example, a possible Western Australian Public Sector ‘tool kit’ staff survey/questionnaire design for future Western Australia GIPP related evidence-based policy evaluation reviews.
  - G: An overview and schematic of the basic Western Australian Public Sector system elements involved in a possible agency-orientated ‘resource-agreement’ approach able to recognise and facilitate successful innovation and IP commercialisation at the agency level.
  - H: Glossary of terms and definitions used in this report.
  - I: References and endnotes

Russell Clemens
Industry, Science and Innovation Division
Department of Commerce, Western Australia
February, 2012

http://creativecommons.org/licenses/by/3.0/au/deed.en
© Government of Western Australia, 2012
EXECUTIVE SUMMARY

A review of the Western Australian (WA) Government Intellectual Property Policy (GIPP) was conducted during 2011 as required by the Public Sector Commissioner’s Circular 2009-30.

The review sought stakeholder insight from a number of senior- and mid-level Western Australia Public Sector (Western Australian Public Sector) staff involved in practical innovation and intellectual property (IP) activities.

The purpose of the review was to help determine the effectiveness of the current WA GIPP (2003) and identify key issues to be considered to improve the future WA GIPP.¹

The review was undertaken at a time when international trends indicate increased focus on IP to support national economic development – especially in the digital economy context.

The review reached three key conclusions based on general participant feedback:

(a) There is an ongoing need for an over-arching WA GIPP;

(b) The WA GIPP (2003) has provided a useful framework for agencies to develop their own IP policy; and

(c) The future WA GIPP should de-emphasise staff reward and incentive (e.g. ex gratia payments) – leaving agencies to manage this ‘motivation’ issue within their respective operating contexts.

A majority of participants indicated non-radical improvement of the existing WA GIPP would be sufficient at this time, although two participants suggested a new WA GIPP approach, developed from ‘scratch’, could be useful.

Ten recommendations are provided to improve the WA GIPP and its implementation, although further work is required to develop these recommendations into specific detailed action lists.

Focus is given to devolving responsibility to agencies to meet the Government’s productivity goals through innovation systems and IP commercialisation.

A variety of stakeholder opinions exist on whether government IP development and commercialisation should occur within public sector agencies, or whether, alternatively, greater access for local industry should be encouraged in developing these opportunities.

The review recommends further investigation into strategies for the retention, management and disposal of Western Australia Government IP with the aim of helping promote local science and industry development in Western Australia – ideally with the assistance of non-government stakeholders.

In respect to government information, the review recommends Western Australia join other States and the Commonwealth in adopting the internationally recognised Creative Commons (CC) licensing framework to apply the least restrictive copyright protections that are legally and operationally applicable to government information.
The review recommends adopting the emerging Australian Governments Open Access and Licensing Framework (AusGOAL) when a sustainable ongoing funding platform is confirmed.

In summary: the review recommends retaining the WA GIPP while placing more emphasis on plain English presentation and promoting systems, networks and cultures of innovation across the Western Australian Public Sector.

Summary of Recommendations

Based on participant feedback, the review makes ten recommendations related to the retention and improvement of the WA GIPP:

- **Recommendation 1** – implement changes recommended by the State Solicitor’s Office (SSO) to update the WA GIPP and associated guidelines to reflect current legislation and regulations.
- **Recommendation 2** – adopt a clear/plain English style and standard policy presentation where possible to increase the appeal for non-expert audience.
- **Recommendation 3** – increase focus on improving State outcomes through systems of innovation (including supportive organisational cultures) and IP commercialisation.
- **Recommendation 4** – reduce the focus on staff rewards and refer to the respective agency’s capacity and options within the legislative frameworks of the Western Australian Public Sector.
- **Recommendation 5** – increase the capacity for Western Australian Public Sector agencies to benefit from revenue streams and increased productivity (or risk reduction) resulting from successful innovation and IP commercialisation.
- **Recommendation 6** – emphasise devolved governance responsibilities at the agency level and encourage agencies to publish evidence of their own agency IP policy, strategies and achievements.
- **Recommendation 7** – conduct an annual WA GIPP practitioner workshop focused on promoting networks and awareness of innovation, IP commercialisation and research opportunities in Western Australia.
- **Recommendation 8** – develop a WA GIPP information ‘tool kit’ including check lists, standard templates, typical IP/innovation system descriptions and guidelines for staff induction, training and moral rights management.
- **Recommendation 9** – establish a panel contract of commercial IP lawyers and commercialisation experts for the Western Australian Public Sector to use where appropriate to help increase commercialisation opportunities while reducing routine IP related administration work for agencies and the SSO.
- **Recommendation 10** – commission an independent review of government and non-government stakeholders to identify how public-private collaboration can improve State benefits and achieve science and industry policy objectives through government innovation and IP development.
These ten recommendations are expanded in more detail later in this report (pp.16-19).

It is recognised that further work will be required (e.g. by project teams) to develop these recommendations into detailed action plans where appropriate.

For example, in respect to *Recommendation 10*, the review considers a wide range of government and non-government stakeholders can contribute constructively to the strategic question: “How can industry, and other non-government sectors, assist government deliver science and industry outcomes for Western Australia through improved innovation systems and IP commercialisation outcomes?”
INTRODUCTION – BACKGROUND OVERVIEW

A review of the Western Australian (WA) Government Intellectual Property Policy (GIPP) (released in 2003) was undertaken by the Department of Commerce’s Industry, Science and Innovation Division (ISI) during the second-half of 2011.

The purpose of the review was to evaluate the effectiveness of the WA GIPP (2003) and determine how the policy may be improved as stipulated by the Public Sector Commissioner’s Circular 2009-30.

The review sought comment from the State Solicitor’s Office (SSO) and senior staff from a number of Western Australian Public Sector organisations involved with innovation promotion and IP related activities (See Appendix B).

Recommendations for improvement are based on this feedback together with information derived from literature reviews on trends in national and international IP policy development.

The review finds the WA GIPP (2003) has:

a) Achieved national and international recognition as a benchmark example of GIPP by way of both specific references in other published documents and through emulation by other organisations.

b) Provided a useful high-level policy framework for Western Australia Public Sector (Western Australian Public Sector) agencies – although some policy goals have proved to be ‘aspirational’ in a number of areas.

c) Been less successful in promoting a focus on incentive/reward systems for staff and organisations – i.e. by implying personal benefit and reward would drive greater innovation and IP commercialisation.

d) Provided little or no quantitative evidence for monitoring and evaluating success in meeting WA GIPP goals – i.e. as submitted to Cabinet in 2003 (See Appendix A).

The review does not recommend radical change to the WA GIPP although a number of technical and stylistic changes are suggested to better align the policy with current public sector regulation, structure, organisation and culture.

Stakeholders surveyed for this review generally agreed the Western Australia Government should retain an overarching whole-of-government WA GIPP framework that is non-prescriptive and supports distributed good-governance practice at the agency level.

Two participants suggested a fresh start and re-think from a ‘blank page’ might be appropriate – although they also agreed the current WA GIPP would be generally adequate if updated.

Less stakeholder agreement was found on two related issues:

a) The reporting mechanisms needed to provide the Western Australia Government and the community with confidence that intended WA GIPP policy outcomes were being achieved; and
b) The Western Australia Government’s role in the marketplace in respect to IP ownership, management and commercialisation.

The review suggests how these two issues (directly above) might be better managed and recommends further investigation to identify viable options.

The review also focused on emerging copyright trends within the public sector context to promote open access to government information – e.g. the Queensland Government’s adoption of the Creative Commons (CC) approach and subsequent development of the Australian Governments Open Access and Licensing Framework (AusGOAL).

AusGOAL is currently being adopted by most Australian States and the Commonwealth. The history of AusGOAL, and its possible future applicability to Western Australia, is covered in more detail later in this report (see section: ‘Findings and Discussion, 5. Copyright’).

AusGOAL was not widely known by most participants at the time of the review, although the adoption of a standard national CC-based approach in the Western Australian Public Sector was generally supported.

Subsequent to participant interviews, the State Library of Western Australia (SLWA) developed its Creative Commons Policy (December, 2011) in conjunction with the National and State Libraries Australasia (NSLA). The SLWA policy enables the reuse of content on the SLWA website (and other publications) for non-commercial use – a policy consistent with this review’s recommendations.4

In respect to applying the CC/AusGOAL approach in the Western Australian Public Sector, it is noted that:

a) The assignment of specific CC classifications for business purposes remains with each agency as a business decision.

b) The ongoing funding and governance arrangements for AusGOAL remain unclear at the time of writing this report.

Although applying appropriate CC classifications (and restrictive license) is seen as a devolved responsibility to each agency there is no whole-of-government monitor of IP asset disposal in Western Australia. There is therefore a risk that Western Australia Government IP asset disposal may be less than optimal.

It is noted that the Government of British Columbia (BC) assign a final responsibility for the oversight of government IP ownership and ‘asset’ disposal to their Office of Chief Information Officer (OCIO) – an option which enables a flexible dynamic system of oversight and ongoing contemporary interpretation of economic value for government copyright and IP asset management.

The review recommends further investigation into whether Western Australia State benefits from IP development and commercialisation could be better optimised through introducing a similar ‘IP asset’ oversight function in the Western Australian Public Sector.

In summary, the review’s findings and recommendations are broadly consistent with the Economic Audit Committee (2009) report which highlights partnering with the community and business and operating in a “climate of trust” with “structures, rules, systems and procedures” to support “innovation and collaboration”.5
OVERVIEW OF LITERATURE

This section summarises those international and national issues and trends (related to IP and GIPP) identified as relevant through publically available online information. More detailed information supporting these points is provided in Appendix D.

Global IP issues and trends include:

- A shift towards using IP and copyright protection as a strategic element of international trade policy – especially in respect to the digital economy and copyright protection.
- Greater emphasis being placed on the need for evidence-based policy and outcomes.
- The need for governments to monitor IP policy implementation (and confirm objectives are being met) is being undermined by lack of evidence.
- Increased focus placed on the ‘systems of innovation’ – i.e. effective integrated networks of people and procedures supported by organisational cultures and leadership.
- A wide variety of approaches to managing government IP exist – with trends towards managing the increased risks and complexities through greater use of private sector options.
- Economic conditions in developed economies are focusing attention on the need for improved productivity and public sector efficiency being achieved through innovation.

National IP issues and trends in Australia include:

- The Commonwealth accepting the close links between productivity, innovation and IP – including governments having a role in facilitating entrepreneurship (through collaboration with the private sector if necessary).
- The Australian government sector represents approximately 20-30 per cent of the national gross domestic product (GDP) – thus being itself a significant domain for innovation and IP commercialisation potential (see Commonwealth of Australia 2009; Department of Industry, Innovation, Science, Research (DIISR) 2010).
- Most Australian States and the Commonwealth publish GIPP statements – with Queensland and New South Wales (NSW) representing the current benchmark standards including extensive additional supporting guidelines and ‘tool kits’.
- South Australia (SA) also supports a flexible competitive approach to staff rewards and incentives that might provide a useful model (and precedent) for the Western Australian Public Sector.
- Commonwealth agencies are not meeting government and stakeholder expectations in respect to moving government IP development and commercialisation to the private sector.6
In summary, government IP development is occurring within an increasing complex geopolitical context focused on deriving national economic benefit from IP related opportunities.

In response, governments appear to be supporting private sector options to develop innovation and IP commercialisation outcomes while, at the same time, focusing on the need for effective governance oversight which includes providing appropriate evidence for monitoring policy outcomes.

WA’s GIPP (2003) has been published for nine years and many more recent examples now exist which set the benchmark for developing and commercialising government IP.
FINDINGS AND DISCUSSION

The review found the WA GIPP (2003) was well referenced in literature and had achieved national and international recognition as a benchmark example of government IP policy.

However, since its publication, more comprehensive and up-to-date examples have been published by other Australian states.

In terms of efficacy, the review found more flexibility is required in respect to personnel reward systems if promoting innovation and IP development through staff incentive is taken seriously.

Participant feedback suggested that applying the WA GIPP (2003) ‘reward system’ principles was less challenging for those agencies operating under their own Boards (e.g. Water Corporation).

Recommended WA GIPP improvements include:

a) Maintaining an over-arching WA GIPP framework with a focus on the distributed responsibility to the agency-level for implementation and achieving State outcomes;

b) Increased emphasis on agency leadership responsibility and organisational culture to facilitate innovation and IP commercialisation – including promoting national productivity aims; and

c) Promoting agency self-evaluation and reporting to support future WA GIPP performance reviews.

These general findings are discussed below under the following themes:

- WA GIPP recognition as an indicator of success.
- Rewards and incentives as motivational devices to increase likelihood of innovation and IP commercialisation.
- Risk aversion and Western Australian Public Sector agency culture as inhibitors to innovation and IP commercialisation.
- WA GIPP and agency performance evaluation.
- Copyright
- Conclusions

1. WA GIPP (2003) Recognition

Peer-group recognition is a useful indicator of success – at least in terms of setting the benchmark for GIPP. In this respect there is evidence that a number of other Australian government IP policy documents have referenced the WA GIPP (2003) – e.g. Queensland, New South Wales and the Commonwealth.

Geoscience Australia’s Intellectual Property Policy and Best Practice Guidelines (Geoscience Australia, 2011) closely emulates, with attribution, the WA GIPP (2003).
Employee awareness is also a useful indicator of innovation system capacity, management priority and ongoing investment in human capital development.

All participants were aware of the WA GIPP (2003) and most agencies involved referenced it in their own agency-level IP policy documents (where these existed). Less staff awareness of the WA GIPP (2003) was found in those agencies traditionally focused on information copyright issues.

Agencies with a traditional focus on innovation and IP commercialisation as part of their business model appeared to place greater emphasis and resources into staff awareness programs.

Overall, there was a general sense from participants that employee awareness of IP, and the importance of innovation, is declining in the Western Australian Public Sector – in part attributed to the challenges involved in maintaining effective levels of training during periods of higher staff turnover.

This issue has not been collaborated by evidence from staff surveys – i.e. the type of data that would be available if a standard staff survey was conducted from time to time (see Appendix F for a suggested example). However, it was evident in some leading innovation agencies (e.g. Landgate) that active ongoing staff awareness programs exist and are valued by management.

In other agencies the focus on staff awareness was less evident – although it is recognised that lack of evidence does not automatically imply lack of performance in meeting WA GIPP policy outcomes. However, it can imply there is a higher perceived risk of sub-optimal performance.

A number of participants suggested greater emphasis should be given to providing common government IP support services such as:

- Providing IP related ‘tool kits’ to assist agencies develop their own IP policies, organisational cultures, and staff /management awareness programs.
- Conducting one-day events (including keynote guest speakers) to help improve shared understanding and developing networking opportunities across the Western Australian Public Sector (and industry).
- Maintain cross-agency online discussion forums focused on developing stronger IP related networks to help promote awareness and peer-to-peer support.

In summary, recognition of innovation promotion and IP development in the Western Australian Public Sector has previously achieved high levels but is now, with a few notable exceptions, largely running on past momentum and at risk of significant decline.

Western Australia’s future GIPP should encourage the adoption of best management practice and innovative culture development in the Western Australian Public Sector to promote the State as a modern leader in government innovation and IP commercialisation – including promoting effective collaboration between the government and non-government sectors.
2. Rewards and Incentives

Rewards and incentives are highlighted in the WA GIPP (2003) as motivational devices to increase likelihood of innovation and IP commercialisation in the Western Australian Public Sector.

This topic was found to be the most challenging in determining a consensus view across all participants – in effect, a broad range of opinion was detected and no common solution identified.

Staff-level ‘reward’

In some situations the current limitations imposed on Western Australian Public Sector employees were seen to be either non-motivators, or even disincentives – e.g. the Health sector where medical staff remuneration levels can be far higher than is normally expected in the general Western Australian Public Sector environment.

In these cases, the 2003 limit of $50 000 on Western Australian Public Sector ex-gratia payments was seen as a disincentive for some inventors and innovators. In some contexts this limit was seen as either inhibiting innovation and IP development; or driving staff and organisations to find alternative solutions – e.g. seeking to develop the innovation or IP commercialisation within the university environment at a significant premium cost to the organisation and potential opportunity loss to the government.

