



THE UNIVERSITY OF  
**WAIKATO**  
*Te Whare Wānanga o Waikato*

**HANDBOOK  
ON  
RESEARCH  
AND  
OUTSIDE  
PROFESSIONAL  
ACTIVITIES**

9th Edition, September 2005  
Copyright: The University of Waikato



# UNIVERSITY OF WAIKATO HANDBOOK ON RESEARCH AND OUTSIDE PROFESSIONAL ACTIVITIES

## Preface

The University of Waikato is a tertiary education institution the core business of which is the advancement and propagation of knowledge by teaching and research. In carrying out their teaching and research duties, and the activities that support teaching and research, University staff draw upon and develop special skills and expertise which may have a commercial value. Situations arise where there is the potential for the commercial exploitation of the University's work.

Because it is the steward of public resources, and because it needs to develop the funding base on which it relies to achieve its goals and objectives, the University has an obligation both to promote such professional activities and to ensure that it benefits financially from them. In some circumstances, University students may also be involved in these activities through their own research or teaching activities.

The University currently receives less than 40% of its total income directly from Government. It has to earn the remainder of its income from student fees, external research grants, and commercial activities, of which contract research is the largest contributor. However, teaching and support activities may also yield opportunities for commercial exploitation. Chapters 5 and 6 in particular are relevant to activities that are not limited to research.

The administrative procedures for the implementation of the University's policies are also included.

The Deputy Vice-Chancellor (Research) acts for the Vice-Chancellor in regard to all externally funded matters, including the proposal and implementation of research policy, the procedures for externally sponsored research arrangements, the exchange of information, and advice on research funding and information. He or she will also advise on the application of the policies contained in this Handbook to other activities, such as teaching, where a commercial return for work carried out may be a consideration.

All matters concerned with external funding of research and consultancies are managed through UNILink. Staff are advised to contact UNILink in the first instance with any queries regarding externally funded research and consultancy issues. Staff who seek external funding for research or University consultancies are encouraged to contact UNILink as early as possible to obtain advice and assistance.

WaikatoLink Ltd is a company wholly owned by the University of Waikato and is responsible for the commercialisation of research projects and University-generated intellectual property, for the benefit or advancement of the University.

# SUMMARIES OF POLICY STATEMENTS

## Ch. 1 CRITERIA UNDERLYING POLICIES ON EXTERNALLY SPONSORED RESEARCH

### 1. Purpose

The purpose of this Handbook is to outline policies and to provide guidelines and advice to staff members who are involved in, or seeking involvement in, research which is sponsored by external agencies. The policies and some administrative requirements are presented in detail in this 'Handbook' which has been prepared primarily for use by staff members. This summary is not a full statement and readers should refer to the relevant sections which are listed in the 'Contents'.

### 2. Benefits

The University of Waikato recognises the benefits of externally sponsored research as providing: access to facilities and resources which would not otherwise be available; stimulation and intellectually challenging opportunities and experience for staff and research students; opportunities for public service; and the opportunity of undertaking applied research (p.11).

### 3. Obligations

- (a) The University recognises that it has a responsibility to conduct its contractual arrangements so that the interests of the University, the sponsors and the public are protected (p.11).
- (b) The principles of freedom to publish and openness of information must be guaranteed (p.11).
- (c) The educational experience of students shall not be impaired by the need to fulfil commercial obligations.
- (d) The primary responsibility of academic staff is to their teaching and research (p.12).

### 4. Staff

- (a) Staff will be encouraged to undertake sponsored research.
- (b) The University recognises that it may be beneficial to the academic development of a staff member to engage in research and publication from which a financial reward may be obtained.
- (c) In considering promotions of staff the University takes into account successfully completed sponsored research and studies (p.12).

### 5. Contracts

- (a) The University of Waikato signs all contracts which involve its facilities, staff and students.
- (b) In signing it seeks to protect staff and students, and its own integrity and reputation (p.13).
- (c) The University's commercialisation company, WaikatoLink Limited, will take out provisional patents to protect intellectual property, and will either license use of that IP, or find a partner in development.
- (d) University contracts are negotiated and managed through UNILink, except for small contracts (<\$50,000) of the Waikato Management School which are managed through the Management Research Centre (MRC).

## Ch. 2 COST-RECOVERY IN EXTERNALLY SPONSORED RESEARCH

- (a) The University seeks to recover the costs of projects commissioned by external sponsors (p.14).
- (b) In specific instances the University may be willing to absorb part of the costs of a project. The degree of subsidy which will be made available is based upon consideration of: the academic advantages to the University; the limitations imposed by the sponsor; the nature of the sponsoring body; and the character of the project (p.14).
- (c) It is relatively easy to identify direct costs. Indirect costs may be very difficult to identify or to quantify. The University consequently uses the method indicated by extensive research in U.S.A., Canada, Australia and Britain as being the most reasonable way of determining the magnitude of a project: that is, the assessment of overhead costs by means of a percentage of the total payroll cost of the project. This requires that all academic and technical staff time be assessed as if it were a charge against the project, irrespective of whether it is intended that the cost be charged (p.15).

- (d) It is not cost efficient, or generally feasible, to itemise overhead (indirect) costs in respect of individual projects.

### **Ch. 3 OUTSIDE PROFESSIONAL ACTIVITIES OF UNIVERSITY STAFF**

#### **1. Definition**

Outside professional activities use the special skills, experience and knowledge which are the basis for employment as academic staff members; such activities are undertaken voluntarily and are not part of the required duties of a staff member (p.16)

#### **2. University's interest**

Power to permit, or forbid, outside activities which may involve the University's time and resources lies with the Vice-Chancellor who may, from time to time, delegate his/her powers in such matters to a representative.

In order to protect its integrity and reputation the University requires that it be informed of all outside professional activities. Any activity which is substantial in use of time, or which uses any University resource, must be specifically agreed to by the appropriate Chairperson (and Dean for continuing activities). No steps should be taken which imply that the University is a party to a private activity (in this regard particular care shall be taken to avoid the use of University printed stationery and titles for private work, unless these are required when appearances are made as an expert witness in courts of law) (p.16).

#### **3. Limitations**

- (a) The University requires staff to recognise its aims and position as an institution of higher learning and to avoid improperly using its resources for private gain, impairing its independence, and implying that it is a party to a private enterprise (p.17).
- (b) Outside activities shall not cause the staff member to be deprived of intellectual independence nor shall they be permitted to be detrimental to the fulfilment of University duties (p17).

#### **4. Time**

The University does not seek to define what time belongs to it: rather it requires all staff to devote to their duties that time which is necessary for the proper discharge of those duties (p.16).

#### **5. Consultancies and commercial contracts**

- (a) Consultancy is defined as the provision of advice to a client, such advice being based on the pre-existing professional knowledge and skills of the consultant (p.19).
- (b) Research is different from consultancy in that its aim is to create new knowledge.
- (c) University consultancies are negotiated through UNILink, except for those of the Waikato Management School which are managed through the Management Research Centre (MRC).
- (d) Where staff are engaging in commercial consultancies it is important to be clear at the outset whether the outside activities are being undertaken on behalf of the University, or as a private individual. This distinction is the basis on which the University does, or does not, take responsibility and carry liability for the activity.
- (e) All consultancy work undertaken in the name of the University requires the approval of the Chairperson of Department (and the Dean for continuing activities) before any commitments are made.
- (f) The income from University consultancies, less contribution to University overheads, belongs to the department or unit of the staff member concerned.
- (g) Signing of all University consultancies and research contracts is arranged through UNILink.
- (h) Private consultancies and other professional activities require, in advance, that:
  - (i) the relevant Chairperson be informed;
  - (ii) that the client be informed that the activity is not a University responsibility; and
  - (iii) that the other requirements set out in Chapter 3, Section 8 (p. 19) are fully met.

