1. Interpretation

1.1 In this statute and any regulation made pursuant to it, unless the contrary intention applies -

'circuit layout' means a circuit layout as defined by the Circuit Layouts Act 1989 (Cth).

'Committee' means the Intellectual Property Committee established pursuant to section 4 or 1A as the case requires.

'computer program' means a computer programme as defined in the Copyright Act 1968 (Cth).

'confidential information' means information of any kind which, because of its confidential character, is capable of protection by contractual or equitable means, and includes information of a valuable commercial or technical character.

'copyright work' means any 'artistic work', 'literary work', 'dramatic work', 'musical work', 'sound recording', 'cinematograph film', 'television broadcast', 'sound broadcast' or 'published edition of work' as those terms are defined by the Copyright Act 1968 (Cth) and the respective definitions of those terms have the respective meanings ascribed to them in that Act.

'course material' means any copyright work created by an originator in the circumstances referred to in section 2.1.1 specifically for use in, or in connection with a course, subject or unit offered or to be offered by the University, or by Open Universities Australia Pty Ltd.

'design' means a design as defined by the Designs Act 1906 (Cth).

'eligible layout' means an eligible layout as defined by the Circuit Layouts Act 1989 (Cth).

'intellectual property' means any copyright work, circuit layout, eligible layout, design, patent, invention, confidential information, know-how, plant variety, trade mark or other insignia of origin, and any related right.

'intellectual property officer' means the person appointed by the vice-chancellor and president pursuant to section 5 or 1A as the case requires.

'invention' means an invention (whether or not qualifying for registration) under the Patents Act 1958 (Cth) or the Patents Act 1990 (Cth).
'originator' means any person who creates, whether or not in conjunction with another person, intellectual property referred to in section 2.1.

'patent' means a patent within the meaning of the Patents Act 1958 (Cth) or the Patents Act 1990 (Cth) and includes a standard patent or a petty patent.

'plant variety' means a plant variety whether or not qualifying for a grant under the Plant Variety Rights Act 1987 (Cth).

'resources' includes administrative support and other human resources.

'scholarship' includes a fellowship, and a scholarship awarded by the University, a department, centre or other unit of University organisation, or a person or body external to the University.

‘South Africa' means Monash South Africa Limited which operates as the Monash South Africa campus of the University.

'specific contribution' in relation to the creation of intellectual property excludes a scholarship and means funding, resources, facilities or apparatus which is earmarked for the purpose of creating the intellectual property.

'student' means, despite anything to the contrary in any other statute or regulation, a person who creates intellectual property in the course of the person’s studies or research at the University undertaken in pursuance of a degree, diploma, or unit offered by the University.

‘Sunway’ means Monash University Sunway Campus Malaysia Sdn Bhd (Malaysian Company No. 458601-U) which operates as the sunway campus of the University in Malaysia, located at Bandar Sunway in the state of Selangor and at its other sites.

'trade mark' means a trade mark as defined by the Trade Marks Act 1995 (Cth) whether or not registered under that Act.

1.2 A reference in this statute to a Commonwealth Act is a reference to an Australian Act and includes a reference to the Act as amended, re-enacted or remade (with or without modification), re-enacted or remade (with or without modification) and subsequently amended, or if the Act is repealed and not re-enacted or remade, the Act as in force immediately before it is repealed.

1A. Application of statute to South Africa and Sunway

1A.1 This statute and any regulations made hereunder, shall only apply to South Africa and Sunway to the extent that they relate to a student.

1A.2 For the purpose of the application of this statute and any regulations made hereunder to South Africa and Sunway, a reference to a Commonwealth Act shall be interpreted as a reference to the relevant or closest equivalent applicable South African or Malaysian Act or legal instrument.

1A.3 Where subsection 2.2 applies and the student is undertaking a degree, diploma, or unit offered by the University at South Africa or Sunway, the
assignment of ownership under subsection 2.2 shall be to South Africa or Sunway, as the case requires.

1A.4 At Sunway there shall be an intellectual property officer (*intellectual property officer (sunway)*)) who shall be the pro vice-chancellor and president (Malaysia) and who shall have the duties, responsibilities and powers conferred by –

1A.4.1 this statute and the regulations made hereunder to the extent that they relate to a student; and

1A.4.2 the vice-chancellor and president.