It is noted that the current Western Australian Public Sector ex-gratia payment limit is now $250 000 (as specified in the Financial Management Regulations 2007) although there appeared to be little awareness of this change by almost all participants.

The lack of awareness of this change is attributed, in part, to the apparent lack of ‘conceptual connection’ between a general Western Australian Public Sector ex-gratia compensation orientated payment and a more specific IP commercialisation reward-orientated approach. Framing the staff reward and incentive system as a ‘special’ payment does not enhance the concept of reward as a natural part of a system of innovation and IP development – rather, it tends to reinforce the naturally conservative public sector management culture and attitudes.

Although higher reward possibilities were considered important in the Health sector context, most other participants appeared to consider the current WA GIPP (2003) Western Australian Public Sector-based reward and incentive system to be largely irrelevant to their agency’s innovation and IP development and commercialisation programs.

In a number of cases, innovation and IP development were seen to be intrinsic to the normal organisational business project development processes, and therefore, in these situations, IP related ‘rewards’ were not easily applied to single individuals – e.g. plant breeding procedures in the Department of Agriculture and Food (DAF).

A number of senior management participants felt the strong focus on staff rewards in the WA GIPP (2003) may have establish unrealistic expectations with agency staff which could not be easily met by management practice within that agency’s operating context.

It can therefore be reasonably assumed that there is little or no special value ascribed by senior Western Australian Public Sector executives to the current ex-gratia payment
based ‘reward’ system for the purposes of optimizing government innovation and IP development.

The topic of common ‘staff reward’ equity across the Western Australian Public Sector involved extended participant discussion in a number of interviews – i.e. the values issue of its staff being treated equally in respect to rewards for innovation and IP development opportunities and outcomes.

In general, participants’ views fell clearly into one of two categories – those of the opinion that:

a) the Western Australian Public Sector should maintain a strong sense of common equity where staff are given fair and equivalent recognition for innovation related activities according to common public sector standards and values; or

b) each agency operated within different circumstances and therefore reward and incentives should be determined at the agency-level according to operationally relevant criteria and circumstances.

The review noted a significantly higher degree of participant interest and passion with respect to this issue than all other matters discussed. It has not been possible, within the scope of this review, to find an easy solution to this issue in respect to future WA GIPP design – although a possible solution path involving special recognition under the Industry and Technology Development Act 1998 (‘ITD Act’) is included in Appendix G.

When asked for a possible solution, some participants recommended removing (or at least deemphasising) the whole subject of special rewards and incentives in the future WA GIPP – i.e. leaving it to the agency to manage as part of its normal governance approach. Other suggestions included escalating the issue for further discussion to find a way forward – i.e. supporting the view that focus on rewards and incentives in the government innovation and IP development context was indeed strategically important.

Although this latter view supports the WA GIPP (2003) focus on stimulating the entrepreneurial spirit of innovators and inventors in the Western Australian Public Sector via potential reward, it is assessed to be a significant and non-trivial task to change Western Australian Public Sector culture to meet these expectations. Given the poor adoption of this WA GIPP ‘feature’, and the dichotomy of views expressed, any proposed solution is likely to also be contentious.

It should be noted that the review did not assess general Western Australian Public Sector staff opinion on this matter – something that a general survey would provide by way of data. Although all participants appeared able to reflect objectively on this issue, there is, without quantitative evidence to support it, a risk that opinions expressed reflect a management-orientated view inclined away from the added complexity involved in actively applying ex-gratia payment options.

In the final analysis, if reward, staff motivation and innovation/IP development are strongly linked with staff perceptions, as is suggested in the WA GIPP (2003), then further research should be conducted to better understand why it has not been successful in the Western Australian Public Sector context. Based on the lack of evidence of rewards being highlighted in other GIPP models identified, it is assumed the
participants’ views to deemphasise the reward system at the WA GIPP level is appropriate.

However, it is also recognised that special extra-ordinary situations may exist and these should be accommodated if State economic objectives are to be supported through the WA GIPP.

Agency-level ‘reward’

Agency-level ‘reward/incentive’ was also raised by a number of participants in respect to examples of successful IP commercialisation in Western Australian Public Sector agencies which subsequently resulted in equivalent reductions in those agency’s annual budgets.

In general, the same reward/incentive issues and concerns appear to apply at the agency-level, in respect to budget funding, as apply for the personal inventor/innovator – i.e. the Western Australian Public Sector budget process not being seen as providing incentive for achieving WA GIPP (2003) objectives in spite of the specific reference in the WA GIPP (2003):

> Government recognises the importance of providing an incentive for Government Agencies to meet the objectives of this Policy. Government Agencies should therefore generally be entitled to retain some, if not all revenues received by them from the Commercialisation of IP.

Revenue can be retained by a Government Agency having specific legislative powers to retain revenues or by having net appropriation arrangements under section 23A of the Financial Administration and Audit Act 1985 (WA). Requests for revenue retention are considered on a case by case basis and the Treasurer is likely to agree to a Government agency retaining revenue if a sound business case is presented and the revenue is to be applied to high priority Government outputs or projects. Agencies that are funded via another agency rather than from direct appropriation will need to obtain the consent of the relevant agency or Minister to retain revenues. (p. 7)

By way of an example provided: a specific case was raised by one participant where significant revenue was achieved through the sale of a computerised courts system developed in the Western Australian Public Sector which subsequently resulted in the agency’s annual budget being reduced by the equivalent amount – i.e. revenue provided by IP commercialisation was offset by subsequent reductions in agency Consolidated Account allocations.⁸

Indeed, it appears likely the budgetary outcome ‘signals’ sent by these type of examples may have contributed to a decline in focus on government IP commercialisation within the Western Australian Public Sector – i.e. based on participant feedback, they certainly do not appear to have enhanced the Western Australian Public Sector capacity for optimising desirable outcomes.

Summary

In summary, the emphasis on individual rewards in the WA GIPP (2003), as motivation to increase the probability of government innovation and IP development in the Western Australian Public Sector, has not produced the intended outcomes. By way of evidence, a number of anecdotal cases were cited by participants where staff applications for recognition and reward, in respect to innovation and IP development, had been
dismissed by management. These examples appear to be effectively communicated throughout the Western Australia innovation and IP networks.

In general, after all interviews were completed, the overall impression could be paraphrased as: ‘a good idea in theory, but too hard, and too complex, to implement effectively in the Western Australian Public Sector’.

Based on this feedback, and the lack of finding a consistent approach in other GIPP jurisdictions, a pragmatic strategy of focusing on agency productivity outcomes is recommended rather than prescribing whole-of-government mechanisms which are not culturally feasible to implement. This pragmatic approach de-emphasises the role of reward and incentive at the WA GIPP level – a situation that reflects a large portion of the Western Australian Public Sector environment – while seeking to provide mechanisms for those situations where strategic value to State priority objectives are clearly evident.

The review notes the SA Government’s approach to the issue of employee reward for IP commercialisation is similar to Western Australia, except that an easier avenue is provided for Ministerial-Cabinet level endorsement of special “exceptional” IP commercialisation related outcomes when these are deemed appropriate (e.g. see the section on SA in Appendix C).

Irrespective of the actual upper reward limits involved in each jurisdiction (e.g. WA compared to SA, as these will change from time-to-time) the SA example indicates the acceptance of the principle that competing for the services of high quality researchers needs to involve the capacity to do so – i.e. including a competitive reward/incentive system is necessary and desirable.

As such, although the review recommends adopting the general deemphasising of rewards and incentives in the WA GIPP, in line with most participants’ sentiments, it also suggests more work be done to find ways to attract and retain the high quality resources (human and financial) and increase the probability of successful government IP commercialisation.

Appendix G sets out the Western Australian Public Sector elements, including the *Industry and Technology Development Act 1998* (*ITD Act*), which might be useful for designing an innovation/IP reward system which recognises both individual and organisational level “extra-ordinary” achievement – especially in strategically important and potentially high-reward fields such as health and bio-technology. Establishing a limited ‘test-case’ may be appropriate to develop this concept – e.g. within the Western Australia Government’s Health sector.

3. Risk Aversion and Organisational Culture

Based on participant comments, the Western Australian Public Sector reflects the wide range of international trends and challenges in respect to promoting innovation and creativity while simultaneously accommodating public sector management’s traditional aversion to risk.

General observation during the interview process identified more focus on innovation and IP development/commercialisation, as part of the normal business practice and culture, within those agencies exposed to higher levels of commercial pressure – e.g.
Water Corporation, Landgate, and various training institutions exposed to commercial market competition.

Agencies with less direct exposure to market conditions and revenue generating pressures (e.g. those with a stronger regulatory focus) tended to reflect traditional public sector values of equity and risk adverse management.

The issue of ‘fear of making mistakes’ in the Western Australian Public Sector context was raised by more than one participant as a cultural ‘fact’ that inhibits the experimentation and risk-taking usually associated with innovation and IP commercialisation.

The purpose of reporting this observation is not to suggest criticism of the Western Australian Public Sector – rather the issue is raised to:

a) describe the variety of agency operating environments that any successful whole-of-government WA GIPP must accommodate; and

b) identify a strong cultural driver towards the trend for developing greater private sector involvement in IP development and commercialisation.

In respect to this issue, government innovation and IP development must not only be seen as systemically desirable, but also culturally feasible. Both these elements, necessary for effective change, are covered in the report’s recommendations.

4. WA GIPP – Agency Performance Evaluation

As noted in the evaluation section (see Appendix E), the review was not able to quantitatively evaluate agency performance in respect to desired outcomes stated in the WA GIPP (2003).

The Western Australian Public Sector is not alone in this situation. Based on literature, this ‘information deficit’ situation was judged to be similar to the UK and Canada where identifying suitable policy ‘evidence’ was found to be a major inhibitor to performance evaluation.

Therefore, the review took the view that an agency’s success in meeting its agreed budget outcomes (as agreed by the respective Ministers, and audited by the Western Australia Office of the Auditor General) was indicative of, and consistent with, the requisite application of innovation and good governance practice – i.e. it is assumed that any failure to meet overall business objectives may also suggest poor performance against WA GIPP (2003) expectations in both developing and incorporating innovation and IP developments.

Based on published annual reports, containing auditor opinions, all agencies surveyed for this review were judged to have met general good governance standards, and within the general observations relating to the limitations of the WA GIPP (2003), to have organisational cultures and procedures that supported desirable WA GIPP (2003) outcomes being achieved.

The review notes that future WA GIPP reviews will be better able to evaluate performance if agency self-evaluation evidence is available – a recommendation of this report in respect to developing good governance practice and providing evidence of policy implementation.
5. Copyright

As noted in the introduction, the review also considered the issue of copyright in the Western Australian Public Sector context as growing in importance from a WA GIPP perspective – both in terms of applying it and also respecting it in an increasingly litigious international environment. The recent legal challenge of Optus vs. Telstra for broadcast of sporting events is a case in point.\(^{10}\)

Copyright is considered part of the broader spectrum of IP although it is not a dominant theme in the WA GIPP (2003) which is more strongly focused on commercialisation of invention and innovation. International IP trends also suggest copyright is increasingly seen as a strategic tool aiding national economic recovery through the digital economy sector – e.g. UK.

The review found participant agencies tended to reflect this divide between innovation/invention and copyright within their organisational structures and cultures – i.e. with different staff and sections being responsible for copyright and IP related issues. It is assumed this situation is a legacy of information management, libraries and records management being often separated from the creative business invention and innovation commercialisation process.

Trends towards the growing importance of the digital economy, and the higher risk of inappropriate use of IP belonging to other organisations, may require stronger links and synergies between these areas in the future.

In respect to government copyright, there has also been an international trend towards promoting open government and greater default access to public sector information as a potential resource for commercial development by non-government organisations.

This trend is reflected in the development of the CC approach stemming from the United States of America (USA) where government IP is the exception rather than the rule.\(^{11}\)

The main principle behind the CC approach is towards open government and free release of (and access to) government information for possible further development by the non-government sector. USA government IP legislation and policy focuses on the lack of IP commercialisation by the private sector – i.e. it can penalize holders of IP developed in government for not delivering to market. Other jurisdictions take different approaches (See Appendix C).

In 2010, the Queensland Government (QG) adapted the CC approach for use by Australian governments. A QG Enterprise Architecture (QGEA) policy mandated the use of a consistent information licensing framework (GILF) for Queensland agencies.\(^{12}\)

GILF stipulated QG agencies should:

- incorporate GILF in departmental policies;
- ensure that government information to be released by a department is licensed with one of the GILF licences or a licence (restrictive) which supports the GILF policy benefits;
- apply the least restrictive use rights that are legally and operationally applicable to the government information to be licensed;
- ensure that employees understand GILF consistent with their positions; and at a minimum
- ensure that information about GILF is available to users to enable them to understand Queensland Government’s use of GILF, the Creative Commons licences and the Restrictive Licence and to
The possibility of adopting AusGOAL as a Western Australian Public Sector standard within the WA GIPP was raised with participants.

Most participants were unaware of AusGOAL (or GILF) developments although many participants had some knowledge of the generic CC approach. Participant responses were generally either supportive in principle, or neutral. One agency expressed some concern about the possible impact on their commercial business operations – although these concerns seemed to be more strongly associated with the issues of the apparent ‘free access’ to government information ethos underlying the CC approach than to the AusGOAL ‘technology’ per se.

AusGOAL implementation is neutral to the business requirements of the organisation, and its six-level licensing options (including a restrictive licence) appear to cover the full spectrum of options – i.e. from ‘free and open access’ through to specifying fully secure and commercial-in-confidence contract conditions.

Three issues remain in respect to adopting AusGOAL in the Western Australian Public Sector through the WA GIPP:

a) The general consensus by most participants that the WA GIPP should not be prescriptive – which mandating AusGOAL would entail (e.g. as per the QGEA);

b) The need to better understand the business implications of the open government ethic underpinning the CC approach in those agencies engaged in competitive commercial activity – e.g. in education and training services delivery.

c) The ongoing funding support issues for AusGOAL (and its management project) which appeared to be unresolved at the compilation of this report.

The QG has made significant progress with their GIPP policy since 2003 and they are now possibly the current Australian benchmark (along with NSW). Therefore, mandating AusGOAL as the standard for use in the Western Australian Public Sector through the WA GIPP should be seriously considered as adopting best practice.

The minimum policy position recommended by AusGOAL’s programme director, at this time, is to ensure adoption of AusGOAL by individual agencies in Western Australia is not precluded by the WA GIPP.

Adopting AusGOAL as a Western Australian Public Sector standard would facilitate efficiency with staff training and awareness of standardised information management and publication procedures across the public sector. However, the issue of how AusGOAL should be applied in respect to information openness within agencies engaged in competitive commercial activities needs further investigation.

This review concludes that copyright should be given a higher profile in future WA GIPP and that AusGOAL should be considered as the Western Australian Public Sector defacto standard unless considered non-applicable by an agency (i.e. under the non-prescriptive principle). The copyright management issue may be better addressed through an associated Public Sector Commissioner’s Circular at a future time.
In summary: AusGOAL is an enabling technology able to ‘stamp’ government publications with a range of copyright usage conditions reflecting the agency’s business decisions. The broader principles of open government underpinning the CC approach should be addressed by a broader Western Australia information policy. In BC, this role is performed by their Office of Information Commissioner although Western Australia’s equivalent Office of Information Commissioner does not have jurisdiction for this matter.\(^\text{14}\)

In the meantime, AusGOAL appears to be emerging as a useful default Australian government standard and the review supports its adoption by Western Australian Public Sector agencies where they determine it has relevance.

6. Conclusions
The WA GIPP (2003) appeared to be generally well accepted by the Western Australian Public Sector agencies contacted for this review.

At a minimum, the future WA GIPP needs minor corrections to bring it into line with changes in legislation since its release in 2003.

However, in terms of achieving its aspirational goals, the WA GIPP (2003) has been less successful in respect to providing easily accessible public evidence for evaluation and review.

It would appear from public documents (e.g. annual reports) that few Western Australian Public Sector agencies are failing in their missions due to lack of focus on productivity, innovation and IP commercialisation.