## **6. Financial responsibility in consultancy/contract work**

- (a) Staff members who are project leaders have the responsibility for initiating discussions on contracts or consultancies, but they should consult UNILink as soon as firm discussions are commenced (Refer Chapter 8).
- (b) No contract or consultancy may be commenced without a contract or agreement being signed by both parties. The Financial Services Division is responsible for the receipt of all income to the University; UNILink raises tax invoices for research income and consultancy fees (p.20).

## **7. Costings and disbursement of income from contracts and consultancies**

See p.21 and appendix C and D for details.

## **Ch. 4 CONDITIONS OF EMPLOYMENT FOR STAFF EMPLOYED FOR EXTERNALLY SPONSORED RESEARCH**

### **1. General principles**

Persons employed to work on contract and sponsored work are employees of the University (p.22).

### **2. Recruitment**

Research staff are recruited and selected in accordance with the University's normal policies and procedures.

### **3. Conditions of employment**

Staff are normally employed on standard conditions applicable to academic and general staff.

## **Ch. 5 SHARING 'ADDITIONAL INCOME'**

### **1. General principles**

- (a) The University claims an interest in 'additional income' of staff members which is derived from the exercise of their professional qualities and by the use of University time and resources. The University may also claim an interest in the income of students which is derived from the use of University resources.
- (b) The University does not claim an interest in private income from any activity which does not use University time and resources or the professional capabilities of the staff member (p.23).
- (c) The formula for income sharing seeks to safeguard the University from improper use of its resources, and to encourage staff to exercise their skills in an open manner.

### **2. Formula**

- (a) After recovery of all identifiable costs, the residual profit will be distributed so that one-third of the annual profit belongs to the staff members concerned, treated as a single unit, and the remaining profit is shared equally by the University and the School(s)/department(s) of the staff members.
- (b) In the event that more than one staff member is involved in a sharing of income, the division of the income amongst those staff members shall be according to the written agreement they have negotiated amongst themselves.
- (c) Part-time staff may have several sources of professional income. The formula is applied to them **only** in respect of income derived from royalties or fees arising from University-supported sponsored projects which are undertaken in addition to their normal contractual duties to the University.
- (d) Where the University exercises its claim to an interest in student income, it will do so on the basis of the formula outlined in paragraph (a).

3. The formula may be modified where the income does not derive from royalties or fees, eg, where the benefits derive from shareholding in a spin off company (See Chapter 6, section 12). In such cases an appropriately modified formula (following the general principles of 2 (a)) will be negotiated with the Deputy Vice-Chancellor (Research).

## **Ch. 6 COMMERCIALISATION AND INTELLECTUAL PROPERTY RIGHTS**

### **1. Policy**

The University has an obligation to ensure that the benefits of any discoveries arising from research within the University are made available to the community. WaikatoLink Limited, in consultation with the discoverer(s), makes the decisions regarding assignment, protection and course of commercialisation of any discoveries made (p.25).

### **2. Ownership of intellectual property**

Where research activity is undertaken in the course of a staff member's duties to the University and utilising the University resources, the ownership of any intellectual property rights arising from the research normally belongs to the University. Privately undertaken activities, outside of the University, and without utilising University resources would normally belong to the staff member concerned (p.25).

Staff members are required to disclose to WaikatoLink Limited any discovery or innovation which may have possibilities for commercial exploitation. WaikatoLink will decide on the protection and commercialisation of the discovery.

### **3. Assignment of Intellectual Property Rights to WaikatoLink Ltd**

WaikatoLink Limited may require the transfer to it of all registrable intellectual property (patents, trademarks and registered designs) once it has identified commercial potential in that intellectual property. WaikatoLink Ltd is responsible for management of such of the University's intellectual property as has been transferred to it.

### **4. Copyright**

Where an author produces a copyright work in furtherance of his or her academic career and privately enters into a contract for the publication of that work with a publisher, that author becomes the automatic and legal owner of the copyright. The University encourages publication and consequently does not claim intellectual property rights in books and articles published by organisations outside the University (p.26) unless the intellectual property has been created specifically for teaching purposes, or has been created under an externally-funded research contract.

### **5. Confidentiality**

There may be circumstances whereby University staff or students are required to sign a confidentiality undertaking before commencing work on a research project (p.27).

### **6. Costs and rewards**

The University recognises that staff members should share in the income derived from commercialisation of their research and professional expertise. There is a benefit sharing policy which applies to revenue generated by commercialisation. The University seeks to reimburse itself for costs which have been incurred in the research leading to a discovery from which a profit may be derived (p.27).

### **7. Students and intellectual property**

Intellectual Property created by a student in the course of their study or research at the University is the property of the student unless it has been legally transferred to another party with the informed agreement of the student. Where such Intellectual Property involves contributions from staff members or has made use of University resources, the University also has ownership rights and will seek an agreement with the student which is fair to all parties.

Students are the first owners of copyright in their theses, dissertations and other assessable work to the extent that they are authors of the work.

There may be instances where the student may be requested to assign their rights to the University and sign confidentiality agreements prior to commencing work on a programme. (p.28)

**Ch. 7 POLICY STATEMENT ON RESEARCH AND STUDY OFF CAMPUS BY GRADUATE STUDENTS**

- (a) Where students are working in collaborating institutions the University remains responsible for the academic programmes and supervision of the enrolled research students, and the examination of their work.
- (b) The University encourages participation in the supervisory panel of staff from collaborating organisations who are active researchers in the general area of the student's research.
- (c) The Chief Supervisor of a research student normally must be a member of the staff of the University.
- (d) Formal terms of agreement with collaborating organisations must be negotiated through UNILink.

**Ch. 8 PROCEDURES TO BE FOLLOWED BY STAFF INTENDING TO UNDERTAKE SPONSORED RESEARCH PROJECTS**

- (a) Except in the case of Deans and Chairpersons of Department who exercise powers in areas specifically delegated to them, individual members of staff may not commit the University academically or financially, or in respect of the employment of additional staff.
- (b) The procedures include advice on the steps to be followed to ensure that formal consideration and approval of the proposal takes place within the University, prior to the formal submission of the proposal to the sponsoring body. UNILink staff are available to assist with these procedures.

