

Intellectual Property

First Produced:	17/11/94	Authorisation:	Te Kāhui Manukura (TKM)
Current Version:	31/10/22	Officer Responsible:	Executive Director Academic, Innovation and Research
Past Revisions:	11/10/02, 26/11/04, 14/03/07, 13/08/12, 26/3/15, 14/7/20, 19/02/21		
Review Cycle:	5 years		
Applies From:	Immediately		

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 Canterbury (Ara) and provides specific directions to colleagues and learners on IP related matters. This policy aims to provide incentives to colleagues and learners to create valuable IP.

1.2 Scope and Application

- a This policy applies to all Ara colleagues, learners, and visitors.
- b This policy does not regulate agreements between Ara and external parties concerning IP (ownership explicitly stated in agreement/contract).
- 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 and Training Act 2020](#) in relation to the freedom of academic colleagues and learners 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 colleagues and/or learners relating to IP which may be at variance with this policy. Any such variations may only be agreed to by the Chief Executive or delegate.

1.3 Formal Delegations

- a This policy assigns accountability to the Executive Director, Academic, Innovation and Research, and the Chief Executive.

All policies on the Ara Website are the current version. Please check date of this hard copy before proceeding.

- b This policy assigns responsibility for any required negotiations and document preparation to the People and Culture (P&C) team, with such document being subject to the approval of the colleagues detailed in section 1.3(a).
- c The *CPP309 Contracts Management Policy and Procedures* 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 (repealed and replaced by the [Education and Training Act 2020](#)).
- 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 colleagues and/or learners 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 colleague or learner who contributed to the creation, development or invention of the relevant IP.
- g **Instructional Material:** any work prepared for assisting teaching and learning.
- h **Indigenous Cultural Property (CP):** the preservation, protection, and control of cultural properties of Indigenous Peoples of their cultural artefacts, archaeological and traditional sites of significance, traditional food and resources, material culture such as weaving, songs, rituals, legend and other oral traditions, skeletal remains and so on.
- i **Indigenous Intellectual Property:** the rights which accrue to Indigenous peoples in regard to preserving knowledge over medicinal plants, agricultural biodiversity, cultural creations, talents and expertise, environmental management, cultural customs, language, epistemology, specialised knowledge, skills and pedagogy.
- j **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 design, and

All policies on the Ara Website are the current version. Please check date of this hard copy before proceeding.

- 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).
- k **Mātauranga Māori** refers not only to Māori knowledge, but also the Māori way of knowing. Mātauranga Māori incorporates language, whakapapa, technology, systems of law and social control, systems of property and value exchange, forms of expression, and much more. It includes, for example, traditional technology relating to food cultivation, storage, hunting and gathering. It includes knowledge of the various uses of plants and wildlife for food, medicine, ritual, fibre, and building, and of the characteristics and properties of plants, such as habitats, growth cycles, and sensitivity to environmental change. It includes systems for controlling the relationship between people and the environment. And it includes arts such as carving, weaving, tā moko (facial and body tattooing), the many performance arts such as haka (ceremonial dance), waiata (song), whaikōrero (formal speech-making), karanga (ceremonial calling or chanting), and various rituals and ceremonies such as tangihanga (funeral rites), tohi (baptism), and pure (rites of cleansing).
- l **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.
- m **Colleague(s):** 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. Colleague has a corresponding meaning. If a colleague is also a learner enrolled at Ara, he or she is classified as a colleague for the purposes of this policy.
- n **Learner:** Any person enrolled at Ara.
- o **Taonga:** Anything that is treasured, including tangible things such as land, waters, plants, wildlife, and cultural works; and intangible things such as language identity, and culture including mātauranga Māori itself.

Related Ara Procedures <ul style="list-style-type: none"> • Declaration of IP model letter (available from People and Culture) • Employment Awards (available from People and Culture) 	Related Ara Policies <ul style="list-style-type: none"> • APP803 Research and Knowledge Transfer • CPP309 Contracts Management Policy and Procedures • Other relevant People and Culture policies (refer Corporate Policies & Procedures Manual)
Related Legislation or Other Documentation <ul style="list-style-type: none"> • See Section 1.4 	Good Practice Guidelines
References	
Notes	

All policies on the Ara Website are the current version. Please check date of this hard copy before proceeding.