However, by extension, it is also not possible to evaluate what ‘opportunity loss’ may have occurred in the Western Australian Public Sector due to inappropriate incentive systems. It is concluded that, in respect to promoting a culture of staff rewards for invention and IP, the WA GIPP (2003) has not achieved any significant impact.

Participant opinions on the merits of the strong focus on rewards and incentives were mixed. One range of participant views supported more flexibility and agency control over the levels of reward incentives – e.g. supporting more effort to develop an alternative discretionary ex gratia reward system.

Another range of participant views considered the whole topic of staff rewards and incentives should be defocused in the WA GIPP and, ideally in some views, explicit mention removed altogether from the WA GIPP. This latter opinion appeared to consider the risk of setting high staff expectations in situations where agencies could not support this outcome as interfering in agency governance responsibilities.

The complex area of rewards and incentives is sufficiently fundamental to innovation system theory, and its linking of innovation and IP development to broader productivity goals, that further investigation is recommended to investigate and recommend on how best to proceed.

Either the innovation theory is incorrect, or at least less relevant to the Western Australian Public Sector, or the Western Australian Public Sector needs a strategic focus on how the Western Australian Public Sector culture and governance systems can better accommodate higher productivity expectations and benefits through innovation and IP commercialisation.
It is therefore suggested that focus on rewards and incentives be reduced in the WA GIPP unless a new system can be designed to allow rewards and incentives to be applied by agencies to meet their staff expectations.

Based on the views obtained during this review, it may be possible to establish the necessary WA GIPP rewards framework for a select group of specific agencies through a combination of Western Australian Public Sector ‘CEO’ agreements, budget resource agreements, and the powers inherent in the ITD Act.

In this case, higher risk and potential benefits could be managed in strategic IP ‘development zones’ by Western Australian Public Sector agencies prepared to implement appropriate governance standards. Appendix G outlines a brief schematic to support this possible two-tier approach.
RECOMMENDATIONS

The ten recommendations (below) relate to the retention and improvement of the WA GIPP in its anticipated updated release during 2012.

They address the issues and concerns identified in this review. If endorsed, some recommendations can be implemented directly as technical improvements (e.g. Recommendation 1), while other recommendations will require further definition and specification in conjunction with small cross-agency working groups.

1. **Recommendation 1** – implement changes recommended by the SSO to update the WA GIPP and associated guidelines to reflect current legislation and regulations.

   1.1. The SSO provided a number of comments in May, 2011 including the need to reflect changes to certain statute references. These technical changes can be implemented without further consultation and subsequently verified by the SSO before release.

2. **Recommendation 2** – adopt a clear English style and standard policy presentation where possible to increase the appeal and level of engagement for non-expert audience.

   2.1. Introduce a stronger narrative in the WA GIPP to link government productivity goals with industry and science policy through government innovation and IP development and commercialisation.

   2.2. Distinguish between responsible governance to protect government assets and exceptional extraordinary innovative and IP development effort to drive Western Australia State economic objectives.

   2.3. Base the WA GIPP 2012 document format on the more recent GIPP models developed by Queensland, NSW and SA – including system schematics for managing the IP development and commercialisation process to help improve overall understanding of critical decision points. (see Recommendation 3 below)

   2.4. Establish a cross-agency working group to direct the compilation of a new WA GIPP 2012 document with assistance from contracted resources supplied through ISI.

3. **Recommendation 3** – increase focus on improving State outcomes through systems of innovation (including supportive organisational cultures) and IP commercialisation.

   3.1. Introduce an innovation / IP commercialisation systems ‘life cycle’ approach to help clarify where certain issues and challenges (requiring additional help) may exist in achieving IP commercialisation.

   3.2. Reduce the need for Western Australian Public Sector agencies to use non-government organisations options (e.g. the university system) for IP commercialisation in order to circumvent failures in the WA GIPP IP commercialisation system.
3.3. ISI to investigate the desirability for a role in the Western Australian Public Sector to oversee the disposal of government IP from a whole-of-government perspective – e.g. as per the BC OCIO role.\(^{15}\)

3.4. Encourage, without prescribing, the adoption of the AusGOAL framework in the Western Australian Public Sector as a standard system of copyright management with the full endorsement by the WA GIPP (and/or associated Public Sector Commissioner’s / Premier’s Circulars) when various management issues have been further clarified.

4. **Recommendation 4** – reduce the focus on staff rewards in the forthcoming WA GIPP 2012 and refer to the respective agency’s capacity and options within the Western Australian Public Sector legislative frameworks while recognising the need to attract quality human resources through competitive reward systems.

   4.1. Reduce the focus on staff rewards WA GIPP (i.e. as part of the ex gratia payments system) in recognition that it is not applicable, nor successful, in most normal innovation and IP commercialisation situations across the Western Australian Public Sector.

   4.2. Recognise the possibility (and desirability) of extraordinary innovation and IP commercialisation possibilities in strategic sectors and reduce the effort and complexity to apply reasonable rewards. Although the new Western Australian Public Sector ex-gratia payment upper limit ($250 000 as of 2007) provides greater scope for incentive and reward, the degree of difficulty involved (including change in the Western Australian Public Sector culture) suggests a new approach is required to be competitive for those exceptional cases in relevant strategic sectors such as medical invention in the Health sector. SA’s “fully transparent and accountable” approach includes annual assignment of funds from net returns and possible assignment of licenses to staff where other options do not exist.

   4.3. Establish a cross-agency working group to direct the compilation of a new competitive Western Australian Public Sector model of reward and incentive in line with other states – e.g. specifically SA.

5. **Recommendation 5** – increase the capacity for Western Australian Public Sector agencies to benefit from revenue streams and increased productivity (or risk reduction) resulting from successful innovation and IP commercialisation.

   5.1. Establish a cross-agency working group, in conjunction with the Department of Treasury (DoT) and the Department of the Premier and Cabinet (DPC), to design and recommend a Western Australian Public Sector model that recognises and shares the benefits of significant innovation and IP commercialisation achievements in the Western Australian Public Sector.

   5.2. Establish a special conceptual ‘IP development’ and management zone within the Western Australian Public Sector through the powers of the *ITD Act* to demonstrate and test the capacity for special ‘extra-ordinary’ conditions (including competitive staff and agency reward mechanisms) to facilitate WA GIPP.
objectives – e.g. a notional “Western Australia Health Sector IP Development Zone” as a virtual extension of a Technology Development Park.

6. **Recommendation 6** – emphasise devolved governance responsibilities at the agency level and encourage agencies to publish evidence of their own agency IP policy, strategies and achievements.

6.1. Issue an updated Premier’s (Public Sector Commissioner’s) Circular to encourage all Western Australian Public Sector agencies to create and publish agency-level IP policies that clearly set out the interpretations of the higher-level WA GIPP – including copyright and staff recognition.

6.2. Request Western Australian Public Sector agencies with significant involvement in IP development and commercialisation to undertake regular self-assessment with the results being made available for future whole-of-government WA GIPP performance evaluation.

6.3. ISI to commission a suitable independent Western Australian Public Sector-wide survey of staff awareness of the WA GIPP and its objectives and conditions (See a possible prototype in Appendix F).

7. **Recommendation 7** – conduct an annual GIPP practitioner workshop focused on promoting networks and awareness of government innovation, IP commercialisation and research opportunities in Western Australia.

7.1. Promote Innovation and IP development and commercialisation as part of the *ITD Act* through ISI Innovation Centre networking and annual events related to innovation and government IP commercialisation (i.e. in line with an ‘innovation hub’ concept).

7.2. Ministerial release of a new WA GIPP 2012 version in conjunction with the annual Australian Innovation Festival (i.e. April-June 2012).\(^\text{16}\)

7.3. Invite national and international keynote speakers to speak at the release on various related IP topics – including the national AusGOAL representative.

8. **Recommendation 8** – develop a WA GIPP 2012 information ‘tool kit’ including check lists, standard templates, typical IP/innovation system descriptions and guidelines for Western Australian Public Sector staff induction, training and moral rights management.

8.1. Seek permission from other state governments (e.g. Queensland and NSW) to adapt, where appropriate, their comprehensive guidelines and ‘tool kits’ for the Western Australian Public Sector.

8.2. Commission a new WA GIPP support ‘tool kit’ to be developed based on current best practice examples.

9. **Recommendation 9** – establish a panel contract of commercial IP lawyers and commercialisation experts for the Western Australian Public Sector to use where appropriate to help increase commercialisation opportunities while reducing routine IP related administration work for agencies and the SSO.
9.1. Provide a number of Western Australian Public Sector agencies, which regularly approach the SSO for advice or legal services, with direct access to a pre-approved panel of legal services.

10. **Recommendation 10** – commission an independent review of government and non-government stakeholders to identify how public-private collaboration can improve State benefits and achieve science and industry policy objectives through government innovation and IP development.

10.1. The Minister to invite the Technology and Industry Advisory Council (TIAC) to undertake a review into how Western Australian State science and industry objectives could be better optimised through greater private sector involvement and partnership.
NEXT STEPS

The ten recommendations (outlined above) represent a set of broad actions which can be applied to improve the WA GIPP in 2012.

Further work is required to specify the detailed actions necessary to progress most recommendations.

A number of small cross-agency project teams will be assembled to oversee the implementation of endorsed recommendations during 2012.

As a courtesy, following endorsement, a copy of the report (revised if necessary) will be circulated to participants for their comment.
APPENDICES

A copy of page 2 of the original Cabinet Summary Sheet (AD1645/03V04)

The Policy states that Government Agencies will ensure that:

“A IP created with Government Resources is identified, captured, suitably protected and responsibly managed.

B Rights to IP are allocated to optimise the Benefit to Western Australia from the use and Commercialisation of the IP.

C Creativity and Innovation resulting in the creation of valuable or useful IP with Government Resources is encouraged and incentives are provided where appropriate, noting that monetary rewards should only be paid from revenue received from the Commercialisation of the IP and can only be paid with the approval of Executive Council.”

The Policy also requires Government agencies to operate consistently with the following Key Principles (outlined in the Policy).

1. to manage and utilise their IP to enhance delivery of services and performance of core functions.
2. to preserve and enhance the operational value of the IP;
3. to maintain and build upon core business;
4. to work in a spirit of cooperation with the Business Community in the development and Commercialisation of IP;
5. to adopt risk management methodologies to ensure that Government is only exposed to an acceptable and managed level of risk;
6. to seek to apply best practice in the Management and Commercialisation of IP; and
7. to operate in an accountable manner and be prepared to justify their processes and decisions in an auditable and transparent way.

The Policy requires Government Agencies to seek to optimise the Benefit to Western Australia of its actions which involves the identification and weighing of Western Australian interests affected positively or negatively by their actions. Indicative factors set out in the Policy should be used to aid decision makers to assess how a proposed course of action may benefit Western Australia. The factors proposed in the Policy are:

1. Contribution to the development of the Business Community.
2. The inclusion of small to medium businesses in IP related opportunities.
3. The development of employment opportunities.
4. Enhancement of human capital through skill and knowledge exchange.
5. Revenues flowing into Western Australia as a result of the commercialisation of the IP.
6. Capital investment in knowledge based industries and research and development infrastructure.
7. Increases in Government efficiency and effectiveness.
8. Social and environmental benefits from broader take up of the IP in the community.
9. Creation of new research and training opportunities.
APPENDIX B – Contributing Agencies and Corporations

A list of Western Australian Public Sector Agencies and Corporations contacted for this review and the number of participants involved:

- Central Institute of Technology\(^{17}\) \(n=1\)
- Challenger Institute of Technology\(^{18}\) \(n=2\)
- Chemistry Centre (Western Australia)\(^{19}\) \(n=1\)
- Department of Agriculture and Food (DAF)\(^{20}\) \(n=2, \text{ plus additional email correspondence with staff members}\)
- Department of Fisheries (Western Australia)\(^{21}\) \(n=2\)
- Department of Health (Western Australia)\(^{22}\) \(n=2\)
- Department of Mines and Petroleum (DMP)\(^{23}\) \(n=1, \text{ Engineering Division}\)
- Department of Training and Workforce Development\(^{24}\) \(n=2\)
- Office of the Information Commissioner (OIC)\(^{25}\) \(n=1\) (Note: (opinions expressed for this review did not represent the formal role of OIC Commissioner)
- State Library (Western Australia)\(^{26}\) \(n=2\)
- Water Corporation (Western Australia)\(^{27}\) \(n=1\)
- West Coast Institute of Training\(^{28}\) \(n=3\)
- Western Australian Land Information Authority (Landgate)\(^{29}\) \(n=3\)
- Western Australian Museum\(^{30}\) \(n=1\)

Note: participant’s names are not identified in this report, nor are any direct quotations included.

In addition, comments were invited from:

- Mr Peter van Bruchem (Director, Elevation Corporate) in respect to his significant role in formulating the WA GIPP (2003).
- Mr Baden Appleyard (National Programme Director, Australian Governments Open Access and Licensing Framework – AusGOAL) in respect to the AusGOAL project.
- Mr Des Hutchinson, (Director, Public Sector Commission) – comments on the background of AusGOAL development.
- Mr Peter Sparkes, Office of the Auditor General (OAG) – telephone discussion on the approach and methodology being applied for this review.
APPENDIX C – Intellectual Property

Intellectual property (IP) rights are the rights given to people over the creations of their minds. ³₁

In the context of employment, these rights may be shared with the employer and others involved in the process of development – although this is dependent on the national context.³²

Government has an essential role to encourage an effective system of innovation through ensuring protection of IP rights, including patents, trademarks, and copyrights. This typically requires substantial investment in education, research and development, and labor skills in order to successfully bring new ideas to the marketplace.³³

In the broader IP context:

- A patent provides a limited monopoly to the holder granting exclusive rights to make, use, and sell the patented innovation for a limited period of time within a legal jurisdiction.
- A trademark is a word, symbol or phrase identifying a particular product to distinguish it from the products of another manufacturer. Trademarks are territorial, meaning they are enforceable in a specific geographic territory.
- Copyrights protect works of authorship (e.g. writings, music, and works of art) that have been “tangibly expressed”. Copyright protection against unauthorised use in a particular country depends, basically, on the national laws of that country.³⁴

Innovation and engagement with new ideas and technologies are both considered important drivers of economic growth and significant contributors to productivity and employment (Organisation for Economic Co-operation and Development – OECD 2001).

For evidence-based policy, an effective system of innovation therefore includes suitable indicators and measures covering human resources, knowledge creation and knowledge diffusion – e.g. knowledge creation indicators are measures of the potential for generating new ideas and technologies which may include “expenditure on research and development (R&D) and other innovative activities; and the development of intellectual property such as numbers of patents or scientific papers” (Australian Bureau of Statistics 2008, p. 5).

Although IP is generally considered to promote innovation and economic development (OECD 2001) it can also provide a strategic tool for commercial parties to block commercial competition – this is especially the case with large companies:

A third survey is the PatVal-EU survey on inventor, which provides information on the actual uses of patents (Giuri et al. 2007). The analysis shows that large companies trade less than 10% of their patent portfolio and leave 40% of their patents unused. These figures are in sharp contrast with those for medium companies, for which it is estimated that 65% of the patents are actively used, about 10% are traded, and 25% are left unused. Small companies reveal that more than 25% of their patents are traded and less than 20% are unused. (de Rassenfosse 2010, p. 2)
Therefore, managing IP can be a complex and often expensive exercise requiring a specialised understanding of the international, national and local contexts in order to achieve strategic business goals – especially within a rapidly changing global business environment.

In 1996, the World Trade Organisation’s (WTO) introduced IP rules into the multilateral trading system for the first time – e.g., see the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).[35]

The international trends towards greater deregulation, small government and bilateral free-trade agreements have increased the challenges for governments to support their local industry development and science policy through their respective GIPP frameworks – e.g., ensuring publically funded research and development grants (which produce IP then on-sold to international business interests) benefit the local business and economic environment.