**Ch. 9 GUIDELINES ON ETHICAL BEHAVIOUR IN RESEARCH: PROTECTIONS AGAINST FALSE ALLEGATIONS AND METHODS OF DEALING WITH SERIOUS MISCONDUCT**

Under review

# HANDBOOK ON RESEARCH AND OUTSIDE PROFESSIONAL ACTIVITIES

## CONTENTS

<b>1. CRITERIA UNDERLYING UNIVERSITY POLICIES ON EXTERNALLY SPONSORED RESEARCH.....</b>	<b>11</b>
1. POSSIBLE BENEFITS TO THE UNIVERSITY .....	11
2. INTENTIONS OF THE UNIVERSITY .....	11
3. SUITABILITY OF TOPICS FOR RESEARCH .....	11
4. FREEDOM TO PUBLISH .....	11
5. CONDITIONS FOR STAFF AND RESEARCH STUDENTS .....	12
6. FEES CHARGED FOR RESEARCH .....	12
7. CONTRACTING BODIES .....	13
8. ACADEMIC FREEDOM AND CONTRACTUAL OBLIGATIONS.....	13
<b>2. POLICY ON COST-RECOVERY IN SPONSORED RESEARCH.....</b>	<b>14</b>
1. GENERAL POLICY .....	14
2. SUBSIDISING PROJECTS .....	14
3. DIRECT COSTS.....	14
4. INDIRECT COSTS .....	14
<b>3. POLICY ON OUTSIDE PROFESSIONAL ACTIVITIES OF UNIVERSITY STAFF.....</b>	<b>16</b>
1. DEFINITION.....	16
2. PURPOSE.....	16
3. GENERAL STATEMENT .....	16
4. BENEFITS.....	17
5. LIMITATIONS.....	17
6. PROFESSIONAL ACTIVITIES - GENERAL POLICY .....	17
7. POLICY RELATING TO SPECIFIC CATEGORIES OF PROFESSIONAL ACTIVITY.....	18
8. CONSULTANCIES AND COMMERCIAL CONTRACTS .....	19
9. EMPLOYMENT OF TECHNICAL AND SECRETARIAL STAFF AND STUDENTS .....	20
10. FINANCIAL RESPONSIBILITY IN UNIVERSITY CONSULTANCY/CONTRACT WORK .....	20
11. COSTING AND PRICING OF RESEARCH CONTRACTS.....	21
12. COSTING AND PRICING OF UNIVERSITY COMMERCIAL CONSULTANCIES.....	21
13. DISBURSEMENT OF INCOME FROM CONSULTANCIES.....	21
<b>4. EMPLOYMENT OF STAFF TO WORK ON CONTRACT AND SPONSORED RESEARCH .....</b>	<b>22</b>
1. GENERAL.....	22
2. RECRUITMENT .....	22
3. CONDITIONS OF EMPLOYMENT .....	22
4. APPOINTMENTS .....	22
5. BUDGETARY MATTERS .....	22



<b>5.</b>	<b>UNIVERSITY FORMULA FOR SHARING 'ADDITIONAL INCOME'</b> .....	<b>23</b>
1.	GENERAL PRINCIPLES .....	23
2.	CIRCUMSTANCES FOR APPLICATION OF FORMULA FOR INCOME SHARING .....	23
3.	FORMULA FOR INCOME SHARING.....	24
4.	APPLICATION OF THE FORMULA .....	24
<b>6.</b>	<b>INTELLECTUAL PROPERTY RIGHTS POLICY</b> .....	<b>25</b>
1.	PREAMBLE .....	25
	PART A — GENERAL.....	26
1.	Definitions .....	26
	PART B — IP CREATED BY STAFF .....	26
	PART C — IP CREATED BY STUDENTS.....	27
	PART D — IP CREATED BY VISITING RESEARCHERS .....	28
	APPENDIX 1 .....	29
	APPENDIX 2 .....	32
	POLICY ON SHARING OF BENEFITS FROM COMMERCIALISATION OF INTELLECTUAL PROPERTY .....	32
<b>7.</b>	<b>POLICY STATEMENT ON RESEARCH AND STUDY OFF CAMPUS BY GRADUATE STUDENTS</b> .....	<b>33</b>
1.	GENERAL.....	33
2.	GUIDELINES FOR STUDENTS WORKING IN COLLABORATING INSTITUTIONS .....	33
3.	SUPERVISION .....	33
4.	PROGRESS REPORTS.....	33
5.	SUBMISSION OF THESES .....	34
6.	SCHOLARSHIPS/STUDY AWARD PAYMENTS TO THE STUDENT.....	34
7.	LOGISTICAL SUPPORT .....	34
8.	PUBLICATIONS AND INTELLECTUAL PROPERTY.....	34
<b>8.</b>	<b>PROCEDURES TO BE FOLLOWED BY STAFF INTENDING TO UNDERTAKE SPONSORED RESEARCH PROJECTS</b> .....	<b>35</b>
1.	GENERAL STATEMENT .....	35
2.	LOCATING SOURCES OF FUNDS.....	35
3.	PREPARATION OF PROPOSALS .....	35
4.	CONSIDERATION OF PROPOSALS .....	36
5.	FORMAL NEGOTIATION OF CONTRACTS.....	36
6.	ADMINISTRATION OF CONTRACTS .....	36
<b>9.</b>	<b>GUIDELINES ON ETHICAL BEHAVIOUR IN RESEARCH: PROTECTIONS AGAINST FALSE ALLEGATIONS AND METHODS OF DEALING WITH SERIOUS MISCONDUCT</b> .....	<b>38</b>

Under review

Appendices:	A.	Glossary of terms	40
	B.	Funding for research	42
	C.	Costing and pricing research work and the disbursement of income received	45
	D.	Guide for the preparation of budgets for research projects	48
	E.	Formulating a research contract	51
	F.	Protection of Intellectual Property	55

# **CHAPTER 1**

## **CRITERIA UNDERLYING UNIVERSITY POLICIES ON EXTERNALLY SPONSORED RESEARCH**

### **1. POSSIBLE BENEFITS TO THE UNIVERSITY**

The University of Waikato recognises the benefits of externally sponsored research as:

- providing access to facilities and resources which would not otherwise be available;
- providing assistance to the University for the improvement and maintenance of its support facilities and equipment;
- assisting in the education and training of research students;
- providing stimulating and intellectually challenging opportunities and experience for staff and research students;
- providing opportunities for public service, especially by making available independent advice and specialised skills;
- assisting the University to engage in cooperative research with government, industry, businesses and community organisations;
- assisting the University to arrange sponsorships for students engaged in cooperative ventures as part of their course work;
- assisting students to obtain permanent employment;
- encouraging recruitment and retention of staff who might otherwise be attracted to full-time employment elsewhere;
- providing income from royalties and fees.

### **2. INTENTIONS OF THE UNIVERSITY**

- ( ) In pursuit of the advantages of sponsored research the University seeks to manage its affairs so the aims, quality and autonomy of its scholarly programmes of teaching and research are not limited or devalued.
- (b) The University seeks to protect its own role, and that of its staff, as credible and impartial contributors to the development of scientific, technological, economic, social and political policies.
- (c) The University recognises that it has a responsibility to conduct its contractual arrangements so that the interests of the University, the sponsors and the public are protected.

### **3. SUITABILITY OF TOPICS FOR RESEARCH**

- (a) The University enters into arrangements for sponsored research when such research provides staff and graduate students with opportunities to make significant contributions to knowledge and scholarship and to extend their skills and experience. The research must be intellectually challenging and not merely a routine test, survey or investigation which can be carried out by available commercial enterprises.
- (b) When the University agrees to undertake routine testing or survey which cannot be undertaken commercially it seeks to establish a contract on a full commercial basis.
- (c) The University recognises that the best judges of appropriateness of research topics are its experienced academic staff members, and it will be guided by their assessment of research proposals.