**Explanatory Note:**
For the avoidance of doubt, applicable references in section 2 to the intellectual property officer refer to the intellectual property officer (Sunway).

Unless expressly stated to the contrary, the intellectual property officer (Sunway) may delegate any of his or her duties, responsibilities or powers conferred in accordance with this statute or the regulations made hereunder to any person or body as he or she thinks fit.

1A.5 At Sunway there shall be an Intellectual Property Committee (Sunway) which shall be constituted by the intellectual property officer (Sunway) and which shall have such duties, responsibilities and powers as conferred by –

1A.5.1 this statute and the regulations made hereunder to the extent that they relate to a student; and

1A.5.2 the pro vice-chancellor and president (Malaysia).

1A.6 At South Africa there shall be an intellectual property officer (*intellectual property officer (South Africa)*) who shall be the pro vice-chancellor (Monash South Africa) and who shall have the duties, responsibilities and powers conferred by –

1A.6.1 this statute and the regulations made hereunder to the extent that they relate to a student; and

1A.6.2 the vice-chancellor and president.

**Explanatory Note:**
For the avoidance of doubt, applicable references in section 2 to the intellectual property officer refer to the intellectual property officer (South Africa).

Unless expressly stated to the contrary, the intellectual property officer (South Africa) may delegate any of his or her duties, responsibilities or powers conferred in accordance with this statute or the regulations made hereunder to any person or body as he or she thinks fit.

1A.7 At South Africa there shall be an Intellectual Property Committee (South Africa) which shall be constituted by the intellectual property officer (South Africa) and which shall have such duties, responsibilities and powers as conferred by –
1A.7.1 this statute and the regulations made hereunder to the extent that they relate to a student; and

1A.7.2 the pro vice-chancellor and president (Monash South Africa).

2. Ownership of intellectual property

2.1 Subject to section 2.4, the University owns intellectual property, other than intellectual property created by a student -

2.1.1 which is created by an originator in pursuance of the originator’s employment under a contract of service with the University; or

2.1.2 in respect of the creation of which the University has contributed other University owned intellectual property or has made a specific contribution of funding other than salary payable pursuant to a contract of employment, resources, facilities or apparatus.

2.2 In the case of intellectual property created by a student, the student shall assign the ownership to the University if the intellectual property is prescribed for the purposes of this subsection under regulations made pursuant to this statute.

2.3 The University -

2.3.1 may enter into an agreement with an originator or other person in relation to the creation, ownership, licensing, use or exploitation of intellectual property; and

2.3.2 subject to subsection 2.3A shall, where the University owns intellectual property, enter into an agreement with an originator referred to in paragraph 2.1.1 regarding the distribution of any revenue between the University and the originator where the intellectual property is sold or licensed by the University.

2.3A Paragraph 2.3.2 does not apply to or in relation to –

2.3A.1 course materials; or

2.3A.2 intellectual property in respect of which the distribution of revenue is governed by the Council’s statement on patent revenue distribution.

2.4 An agreement made pursuant to section 2.3 prevails over any provision in this statute or regulations made pursuant to this statute which is inconsistent with the agreement.

2.5 Where an originator of a copyright work prescribed by the regulations made pursuant to this statute is a member of the academic staff of the University, subject to subsection 2.6, the University by operation of this statute assigns ownership in the copyright work to the originator.

2.6 An assignment of ownership in a copyright work under subsection 2.5 is subject to a non-exclusive, royalty free and irrevocable licence to the
University to reproduce, digitise, publish, perform, communicate to the public and otherwise use the work for the University’s teaching and research purposes.

2.7 Subject to sections 2.4 and 2.10 where the University owns copyright in a copyright work, the originator is granted by operation of this statute a non-exclusive, royalty free and irrevocable licence to use the work for the originator’s teaching and research purposes.

2.8 Subject to section 2.4 where the University owns copyright in a computer program, the originator of the program may not disclose it or information about it other than reasonable disclosure to persons employed by or contracted to the University without the prior approval of the intellectual property officer who, in deciding whether to give approval, must ascribe primary importance to the need to preserve appropriate academic interchange and discourse.

2.9 An originator must, if required by the vice-chancellor and president or authorised officer, execute any document or do anything reasonably required by the University in relation to intellectual property created in whole or in part by the originator to demonstrate or prove ownership to third parties or secure intellectual property protection, any costs of or for which are to be borne by the University.