IP Protection in Western Australia

Seven types of IP protection are promoted in Western Australia for the business environment – these also apply to government organisations:

- patents for new or improved products or processes;
- trade marks for letters, words, phrases, sounds, smells, shapes, logos, pictures, aspects of packaging or a combination of these, to distinguish the goods and services of one trader from those of another;
- designs for the shape or appearance of manufactured goods;
- copyright for original material in literary, artistic, dramatic or musical works, films, broadcasts, multimedia and computer programs;
- circuit layout rights for the three-dimensional configuration of electronic circuits in integrated circuit products or layout designs;
- plant breeder’s rights for new plant varieties;
- confidentiality/trade secrets including know-how and other confidential or proprietary information.[36]

The WA GIPP (2003) states:

“Intellectual Property” & "IP” means the legal rights which result from intellectual activity in the industrial, scientific, literary, artistic, musical and dramatic fields and includes all rights, including, without limitation:

(a) patents, copyright (including moral rights), rights in circuit layouts, plant breeders’ rights, registered designs, trade marks, and the right to have trade secrets kept confidential
(b) any application or right to apply for registration of any of those rights; and
(c) any rights which may be introduced or come into existence through international and national laws. (p. 5)

The definition also notes that IP rights are complex in nature and significantly different from rights in physical property.

Within the wider Australian public sector context, as a general principle, governments own any IP developed by their employees in the course of their employment unless it is
specifically agreed otherwise. Moral rights are an exception and they normally automatically belong to the creator in the absence of an agreement to the contrary.\(^{37}\)

However, the field is complex and dynamic. In February 2010, the High Court of Australia upheld the Full Federal Court’s decision that Dr. Gray owned the IP in the inventions he created while employed by the University of Western Australia due to no express IP ownership clause in Dr Gray’s employment contract with the University.\(^{38}\)

Government IP can generate value through direct license revenue, reducing operating costs (efficiency), enhancing reputation for innovation, or through reducing social and environmental risks. However, managing government IP can distract from core business and in some situations greater public benefit may be achieved through the release of government IP for further development and management by the private sector.

The ‘right’ approach to managing government IP cannot be easily determined within a high-level generalised GIPP framework. In general, a higher-level GIPP is part of a system of ‘good governance’ at the agency level which balances a number of complex competing priorities and risks. For example, government expectations for revenue returns within competitive commercial environments (e.g. fee-based education and training services) may compete with industry expectations that publically funded collaborative research and development should create pre-competitive market opportunities for further local industry development.

Effective over-arching whole-of-government IP policy frameworks establish the need for government IP assets to be defined, managed and disposed of responsibly without prescribing the detailed methods and outcomes at the agency level. However, although necessary for evidence-based policy approaches, evaluating IP policy outcomes against GIPP expectations is difficult – especially in respect to identifying solid ‘evidence’ for claims and opinions.

In addition, developing IP within the public sector context is often considered a secondary issue in respect to the official purpose of the organisation – in fact a number of Australian government IP policies explicitly stipulate government IP development should not be a primary aim in itself which detract from achieving core business service goals.

In summary:

- Productivity is increasing seen as the response to the global economic challenges affecting many developed and developing economies at this time.
- IP is a complex and specialised field supporting innovation and promoting productivity.
- Developed economies are increasingly using IP as a strategic tool to develop wealth within the emerging digital market economy.
- Effective competition in a global marketplace of products, services and ideas increasingly requires the creating, ongoing management, and defense of IP as a strategic focus in itself.
- Development of government IP creates state/public assets although the value of these IP assets may be realised by the agency itself or through releasing it to the market (while retaining certain rights and privileges).
As such, GIPP provides an opportunity to help generate local economic benefits from public sector operations (and publically funded research) to achieve industry development policy and science policy objectives.

Western Australia Government IP Policy

Western Australia’s first GIPP was developed in 1987 in response to the increasing importance and potential value of government IP (e.g. in agriculture, mining, and information technology) with the aim of setting the appropriate method of sharing net revenue from inventions by government officers.39

A major updated release of the WA GIPP and guidelines were published in 1997 (Department of Commerce and Trade 1997) – together with another related policy and guidelines on exporting Western Australian Public Sector skills and expertise.40

A review of the WA GIPP was undertaken during 2000 and an updated version approved by Cabinet published prior to a change of government in early 2001.41

Following extensive rewriting, the current version of the WA GIPP was published in March 2003 (WA GIPP, 2003) following approval by Cabinet. Appendix A lists the approved objectives.

The release of the WA GIPP (2003) was accompanied by the Premier’s Circular 2003/04.

The WA GIPP (2003) defines those IP related activities and outcomes in the Western Australian Public Sector which are considered assets of the ‘State of Western Australia’. The policy outlines the principles and Western Australian Public Sector management responsibilities involved in developing these IP assets for the public good. It has been referenced in various national and international documents.42

Anticipated benefits flowing from the WA GIPP (2003) include:

a) To business – “revenue, expansion of business opportunities and improved international competitiveness”

b) To government – “revenue that can be raised, enhanced industry capability, and a positive and respected reputation for the development of innovative and technological solutions”

c) In both cases – IP commercialisation can benefit the community through “wealth generation including increased employment”. (p.3)

The WA GIPP (2003) policy statement reads:

Policy Statement

Intellectual Property (IP) created with Government Resources is a major potential source of value to the Western Australian economy and community.

Government will actively seek to optimise the economic, social and environmental benefits to Western Australians from the use and Commercialisation of that Intellectual Property in conjunction with the Business Community.

Government Agencies will ensure that:

A. IP created with Government Resources is identified, captured, suitably protected and responsibly managed.
B. Rights to IP are allocated to optimise the Benefit to Western Australia from the use and Commercialisation of the IP.

C. Creativity and Innovation resulting in the creation of valuable or useful IP with Government Resources is encouraged and incentives are provided to Government employees where appropriate, noting that monetary rewards should only be paid from revenue received from the Commercialisation of the IP and can only be paid with the approval of Executive Council. (p. 6)

In addition, the WA GIPP (2003) specifies a regular review process should be carried out:

**Review of Policy**

As soon as practicable after the expiry of four years from the release of this Policy the Government Intellectual Property Policy Council (GIPPC) will conduct or commission a comprehensive review of the Policy and will report to the Minister for State Development within six months after the commencement of the review. (p.7)

The Government Intellectual Property Policy Council (GIPPC), mentioned above, was never formally established. However, a limited survey of IP management across the Western Australian Public Sector was commissioned in late 2006 (cf. Fortina and Christian 2007) by the former Western Australian Department of Industry and Resources. Fortina and Christian (2007) distributed twenty-two questions to fifty-four agencies and received thirty-one responses. The survey noted there was a wide range of “sophistication and expertise” found in respect to IP.

Other findings included:

- There was a general awareness of IP with respect to each agency’s operations.
- The majority of IP related activity in the agencies surveyed was related to copyright.
- IP record keeping appeared to be an “administrative obligation” rather than seen as part of a strategic process.
- Limited times and resources appeared to be spent on managing IP which may be a result of limited resources and "lack of executive focus".
- Several agencies reported implementing or improving IP policy and management processes.

The Public Sector Commissioner’s Circular 2009-03, which superseded the Premier’s Circular 2003/04, stipulates a review of the WA GIPP (2003) should occur in 2011.44

**Summary**

In summary: while retaining the “good government” objectives of former versions, the WA GIPP (2003) placed stronger focus on industry and economic development with the intent to encourage “Government collaboration with the business community to develop and commercialise IP that has been developed with Government resources” (p.3).

The WA GIPP (2003) places significant focus on employee incentives with the aim to help facilitate innovation (e.g. see Section C, p.15).
The WA GIPP (2003) also refers to an associated document “Encouraging Innovation by Government Employees” which sets out the conditions and limitations with rewarding government employees who are deemed:

... outstanding innovators .... [and are] directly involved in the creation or further development of the IP .... rewards should only be paid to employees [or teams of employees] who make a significant direct contribution to the development of the asset.45

Based on participant feedback, the WA GIPP (2003) reward and incentive system is the least understood and most challenging aspect to implement. In effect, the WA GIPP (2003) ‘reward system’ refers to the normal public sector ‘ex gratia’ payment facility – an avenue of payment with numerous conditions and limitations (including an upper-limit of $50,000 in 2003) – which potentially applies to any general circumstance. Therefore, the WA GIPP (2003) approach to rewards does not appear to signal a special focus on, or value for, innovation and IP development within the Western Australian Public Sector context.46

In addition, although the WA GIPP (2003, p.7) mentions retention of revenue by Government agencies, no mention of a ‘reward system’ is provided in respect to annual agency-level budget determinations – i.e. the emphasis is on ad-hoc “sound business” case-by-case submissions rather than a formal process and agreed conditions expressed as a formal resource agreement. This issue is also covered later in this report in respect to the case of the Western Australia Courts system (circa. 2005).

Based on the SA Government model, a special reward/incentive system may be possible using CEO Agreements, Budget Resource Agreements and sections of the ITD Act (1998) (See Appendix D).
APPENDIX D – Global and Australian Trends

Global Trends

A non-exhaustive literature review of a representative sample of English speaking jurisdictions was undertaken to determine the current status of IP developments. Focus was given to the situation in the United States of America (USA), United Kingdom (UK), and Canada. Where helpful, a representative state/province is covered as providing more relevance to the Western Australia context – e.g. California and British Columbia. The role of IP is changing in the modern context from being a “technical topic within small specialized communities” towards a more central and strategic role for organisations (World Intellectual Property Organization, 2011, p. 3).

Understanding these innovation trends and the associated role of IP is important in order for public policy to support new growth opportunities. The essential questions to ask are whether the design of the current IP system is fit for this new innovation landscape, and how best to cope with the growing demand to protect and trade ideas. To move beyond polarized debates on IP, more fact-based economic analysis is needed. In addition, it is crucial to translate economic research in the field of IP into accessible policy analysis and messages. (Ibid.)

The World Intellectual Property Organization’s (WIPO) focus on the need for evidence-based policy in the IP policy domain is reflected in the UK Government’s response to their recent Hargreaves Review on IP:

Fundamentally, the Government agrees with not only the Review’s headline conclusion but also with its underlying critique: too many past decisions on IP have been supported by poor evidence, or indeed poorly supported by evidence. [47] This is true at an international level as well as domestically. Recommendation 1 of the Review calls on the Government to make decisions on IP policy on the basis of good evidence, balancing economic objectives and the needs of various groups. (HM Government 2011 p. 3)

There is international recognition of the need for governments to address cultural and institutional barriers to help facilitate social and public service innovation – e.g. the UK innovation hub (Department for Innovation, Universities & Skills 2008).

The USA and the UK are indicative examples of government recognition of the emerging strategic role of IP rights protection within the international market. Two emerging issues for government IP policy are noted: (a) the risk and penalties for IP abuse/infringement by government agencies is increasing; and (b) directly marketing and defending government IP rights will become increasingly complex and costly.

The global IP legal business industry is significant in providing specialised expertise and skills to minimise risk and maximise benefits to industry when dealing with government IP. McEwen, Bloch, Gray and Lucas (2012) provide strategic guidance for the protection of IP in government contracts and outline various approaches to enforce IP rights in the event of government violation in the USA, the European Union and other industrialised countries.
USA
In the USA, the Office of International Intellectual Property Enforcement (IPE) actively promotes US innovation by advocating for the effective protection and enforcement of intellectual property rights (IPR) around the world.

The stakes are high: based on survey information, the USA’s International Trade Commission (USITC) estimates US IP-intensive firm losses from IPR infringement in China were approximately $48 billion in 2009 – while improving China’s IP rights protection and enforcement to comparable US levels would likely increase employment in their USA operations by approximately 923,000 jobs.\textsuperscript{50}

The USA federal government generally waives copyright within the USA for works produced by their government agencies with these materials generally treated as public domain – although protection may apply outside its national borders (Copyright Law Review Committee 2004, p.49).\textsuperscript{51}

Although, USA state and municipal governments can claim copyright in works produced by their agencies (e.g. Department of Homeland Security)\textsuperscript{52} there has been slow progress to recognise and develop “state-owned” IP at the state level.

For example, in California, a leading state for technology innovation, the State Auditor notes little progress over the last decade to establish clear government IP policy and guidelines – with agencies often having little knowledge of their IP assets and value, and no standard approach being adopted at a whole-of-state level (California State Auditor 2000; 2011).

The fact that more than half of the state agencies we surveyed would like guidance regarding intellectual property indicates that there is a need for the State to provide this information. At the same time, establishing a formal policy poses a number of challenges, and in the past, the Legislature has not been successful in passing proposed legislation related to the State’s management of intellectual property. To move forward, the State will need to clearly articulate the goals of any policy related to intellectual property. We believe that an effective policy would educate state agencies on their intellectual property rights. It would also be flexible and take into account that state agencies perform different functions and work with different types of intellectual property. If the State does not act, it will be missing an opportunity to help agencies make informed, thoughtful decisions about their intellectual property. (California State Auditor, 2011) \textsuperscript{53}

In 2001, the USA Department of Defence (DoD) noted a reversal in leadership had occurred during the previous decades away from government leadership in innovation and IP towards a commercial sector driven paradigm with subsequent need for stronger recognition of IP rights in order to encourage the private sector to share advances with the DoD:

In the past, research programs funded by the Department of Defense (DoD) often led industry efforts in technology. Today the reverse is largely the case—technology leadership has shifted to industry, where most research and development (R&D) dollars are spent . . . .

Challenges to the Government today are to find ways to entice commercial industry into collaborating with the Department in vital research efforts, and to acquire commercial products using commercially friendly terms. While the acquisition streamlining legislation of the 1990s went a long way to create more commercial like contracting processes for the Government, some practices from past decades are holdovers to today. One such area is intellectual property (IP). (Department of Defense 2001, p. iii)
The DoD’s IP policy position is indicative of the USA’s strong focus on private industry development:

These guiding principles require fair treatment of IP owners and encourage the use of that IP to produce commercial products and services that meet Defense needs. They support the current movement for DoD to collaborate with industry on more commercially friendly terms, so that the benefits of commercial research and development can be more readily assimilated into Defense products (Ibid., p. 1-4) . . . .

DoD clauses related to IP are currently built around the following framework:

• Contractors are generally permitted to retain ownership (e.g., title) of the IP rights governing the technologies/information that they develop or deliver under DoD contracts; and
• DoD receives only a (nonexclusive) license to use that IP—the scope of the license depends on the nature of the data, the relative source of funding for development, and negotiation between the parties. (Ibid., p. 2-2)

Subsequent public comment (circa. 2008) indicates some degree of industry dissatisfaction with progress towards achieving these general goals as laid out in the Bayh-Dole Act (1980):

The government generally respects a contractor’s need to protect its intellectual property. Since 1980, the Bayh-Dole Act (the "Act") has streamlined how the government deals with private intellectual property and simplifies the acquisition of intellectual property by the government while extending new protections to the contractor. The Act's policy statement presents the fundamental approach that the government should take with regard to intellectual property: "It is the policy and objective of the Congress . . . to ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and to minimize the costs of administering policies in this area."

The federal government has a reputation for being inflexible and over-reaching by demanding that contractors give up basic intellectual property rights commonly retained in the private sector. For example, if a contractor fails to commercialize a patent developed from federally-funded research, the government can exercise what is known as march-in rights and grant a license to a third party to use the patent without the permission or involvement of the contractor. Fortunately, the federal government has never exercised its march-in rights. But that does not mean it never will. (Norment 2008)

The size of the USA federal government market for industry is significant – estimated to be around $143 billion in 2008 with around $2 billion for one USA State alone:

The federal government spent about $2 billion in North Carolina during 2007 on intellectual property procurement through the licensing and purchasing of customized source and object codes as well as technology research and development. Additionally, hundreds of millions of dollars were spent nationally procuring off-the-shelf software.

Although the private sector now spends more than the federal government overall on technology, no single company can match the $143 billion in the 2008 federal purchasing pipeline for technology. North Carolina’s technology companies should position themselves now in order to take advantage of the expected tremendous growth in Department of Defense and Department of Homeland Security spending in the state. (Ibid.)

Publically available examples of USA GIPP are difficult to locate online, largely because, it seems, they do not exist – a situation that suggests the USA is in GIPP catch-up mode in this respect. However, indications suggest there has been renewed recognition of the
need to effectively engage industry through mutually beneficial government IP arrangements.