### **4. FREEDOM TO PUBLISH**

- (a) Freedom to exchange ideas and to publish acquired knowledge is fundamental to the purposes of a university. Consequently, restrictions on freedom of access to information are acceptable only for limited periods and for the purposes of permitting: filing of patent applications; comment from the sponsor; protection of the pre-existing commercial secrets of a sponsor; and protection of national security.
- (b) Openness of information must be guaranteed, after an agreed time, for all work which involves the use of University resources.

## **5. CONDITIONS FOR STAFF AND RESEARCH STUDENTS**

- (a) Academic staff members have a primary responsibility to the Dean of their School who may from time to time devolve responsibility to Chairpersons of Department. Staff members, who require approval to undertake consultancy work, should therefore ensure that the Dean is informed either directly or through the Chairperson.
- (b) Research workers shall not be subjected to any pressure to depart from an impartial search for knowledge and understanding, or the highest accepted standards of ethical behaviour.
- (c) Staff members and research students shall be free to refuse engagement in a particular investigation unless they have been employed specifically for that investigation.
- (d) Participation of students in contracted research must be planned to ensure that the educational experience of students is not impaired by contractual or commercial obligations.
- (e) The primary responsibility of academic staff is to their teaching and research, and this has priority over commercial obligations unless staff members are specifically employed or contracted to serve a sponsor.
- (f) Research workers should not engage in activities which endanger mental or physical health.
- (g) University staff may choose to retain the full income from outside work in cases where the use of University time and resources is not involved and the work does not involve the professional capabilities of a member of staff. Where University time and resources are involved staff members may only engage in professional consultancies and sponsored and commissioned research work if the conditions set out in Chapter 3 of this Handbook are fulfilled. Policy for the disbursement of income from research contracts and consultancies is set out in Chapter 3. Policy for the disbursement of "additional income" is set out in Chapter 5.
- (h) In assessing performance, advancement and promotions of staff members, the University takes into account activity leading to successfully completed contracts, projects, designs, policy studies, evaluations and publications.
- (i) Staff members must declare to the University potential conflicts of interest which may arise from any financial or contractual connections they may have with a sponsor, such as directorships, or consultancies.
- (j) Staff, funded research scholars, and funded research students shall disclose to the University inventions and processes which may be of commercial or financial value which have been discovered or developed with the aid of University resources and in time for which a salary or stipend has been paid.
- (k) Patents arising from research done using University resources or under contracts and agreements entered into by the University are the responsibility of WaikatoLink Limited.

## **6. FEES CHARGED FOR RESEARCH**

- (a) The University seeks to recover its costs and to benefit from sponsorships and contracts, to the extent that it: provides fair value to sponsors and contracting organisations; does not unfairly compete with private enterprises or damage employment prospects of their staff; provides a public service.
- (b) The scales of fees and charges are confirmed by the University after consideration of factors which include the extent to which a project brings:
  - scholarly benefits to the University's academic programmes;
  - benefit to its students;
  - enhancement of staff experience and skills;
  - public benefits;
  - material resources to the University;
  - wholly commercial considerations into effect.

- (c) Cost evaluation criteria for projects are periodically revised and should be checked with UNILink. See also Chapters 2 and 3.

## **7. CONTRACTING BODIES**

The University of Waikato is the contracting party for all contracts and agreements which involve University facilities, and staff and students engaged in its name. In signing it seeks to protect:

- staff and students from improper contractual terms;
- its integrity and reputation;
- its material properties and rights;
- academic freedom to publish;
- opportunity to commercialise its research for the benefit of the institution and its staff.

Contract development and sign off by an authorised signatory is arranged through UNILink.

## **8. ACADEMIC FREEDOM AND CONTRACTUAL OBLIGATIONS**

Academic freedom is a concept without clear and universally accepted definition, but at the least it implies; (1) that academics have a right to comment freely upon matters which lie within their areas of academic competence; and (2) that academics may follow, without restraint from the University, wherever the search for knowledge may lead. This freedom carries with it an obligation from academics to require of themselves the highest standards of scholarship. When academic freedom, and freedom from a requirement to accept a part in a particular research project are coupled, it follows that a university cannot accept a contractual obligation to undertake an investigation in the same way that is possible for a commercial or government organisation which employs people to carry out specified investigations, unless the University employs people with direct responsibility for sponsored research only. The University does, however, need to maintain its competence in research and also its research facilities. Government and fee income for teaching is not adequate to support academic research and the University encourages staff to undertake contract research which may be funded by commercial organisations, the Foundation for Research, Science and Technology and other funding bodies.

The following general policies apply:

- (a) The University will only accept a contract for specific outcomes which are enforceable in law, if it has the prior, explicit, formal agreement of participating staff members for the completion of the specific requirements. This is normally achieved through completion of the UNILink Budget and Approval Form which must accompany proposals submitted to UNILink.
- (b) In the event that an agreed investigation can be only partly completed, the University undertakes, unless the sponsor agrees otherwise,
- to provide the sponsor with copies of all completed work,
  - to return all unspent funds provided for the project,
  - to return all equipment provided for the project, even where there was an original expectation that it would be retained,
  - to give the sponsor the right to use all existing data and to find an alternative researcher to complete the investigation.
- (c) The University may consent to specific outcomes of an investigation to be shared on some agreed basis, thus it may accept a legally-binding contract for shared rights to publish, or shared responsibility to maintain specific items of equipment or services.
- (d) WaikatoLink Limited usually takes out provisional patent protection for new, commercially valuable, discoveries but, as it can seldom develop them to a commercial product stage, it usually seeks a commercial partner or seeks to license the use of the discovery.

## **CHAPTER 2**

### **POLICY ON COST-RECOVERY IN SPONSORED RESEARCH**

(Readers are referred to the 'Glossary of Terms' in Appendix A).

#### **1. GENERAL POLICY**

The policy of the University of Waikato is that, to the extent that it is possible and appropriate, the University should endeavour to recover the full costs of projects commissioned by external sponsors and contracting organisations. The University exists to advance and propagate knowledge for individual enlightenment and public benefit, rather than to enhance private financial purposes. As a general rule, it is not appropriate to allow funds given to permit the University to attain stated objectives to be diverted into supporting activities which, no matter how desirable, are beyond the purposes for which the funding was given. Similarly, it is not normally appropriate for an external individual or organisation to benefit personally and directly from research conducted in the University which has been funded from other sources, without appropriate compensation.

#### **2. SUBSIDISING PROJECTS**

- (a) The University recognises that there may be reasons why, in specific instances, it may be appropriate for the University to "subsidise" a project by absorbing some of the costs, at least initially. In judging whether to absorb costs the University considers:
- the academic advantages, to the University, offered by the sponsor,
  - the limitations imposed by the sponsor,
  - the nature of the sponsoring body, and
  - the character of the project itself.
- (b) In most instances the University expects to be fully compensated for all of its direct and indirect costs arising from a research project. Subsidies for projects have to be met fully from School funds, and only the Dean, or the Dean's appropriate representative, can authorise a subsidy. Advice on such matters may be obtained from UNILink.
- (c) In all cases, it is important that the University be able to assess the full costs of undertaking a project. Unless it does so it will have no means of measuring the amount of any subsidy or diversion of resources. The University therefore requires that, to the fullest extent possible, the likely actual costs of carrying out a piece of research be set out in the project budget (see appendix D).

