

Intellectual Property

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Applies From:	Immediately		Director, Academic

Major changes/additions since the last version was approved are indicated by a vertical line in the left hand margin.

1 Introduction

1.1 Purpose

This policy regulates the ownership and protection of the Intellectual Property (IP) at Ara Institute of Canterbury¹ and provides specific directions to staff and students on IP related matters. This policy aims to provide incentives to staff and students to create valuable IP.

1.2 Scope and Application

- a This policy applies to all Ara staff, students and visitors.
- b This policy does not regulate agreements between Ara and external parties concerning IP.
- c IP is of little value to Ara unless it is identified, protected, managed and commercialised, including enforcement where necessary. This policy identifies how Ara will protect, manage and commercialise its IP.
- d In giving effect to this policy obligations are acknowledged under the Education Act 1989 in relation to the freedom of academic staff and students within the law to:
 - i Question and test perceived wisdom
 - ii Advance new ideas
 - iii State controversial or unpopular opinions
 - iv To engage in research
- e Ara reserves the right to enter into express agreements with staff and/or students relating to IP which may be at variance with this policy. Any such variations may only be agreed to by the Chief Executive or his/her delegate.

1.3 Formal Delegations

- a This policy assigns accountability to the Director, Corporate Services, and Chief Executive.
- b This policy assigns responsibility for any required negotiations and document preparation to the Human Resources team, with such document being subject to the approval of the staff detailed in section 1.3(b).

¹ Herein referred to as Ara

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- c The policy 'CPP309 Principles & Practices Governing All Contractual Arrangements' applies to all contracts arising from IP.

1.4 Definitions

- a **Academic Institution:** any public or private sector organisation whether inside or outside New Zealand engaged in the provision or delivery of tertiary education and includes tertiary institutions established under the Education Act 1989.
- b **Copying:** copying as defined in the Copyright Act 1994.
- c **Copyright work:** those original works referred to in section 14 of the Copyright Act 1994, and further defined in section 2 of that Act, or their equivalent and includes work of joint ownership.
- d **Course material:** All items created by staff and/or students which are, or could be, used in the delivery of any course on behalf of Ara.
- e **Creator:** any person who produces, invents, discovers, originates, develops or puts into practice any IP. Create, created, creation and creating have corresponding meanings.
- f **Contributor:** a staff member or student who contributed to the creation, development or invention of the relevant IP.
- g **Instructional Material:** any work prepared for assisting teaching and learning.
- h **Intellectual Property (IP):** any discovery, innovation, invention, form, shape, sound, image, expression, technique or process which is the product of skill, effort or intellect including:
 - i Inventions whether patented or not, patents, branding and other trademarks, service marks, copyright, copyright work, designs whether registered or not, trade names, symbols and logos, and layout design rights;
 - ii Plant varieties and invented life forms;
 - iii Data bases and other valuable or potentially valuable information including research outcomes and records;
 - iv Signs or insignia of origin, quality, reputation or commercial connection;
 - v Course material and instructional material;
 - vi Patent applications, applications to register trademarks, service marks and designs; and
 - vii Know-how, tools, techniques, computer programme code, data, confidential information, discoveries, developments, trade secrets, and logical sequences (whether or not reduced to writing or other machine or human readable form).
- i **Moral Rights:** the right of the author or inventor to:
 - i Be named as author or inventor;
 - ii object to derogatory treatments of the work; and
 - iii not be falsely identified as author or inventor.
- j **Staff:** Any person(s) with an employment relationship with Ara and, for the purposes of this policy, includes a person engaged on a contract for services. Staff member has a corresponding meaning. If a staff member is also a student enrolled at Ara, he or she is classified as a staff member for the purposes of this policy.

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k **Student:** Any person enrolled at Ara.

