



BRIEFING

National IP management policy for universities and Public Research Organisations - Draft Cabinet paper for Ministerial consultation

Date:	28 August 2025	Priority:	High
Security classification:	In Confidence	Tracking number:	BRIEFING-REQ-0019881

Minister	Action sought	Deadline
Hon Dr Shane Reti Minister of Science, Innovation and Technology	Agree to distribute the Cabinet paper for Ministerial consultation	1 September 2025

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Gina Williamson	Manager, Innovation Policy	04 901 8203	Privacy of natural persons	✓
Dr Simon Wakeman	Principal Policy Advisor, Innovation Policy			

The following departments/agencies have been consulted
n/a

Minister's office to complete:

☐ Approved

☐ Declined

☐ Noted

☐ Needs change

☐ Seen

☐ Overtaken by Events

☐ See Minister's Notes

☐ Withdrawn

Comments



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Purpose

To provide you with advice on outstanding issues in relation to the national intellectual property (IP) management policy for universities and Public Research Organisations (PROs) and provide a revised Cabinet paper for Ministerial consultation.

Recommended action

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Note** the draft Cabinet paper provided for Ministerial consultation

Noted

- b **Agree** that the IP management policy does not give a research organisation a right to clawback uncommercialised IP from inventors that have elected to commercialise without the research organisation

Agree / Disagree

- c **Agree** to require commercialising inventors to report to MBIE on the commercialising outcomes but not to require them to demonstrate benefit to New Zealand

Agree / Disagree

- d Confidential advice to Government

- e Confidential advice to Government

- f **Agree** to distribute the Cabinet paper for Ministerial consultation

Agree / Disagree

g **Note** that we will concurrently distribute the draft Cabinet paper to other agencies for agency consultation

Noted



Gina Williamson
Manager, Innovation Policy
Labour, Science and Enterprise, MBIE
28 / 08 / 2025

Hon Dr Shane Reti
**Minister of Science, Innovation and
Technology**
..... / /

Background

1. You asked us to prepare a paper to enable you to seek Cabinet approval for the national IP management policy for universities and PROs. On 21 August 2025 we provided you with a draft Cabinet paper for your feedback [BRIEFING-REQ-0019477 refers].
2. In that advice we indicated that there were two recommendations from stakeholders on which we had not yet formed a view, and we would provide you further advice on these issues. We also indicated that we had commissioned an expert review of the policy statement in Appendix 1 by a law firm with expertise in IP law (AJ Park), and that we would incorporate any recommended changes into the policy prior to sending you the version for Ministerial consultation.
3. At the SI&T Officials meeting on 25 August 2025 Confidential advice to Government
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] You also specified several other edits that you wanted made to the paper.

Response to stakeholder recommendations

4. As noted in our previous briefing, individual stakeholders recommended the following amendments in their feedback on the IP policy proposal:
 - a. If the inventors choose to commercialise the IP without the university but then fail to commercialise it within a reasonable period, the IP should revert to the university.
 - b. If the inventors choose to commercialise the IP without the university, they be required to demonstrate benefit to New Zealand and to report to MBIE on the commercialisation outcomes (similarly to how universities and PROs do at present).

We do not recommend giving universities a right to clawback uncommercialised IP

5. We do not recommend accepting the suggestion in paragraph 4.a4a. Instead, we recommend allowing the commercialising inventors to retain the IP rights, even if they do not proceed with the commercialisation or their commercialisation attempt(s) fail.
6. Giving the university (and other organisations covered by the first arm of the IP policy) a right to clawback uncommercialised IP mitigates the risk of the IP not being commercialised and IP being 'left on the shelf' because the inventors encounter insurmountable barriers or lose interest in commercialisation. We understand the frequency of IP not being commercialised by a researcher is a reason why the University of Sydney rolled back their attempts to introduce a Waterloo-like IP policy.
7. Conversely, clawback provisions can be a deterrent to investors, undermining the ability of researchers to successfully commercialise. This issue could be addressed through clearly defining what is a genuine attempt to commercialise, putting a time limit to any clawback right, and/or cancelling the clawback after a specified commercialisation milestone (such that it will not interfere with capital raises).
8. However, it would be difficult to specify a clawback right in a way that balances giving the inventors adequate time to commercialise the IP with ensuring that IP is not left

uncommercialised. In some cases, it may take a long time (eg, 5 or even 10 years) for inventors to successfully commercialise the IP. It can also be difficult to clearly define appropriate commercialisation milestones.

9. To not include a clawback provision is also more consistent with the Waterloo model, which gives the investors absolute ownership of the IP rights (and hence does not allow a clawback right). We also note there is a market-based solution if the researcher does not progress with commercialisation – that is, if the university believes it is better placed to commercialise the IP, it can offer to buy the IP off the inventors.

We recommend requiring commercialising inventors to report on the commercialisation outcomes but not specifically to demonstrate benefit to New Zealand

10. In response to the suggestion in paragraph 4.b4b, we recommend including a requirement in the IP policy that inventors report on the outcomes of commercialising IP that is subject to the policy. Collecting this information will help to assess the impact of the IP policy on commercialisation outcomes. However, we note that compliance with this requirement would essentially be voluntary unless there is a consequence of the commercialising inventors not complying (eg, they are benefiting directly from government-funded commercialisation support).
11. We do not recommend requiring the inventors demonstrate benefit to New Zealand. This requirement would be difficult to enforce, especially if the inventors bring in third-party investors. It would also limit the inventors' ability to attract external capital as investors may be unsure whether this would limit what they can do with the IP. We believe that maximising the commercialisation of the IP is the best way to achieve benefit to New Zealand.

Formal statement of the IP policy

12. As noted in our previous advice [BRIEFING-REQ-0019477 refers], we commissioned AJ Park, a law firm with expertise in IP law, to conduct an expert review of the statement of the policy in Appendix 1 of the draft Cabinet paper.
13. AJ Park has recommended several changes to clarify the meaning of the statement. These do not materially alter the policy itself.

Confidential advice to Government

14. Confidential advice to Government
[Redacted text]
15. Confidential advice to Government
[Redacted text]
16. Confidential advice to Government
[Redacted text]

Confidential advice to Government

17. Confidential advice to Government

18. Confidential advice to Government

19. Confidential advice to Government

Next steps

20. We are currently working towards your office lodging this paper on Thursday 11 September, ahead of the Cabinet Economic Policy Committee (ECO) meeting on Wednesday 17 September. Meeting this timeframe would require beginning concurrent agency and Ministerial consultation as soon as possible (to allow as close to two full weeks as possible).

21. Our recommended timeline is:

MBIE provides revised Cabinet paper	28 August 2025
Ministerial and agency consultation (in parallel)	28 August – 10 September 2025
MBIE provides final Cabinet paper for lodging	11 September 2025
Minister's office lodge paper for ECO	11 September 2025
ECO	17 September 2025
Cabinet	22 September 2025

22. We note that the next ECO meeting after 17 September is on 8 October 2025.

Annexes

Annex One: Draft Cabinet paper

¹ Confidential advice to Government

Annex One: Draft Cabinet paper