#### **3. DIRECT COSTS**

It is relatively easy to identify direct costs, i.e. the cost of items such as salaries and leave allowances, superannuation and ACC levies, appointment and relocation expenses, capital equipment, consumables and equipment usage, travel and field allowances, special services including computer usage. In some cases it will also be clear that more than "normal" support services will be required. For example:

- (a) A project may necessitate more than incidental toll calls, or may require the posting of a large number of survey forms.
- (b) A project may require the production of survey forms or questionnaires rather than minimal or incidental secretarial support.
- (c) The general cleaning and waste disposal services normally provided might not meet the needs of the project.
- (d) As well as making its general resources available, the Library might need to secure specialist journals.

In all such cases, the additional costs can and should be identified and included as direct costs.

#### **4. INDIRECT COSTS**

Every project also draws upon the general resources of the University and services provided by it. These services include: space rental and maintenance; the Library; normal cleaning, lighting and heating; basic secretarial and postal services; telephones; general insurance; security and portering; the provision of petty supplies including stationery; the maintenance of salary and leave records; staffing, purchasing, accounting and general administrative services. Considerable research, designed to establish the best means of assessing the cost of providing such services (i.e. the overhead costs), has been undertaken. The overall findings can be summarised as follows:

- (a) It is not cost efficient, or generally feasible, to seek to itemise the overhead costs in respect of individual projects.
- (b) The method most commonly used by non-university research bodies for the calculation of overhead costs is the application of a percentage formula to overall payroll costs, because this is normally the most reliable way to assess the scale of a project and its probable total overhead cost.
- (c) Several methods are in use in Commonwealth universities including:
  - (i) using a percentage of direct costs;
  - (ii) using a percentage of the total budget;
  - (iii) using a percentage of the total salary costs of technical and academic staff involved in the project. (An explanation of what is meant by total salary costs is given in the next paragraph.)

The University of Waikato recognises that a percentage formula may appear arbitrary in character because it fails to take account of different circumstances. The University considers that provided care is taken to identify the larger "indirect" costs when possible (as suggested in 3 above) and provided the percentage used to fix the charge for general support services for different classes of sponsors is reasonable, the application of a formula is generally equitable and is a realistic price to pay for simplicity and economy of operation. Consequently, the University will normally adopt the policy of assessing overhead costs by means of a percentage of the total payroll cost of the project and requires that all academic and technical staff time (but not student time) shall be assessed as if it were a charge against the project, irrespective of whether it is intended that the cost be charged. Actual academic salaries are to be used where possible.

Nevertheless, where special circumstances prevail, as for example a project in which nearly all of the cost is related to purchase of a machine and very little to salaries, then the University may choose to use methods other than the percentage of payroll.

Refer to Appendices C and D for guidelines on indirect costs to be recovered from different categories of sponsors. Assistance with the costing and pricing of specific research projects is available from UNILink.

## **CHAPTER 3**

### **POLICY ON OUTSIDE PROFESSIONAL ACTIVITIES OF UNIVERSITY STAFF**

#### **1. DEFINITION**

Outside professional activities have the following characteristics:

- they are not part of the required duties of a staff member, nor are they carried out at the request or invitation of the University; hence they do not include participation in Continuing Education or other University-sponsored courses or programmes;
- they are undertaken voluntarily, on the initiative of the staff member or in response to a request from a person or body outside the University;
- they use the special skills, experience and knowledge which are the basis for employment of the staff member;
- participation in such activities enhances the professional expertise of the staff member, or makes it available for public benefit.

Any doubtful or borderline cases should be discussed with the staff member's Chairperson or Dean.

#### **2. PURPOSE**

The University is required to be a good steward of its resources; it intends to be an employer which encourages and enhances the well-being and professional skills of its staff, and to encourage the use of these skills for the benefit of the general community. There is a possibility that these requirements and intentions, and the aspirations of its staff, may occasionally be in conflict. The purpose of this document is to clarify the position of the University with regard to outside professional activities and to provide guidance to its staff on the way it expects them to contribute to its stewardship and intentions. In most situations reasonableness and good sense from all parties are the basis on which decisions regarding such activities are made, but in certain matters, involving property, standards of behaviour, and legal liability, for example, the University has, necessarily, to apply rules to protect its integrity and stewardship.

#### **3. GENERAL STATEMENT**

University staff are involved in many outside activities which are directly, or partly, related to their status as University staff members. These activities include: membership of committees and professional bodies; consultancy; advisory and professional service to public and private institutions, courts and commissions, companies, charities and individuals; extensions of their own scholarly activities through writing, broadcasting, and lecturing. These activities may use either the general abilities of highly educated people or specific knowledge and skills.

In recognising the desirability of staff members making their experience and skills available to the wider community, and their right to do so, the University does not in any way regard outside activities as a substitute for research, scholarly or other work, although it does recognise that academic advantages may arise from some outside activities, and that some of them may form contributions to research and to development of research and teaching experience.

In prescribing rules to govern outside activities of staff, and earnings from them, the University of Waikato recognises that such activities may have benefits and limitations and it seeks to safeguard both its own standing as a learned, independent institution, and also the reputation and well-being of its staff members. Furthermore, the University seeks to ensure that its resources are not used improperly for private gain.

Full-time staff are required to devote their full-time, and part-time staff the contracted proportion of full-time, to their university duties.

With the exception of literary work, which is regarded as being part of the normal activity of all academics, all outside professional activities undertaken in the name of the University require the prior approval of the relevant Chairperson or Director, and for regular or long-term (i.e. more than one year) commitments the approval in writing of the relevant Dean. Approval of an activity as being a professional matter confirms that the University accepts responsibility and liability and that documentation is in place in the event that the



University's insurers are called upon. Approvals may be granted on conditions and withdrawn on reasonable notice.

#### **4. BENEFITS**

Outside activities may have academic benefits amongst which are opportunities for:

- the development of professional competence and skills of participating staff;
- application of theoretical knowledge to practical situations;
- recognising areas for personal and student research;
- applying new knowledge and techniques to solve problems;
- promoting the University's contacts with the community and making the skills of its staff publicly available;
- developing contacts with potential employers of students;
- developing contacts with potential sponsors of University research;
- improving and publicising the general and public knowledge of staff professional expertise.

#### **5. LIMITATIONS**

In undertaking outside professional activities, University staff are required to recognise not only the aims of the University but also the ethics associated with their outside activity and any commercial, legal or other obligations they may enter into. Regard must be had to the standing of the University and use of its resources. Particular care should be taken to avoid:

- improperly using the resources of the University for private gain;
- impairing the independence or impartiality of the University;
- implying that the University is a party to a private enterprise;
- conflicts of interest; (Appendix A)
- conflicts of commitment; (Appendix A)
- pursuit of financial reward without regard to enhancement or application of professional skills;
- improperly using information gained during employment by the University, or during consultancy, for private gain.