Related Ara Procedures <ul style="list-style-type: none">• Declaration of IP model letter (available from Human Resources)• Employment Awards (available from Human Resources)	Related Ara Policies <ul style="list-style-type: none">• APP803 Research and Knowledge Transfer• CPP309 Principles & Practices Covering all Contractual Arrangements• Other relevant Human Resources policies (refer Corporate Policies & Procedures Manual)
Related Legislation or Other Documentation <ul style="list-style-type: none">• See 1.3 above	Good Practice Guidelines <ul style="list-style-type: none">•
References <ul style="list-style-type: none">•	
Notes	

2 Principles

- 2.1 State clearly the ownership rights of Ara in relation to IP;
- 2.2 Maximise the transfer of the benefits of IP to the wider community, whilst recognising the advantages of protecting and sharing fairly the benefits of ownership of IP.
- 2.3 Recognise the moral rights held by creators, including the right of fair attribution of authorship and the need for work not to be modified or used in such a way that it harms the creator's reputation.
- 2.4 Preserve and enhance a climate of creativity, innovation and inventiveness at Ara;
- 2.5 Foster an awareness of the importance of IP among staff and students;
- 2.6 Assist in establishing appropriate mechanisms for the more effective commercial exploitation of IP for the benefit of Ara.

3 Associated procedures for

Ara Corporate Policy on: IP

Contents:	3.1	IP Rights – Staff Members
	3.2	IP Rights – Students
	3.3	Ownership of Pre-Existing IP
	3.4	Moral Rights
	3.5	Commitments
	3.6	Further Provisions Related to IP Rights
	3.7	Joint Ownership
	3.8	Disclosure of IP – Staff
	3.9	Disclosure of IP – Students
	3.10	Publication and Academic Exchanges
	3.11	Consequential Matters

3.1 IP Rights – Staff Members

- a Except as otherwise stated in this policy, Ara owns all IP created by staff:
 - i In the course of employment, or

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- ii Using Ara resources.
- b IP created in the course of employment with Ara includes IP created:
 - i In furtherance of the goals of Ara;
 - ii As course materials or instructional materials or as part of those course materials or instructional materials;
 - iii While participating in any project or programme supported by funding provided by, or arranged by Ara;
 - iv As a component of other IP (and whether or not others have contributed to that creation); or
 - v Using other Ara IP or incorporating other Ara IP;
- c Ara owns any physical object or tangible material embodying or incorporating its IP.
- d While Ara owns IP created by staff in the course of employment as described in this policy, it grants to the creator of course materials or instructional materials prepared for teaching a perpetual, personal royalty free, non-exclusive and non-transferrable licence to use those materials for teaching, educational and research purposes at another academic institution. This licence does not extend to course or instructional materials generated by, or contributed to by, other Ara staff members or students. This licence does not give the staff member any rights to compete against Ara or to licence, or otherwise deal with, the course materials or instructional materials to generate royalties or licence fees (or any other income) for the staff member.

3.2 IP Rights - Students

- a Rights to IP created by students belong to them, unless otherwise stated below.
- b Ara will usually claim its right to IP created by students in the following cases:
 - i When the work is completed wholly or substantially by the student under staff direction, with little originality on the part of the student.
 - ii Where the student's work uses IP already owned by Ara.
 - iii Where the student's work is created using funding provided by, or arranged by Ara.
 - iv When intellectual property is developed in collaboration between a staff member and student, unless there is an express agreement by Ara in writing to the contrary.

3.3 Ownership of Pre-Existing IP

- a Ara does not assert ownership over pre-existing IP belonging to staff members created prior to employment or engagement by Ara.
- b To avoid any dispute as to ownership, the staff member or student must advise his or her Manager or relevant Departmental Head in writing of the existence of the pre-existing IP that the person intends to bring to or use at Ara as soon as is practicable after employment, engagement or enrolment.

3.4 Moral Rights

- a Ara recognises moral rights to IP arising from the efforts of staff or students. Authors are encouraged to cite their name and role in the creation of IP.

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- b Subject to any contracted obligation to which Ara is a party, the use of the whole or part of the work of a creator shall be appropriately acknowledged in accordance with academic practices.
- c Ara recognises the right of a creator to be acknowledged as the creator of IP, and the right to object to derogatory treatment of that IP. Ara will take all reasonable steps to ensure that the moral rights of the creator are respected and to endeavour that others respect those rights.

3.5 Commitments

- a Staff and students are expected to discuss any issues arising from IP with their immediate Manager and the Director, Corporate Services as soon as possible, before any work that may result in significant IP is undertaken or as soon as such potential is identified.
- b Should it be agreed that IP has commercialisation potential, agreements to share the benefit of commercialisation will be negotiated. The development of such arrangements is welcomed and encouraged by Ara.
- c Ara will only be liable for compensating creators for pre-negotiated IP benefit sharing arrangements.