As such, there appears to have been a decade of slow progress in developing GIPP at the USA state-level – although recent indicators are emerging in California that a renewed focus on the asset value of USA government IP may help meet the economic budget constraints.

In respect to future GIPP trends in the USA, President Obama clearly signalled the important role of the public domain in supporting research and development during his 2012 State of the Union speech – a view signalling increasing expectations by governments in the USA for greater leverage and budgetary benefits from publically funded activities:

. . . And by the way, it was public research dollars, over the course of 30 years, that helped develop the technologies to extract all this natural gas out of shale rock – reminding us that government support is critical in helping businesses get new energy ideas off the ground.

. . . In three years, our partnership with the private sector has already positioned America to be the world’s leading manufacturer of high-tech batteries. Because of federal investments, renewable energy use has nearly doubled, and thousands of Americans have jobs because of it. (President Obama 2012)

The USA’s foreign policy response to China and its currency valuation is also suggesting focus on illegal use of IP (private and government) will increase.54

UK

The UK Government acknowledges the need to work with limited evidence in designing a modern IP policy framework – one that has a systems focus and provides clear incentives for growth:

While working hard to improve the quality of evidence available, the Government recognises that perfect evidence is an ideal. As the Review recognises in its discussion of IP enforcement, it is sometimes necessary to "guess and get on with it"55 where the alternative is inaction in the face of poor information. We are determined to have an IP system that is the best possible incentive for UK growth, and we want to make rapid progress towards it, informed by emerging evidence. (Ibid.)

The UK Government’s focus on the emerging digital age clearly extends to extracting the maximum domestic economic benefit (especially for small-medium enterprises) from their international strategies and intelligence/diplomatic networks (especially with respect to emerging economies such as China and India).

This aim is expected to be achieved through:

- A Well-functioning International Framework – promoting reform of the international IP system and placing a strong focus on ensuring the European Union’s (EU) IP framework delivers benefits to UK business.
- Good national regimes – promoting effective and consistent enforcement within national regimes (especially with China, India, Brazil, and the United States of America), together with effective government support networks for domestic UK business operating overseas.
- Economic and Technological Development – ensuring balance and allowing IP policy flexibility between industrial challenges (economic growth) and development priorities such as diffusion of medicines and climate change technology in least developed countries. (Intellectual Property Office 2011, p.1).
In respect to copyright, UK government ownership is dealt with through the *Copyright Designs and Patents Act (1988)* which vests ownership in the Crown – an approach which underpins the Australian, Canadian and New Zealand systems (Copyright Law Review Committee 2004, p.42).

In May 2011, the UK Government published *Digital Opportunity – A Review of Intellectual Property and Growth* (Hargreaves 2011) which confirmed the importance of IP-based economic growth and set out ten recommendations for improving the UK’s IP framework – a framework considered to be “falling behind what is needed”:

> The review paints a picture of an IP system that is the foundation for a substantial portion of the UK’s innovation and economic growth but which needs to adapt to meet the challenge of new technologies. The potential benefits it identified from making those changes are considerable: adding between 0.3 per cent and 0.6 per cent to the size of the UK economy by 2020 – between £5 billion and £8 billion – and cutting deadweight costs in the economy by over £750m.” (HM Government 2011, p. 1).

Hargreaves (2011) noted that inappropriate copyright protections will increasingly become a barrier to innovation and economic development as the digital economy develops – a view that potentially impacts the management of government IP and has implications for open government based approaches:

> As data farming becomes routine in systems across the economy, from the management of transport to the administration of public services, copyright issues become ever more important as potential obstacles. In these circumstances, copyright in its current form represents a barrier to innovation and economic opportunity. (p. 43)

The risk of recession in the US and several EU economies (including the UK) increases the risk of economic protectionism as countries compete for shrinking economic demand.

**Canada**

IP protection in Canada is primarily regulated by the federal government’s Canadian Intellectual Property Office (CIPO) which administers and processes most intellectual property legislation in Canada.56

During 2011, the CIPO focused on supporting IP education and promoting awareness of case studies – e.g. one of which features a young entrepreneur who turns to the Office of Applied Research of his former college for advice regarding the protection and commercialization of his newly designed machine.57

In her statement to the Standing Committee on Public Accounts in 2009, the Auditor General of Canada confirmed the importance of IP and the need for the federal government monitor its management to ensure government investments in research translates into value for Canadians:

> The creation, development, and protection of intellectual property are critical early steps in the innovation process. The 2007 federal science and technology strategy, Mobilizing Science and Technology to Canada’s Advantage, recognizes that intellectual property is a critical component of the overall innovation system. (Fraser 2009)58

In respect to monitoring IP policy outcomes, the Canadian Auditor General also found a number of agencies did not comply and the government could not confirm if policy objectives were met:
For Health Canada and Fisheries and Oceans Canada, we found that these departments did not accurately justify when the Crown took ownership of the intellectual property and that they were not fulfilling their obligations as contracting authorities.

The federal government does not know if the objective of the policy is being realized. Industry Canada and the Treasury Board of Canada Secretariat have not adequately monitored the application of the Policy, with a focus on cases where exceptions were invoked. (Ibid.)

At the state/province level, the BC Provincial Government (BCPG) has instituted an IP Program to manage IP licensing and sale of government-owned IP through their OCIO:

- facilitates equal and fair access to intellectual property owned by the Province;
- encourages ministries to make available Province-owned intellectual property to the private sector, particularly where it supports economic development and job creation in British Columbia;
- ensures that ownership of intellectual property developed by employees of the provincial government, or by its contractors, is protected; and
- provides new non-tax revenue to the government. (Government of British Columbia 2012a)

The BCPG reserves the right to impose license conditions and charge fees for government IP related assets under the follow justification:

The permission and licensing fees charged by the IPP are intended to recover a fair share of the government's cost of providing goods and services from those who receive the direct benefits. These fees are not another form of taxation, but instead help to make the provincial government's revenue system fairer by shifting some of the burden away from general taxation, borne by all taxpayers, to those individuals or companies who derive a clear benefit from government-owned material. (Ibid.)

The BCPG’s IP Program has an active role in the management of government IP – including claim of ownership and disposal by the BCPG as a whole (i.e. not as individual agencies):

Crown Copyright of any Work means it belongs to the Province and not to individual ministries or any other government agencies. Unless there is a written agreement to the contrary, including terms of a collective agreement, the copyright for any Work that has been prepared or published by the Province's employees in the course of their employment belongs to the Province. . . .

Where intellectual property is to be disposed of by a ministry under specific legislative authority or under a Treasury Board Order or Directive, SSBC [Shared Services BC] must be notified prior to initiating the disposal in order to ensure there are no issues that may arise from the disposal in relation to other pre-existing intellectual property licensing agreements. . . .

Revenue from disposal of intellectual property will be paid into the SSBC $1000 Vote. Annually, Treasury Board Staff will add, as approved by Treasury Board in the Estimates, the ministry share of revenue received in the given fiscal year to that ministry's base budget for the following fiscal year. (Government of British Columbia 2012b)

In summary, a brief review of international IP trends indicates government IP is managed under a variety of different policy approaches and frameworks ranging from apparent minimal government control of, and leverage from, market based IP development (e.g. in the USA) through to stronger focus on government IP as a public asset (e.g. UK and Canada).

Economic pressures in developed economies are increasing government focus on the strategic role of innovation systems and IP to help facilitate national productivity and economic growth.
Government agencies will increasingly need to develop and manage their IP opportunities in a complex international context – both in respect to the legal use of IP (to avoid risk of legal action) and in respect to the development of government IP (as a benefit to the local economy) without attracting criticism for protectionism and offending international trade agreements.

Australian Trends
The Commonwealth of Australia’s (‘Commonwealth’) jurisdiction and authority for IP is specified in the *Patent Act 1990* and intellectual property is administered through *IP Australia* as a prescribed agency within the Department of Innovation, Industry, Science and Research (DIISR). The Commonwealth acknowledges the close relationship between productivity, innovation and IP. Support for research, science and innovation is provided to help foster productivity, growth and resilience to risk (DIISR 2011; Commonwealth of Australia 2009) – specifically IP policies serve national productivity and innovation agenda by helping stimulate innovation and creativity:

> The function of the intellectual property system is to stimulate innovation. Patents, trade marks, copyright and other protections exist to give creators a reasonable chance of profiting from their investment in whatever it is they have created — typically by granting them an exclusive right to exploit the creation for a specified time. The trick is to get the balance right: too little protection will discourage people from innovating because the returns are uncertain; too much protection may discourage people from innovating because the pathways to discovery are blocked by other intellectual property owners. (DIISR 2011, p.56)

Australian Commonwealth, State and Local governments represent approximately 20-30 per cent of the national Gross Domestic Product (GDP) and share responsibility for productivity within their sphere of operations (Commonwealth of Australia 2009; DIISR 2010; Australian Public Sector Commission 2011).

Increased focus on public sector cost reduction, especially within developed economies experiencing low economic growth, highlight the need for organisational culture and management to help facilitate innovation and creativity – including a readiness to experiment and evaluate (Commonwealth of Australia 2009; Cutler 2008).

Governments also have a role in facilitating entrepreneurship in private firms, particularly small and medium-sized enterprises (SME), to help innovation through skills development, establishing mechanisms for collaboration and assisting with access capital (Cutler 2008, p. 111).

The WA GIPP (2003), and the more recent QG’s *Intellectual Property Guidelines* (Queensland Government 2007), encourage government collaboration with the business community. In respect to Queensland, the Enterprise Architecture (QGEA) and associated Government Information Licensing Framework (GILF) released in 2010 mandates the use of a consistent information licensing framework across the QG.

However, it is less clear, by way of specific guidance for management, how (and when) opportunities for IP development within the public sector environment should be developed as an asset of the State for the benefit of the specific agency (e.g. revenue generation), or alternatively, when it should be promoted as an opportunity for local business to develop for the benefit of the local economy.
For government agencies, proper management of IP is challenging. If agencies do not protect IP, the state may lose valuable knowledge and its application. Conversely, if the management of IP is too restrictive, the asset may be underutilized and the community benefit unrealised. Agencies are also major consumers of IP owned by others, so the use of this IP needs to be prudently negotiated and managed. (Cameron 2005, p. v)

As outlined below, the Commonwealth took specific steps in 2010 to counter the tendency in Commonwealth agencies at that time to retain IP management with agencies – e.g. see Gershon (2008). Trends toward allowing free access to IP further development by the private sector is also occurring in Australian university sector – e.g. University of NSW.  

Australian states and the Commonwealth address government IP management in a variety of ways – a brief summary is provided below (in no specific order of importance):

New South Wales (NSW)
The NSW Public Sector operates under an *Intellectual Property Management Framework* (NSW Government, 2005) developed through extensive consultation with public sector agencies and specialist practitioner expertise from across Australia. The Framework includes mandatory Principles and a non-mandatory Better Practice Guide which recognise the large variety of NSW government agencies which no single model could meet:

- **Part 1** - a set of mandatory *Intellectual Property Principles* (which all general government sector agencies must implement) and a non-mandatory *Better Practice Guide* that identifies better practice in the management of IP and includes information and advice about the creation, use, protection, and commercialisation of IP.
- **Part 2** - an IP Resource Kit, which provides more detailed information about the different categories of IP, key contacts at a State and Commonwealth level, relevant legislation, policies and websites.
- **Part 3** - a Summary Guide which includes the IP Principles, Better Practice Checklist and Advisory Signposts.

No specific emphasis is made to staff reward or incentives systems.

Victoria
In 2005, the Victorian Auditor General noted the whole-of-government management of IP in Victoria were piecemeal and the policies and guidelines provided limited assistance in agency-level management of government IP. The Auditor General also noted the Victorian Government had not clearly articulated how public IP assets should be managed to support overarching state-wide policy directions (Cameron 2005, p.4). Although the Auditor General’s report recommended the Victorian Government assign a lead agency to develop a whole-of-government GIPP – and noted the Victorian Department of Justice should “complete its planned revision of the copyright policy and guidelines for departments on copyright management as a priority” (Ibid., p.5) – little progress appears to have occurred.

No specific emphasis is made to staff reward or incentives systems.
Queensland

Queensland appears to have the most advanced and comprehensive GIPP at this time – especially in respect to information access and copyright.

As noted above, the Queensland Department of State Development released comprehensive intellectual property guidelines for the public sector in early 2007. In 2010, the QG’s Chief Information Office (GQCIO) released the Queensland Government Enterprise Architecture (QGEA) policy which mandated use of a consistent information licensing framework across the Queensland Government.

The GQCIO’s Government Information Licensing Framework (GILF) is based on the CC framework and a Restrictive License model which, in addition to mandating its use in the Queensland public sector, requires that legal uses must be made explicit to users.

The policy position also supports an open government approach to government information access with the default position being to adopt the least restrictive GILF license positions.

The GILF approach was subsequently promoted to all Australian governments, including Western Australia, as the Australian Governments Open Access and Licensing Framework (AusGOAL) through the AusGOAL Subcommittee of the Cross Jurisdictional Chief Information Officers’ Committee (CJCIOC).

No specific emphasis is made to staff reward or incentives systems.

South Australia

The Government of SA released its GIPP policy for the public sector in 2006 through the Department of the Premier and Cabinet (Government of South Australia 2006).

The SA GIPP policy provides an enabling and overarching framework to create a supportive environment to:

- achieve best practice in IP management in Government;
- where appropriate, to facilitate effectiveness of knowledge transfer by Government agencies to the public and private sectors; and
- achieve effective and timely protection of Government IP and, where appropriate, its commercialisation. (Ibid., p. 1)

The SA IP policy also clearly stipulates the responsibility for achieving government IP policy aims (including best practice) resides with the agency management and the Minister:

Each agency Chief Executive is responsible and accountable to his or her Minister, for the accomplishment of these aims and the implementation of this Policy. Each agency will ensure that its agency specific guidelines and practices are within the framework of this Policy. (Ibid.)

In addition, the SA Government recognises the need for a flexible approach to staff reward frameworks in order to attract high quality researchers while ensuring the public sector reward system does not undermine the primary purpose of agencies:

(vii) If the Government has a legitimate need to compete for the services of high quality researchers, it should have the means to do so. Those means could include an appropriate framework for financial and nonfinancial rewards.
A rewards framework for Government employees should not skew the creative effort to the production of commercialisable IP rather than the achievement of the primary Government or public purpose. (Ibid., p. 2)

Specific mention is made in the SA GIPP with respect to staff reward and incentives systems for government IP developments. However, in contrast to the upper limits imposed by the Western Australian Public Sector ex gratia payment approach (originally a maximum of $50,000 in 2003 and now set at $250,000), the SA Government GIPP rewards system specifies the general principles and recommendations but also allows for exceptional situations to be decided by the appropriate Minister:

3.2. For each item of IP, up to 1/3 of Net Returns per annum, or a maximum limit of $100,000 per annum (CPI adjusted) whichever is the lesser, may be allocated to the eligible employee (or shared among the group in the case of multiple contributors).

3.3. If the Chief Executive considers a higher reward is appropriate in any specific case, the responsible Minister may seek Cabinet approval. (Ibid., p. vi)

In addition to allowing for exceptional situations, the SA GIPP rewards system specifies an open system of administration and reporting between the “Chief Executive [and the] Department of Premier and Cabinet” (cf. Clauses 4.1 and 4.2, Ibid., p vii).

Tasmania

The Government of Tasmania outlines its position on GIPP and Crown copyright in the public sector through a brief statement on the website of the Department of Premier and Cabinet.72

There is evidence that individual agencies develop IP Policy for their jurisdictions within this broad policy approach – e.g. Department of Education.73

Tasmania has a limited industry base and small population which limits IP opportunities for local legal practitioners and often results in work being directed to the mainland states – e.g. Victoria.74

Northern Territory

The Northern Territory Government’s IP policy approach is outlined by the Northern Territory Land Information System (NTLIS) in respect to land information and the Northern Territory Government Software Intellectual Property Policy and Management Framework (Northern Territory Government 2005) in respect to computer software development. The policies provide a basic framework and focus on procurement, development and management (including maintaining an IP register).75

Commonwealth of Australia

The Commonwealth Government (‘Commonwealth’) has a range of IP policy related resources including the services of the Australian Government Solicitor (AGS) which advises Commonwealth agencies on how to best protect, manage and leverage their government IP.