#### **6. PROFESSIONAL ACTIVITIES - GENERAL POLICY**

For an activity to be regarded as having professional status suitable for a University staff member it should have certain characteristics as described below:

- The activity shall clearly demand the particular professional knowledge and skill of the staff member. A staff member who serves in a professional capacity in a repetitive or trivial way is not properly using time or qualifications.
- The activity must have relevance to the particular staff member's teaching, research or other duties and accordingly provide some benefit to the University.
- The outside work should not cause the staff member to be deprived of the independence of thought and expression which should characterise the status of an academic member of the University staff.
- Where a client-consultant relationship exists, professional standards of confidentiality should be observed and the fees charged should be on standard or appropriate professional scales.
- Outside work shall not be allowed to have any detrimental effect upon University responsibilities and duties.
- Where it is appropriate, ethical approval must be obtained.
- No member of the University staff may receive a fee for additional or private tuition in University course-work of an enrolled student of the University of Waikato.
- Private activity of staff members in competition with official activities of the University is not permitted. Particularly prohibited are teaching, research, consultancy, and provision of advice to or on behalf of an organisation which is providing similar or equivalent services to those of any unit or department of the University of Waikato. Where there is uncertainty in regard to such activities, staff should consult the appropriate Dean.
- Outside private work sought by any form of public announcement or advertising may not use any reference to the University, nor may it imply that the advertiser has a right to use University time or resources.
- No staff member may undertake private professional work when initial contact with a client has been made through the University, unless a specific agreement to do so is received from the relevant Dean.

- Use of University facilities and equipment shall not be permitted for any private activity carried out by University staff or students unless a full market-rate fee has been paid to the University, and a certificate indemnifying the University from liability and agreeing to the conditions of use has been signed by the staff member(s) and the relevant Dean. This certificate must be retained by the Dean. Special care must be taken to avoid use of University stationery and any other property which may be taken as indicators of University involvement in a private activity.
- No responsibility shall be allowed to attach to the University for outside work done by a staff member in a private capacity.
- Outside private activities of full-time staff members must normally take place outside departmental hours (defined as the time during which departmental offices are open) unless otherwise authorised by the relevant Dean.
- In the case of part-time staff the activities must take place outside the period of agreed attendance or availability in the University.

## **7. POLICY RELATING TO SPECIFIC CATEGORIES OF PROFESSIONAL ACTIVITY**

### **Appointment and Election to Statutory Bodies, Commissions of Inquiry, Government and National Committees**

Appointment or election to outside bodies may involve University time and its public reputation. Such activities shall be discussed with the Chairperson of Department who shall refer the matter to the Dean, or controlling manager, if there is a possibility that a conflict of interest or of commitment will arise.

Membership of some outside bodies may add to the prestige of the University and it may provide an opportunity for public service, but it may also be demanding of time. In such cases it may be appropriate to request special leave from the University and to request funding for a substitute staff member. All such matters shall be discussed with the Chairperson of Department and Dean (the latter will advise the Deputy Vice-Chancellor (Research) (as necessary).

### **Directorships, and Partnerships in Commercial or Profit-Making Enterprises**

No full-time staff member may accept a directorship or partnership in a commercial enterprise without the approval of the Deputy Vice-Chancellor (Research) and the relevant Dean or Director. This requirement is to allow the University to avoid any improper dealings or associations with that enterprise.

### **Membership of Judicial and Semi-Judicial Bodies and Appearances in Court as an expert witness**

Membership of judicial bodies should be treated similarly to membership of statutory bodies (see above).

Appearances as an expert witness, both voluntarily or under subpoena, may be very time-consuming and require absences from the University which are in conflict with University duties. The Chairperson of Department and Dean shall be informed of the details, and the University given the opportunity to charge the employer, in the case of voluntary appearances, for a replacement, or to seek recovery of replacement costs from the disbursement of legally distributed costs in the case of a subpoena.

### **Scholarly work for outside income**

It is not necessary to seek permission to undertake occasional activities which do not use University resources, such as broadcasting, telecasts, public lectures, writing, or examining duties for other universities or for professional bodies: these are all regarded as being part of the general academic activity of a University staff member. If, however, such activities require commitment of normal departmental time, or are not connected with the staff member's academic expertise, or are at a level which is not appropriate to University work, then the staff member shall seek the approval of the Chairperson of Department and Dean. In addition, if the work involves the staff member in acceptance of legal responsibility for the information, advice or evidence which he/she publishes, he/she will be required to indemnify the University against legal liability.

Production of written or similar work (audio-video, software etc.) reporting the results of research and scholarship is regarded as a part of a staff member's general academic activities and properly uses University resources. If such activity is likely to place a substantial or concentrated load on these resources, arrangements must be made in advance through the Chairperson or controlling officer.

Staff members are encouraged to discuss with the publisher all such ventures at an early stage to evaluate the likely scale of the work. It is also necessary to ensure that the University (or the author) is not being asked to cover costs more appropriately the responsibility of the publisher or other organisation promoting the work.

### **Work Overseas for Foreign Agencies**

Work overseas usually requires leave of absence from the University and is dealt with by the Leave Committee or other competent authority.

Professional work carried out overseas should have regard to the professional standards expected within New Zealand as well as to local practice.

Staff contemplating such work should ensure that they have appropriate indemnity insurance cover.

## **8. CONSULTANCIES AND COMMERCIAL CONTRACTS**

The University enjoys a sound reputation through its involvement in professional consultancies and sponsored and commissioned research work. Staff are encouraged to pursue opportunities for consultancies and contracts to the extent that they are in the University's and the staff member's interest.

**Consultancy is defined** as the provision of advice to a client, such advice being based upon the pre-existing professional knowledge and skills of the consultant.

Consultancy is distinguished from research in that:

- It does not usually require the creation or discovery of new knowledge by the consultant;
- The sponsor expects (or requires) ownership of intellectual property created, and confidentiality on the part of the consultant;
- The consultant does not have an automatic right to publish the resulting knowledge;
- Consultancy may exclude junior staff who then are deprived of learning opportunities;
- Consultancy may exclude research students and so limits opportunities for applied study.

Consultancy is therefore of more limited value to the University than is research.

There may be a merging of consultancy and research in some projects. For University purposes it is important to make a distinction on the basis of the primary purpose of the project, as University research policy usually requires protection of the right to publish and other issues which may be at variance with the consultancy. The contract is therefore negotiated through UNILink for both research and University consultancies, or through the Management Research Centre (MRC) for Waikato Management School consultancies with budgets of under \$50,000.

### **Distinction between University and private consultancy**

Where staff are engaging in commercial consultancies it is important to be clear at the outset whether the consultancies are being undertaken on behalf of the University or as the private matter of the consultant. This distinction is the basis on which the University does, or does not, take responsibility, and carry liability, for the activity.

The University carries indemnity insurance to protect itself and its staff in contract consultancy work undertaken in its name. The University policy does not cover staff involved in private activities.

### **Setting up a University consultancy**

The following matters should be noted.

- The University of Waikato is the contracting party, not its staff member(s).
- The use of University staff, equipment and resources for outside consultancies shall always be subordinate to their use for teaching and research.
- The University requires recovery of all its direct and indirect costs arising from the use of its equipment, facilities and resources in consultancies. Costs are to be assessed at prevailing commercial rates or in the manner prescribed by UNILink (see appendices C and D. See also sections 10 - 13 of this Chapter).
- All finances must be handled through the central accounting system (by UNILink), so that tax and audit requirements are properly attended to.