3.6 Further Provisions Related to IP Rights

- a 'Rights' to intellectual property include the use of the work and the ownership of any patents, copyright, designs and confidential information related to the work.
- b Where Ara is the sole owner of intellectual property rights, it may sell, share or transfer those rights to another party as it sees fit. However, Ara also recognises the moral rights of the creator and will notify the creator of its intention to sell, share or transfer those rights.
- c Current and former Ara staff and students may not use or disclose for any unauthorised purpose any IP owned by Ara without written permission from the Chief Executive. This restriction applies even if the staff member or student is employed by, or enrolled at, another academic institution. For a staff member unauthorised use or disclosure of IP may be 'serious misconduct' and dealt with under the relevant employment policy.

3.7 Joint Ownership

- a Ara may transfer its IP rights to others with or without conditions.
- b Joint ownership agreements may specify:
 - i The terms and conditions of the agreement;
 - ii Who has the right to use of the IP;
 - iii Who has distribution rights;
 - iv Who has sale rights; and
 - v How any profit or costs are to be allocated.

3.8 Disclosure of IP - Staff

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- a If a staff member thinks a work with commercial potential is to be, or may have been, created, the staff member must inform the Director, Corporate Services in writing.
- b Written disclosure must include:
 - i A description of the concept or work;
 - ii The perceived advantages or potential of the work (if known);
 - iii Any likely disadvantages or risks (if known);
 - iv A summary of further work and/or development required; and
 - v A summary of the likely commercial application of the IP (if known).
- c All written disclosures will be treated in confidence.
- d There is a significant risk that publication, or other forms of disclosure to a third party, will result in the work ceasing to be IP or otherwise reduced in value. The staff member must ensure that no publication, exhibition or broadcast of the work occurs without written permission from the Director, Corporate Services or Chief Executive. Non-confidential disclosure, even to other Ara staff, may result in the loss of any IP rights. Non-confidential disclosure includes:
 - i publication in scientific or academic journals and reports;
 - ii an abstract, presentation or poster session at a conference;
 - iii publication of photographs in detail;
 - iv a demonstration, with commercial purposes in mind; and
 - v descriptions published in foreign languages.

3.9 Disclosure of IP - Students

- a Where a student's work is covered by this policy that individual is encouraged to disclose any work with commercial potential to the relevant Head of Department. If the student wishes to commercially develop the work, written confirmation should be sought to confirm that Ara does not claim any IP rights arising from the work.
- b There is a significant risk that publication, or other forms of disclosure to a third party, will result in the work ceasing to be IP or otherwise reduced in value. No publication, exhibit or broadcast of the work should occur without written permission from the Director, Corporate Services or Chief Executive. Non-confidential disclosure may result in the loss of IP rights. Attention is drawn to the non-exhaustive references to non-confidential disclosure in 10(d).
- c If the student and Ara agree that Ara should take part in any commercial development of the work, Ara will prepare a formal agreement as to:
 - i ownership of the IP; and
 - ii the sharing of any financial reward;
 - iii the sharing of the costs of exploiting the work.
- d Where Ara and/or a third party are the sole owners of IP rights, the student agrees:
 - i that all rights, duties and obligations in this policy continue to apply after the work is completed and after the student is no longer enrolled at Ara;
 - ii to undertake additional work as needed to enable Ara to apply for protection, enforce that protection and commercially develop the work;

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- iii not to give to any other person or entity other than Ara any interest in any IP rights arising from the work; and
 - iv not to do anything, or fail to do something, that may result in a conflict of interest about that IP or that is detrimental to the work.
- e Nothing in this policy will preclude or limit students' rights to have the work evaluated and assessed as part of the requirements of their course of study in the usual way.

3.10 Publication and Academic Exchanges

- a Ara acknowledges the rights of staff and students to exchange academic information with colleagues and to present and publish the results of research and academic endeavours.
- b Where such an exchange, presentation or publication could diminish the value of IP or the opportunity to commercially exploit or develop IP, Ara must be notified of an intention to exchange the information or to present and publish the information prior to this occurring.
- c In any case Ara may require the staff and students concerned to:
 - i Inform the recipients of the information that they may only use it for stated purposes; or
 - ii Not further disclose the information (or transmit it) without the prior written consent of Ara; or
 - iii Suspend publication or presentation for as long as may be reasonably necessary for Ara to complete the successful commercialisation of the IP.

3.11 Consequential Matters

Ara may waive or forego any of its IP rights but will only do so in a formal agreement recorded in writing.

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