All Commonwealth agencies governed by the Financial Management and Accountability Act 1997 (the ‘FMA Act’) are required to comply with the requirements of the AGS “Statement of Intellectual Property Principles for Australian Government Agencies”.76
By way of example of good practice, the AGS resource ‘toolbox’ includes:

- ‘Intellectual Property Law, Policy and Practice within the Commonwealth’ outlining the basic principles of IP law and practice in the Commonwealth.
- ‘Methodology for developing an Agency IP Policy’ – a methodology for undertaking a strategic IP management review, leading to the development of an agency IP management policy.
- ‘Diagram depicting Methodology for an Agency IP Policy’ – illustrating the structure of the AGS IP Methodology.
- IP Review and Policy Development Questionnaire Suite (based on the AGS IP Methodology) to assist FMA Act agencies in their internal processes of information gathering and analysis leading to the development of an IP Policy.
- ‘Template for an IP Register’, illustrative IP Case Studies, relevant publications, and IP Practice, Policy and Reform issues for universities, and links to services related to legal audits – including review and risk.

The Commonwealth no longer provides copyright licences for re-use of Commonwealth material. In line with a recommendation of the Government 2.0 Taskforce Report, Commonwealth agencies are now required to release copyright public sector information under the least restrictive CC BY-licences or other open content licences wherever possible.\(^77\)

The Commonwealth’s *Intellectual Property Principles for Australian Government Agencies* (Attorney-General’s Department 2010) provides a framework for effective management of IP in Commonwealth agencies (although it is not mandatory for bodies covered by the *Commonwealth Authorities and Companies Act 1997*). The framework covers a range of issues relevant to effective management of IP, including procurement, record keeping, industry development, broader innovation policy and public access.\(^78\) It also acknowledges the diversity of the functions, circumstances and requirements of agencies across the Commonwealth and provides flexibility in its implementation by encouraging agencies to implement the IP principles in accordance with their own particular needs and objectives.

In 2008, the Commonwealth implemented the recommendations of the *Review of the Australian Government’s Use of Information and Communication Technology* (Gershon 2008) which noted that information communications technology (ICT) vendors considered Commonwealth agencies were adopting a default position of Commonwealth ownership of intellectual property rather than complying with the intent of the Statement of IP Principles which encouraged flexibility.

The Commonwealth subsequently amended its GIPP to encourage commercialisation of IP by the Australian ICT sector, particularly small and medium enterprises, through contracting with Government agencies. The revised principles specifically provide that when an agency negotiates an ICT procurement contract, there will be a default position in favour of the ICT supplier owning the IP in the software created (conditional on the ICT supplier granting the Commonwealth a licence to use the relevant IP in government activities).
In respect to employee rewards systems, the Commonwealth acknowledges agencies should recognise innovation and creativity in the development of government IP in an appropriate manner which is consistent with agency objectives – specifically:

Recognition of innovation and creativity within agencies can be an important contribution to a rewarding, effective and efficient work environment. This can be linked to human resource performance management systems or other mechanisms which recognise and reward contributions to the achievement of agency objectives. (Attorney-General’s Department 2010, p. 5)

The level of innovation in the Commonwealth public sector is estimated to be equivalent to the private sector with around 50 per cent of staff surveyed perceiving a climate of innovation exists in their workplace (Australian Public Service Commission 2011; DIISR 2012).
APPENDIX E – Scope, Methodology and Evaluation Criteria

Under the *Industry and Technology Development Act 1998* the Minister for Science and Innovation is responsible for the development and review of the State’s IP policy.

Section 6 (g) of the *ITD Act* states that one of the functions of the Minister is “to encourage and facilitate the commercialisation of the intellectual property and other resources of departments of the Public Service or of State agencies or instrumentalities”.

The *Public Sector Commissioner’s Circular 2009-03* stipulates a review of the WA GIPP (2003) should occur in 2011.

Scope

The review covered the Western Australian Public Sector agencies subject to the WA GIPP (2003) and the *Public Sector Commissioner’s Circular 2009-03* – i.e. “. . . all agencies, departments and public authorities forming Western Australian Government other than the group of Western Australian Government entities sometimes referred to as Government Trading Enterprises including the Water Corporation, Western Power and the Port Authorities” (WA GIPP 2003, p.4).

In general, the agencies considered ‘in scope’ operate under the *Financial Management Act 2006*.

A number of ‘government trading agencies’ known to be involved with innovation and IP development and commercialisation were also consulted for their views on issues and trends.

The review conforms to the “Review of Policy” section in the WA GIPP (2003, p.7) and this report will be submitted to the Minister for Planning; Culture and the Arts; Science and Innovation before March 2012.

Methodology

Due to the extended period since the release of the WA GIPP (2003), and the lack of formal support through the (then) proposed GIPPC support unit (which was never established), it has been difficult to establish clear review criteria and quantitative data which can be used to fairly evaluate the policy’s performance outcomes against original Cabinet expectations.

As such, a number of stakeholders were approached during the early stages of the 2011 review project to discuss the best approach.

It was generally agreed, considering the limited resources available for a review, that a number of extended interviews would be undertaken with approximately 15-20 key stakeholder representatives from a number of representative agencies across the Western Australian Public Sector involved with innovation and IP development and commercialisation as part of their business model – e.g. Health, Department of Agriculture and Food, Fisheries, Landgate, Museum, and institutions operating within the education and training sectors.

In addition, a short simple self-assessment survey was drafted for possible circulation to help determine a number of fundamental issues (e.g. questions related to staff
awareness of IP, use of IP policy, satisfaction with the current IP policy approach, and suggested improvements etc – see Appendix F). As noted below, the sample survey was not circulated for this review but is included in this report for completeness and to indicate the type of data that would be useful for future reviews.

Process

The first stage of the review involved a series of stakeholder interviews conducted from September-December, 2011. A list of agencies contacted is provided in Appendix B. This review is therefore based on the qualitative feedback and comments provided during the semi-structured interview process. The participants were either senior executive management representatives of the agency, or nominated by them as agency experts or knowledgeable in the IP area.

A brief 5-minute online survey comprising nineteen questions was developed during, and influenced by, the interview cycle for later distribution if appropriate. When asked, participant response was either positive or neutral to the suggestion of distributing such a survey to staff.

As noted above, final approval was not available within the timeframe required for this report and a copy is provided in Appendix F as an indicative example of the type of survey that would be useful to develop evidence for future WA GIPP evaluation – at least in terms of employee awareness and opinion regarding government IP.

Agencies were selected for participation on the following criteria:

a) They were known to be actively involved in innovation and IP related activities (e.g. Health, Department of Agriculture and Food, Landgate)

b) They had staff known to be actively involved in innovation or IP policy related activities – either in the past or the present (e.g. Innovation Working Group network involvement).

c) They were recommended by others participating in the survey.

The interview process consisted of an initial contact via telephone or email to establish a suitable time and location for a 45-minute discussion.

A short summary of the WA GIPP (2003) background was provided before each interview to:

a) help set the context;

b) describe the broad evaluation criteria being applied;

c) suggest some possible review topics for consideration based on initial discussions with experts and departmental staff previously involved in the WA GIPP (2003) development;

d) provide a summary of the expected project stages and approximate timeline; and

e) provide the original Western Australia Cabinet Summary Sheet setting out the key principles and expected benefits agreed by Cabinet in 2003 (See Appendix A).
In all, fourteen interviews were conducted with most sessions lasting between 45-60 minutes. Towards the end of the interview cycle, it was noted that stakeholder comments tended to repeat and confirm issues and opinions already raised. This indicated the interview process had reasonably explored the opinions and insights of a representative sample of Western Australian Public Sector agencies involved with innovation and IP policy related activities. It is therefore assumed there is a low risk that key issues were not discovered.

The second stage of the review process will involve distributing this draft report to the participants for comment and feedback following endorsement in principle by the Director General, Department of Commerce. If agreement with its content and conclusions is high then the review will conclude with the submission of the report to the Minister for Planning; Culture and the Arts; Science and Innovation.

If agreement is low, or there are disputed views on key matters, then a further Delphi-based stakeholder discussion process can be initiated to investigate the issue(s) further. The timeframe for an agreed report is March 2012.

Once agreement is reached and approvals are provided then an updated WA GIPP (2012) will be released – possibly in conjunction with a public 1-day keynote speaker, innovation networking and WA GIPP workshop event associated with the 2012 Australian Innovation Festival scheduled for April-May, 2012 (see Recommendation 7).

Assumptions

The value of the review is based on the following assumptions:

a) The agencies selected represented the leading organisations in Western Australia government innovation and IP development.

b) The senior staff interviewed were able to provide expert opinion on innovation and IP related issues in respect to their agency and the WA GIPP (2003) as it relate to their agency.

c) The reduction in new issues being raised towards the end of the interview process indicated that most relevant issues had been uncovered – i.e. the risk of missing an important issue was low.

d) The views provided by participants represented a sufficient variety and homogeneity to safely be generalised to the wider Western Australian Public Sector.

e) Deeper and more philosophical issues (e.g. government vs. market development) raised during the review can be resolved through further investigation and expert discussion if necessary.

Evaluation Criteria

As noted above, the fundamental criteria for evaluating the performance effectiveness of the WA GIPP (2003) would be based on meeting the expectations outlined in the original approved Western Australia Cabinet Submission (see Appendix A).

Interview responses were evaluated on two basic levels:
a) As expert opinion on the level of success of the WA GIPP (2003) as judged by the agency stakeholders who were closest to the impacts of the policy on their respective business operations; and

b) As useful feedback to inform a new updated WA GIPP expected to be released in 2012.

There is no claim the evaluation process was exhaustive or comprehensive in scope or depth – as outlined in the WA GIPP (2003, p.7). Rather, limited resources and lack of empirical data imposed serious limitations on the review’s scope and depth.

Within this context, the review focused on determining how the WA GIPP (2003) could be improved (from the stakeholders’ perspective) rather than seeking empirical evidence of past agency performance in achieving broad WA GIPP (2003) outcome objectives.

It is an underlying assumption of the review that all agencies publicly report their general overall performance annually. On this basis, from an evaluation perspective, Ministerial (or Board) satisfaction with an agency’s overall performance would suggest innovation and IP related activities are meeting business and operational objectives of the agency – including, where appropriate, Key Performance Indicators (KPI) evidence of comparative benchmarks with national and international equivalents.

This approach assumes, without audited KPI evidence to the contrary, that Western Australian Public Sector agency governance is requisite to public/stakeholder expectations – i.e. governance outcomes supporting the underlying assumption that incremental innovation and IP development are at least meeting business needs and stakeholder expectations (e.g. plant breeding in the Department of Agriculture and Food).

In respect to extra-ordinary achievement, it is assumed that evidence related to key IP inventions and development would have a reasonably high profile in the agency’s annual reports and/or be well known in the Western Australia innovation network – e.g. aquiculture inventions and innovations in the Challenger Institute of Technology.

From a competitive performance and risk assessment perspective, the review considered any agency’s failure to meet overall business or operational objectives may also indicate requisite levels of innovation (and IP development/commercialisation if appropriate) were not being achieved.

Further confirmation of these assumptions can be undertaken by reviewing respective agency annual reports, budget documents and public media reports.
APPENDIX F – Sample Proposed Staff Questionnaire
(not distributed at time of report compilation)

This staff survey forms part of a review of the Western Australian State Government’s Intellectual Property (IP) Policy. It seeks to determine the level of awareness, understanding and perceived applicability of IP in the Western Australia Public Sector. Individual responses will be kept confidential.

1. **STAFF AWARENESS OF IP**
   a. Does your agency have an IP Policy?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Don’t know</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

   If ‘no’ or ‘don’t know’ go to 1 (c)

   b. How aware are you of the contents of your Agency’s IP Policy?

<table>
<thead>
<tr>
<th>Very aware of its existence and contents – it is highly relevant to my role.</th>
<th>Somewhat aware of its existence but not of its specific contents – it is not very relevant to my role.</th>
<th>No awareness – it is not directly relevant to my role.</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

   c. How aware are you of the State Government’s IP Policy?

<table>
<thead>
<tr>
<th>Very aware of its existence and contents – it is highly relevant to my role.</th>
<th>Somewhat aware of its existence but not of its specific contents – it is not very relevant to my role.</th>
<th>No awareness – it is not directly relevant to my role.</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

   If ‘no’ or ‘don’t know’ go to 2

   d. If you are aware of the State Government’s IP Policy, then how would you rate it overall for effectiveness?

<table>
<thead>
<tr>
<th>Very satisfactory</th>
<th>Satisfactory</th>
<th>Less than satisfactory</th>
<th>Very unsatisfactory</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

2. **STAFF REWARDS AND INCENTIVES FOR IP RELATED INNOVATION AND RESEARCH ACTIVITIES**
   a. How involved are you in facilitating your Agency’s IP related activities?

<table>
<thead>
<tr>
<th>Always</th>
<th>Regularly</th>
<th>Sometimes</th>
<th>Occasionally</th>
<th>Never</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>
REVIEW OF THE WESTERN AUSTRALIAN GOVERNMENT INTELLECTUAL PROPERTY POLICY – 2012

If ‘never’ go to Question 2 (c).

b. In respect to your Agency’s IP related activities, what best describes your role?

<table>
<thead>
<tr>
<th>Inventor</th>
<th>Project Manager</th>
<th>Administration/Clerical etc</th>
<th>Other</th>
<th>No role in IP</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If ‘other’ please specify: ………………………………………………………………………

c. How aware are you of the Public Sector’s current reward system?

<table>
<thead>
<tr>
<th>Very aware</th>
<th>Moderately aware</th>
<th>Not very aware</th>
<th>No awareness</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

d. In your opinion, how satisfactory is the current Public Sector reward system in facilitating and promoting IP development?

<table>
<thead>
<tr>
<th>Very satisfactory</th>
<th>Satisfactory</th>
<th>Less than satisfactory</th>
<th>Very unsatisfactory</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. AGENCY STRATEGY FOR USING IP

a. Why in your opinion does your Agency use IP?

<table>
<thead>
<tr>
<th>Increase revenue</th>
<th>Always</th>
<th>Regular</th>
<th>Sometimes</th>
<th>Occasionally</th>
<th>Never</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Reduce costs</th>
<th>Always</th>
<th>Regular</th>
<th>Sometimes</th>
<th>Occasionally</th>
<th>Never</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>For use in negotiations</th>
<th>Always</th>
<th>Regular</th>
<th>Sometimes</th>
<th>Occasionally</th>
<th>Never</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Prevent law suits</th>
<th>Always</th>
<th>Regular</th>
<th>Sometimes</th>
<th>Occasionally</th>
<th>Never</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Prevent copying</th>
<th>Always</th>
<th>Regular</th>
<th>Sometimes</th>
<th>Occasionally</th>
<th>Never</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Enhance reputation</th>
<th>Always</th>
<th>Regular</th>
<th>Sometimes</th>
<th>Occasionally</th>
<th>Never</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Measure performance</th>
<th>Always</th>
<th>Regular</th>
<th>Sometimes</th>
<th>Occasionally</th>
<th>Never</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

b. If someone created an invention in your Agency would IP be pursued to:

<table>
<thead>
<tr>
<th>Prevent imitation by competitors</th>
<th>Always</th>
<th>Regular</th>
<th>Sometimes</th>
<th>Occasionally</th>
<th>Never</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
4. COPYRIGHT AND CREATIVE COMMONS

a. How aware are you of your Agency’s copyright policy?

<table>
<thead>
<tr>
<th>Awareness Level</th>
<th>Very aware</th>
<th>Moderately aware</th>
<th>Not very aware</th>
<th>No awareness</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

b. How aware are you of the “Creative Commons” approach to open government?

<table>
<thead>
<tr>
<th>Awareness Level</th>
<th>Very aware</th>
<th>Moderately aware</th>
<th>Not very aware</th>
<th>No awareness</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

c. How aware are you of the “AusGOAL” approach being promoted across Australia?