- All consultancy work undertaken in the name of the University requires the approval of the Chairperson of Department (and the Dean for continuing activities) before any commitments are made. Approval must be in writing.
- Departmental approval of outside professional activities does not extend to entering into formal agreements on behalf of the University. Agreements involving a contractual commitment by the University must be considered through UNILink before any arrangement is entered into.
- UNILink is responsible for obtaining the appropriate signatures on the final contract document.
- The income from consultancies accrues to the department or unit of the staff member concerned (see section 13 below) unless the staff member has entered into a written agreement for alternative arrangements with the Dean prior to commencement of the activity.
- The provision of free advice does not make professional persons immune from liability if they are negligent.
- The University expects and requires that all staff exercise appropriate standards of professional care and conduct in the exercise of contract and consultancy services.

### **Private consultancy and other professional activities**

The University encourages all staff to carry out consultancy and other professional activities through the University, but reserves the right to dissociate itself from work initiated by staff, and it also recognises that staff may have sound reasons for undertaking some activities privately.

Where activities are private, the University has no claims or financial interests and seeks only to ensure that its reputation is protected and that it incurs no liabilities. Staff members engaged in private professional activities are required to comply with the requirements set out in Section 6 of this Chapter. Furthermore they must:

- Inform their Chairperson in advance of any professional private activities;
- Inform the client, in writing, that the activity is being carried out in their private capacity and is not an official activity involving the University. A copy of the letter and acknowledgement should be given to the Chair of Department.
- Ensure that they do not imply or state that the University is in any way connected or associated with, or has any liability or responsibility for, their private activities.

## **9. EMPLOYMENT OF TECHNICAL AND SECRETARIAL STAFF AND STUDENTS**

Technical and secretarial staff may not be employed during their normal working hours in part of another staff member's outside activity which is undertaken for private gain.

Technical and secretarial staff and students may be involved in official contract and consultancy work of the University provided that:

- students shall not be under any obligation to participate;
- students are reimbursed at the prevailing rates of pay for such work, and the reimbursement rate is clearly notified in writing to the student;
- technical staff are covered by the safeguards and protection normally applying to their employment and to any special protection and conditions which normally apply to the type of work being undertaken as part of a consultancy or contract.

## **10. FINANCIAL RESPONSIBILITY IN UNIVERSITY CONSULTANCY/CONTRACT WORK**

Staff members who are project leaders have the responsibility for initiating discussions on contracts or consultancies, but they should consult UNILink as soon as affirm discussions are commenced. (Refer Chapter 8). Staff must not enter into any agreement, written or verbal, prior to consulting with UNILink.

No contract or consultancy may be commenced without a contract or agreement being signed by both parties (see 8 above).

The Financial Services Division is responsible for the receipt of all income to the University. UNILink arranges tax invoices for research income and consultancy fees.

See Section 8 of this chapter, and the summary in Appendix C4 for responsibility, liability and fees with respect to University consultancy work.

## **11. COSTING AND PRICING OF RESEARCH CONTRACTS**

For all Research Contracts the University requires that the full costs of a research project be set out in a budget, and discussed and agreed with UNILink. Each project is looked at separately within a spectrum of activity ranging from contract applied research (for which objectives may be set by the customer) to collaborative basic research (for which objectives are determined by the University and there is a shared or joint funding responsibility). It is essential in all cases that the University is aware of the extent to which it is providing its own resources to support a project if it decides to charge a price that is less than full cost. (See Chapter 2 and Appendix C).

## **12. COSTING AND PRICING OF UNIVERSITY COMMERCIAL CONSULTANCIES**

The price of a consultancy should normally be the sum of:

- (i) the actual direct costs associated with the work (e.g. travel costs, consumables, etc.) and,
- (ii) the cost of the labour and the associated support. This is the actual salary cost, with a multiplier for the related indirect costs which include general administrative support, computer services, library services, insurance and other overheads.

The basic formula for pricing the labour and support content of services is set out in Appendix D with examples.

## **13. DISBURSEMENT OF INCOME FROM CONSULTANCIES**

Where the consultancy work is undertaken Chairpersons and Deans must be consulted regarding reimbursements to departmental/school accounts for the cost of time and resources involved in the activity.

Where outside work is done through a department, research centre or unit of the University all revenue and costs must pass through that centre's or unit's regular UNILink accounts.

Consultancy income can remain identifiable in a department's accounts under executive control of the Chairperson. Such income may be used for engaging temporary staff, creating scholarships for research students or for other developments that support a department's research activities.

Where professional consultancy is undertaken on behalf of the University and has placed a substantial burden of commitment and responsibility on the consultant, that staff member may apply for additional remuneration to the relevant Dean, who will confer with the Deputy Vice-Chancellor (Research).

## **CHAPTER 4**

### **EMPLOYMENT OF STAFF TO WORK ON CONTRACT AND SPONSORED RESEARCH**

#### **1. GENERAL**

Persons engaged to work on contract and sponsored research are employees of the University. The regular recruitment and selection procedures apply and all appointments are made by the University. It is advisable that the Human Resource Management Division be consulted about recruitment issues at an early stage.

#### **2. RECRUITMENT**

Research staff are recruited and selected in accordance with the University's normal policies and procedures and the relevant information is sent to all applicants. Equal employment opportunity is University policy.

Unless the position is very short-term, a selection process is required but this may not necessarily involve public advertising. Advice concerning the appropriate scope and method of advertising is available from the Human Resource Management Division. The constitution of appointments committees is set out in the University's Directory of Committees.

Fixed-term appointments are offered for specified periods and on the clear understanding that there is no expectation, express or implied, of continuing employment. Any subsequent positions, involving significantly different responsibilities, are treated as new appointments.

The employment of students may affect their eligibility to register for full-time studies or to receive scholarships or student allowances. It is important that this matter is addressed at the time of acceptance of an offer of employment. Where students are undertaking research as part of their degree programmes it is common to treat them as scholarship or study award holders – not employees.

#### **3. CONDITIONS OF EMPLOYMENT**

Most staff are employed on standard conditions applicable to academic and general staff. Full details are available from the Human Resource Management Division.

In deciding salary levels on appointment, the University may recognise the disadvantages which attach to temporary appointments and difficulties which may be associated with attracting staff to them.

#### **4. APPOINTMENTS**

All appointments are offered by Human Resource Management Division.

#### **5. BUDGETARY MATTERS**

Unless the University has specifically agreed otherwise, all funds for the salaries, and leave of staff employed for contract research are derived from external sponsors.

The implications of automatic increments, annual salary reviews, and the right of staff to be considered for salary advancement need to be considered in the formulation of budgets.

Budgets agreed in research contracts or agreements must be adhered to; consequently they should make specific provision for advertising, travel and removal expenses, and interview and overhead expenses incurred in recruitment and appointments.

## CHAPTER 5

### UNIVERSITY FORMULA FOR SHARING 'ADDITIONAL INCOME'

#### 1. GENERAL PRINCIPLES

- (a) In principle the University lays claim to any income generated by its staff members which is:
- (1) Additional to regular University income, and;
  - (2) Which is derived from the exercise of the professional skills and qualities of its staff members which are the basis on which they are employed by the University, and;
  - (3) Which is derived from activities associated with their normal duties.

Additional income in this context includes income from discoveries, inventions, royalties, licences, dividends and sales of intellectual property (see Chapter 3, sections 8 and 13; and section 2 below). (Income from University activities such as consultancies and services is deemed to be regular University income and the policy for the disbursement of that income is set out in Chapter 3, sections 8.c. viii and 13).