2.10 Subject to section 2.4, an originator must not disclose the details of or use intellectual property if the disclosure or use -

2.10.1 involves computer information not approved under section 2.8; or

2.10.2 is currently determined by the intellectual property officer to be disclosure or use which would prejudice the protection, enforcement or commercial exploitation of intellectual property owned wholly or in part by the University, or by another person under an agreement made pursuant to section 2.3 or to any Government or legislative requirement.

2.11 The intellectual property officer must not prevent publication of a student’s thesis beyond any time frame set by the Graduate Research Committee.

2.12 The intellectual property officer shall consult with relevant senior academic staff before making a determination under section 2.10 and shall cause to be published and have readily available the current determinations which prohibit disclosure or use of intellectual property.

2.13 An originator must not apply for any form of protection for, or commercially exploit or otherwise deal with any intellectual property, or do any act or thing in a manner inconsistent with the University’s rights under this statute or otherwise.

2.14 Where the University publishes or causes to be published a copyright work, owned by the University pursuant to this statute, the University shall act in accordance with Part IX of the Copyright Act 1968 (Cth), when attributing authorship.
2.15 At the request of an originator, the University must remove the acknowledgment of authorship carried on course materials created by the originator.

2.16 Prior to entering into an agreement to assign or licence a copyright work owned by the University and where it is reasonable to do so, the University must consult with the originator of the work and reach agreement on whether authorship is to be acknowledged and, if so, the form of the acknowledgment.

2.17 Where the University owns intellectual property, other than copyright, it shall ensure if practicable that the originator is acknowledged as the inventor or co-inventor, as the case requires, in any relevant patent application or other documentation.

3. Provision of intellectual property details

An originator referred to in paragraph 2.1.1, of intellectual property, other than copyright works which are prescribed under subsection 2.1 of the regulations made pursuant to this statute, must provide relevant details about the intellectual property as required by the intellectual property officer or nominee.

4. Intellectual Property Committee

There shall be an Intellectual Property Committee at the University which shall be a committee of the Academic Board.

5. Intellectual property officer

There shall be an intellectual property officer of the University who shall be the deputy vice-chancellor and vice-president responsible for university research development, and who shall have the duties, responsibilities and powers conferred by this statute, the regulations made under this statute and the vice-chancellor and president.

Unless expressly stated to the contrary, the intellectual property officer may delegate any of his or her duties, responsibilities or powers conferred in accordance with this statute or the regulations made hereunder to any person or body as he or she thinks fit.

6. Appeals from decision of intellectual property officer

6.1 An originator who is dissatisfied with a decision of the intellectual property officer may within 14 days of the decision request the Committee to review the decision.

6.2 The intellectual property officer must not participate as a member of the Committee on a review.

6.3 The Committee must commence a review of a decision of the intellectual property officer within 14 days of receiving a request made pursuant to section 6.1 and complete the review as soon as practicable thereafter.
6.4 After providing an originator with an opportunity to be heard, the Committee must either confirm or vary the decision or action of the intellectual property officer and must notify the originator within fourteen (14) days of its decision.

7. Regulation making power and promulgation

7.1 The Council may make regulations for and with respect to -

7.1.1 ownership, licensing and use of intellectual property;

7.1.2 relinquishment of University ownership of or other rights to intellectual property;

7.1.3 developing intellectual property or securing its protection, including any related administrative action;

7.1.4 commercial exploitation of intellectual property;

7.1.5 apportionment of income generated by intellectual property;

7.1.6 the composition, function and powers of the Committee;

7.1.7 the duties, responsibilities and powers of the intellectual property officer.

7.2 Regulations made under this statute must be promulgated on the Monash University Calendar website and after being so promulgated must remain on the website for at least 14 days.

End Notes

1. Table of amendments from 1 November 2011 (as incorporated into this version):

<table>
<thead>
<tr>
<th>Amendment</th>
<th>Sections Amended</th>
<th>Commencement Date (Promulgation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statute 11.2 – Intellectual Property (Amendment) (No.4 of 2012)</td>
<td>Section 1.1, 1.2, 2.3, 2.5, 2.14, 2.16, 3, 4, and 5. Inserted section 1A.</td>
<td>10 July 2013</td>
</tr>
</tbody>
</table>