<table>
<thead>
<tr>
<th>Awareness Level</th>
<th>Very aware</th>
<th>Moderately aware</th>
<th>Not very aware</th>
<th>No awareness</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

If ‘very aware’ or ‘moderately aware’ then please attempt to answer (4d), otherwise go to question 5.

d. If you are able to comment, please indicate which Creative Commons and AusGOAL license categories might best apply in your agency’s situation?

<table>
<thead>
<tr>
<th>Licensing Option</th>
<th>Always</th>
<th>Regular</th>
<th>Sometimes</th>
<th>Occasionally</th>
<th>Never</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Attribution only</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>2. Attribution-ShareAlike</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>3. Attribution-NoDerivatives</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>4. Attribution-NonCommercial</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>5. Attribution-NonCommercial-ShareAlike</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>6. Attribution-NonCommercial-NoDerivatives</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>
7. Restrictive Licence

8. BSD* and Other Software Licences

(* BSD = Berkeley Software Distribution, are a family of permissive free software licenses)

For an outline of the 8 licensing options see - http://www.ausgoal.gov.au/creative-commons

5. DEMOGRAPHIC INFORMATION

a. How old are you?

<table>
<thead>
<tr>
<th>Less than 30</th>
<th>31-40 years</th>
<th>41-50 years</th>
<th>51-60 years</th>
<th>Over 60 years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

b. Your employment details?

<table>
<thead>
<tr>
<th>Full Time</th>
<th>Part Time</th>
<th>Contract</th>
<th>Casual</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If ‘other’ please specify: …………………………………………………………………………

c. What category best describes your term of employment in the Public Sector?

<table>
<thead>
<tr>
<th>Less than 5 years</th>
<th>5-10 years</th>
<th>10-20 years</th>
<th>21-30 years</th>
<th>Over 30 years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

d. Gender Information?

<table>
<thead>
<tr>
<th>Male</th>
<th>Female</th>
<th>Not Specified</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

e. Department/Agency Information?

[Drop down list of PS Agencies etc – see http://wa.gov.au/agencies/E.html ]

f. What is your highest education qualification level?

<table>
<thead>
<tr>
<th>Year 12 or equivalent</th>
<th>Bachelor degree</th>
<th>Graduate diploma</th>
<th>Masters degree</th>
<th>Doctoral degree</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If ‘other’ please specify: …………………………………………………………………………

g. What is/was your primary field of study/expertise?

<table>
<thead>
<tr>
<th>Architecture, Landscape &amp;</th>
<th>Arts, Humanities &amp; Social Sciences</th>
<th>Business</th>
<th>Education</th>
</tr>
</thead>
<tbody>
<tr>
<td>Visual Arts</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Information Technology</td>
<td>Mathematics</td>
<td>Law</td>
<td>Life &amp; Physical Sciences</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Natural &amp; Agricultural Sciences</td>
<td>Indigenous Studies</td>
<td>Chemistry</td>
<td>Communications</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Engineering</td>
<td>Medicine, Dentistry &amp; Health Sciences Nursing</td>
<td>Environmental Sciences</td>
<td>Other</td>
</tr>
</tbody>
</table>

If 'other' please specify: …………………………………………………………………………

6. OTHER FEEDBACK INFORMATION &/OR COMMENTS
Please provide any additional comments below (in less than 500 words):

If you have any queries or require background information regarding this survey, you can locate more information here, or you can reply to this email here.

Thank you for participating in this survey.
APPENDIX G – Resource Agreement Based Rewards System

Figure 1 (below) outlines a possible Western Australian Public Sector agency-orientated 'Resource Agreement' based IP rewards/incentive system for agencies meeting certain governance criteria.

The schematic suggests the possibility of using the annual budget resource agreements in combination with the CEO performance agreements and the ITD Act (1998) to facilitate a flexible IP/innovation reward system able to meet the expectations of ‘extra-ordinary’ achievements in innovation and IP commercialisation. Figure 1.

(i) For example, the elements of the ITD Act (1998) which may support a rewards system include:81

SECTION 3

3. Objects

The objects of this Act are —

(a) to promote and foster the growth and development of industry, trade, science, technology and research in the State;

(b) to improve the efficiency of State industry and its ability to compete internationally;

---

81 Source: Legal citation and reference.
(c) to encourage the establishment of new industry in the State;
(d) to encourage the broadening of the industrial base of the State; and
(e) to promote an environment which supports the development of industry, science and technology and the emergence of internationally competitive industries in the State.

(ii) – The Department of Commerce (Western Australia) administers the ITD Act (1998). There is also a possible role for the Western Australian Technology and Industry Advisory Council (TIAC) which advises the Minister for Planning; Culture and the Arts; Science and Innovation.  

(iii) – An example of the Department of Treasury (DoT) annual Budget Statements Resource Agreement.  

A copy of the relevant section of the Financial Management Act 2006 referred to in the Resource Agreement example is included below: 

PART 3 -- Funds management
Division 5 -- Resource agreements

41. Accountable authorities to submit draft resource agreements
42. Period to which resource agreements relate
43. Matters to be included in resource agreements
44. Resource agreements to be agreed if possible
45. Treasurer’s powers in relation to draft resource agreements
46. Agreement as to draft resource agreements

FINANCIAL MANAGEMENT ACT 2006 - SECT 41 - 46

41. Accountable authorities to submit draft resource agreements
   (1) If directed in writing by the Treasurer to do so in respect of a financial year of the agency, the accountable authority of an agency is to submit a draft resource agreement for the agency to the Treasurer for his or her agreement.
   (2) The accountable authority of an agency is to submit the draft resource agreement —
      (a) not later than 3 months before the start of the next financial year of the agency; or
      (b) as otherwise directed in writing by the Treasurer.

42. Period to which resource agreements relate
   (1) A resource agreement for an agency is to cover a financial year of the agency.
The first resource agreement for an agency is to be in respect of the next full financial year of the agency after the commencement of this Division.

Matters to be included in resource agreements

A resource agreement for an agency is to specify —

(a) the total amount of resources that are expected to be made available to the agency for the financial year; and

(b) the services proposed to be provided by the agency during the financial year; and

(c) any other matters required by the Treasurer to be specified in the agreement.

Resource agreements to be agreed if possible

The accountable authority of an agency and the Treasurer are to try to reach agreement on a resource agreement for the agency before the start of the financial year to which the agreement relates.

Treasurer’s powers in relation to draft resource agreements

(1) The Treasurer may return a draft resource agreement to the accountable authority of an agency and request the accountable authority —

(a) to consider or further consider any matter and deal with the matter in the draft resource agreement; and

(b) to revise the draft resource agreement in light of that consideration or further consideration.

(2) If the accountable authority and the Treasurer have not reached agreement on a draft resource agreement by one month before the start of the financial year, the Treasurer may, in writing, direct the accountable authority —

(a) to take specified steps in relation to the draft resource agreement; or

(b) to make specified modifications to the draft resource agreement.

(3) The accountable authority is to comply with a direction under subsection (2) as soon as is practicable and, in any event, not later than the start of the financial year or any later date approved by the Treasurer.

Agreement as to draft resource agreements

(1) When the accountable authority of an agency and the Treasurer reach agreement on a draft resource agreement, it becomes the resource agreement for the agency for the relevant financial year.

(2) The accountable authority of an agency is to obtain the Minister’s approval before reaching agreement with the Treasurer on a draft resource agreement for the agency.

(iv) CEO Performance Agreements. “The CEO Performance Agreement has three components. The first is the Agency-Specific Goals and Commitments established between a CEO and the Responsible Authority. The second is the agency’s commitment to the Sector-wide Initiatives. The third is the Personal Development Goals, determined by the CEO.” 85
## APPENDIX H – Glossary of Terms and Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGS</td>
<td>Australian Government Solicitor</td>
</tr>
<tr>
<td>AusGOAL</td>
<td>A specific implementation of Creative Commons licensing developed by the Queensland Government for the Australian public sector environment and now being evaluated by most Australian States and the Commonwealth.</td>
</tr>
<tr>
<td>Australian States</td>
<td>The seven Australian States and Territories that make up the Commonwealth of Australia: Western Australia (WA); South Australia (SA); Victoria; New South Wales (NSW); Tasmania; Queensland; and Northern Territory (NT).</td>
</tr>
<tr>
<td>BC</td>
<td>British Columbia – a Canadian Province (State) closely equivalent to Western Australia</td>
</tr>
<tr>
<td>BCPG</td>
<td>British Columbia Provincial Government</td>
</tr>
<tr>
<td>BSD</td>
<td>Berkeley Software Distribution are a family of permissive free software licenses.</td>
</tr>
<tr>
<td>CEO</td>
<td>Chief Executive Officer – the senior accountable person in the organisation. Can also be used interchangeably with “Director General” in the Western Australian Public Sector context.</td>
</tr>
<tr>
<td>CIO</td>
<td>Chief Information Office (or Officer)</td>
</tr>
<tr>
<td>CIPO</td>
<td>Canadian Intellectual Property Office.</td>
</tr>
<tr>
<td>CJCIOC</td>
<td>Cross Jurisdictional Chief Information Officers’ Committee</td>
</tr>
<tr>
<td>Commonwealth</td>
<td>The federal level of government in Australia established in 1901 following agreement by six self-governing British colonies – later the six states. For this report, “Commonwealth” normally refers to the federal level of administrative bureaucracy. References to State and Commonwealth normally implies the combination (and possible cooperation) of two tiers of government in Australia.</td>
</tr>
<tr>
<td>Creative Commons (CC)</td>
<td>Creative Commons (CC) is a non-profit organisation (headquartered in United States) which has released several copyright-licenses known as Creative Commons licenses free of charge to the public. These licenses allow creators to easily communicate in standard language which rights they reserve, and which rights they waive for the benefit of recipients or other creators. See <a href="http://creativecommons.org/">http://creativecommons.org/</a></td>
</tr>
<tr>
<td>Cultural feasibility</td>
<td>A concept in systems thinking describing the cultural criteria which potential changes must meet in order to be implemented successfully – e.g. the context of unique norms, roles and values etc that allow systemically desirable changes to proceed. (See Checkland 1981, 1998)</td>
</tr>
<tr>
<td>DAF</td>
<td>Western Australia Department of Agriculture and Food</td>
</tr>
<tr>
<td>Dept</td>
<td>Abbreviated form of “Department” for use in diagrams</td>
</tr>
<tr>
<td>DIISR</td>
<td>Department of Innovation, Industry, Science and Research</td>
</tr>
<tr>
<td>DoD</td>
<td>USA Department of Defense</td>
</tr>
<tr>
<td>DoT</td>
<td>Western Australia Department of Treasury</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>ex gratia</td>
<td>Ex gratia payments are often referred to as compensation payments when a government or organisation is prepared to compensate victims of an event such as an accident or similar, but not to admit liability to pay compensation, or for causing the event.</td>
</tr>
</tbody>
</table>
GDP
Gross Domestic Product – the market value of all final goods and services produced within a country in a given period.

GILF
Government Information Licensing Framework – the predecessor of AusGOAL

GIPP
Government Intellectual Property Policy – generically, those government policies relating to IP (and innovation) in government agencies.

GIPPC
Government Intellectual Property Policy Council – referenced in the WA GIPP (2003). The GIPPC was formed and operational from 1997 until the time of the finalisation of the 2003 policy with a subcommittee overseeing its review. No meetings of the GIPPC were convened after the launch of the Policy in May 2003 although the Council was never formally disbanded. The GIPPC was chaired by the Minister at the time responsible for the Commerce and Trade, Industry and Technology then Industry and Resources. Throughout its existence the GIPPC membership comprised Central Government agencies and a rotating membership of agencies involved in IP.

Government
Normally, the system of legislators, administrators, and arbitrators in the administrative bureaucracy controlling a state at a given time – including the system of government by which they are organised by which state policy is determined and enforced. (ref: Wikipedia, January 2012). For this review, “Government” may also represent the elected government of the day working through its administrative bureaucracy – i.e. see Western Australian Public Sector. When not capitalized, refers to the generic class of government agencies and instruments rather than the Government (of the day) per se.

Health sector
In this report, those Western Australian Public Sector agencies and other associated organisations delivering medical and health related services to the people of Western Australia.

HM Government
The UK’s “Her Majesty’s Government”

ICT
Information, Communications and Technology

IEP
Office of International Intellectual Property Enforcement – see http://www.state.gov/e/eb/tpp/ipe/

IP
Intellectual Property – a system of legal rights and protections related to patents, trade marks, designs, copyright, circuit layout, plant breeding and confidential trade secrets. Normally implemented at the national level.

IP ‘development/commercialisation’
Those activities which progress creative and innovative achievements through the innovation system cycle to the stage where IP legally exists and new product and services are being delivered to the market.

IPP
Intellectual Property Policy – for this report, the policy (normally government) related to defining the definition, creation, development, commercialisation and disposal of IP. In the context of this review, IPP can be over-arching for the whole State bureaucracy (e.g. GIPP) or at an organisational level for more specific interpretations in context of the operating environment – e.g. staff reward and incentive systems.

IPR
Intellectual Property Rights

ITD (Act)

KPI
Key Performance Indicators (can also refer to key performance measures)

Landgate
Western Australia Land Information Authority

NSLA
National and State Libraries Australasia

NSW
New South Wales
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>NTLIS</td>
<td>Northern Territory Land Information System</td>
</tr>
<tr>
<td>OCIO</td>
<td>Office of the Chief Information Officer</td>
</tr>
<tr>
<td>Premier’s Circulars</td>
<td>Premier’s Circulars that relate to policies of the Government of the day and whole of State legislative/policy requirements that do not come under the provisions of the PSMA are administered by the Department of the Premier and Cabinet. See <a href="http://www.dpc.wa.gov.au/GuidelinesAndPolicies/PremiersCirculars/Pages/Default.aspx">http://www.dpc.wa.gov.au/GuidelinesAndPolicies/PremiersCirculars/Pages/Default.aspx</a></td>
</tr>
<tr>
<td>PSC</td>
<td>Western Australia Public Sector Commission</td>
</tr>
<tr>
<td>Public Sector Commissioner’s Circulars</td>
<td>Public Sector Commissioner’s Circulars relate to public sector management policy or arrangements issued to promote and improve the overall effectiveness and efficiency of the Western Australian Public Sector, together with any mandatory compliance obligations which do not originate from the Public Sector Commissioner’s functions or the Public Sector Management Act 1994 (PSMA). CEOs must remain informed of Public Sector Commissioner’s Circular content and comply with their directions and disseminate information to relevant staff. See <a href="http://www.publicsector.wa.gov.au/AgencyResponsibilities/PSMRequirements/Pages/Circulars.aspx">http://www.publicsector.wa.gov.au/AgencyResponsibilities/PSMRequirements/Pages/Circulars.aspx</a></td>
</tr>
<tr>
<td>QG</td>
<td>Queensland Government</td>
</tr>
<tr>
<td>QGEA</td>
<td>Queensland Government Enterprise Architecture</td>
</tr>
<tr>
<td>R&amp;D</td>
<td>Research and Development</td>
</tr>
<tr>
<td>Reward and incentive</td>
<td>In this report, those financial and non-financial benefits that may be reasonably expected by individuals or agencies where certain conditions and desired outcomes are achieved.</td>
</tr>
<tr>
<td>Schematic</td>
<td>A schematic diagram represents the elements of a system using abstract, graphic symbols.</td>
</tr>
<tr>
<td>SLWA</td>
<td>State Library of Western Australia</td>
</tr>
<tr>
<td>SSBC</td>
<td>Shared Services BC</td>
</tr>
<tr>
<td>SSO</td>
<td>State Solicitor’s Office (Western Australia)</td>
</tr>
<tr>
<td>State objectives</td>
<td>Those high-level goals and desirable outcomes as reflected in various government policy documents and plans. In the context of this review, the terms mainly refer to the economic, social and environmental objectives and priorities specified in the Government’s industry, science and technology policies developed by the ISI.</td>
</tr>
<tr>
<td>Tool Kit</td>
<td>A generic descriptor suggesting (and without being limited to) a collection of useful information, procedures, templates, procedures and events that might reasonably be referred to as an integrated whole for the purposes of achieving some intended goal or purpose. May also be referred to as ‘tool box’ or ‘resource kit’.</td>
</tr>
<tr>
<td>TRIPS</td>
<td>WTO sponsored “Trade-Related aspects of Intellectual Property Rights” – see <a href="http://www.wto.org/english/tratop_e/tratop_e/trips_e/trips_e.htm">http://www.wto.org/english/tratop_e/tratop_e/trips_e/trips_e.htm</a></td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom – also known as Britain (or formally Great Britain) – in this report, abbreviated from the formal “U.K.”</td>
</tr>
<tr>
<td>USA (US)</td>
<td>United States of America – in this report, abbreviated from the formal “U.S.”</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------</td>
</tr>
<tr>
<td>USITC</td>
<td>United States International Trade Commission</td>
</tr>
<tr>
<td>WA</td>
<td>Western Australia (or Western Australian, depending on context) – referring to the State of Western Australia as a geographical, social, cultural and political entity within the Commonwealth of Australia.</td>
</tr>
<tr>
<td>WA GIPP</td>
<td>See GIPP. Specifically, the Western Australia Government’s IP Policy which has evolved in various forms and iterations since 1987. Where ambiguity may exist, “WA GIPP” is used to indicate the latter. GIPP (2003) refers to the current WA GIPP published in 2003.</td>
</tr>
<tr>
<td>WA Government</td>
<td>Broadly, collectively, the agencies and corporations supporting the executive branch consisting of the elected members of the Western Australia Parliament who have formed the government of the day. Specifically, where a more narrow definition is appropriate, the Government of Western Australia as represented by the Cabinet Ministers – see <a href="http://www.premier.wa.gov.au/Ministers/Pages/Default.aspx">http://www.premier.wa.gov.au/Ministers/Pages/Default.aspx</a></td>
</tr>
<tr>
<td>Western Australian Public Sector</td>
<td>Western Australian Public Sector – defined as the broad collection of Western Australia State Government Agencies and Corporations that contribute to the State’s system of innovation through various legislative frameworks. Western Australian Public Sector Corporations are normally more independent and operate with a Board. In this review the word government ‘agency’ is used loosely to describe the Western Australian Government organisations directly covered (or indirectly influenced) by the WA GIPP. More specifically, the term is considered, for the purposes of this review, to cover the organisations listed in Appendix B, and those other Western Australian Public Sector organizations that may be (by way of extension) reasonably represented by them.</td>
</tr>
<tr>
<td>WIPO</td>
<td>World Intellectual Property Organization</td>
</tr>
</tbody>
</table>
APPENDIX I – References & Endnotes