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 colleagues and learners.
- 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: Intellectual Property

Contents:	3.1	Ownership of Pre-Existing IP
	3.2	IP Rights – Colleagues
	3.3	IP Rights – Learners
	3.4	IP and CP Rights – Taonga and Mātauranga Māori
	3.5	Moral Rights
	3.6	Commitments
	3.7	Further Provisions Related to IP Rights
	3.8	Joint Ownership
	3.9	Disclosure of IP – Colleagues
	3.10	Disclosure of IP – Learners
	3.11	Publication and Academic Exchanges
	3.12	Consequential Matters

3.1 Ownership of Pre-Existing IP

- a Ara does not assert ownership over pre-existing IP belonging to colleagues created prior to employment or engagement by Ara.
- b To avoid any dispute as to ownership, the colleague or learner must advise their manager or relevant Head of Department 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.

3.2 IP Rights – Colleagues

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

All policies on the Ara Website are the current version. Please check date of this hard copy before proceeding.

- 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 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 Ara's ownership of IP excludes works published in books, journal articles, artwork, design music, literature, and similar materials, unless production of the work is specified as a task in the colleague's employment agreement as being part of the employee's duties and responsibilities (e.g, a colleague who is employed specifically to produce such material for Ara's use would not normally own the IP arising from that work). The purpose of limiting Ara's rights to such work is to encourage and support publication, exhibition, broadcast, and other forms of disseminating original and scholarly work and research where it doesn't restrict future opportunities for exploitation of IP. In exchange for transferring ownership rights to the colleague, Ara requires appropriate recognition of its support, involvement and/or connection as part of the dissemination. Ara also exercises its right to free use of the IP for educational purposes, where it doesn't conflict with future development of the IP.

3.3 IP Rights – Learners

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

3.4 IP and CP Rights – Taonga and Mātauranga Māori

- a Ara recognises its obligations under the [Education and Training Act 2020](#) to give effect to Te Tiriti o Waitangi, Article 2 of which guarantees 'tino rangatiratanga' (full authority or chieftainship) over all 'taonga' (treasures that are both tangible and intangible, material and non-material).
- b Ara recognises that iwi-Māori are the guardians of their mātauranga and taonga have the right to protect and control the dissemination of that knowledge and use of those taonga.
- c Ara accepts that the cultural and intellectual property rights of iwi-Māori are vested with those who created them.
- d The development of new mātauranga Māori will be undertaken in partnership with iwi-Māori, who will continue to be recognised as the guardians of that mātauranga and holders of the associated cultural and intellectual property rights.
- e Where products and services are designed at Ara and include mātauranga Māori, and are then commercialised, the Office of Treaty Partnerships will liaise with local iwi Māori and advise on any consequent benefit sharing arrangements.

All policies on the Ara Website are the current version. Please check date of this hard copy before proceeding.

- f For an understanding of intellectual and cultural property rights associated with mātauranga Māori and taonga, Ara will be informed by the various deliberations, including published papers, reports and decisions, of the Waitangi Tribunal (especially [WAI262](#)), the Judiciary of New Zealand and academia.

3.5 Moral Rights

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

3.6 Commitments

- a Colleagues and learners are expected to discuss any issues arising from IP with their immediate Manager and the Executive Director, Operations, 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 1/3 : 1/3 : 1/3 benefit sharing, after costs, split between Ara, the academic and their department. Any other arrangement would need to be negotiated between the parties.
- c Ara will only be liable for compensating creators for these IP benefit sharing arrangements unless there is a pre-negotiated arrangement.

3.7 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 colleagues and learners 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 colleague or learner is employed by, or enrolled at, another academic institution. For a colleague unauthorised use or disclosure of IP may be 'serious misconduct' and dealt with under the relevant employment policy.

3.8 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.

All policies on the Ara Website are the current version. Please check date of this hard copy before proceeding.

- 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.

3.9 Disclosure of IP - Colleagues

- a If a colleague thinks a work with commercial potential is to be, or may have been, created, the colleague must inform the Executive Director, Operations 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 colleague must ensure that no publication, exhibition, or broadcast of the work occurs without written permission from the Executive Director, Operations, or Chief Executive. Non-confidential disclosure, even to other Ara colleagues, 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.
- e Open sources – Any open education resources created during Ara work time must be attributed to Ara with a CCO licence.

3.10 Disclosure of IP – Learners

- a Where a learner’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 learner 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 Executive Director, Operations, 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 learner 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

All policies on the Ara Website are the current version. Please check date of this hard copy before proceeding.

- 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 learner agrees:
- i That all rights, duties, and obligations in this policy continue to apply after the work is completed and after the learner 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.
 - 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 learners' rights to have the work evaluated and assessed as part of the requirements of their course of study in the usual way.

3.11 Publication and Academic Exchanges

- a Ara acknowledges the rights of colleagues and learners 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 colleagues and learners 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.

3.12 Consequential Matters

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

All policies on the Ara Website are the current version. Please check date of this hard copy before proceeding.