REVIEW OF THE WESTERN AUSTRALIAN GOVERNMENT INTELLECTUAL PROPERTY POLICY – 2012


Also see associated WA GIPP (2003) documents:


Endnotes

1 For the purposes of this review the Western Australian Public Sector is broadly defined in scope as those Western Australian State Government agencies and corporations that contribute to the State’s systems of innovation and IP development and commercialisation through various legislative frameworks. The phrase ‘government agency’ is used to describe the Western Australian Government organisations directly covered (or indirectly influenced) by the WA GIPP – see Appendix B for organisations participating in the review and Appendix E for the scope of the review.


3 For example, see Geoscience Australia’s Intellectual Property Policy and Best Practice Guidelines (Geoscience Australia, 2011).

4 Creative Commons Policy, endorsed by The Library Board of Western Australia on 1st December, 2011. Communicated to the Department of Commerce on 16th January, 2012 (File ref: 11/431) – see DP0023/2012.

5 For example, see Economic Audit Committee (2009): Recommendation 5 (c) in respect to contributing to “public service culture” and achieving “innovation achievement of outcomes” (p. 4); Recommendation 7 in respect to avoiding KPIs for policy, planning and research functions (p. 5); and Recommendation 33 (b) in respect to implementing new and innovative approaches to attracting, developing and retaining skilled staff (p. 13).


7 See FINANCIAL MANAGEMENT REGULATIONS 2007 - REG 8: “Maximum amount for act of grace payments by Treasurer without Governor’s approval (s. 80) – For the purposes of section 80(2) of the Act, the amount is $250 000.” http://www.austlii.edu.au/au/legis/wa/consol_reg/fmr2007273/s8.html

8 For example, “the sale of a licence to Michigan to use the Department of Justice’s court procedures software netted $1 million. The Department [of Justice] subsequently had $1m cut from its budget the same year” (see Innovation Excellence Program: Business and Commercialisation Plan for PSInnov8, Burrows, R., (2008, p. 6) referencing Warnes R., Director, Court and Tribunal Services, personal communication, November 2006.)

9 See the Soft Systems approach developed by Checkland (1981; 1998).


11 Creative Commons (CC) is a non-profit organization headquartered in the USA which promotes expanding the range of creative works available for others to legally build upon and to share – e.g. see http://wiki.creativecommons.org/FAQ

12 Government Information Licensing Framework (GILF), March 2010.

13 Restrictive Licence Template: “The AusGOAL framework supports users when, in rare circumstances, application of a Creative Commons licence will not be appropriate. For example, an organisation may supply health records or other personal information to another party to conduct medical research. AusGOAL has been designed to cater for all of an organisations information licensing needs. The Restrictive Licence Template (RLT) has been developed specifically for material that may contain personal or other confidential information. It may also be used for other reasons, including material to be licensed under some form of limiting or restrictive condition (e.g. a time limit on use, or payment arrangements other than an initial once-only fee).” – see http://www.ausgoal.gov.au/restrictive-licence-template

This recommendation supports, in part, the Economic Audit Committee (2009) findings in respect to establishing a Chief Information Officer (CIO) and Chief Technology Officer (CTO) roles.

“Dates for this year’s Festival are from 26 April to 31 May 2012. State and Territory launches will be held prior to or just after 26 April. Events in the first week of June may also be included in the official program if they are in line with the Festival objectives of showcasing the best that Australia can offer in terms of innovation and entrepreneurship. . . . The 2012 Festival Theme ‘Creating the Knowledge Economy’ will be supported by the continuing focus on the four C’s of innovation - Creativity, Connections, Collaboration and Commercialisation.” – http://www.ausinnovation.org/fileadmin/site_files/News_Articles/Newsletters/Innovation_headlines_18_January_2012.htm


See http://www.wcit.wa.edu.au/Pages/default.aspx


See World Trade Organisation (WTO): http://www.wto.org/english/tratop_e/trips_e/trips_e.htm

“The intellectual property of the state and of individual government agencies has a special status in copyright and industrial property law. Variation between different nations reflects differing conceptions of the relationship between the state and its members. Variation also reflects differing views on issues such as freedom of the press and access to the law as the basis for civil society.” – See “Government and Crown Copyright”, Caslon Analytics, at http://www.caslon.com.au/ipguide24.htm


Article 6bis of the Berne Convention which protects attribution and integrity states: “Independent of the author’s economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to the said work, which would be prejudicial to the author’s honor or reputation.” – See Berne Convention for the Protection of Literary and Artistic Works, September 9, 1886, art. 6bis, S. Treaty Doc. No. 27, 99th Cong., 2d Sess. 41 (1986). http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html#P123_20726


40 See Exporting Western Australian Public Sector Skills & Expertise – Policy & Guidelines (Department of Commerce and Trade 1997).

41 See Western Australian Intellectual Property Policy 2000, Government of Western Australian (Department of Commerce and Trade 2000).

In addition, the following comments (abridged) have been provided following the initial release of this review. They are included in this final version for the record:

The report could highlight better the leading role that Western Australia has played in Australia, mostly with that 2000 Policy which was effectively a rewrite of the 1997 Public Sector Intellectual Property Policy. The 2000 policy was highly influential, with the Queensland Government adopting it (replacing references to WA etc). The City of Chicago requested permission to adopt it and Western Australia was consulted by the Victorian Government and the Ministry for Justice out of Singapore. It was also influential in other states and federally – e.g. see for example the comments in an ANAO report in 2001:


and reference in the IT IP guidelines issued by DCITA in 2001


The 2000 Western Australian IP policy was approved for release by Cabinet on 10 July 2000.

(P. van Bruchem, 17-2-2012)


43 See File SIB0323/2009-1


46 For example: “A sum of money paid when there was no obligation or liability to pay it. For example, a lump sum payment over and above the pension benefits of a retiring employee. In insurance claims, it may take the form of payment for which the insurer did not appear to be liable. Ex gratia is Latin for “out of goodwill.” Also called ex gratia settlement.” – see http://www.businessdictionary.com/definition/ex-gratia-payment.html also see http://en.wikipedia.org/wiki/Ex_gratia (December 2011)


48 For example: “The strategy is based on evidence that social and public service innovation is growing. It is the diffusion of innovation across the public system that is slow, and it is the cultural and institutional barriers to public innovation across government that the hub aims to tackle. Growing evidence shows that the path of innovation flow is unpredictable and does not follow a linear course. It also frequently goes unrecognised, hidden in the margins. – Leadership and intermediaries play; –
a critical role in the early adoption of innovation; -- Creating space for innovation and for working offline is critical; -- Incentives are needed to support innovators and their work; -- The elimination of disincentives and systemic change are urgently required if the behaviour and processes that inhibit innovation are to be removed.” (Department for Innovation, Universities & Skills 2008, p. 9).

For example, quoting promotional information: “Multifaceted investigation of U.S. federal and state level IP procurement practices, providing valuable advice to attorneys on both sides of intellectual property litigation in government contracts. Provides practical guidance to avoid pitfalls of government IP contracting, and remedies for government misuse of IP rights” – see http://www.oup.com/us/catalog/general/subject/Law/?view=usa&ci=9780199751112


For example, see the Department of Homeland Security’s Intellectual Property Policy statement at http://www.dhs.gov/xutil/gc_1229954863775.shtm

Released in November 2011, the Californian State Auditor’s report clearly indicates the need for a whole-of-government GIPP for that State – i.e. as currently exists in Western Australia. The Auditor noted slightly more than 50% of the agencies surveyed supported the concept of a GIPP: “However, 112 of the 211 state agencies responding to our survey, or 53 percent, believe that the State should establish statewide guidance for managing and protecting intellectual property, indicating that there is a need for guidance.” (p. 1)

In summarizing their recommendations the Auditor found the key four agencies reviewed in detail “… should put in writing those policies and procedures related to intellectual property that they believe are necessary and appropriate to enable their staff to identify, manage, and protect their intellectual property.” – specifically one agency “… should strengthen its royalty process to ensure that it receives the proper amounts from contractors involved …”; and the Legislature and the governor “should consider developing a statewide intellectual property policy that educates state agencies on their intellectual property rights without creating an administrative burden. Specifically, this policy should do the following:

• Provide guidance to agencies that will give them the understanding necessary to identify when potential intellectual property may exist and that will provide them with specific information on intellectual property protections.

• Recognize that not all state agencies have the same needs and that a one-size-fits-all approach may not be feasible. An effective policy should provide agencies with flexibility regarding ownership of intellectual property rights.” (p.3)

“US Treasury Secretary Tim Geithner has accused China of “systematically stealing” American companies’ intellectual property in an unusually blunt attack. . . . But this week a coalition of more than 50 US business groups told Congress that trying to force China to ditch its currency policy may be counter-productive. Energy should, instead, be focused on safeguarding US intellectual property in China and doing more to lift the restrictions for foreign companies.” – http://www.telegraph.co.uk/finance/china-business/8785611/US-Treasury-Secretary-Tim-Geithner-blasts-China-for-systematically-stealing-US-intellectual-property.html


REVIEW OF THE WESTERN AUSTRALIAN GOVERNMENT INTELLECTUAL PROPERTY POLICY – 2012


58 In discussing the chapter on intellectual property from the OAG’s May 2009 Report – see http://www.oag-bvg.gc.ca/internet/English/osh_20091116_e_33487.html


60 See http://www.cio.gov.bc.ca/cio/intellectualproperty/intellectual_property_faqs.page


In respect to the BC’s $1,000 Vote: “In BC we distinguish revenues into two categories - $s flowing into the consolidated revenue fund and not associated with expenditure appropriations (revenues), and $s flowing into voted appropriations, netting off some expenditures (recoveries). The level of recoveries could be a portion of the voted appropriation, or in some cases all of the voted appropriation. (In the case of a complete recovery of all expenditures, the balance of the voted appropriation is maintained at a nominal value of $1,000, allowing an expenditure amount to be voted on.) Net budgeting is used both for administrative functions and program activities. The Estimates also include charge-backs between ministries. These are again recoveries that offset program expenditures.” (personal email communication, Office of the Comptroller General, 12 Dec, 2011)


63 “Australia’s governments — Commonwealth, state, territory, and local — account for around a fifth of our GDP. Commonwealth activity alone represented 8 per cent of GDP in 2007–08. The size of the Australian Government’s contribution to the economy gives it plenty of scope to stimulate innovation through its own activities. It can do this in three main ways. First, by demonstrating innovative approaches to procurement and service delivery. Second, by creating a regulatory environment that favours innovation, not least in relation to intellectual property. And third, by improving the flow of information under its control to consumers, researchers and industry.” (Commonwealth of Australia 2009, p.53, referencing ABS, Australian System of National Accounts, 2007–08 (cat. no. 5204.0), Tables 2 and 5.)

Also see: (i) DIISR (2010) – “The public sector accounts for 28.6 per cent of GDP in Australia.” (p. 77) itself referencing the Australian Government (2009), Budget Paper No.1, 2009-10, Statement 10, Table 1, p.10-6; and (ii) Australian Public Sector Commission (2011, Chapter 9) “More than 30% of Australia’s gross domestic product is derived from the public sector.”

64 “The Australian Government agrees with the Review of the National Innovation System that a readiness to experiment and evaluate is critical to developing new and better government services; we must be willing to learn as we go. To this end, it will encourage and respond to feedback from the public about how it can improve services; extend the use of delivery platforms we know work well; and test new solutions. In particular, the Commonwealth will investigate ways of managing the risk inherent in implementing new and creative ideas.” (Commonwealth of Australia 2009, p.53)

65 This approach also extends to creating a market for innovative response in place of top-down control – e.g. “Australian governments have been good at encouraging ‘bottom up’ innovation where they have established markets in the place of bureaucratic controls – as for example in the case of the Job Network or emissions trading. Outreach programs like Landcare have also fostered innovation at the community level to solve local environmental problems.” (Cutler 2008, p. 126)


67 For example:

Australian universities are being encouraged to make their intellectual property available for free, after the University of NSW said it will offer IP licences to entrepreneurs at no charge.
In a bid to stimulate the take-up of technology, UNSW will offer IP licences for a range of ideas and research results to entrepreneurs and companies at no cost.

Licences will need to disclose how the information will be commercialised. If it is not exploited within three years, the university will reclaim the rights to use the information.


70 See http://creativecommons.org/


The Cross Jurisdictional Chief Information Officers’ Committee (CJCIOC) was established under the Commonwealth Online Communication Council which itself was disbanded on 30 June, 2011. The CJCIOC has continued to operate from within the department of Finance and Deregulation but has recommended the AusGOAL’s ongoing oversight and governance be assumed by another committee. See http://www.finance.gov.au/e-government/strategy-and-governance/cjcioc.html

This issue is under review at the time of this report – see Item 1, ‘Outcomes of October 2011 meeting’, AusGOAL sub-committee of the CJCIOC (WA contact: Des Hutchinson, Director, Public Sector Commission). See http://www.finance.gov.au/e-government/strategy-and-governance/cjcioc.html


73 See the Tasmanian Department of Education http://www.communications.tas.gov.au/toolkit/publishing_print_multimedia_and_web/publications/crown_copyright_guidelines_for_administration_v.2.0


77 See Commonwealth Copyright Administration, Attorney-General’s Department: http://www.ag.gov.au/cca


(Note: although numerous references were found to a Commonwealth "Australian Government Intellectual Property Manual" – said to be released on the Attorney-General’s Department’s website


80 Note: The Australian Public Service Commission (2011) discusses a similar staff survey – e.g. see Chapter 9 (Innovation and Efficiency) for new metrics on public sector innovation which may also apply to intellectual property development.

81 See www.austlii.edu.au/au/legis/wa/consol_act/iatda1998393/