In exceptional circumstances, the University may lay claim to income generated by students which is derived from the use of University resources. The Deputy Vice-Chancellor (Research) shall, in the first instance, be responsible for determining whether any particular circumstance falls within the provisions of this rule.

- (b) The University does not seek to have, or imply that it has, any interest in or control over unearned and earned income resulting from the use of private time and resources.
- (c) The University must be seen to have regard to its proper stewardship of its property and it cannot permit staff to receive additional earned incomes from use of University facilities, or normal work-time for which a salary has been paid, unless the staff member has displayed extraordinary ability, effort or initiative.
- (d) At the same time the University wishes staff to benefit from the extra expenditure of effort and use of abilities which usually attaches to work that generates 'additional' income, and a formula for additional income sharing has been adopted for use between the University and the staff member(s) involved.
- (e) Where additional earned income is shared between the University and a staff member from a project which is directly sponsored by the University (as, for example, in a patent-producing or royalty-producing project) once the University has been reimbursed for all identifiable costs that were incurred by it on behalf of the project, then either the formula would be applied to the total annual income (i.e. profit) of that project, or the benefits may be distributed according to a pre-arranged alternative agreement negotiated by the relevant staff with the Deputy Vice-Chancellor (Research).

#### 2. CIRCUMSTANCES FOR APPLICATION OF FORMULA FOR INCOME SHARING

- (a) The policy applies to earnings from projects which are supported by the University and/or sponsored by outside bodies, and which produce royalty, licence, dividend, sale or fee incomes from inventions, or discoveries or derive income from the sale of intellectual property.
- (b) The University is not proposing that its policy on additional income apply to earnings which are derived from fees paid by the University for any part of the duties required of staff members as part of their terms of appointment to the University, such as Continuing Education courses and departmentally-sponsored seminars and courses.
- (c) The University is not proposing that its policy on additional income sharing apply to royalties payable to staff from the publication of books. The University encourages its staff as part of their duties to disseminate the outcomes of their research and professional expertise, and to propagate knowledge and it recognises that, in dealing with publishers, the staff members concerned normally own the copyright and take upon themselves the full responsibility for producing the book, which means accepting any liabilities which may be involved, such as indemnifying the publisher against actions for inaccurate or libellous statements and for breaches of copyright.

- (d) The University is not proposing that its policy on additional income sharing apply when staff, as part of the normal duties of their employment, create goods, products or technologies including teaching materials, field manuals, on-line presentations, software designs and the like. The results of the work in this case become the sole property of the University and the employee(s) has no right to a share in any possible income resulting from the work. (See Chapter 6 for further details).
- (e) In cases where the University has made a major contribution to development of intellectual property, and carries the costs and responsibilities of commercialisation, the formula may not apply (see Chapter 6).

### **3. FORMULA FOR INCOME SHARING**

Once the University has been reimbursed for all identifiable costs that were incurred by it on behalf of the project, the residual profit from a project will be shared with one-third of annual profit being owned by the University, one-third by the relevant staff members collectively and one-third by their department(s).

In the event that more than one staff member is involved in a sharing of income, the division of the income amongst those staff members shall be according to the written agreement they have proposed themselves.

The share of each staff member will be treated cumulatively for the life-time of the project.

A staff member who leaves the project or the University can remain a beneficiary for 10 years unless there is a prior agreement approved by the Deputy Vice-Chancellor (Research).

For policy in situations where intellectual property (IP) is commercialised and staff members become shareholders in a company undertaking the commercialisation see chapter 6, section 12.

Where the University decides to exercise its claim to an interest in an income of students which is derived from the use of University resources, it will do so on the basis of the figure and formula identified in this section.

### **4. APPLICATION OF THE FORMULA**

Profit received from a project will be shared with staff in each financial year in which they earned this profit while they are still in the employment of the University, plus the next 10 financial years after they leave the University. The only exception to this rule will occur when a special written agreement is entered into by the Deputy Vice-Chancellor (Research) with staff engaged on a project.

Part-time academic staff may have several sources of professional income. The formula is applied to them only in respect of income derived from royalties or fees arising from University-supported sponsored projects which are undertaken in addition to their normal contractual duties to the University.



## **CHAPTER 6**

### **INTELLECTUAL PROPERTY RIGHTS POLICY**

*[Note: Editorial changes to reflect new position and office titles as a consequence of the revised senior management structure will be made to this Policy as and when the changes are formally implemented.]*

<b>Responsibility for policy:</b>	Deputy Vice-Chancellor (Research)
<b>Approving authority:</b>	Vice-Chancellor, after consultation with the Academic Board
<b>Approved:</b>	29 August 2005
<b>Next review date:</b>	August 2008

#### **1. PREAMBLE**

In the course of their research and intellectual activity, academic staff of the University create new knowledge, or ‘intellectual property’, which is shared widely through publication, and the University does not normally claim any ownership of the copyright of research publications and creative works. In the course of their work, staff also create materials specifically for teaching purposes, and in some cases, inventions. In these cases, the University claims the intellectual property rights so that it can use the intellectual property, and explore its future potential, for the mutual benefit of the creator, his or her department and the University at large. This policy expresses these practices in detail, and particularly addresses the rights, responsibilities and protections that are associated with intellectual property.

In providing a framework for protection of IPR the University is aware that a simple “one size fits all” approach may not be applicable in all circumstances. In particular, the University acknowledges that issues concerning rights to the traditional intellectual property of Māori may not be adequately covered by this policy and will be the subject of ongoing policy development.

The University has an obligation under section 162 of the Education Act 1989 to advance, disseminate, and assist the application of knowledge. The University of Waikato Charter expresses the University’s mission to combine the creation of knowledge (through research, scholarship and creative works), with the dissemination of knowledge (through teaching, publication and performance).

The University therefore has a responsibility to make new knowledge arising from the research and other intellectual activity of its staff and students available to the wider community. This may be in the form of publications, conference and other public presentations, and in some cases, through the commercial development of products, processes or ideas.

The University also has a responsibility to operate in accordance with sound financial principles, and to increase its income from non-public sources. In some cases, commercial benefit can be derived from new knowledge generated in the course of the University’s activities. Through WaikatoLink Limited, the University aims to explore such commercial opportunities, for the benefit of the institution as a whole, as well as individual researchers and departments.

In so doing, the University recognises that it is its staff, working both as individuals and in groups, and often in collaboration with students, who are the original creators of new knowledge. The generic term for new knowledge arising from research and other intellectual activity is “intellectual property” (IP). The individual creators of IP, and the University, as their employer, have certain rights in relation to the IP that must be protected. The purpose of this policy is firstly to make explicit how those IP rights (IPR) are derived, and secondly to indicate ways in which those IPR might be protected.

Queries relating to this policy and its interpretation should be addressed to the Deputy Vice-Chancellor (Research).

## **PART A — GENERAL**

### **1. DEFINITIONS**

- (1) In this policy,

**Intellectual property (IP)** means knowledge and creations arising from intellectual activity; it includes literary, artistic and scientific works, performances, sound recordings, broadcasts, inventions, scientific discoveries and industrial designs

**Intellectual property rights (IPR)** means the exclusive rights for a prescribed time and within a prescribed region to control how the IP may be used and what others may do with it

**Copyright** is a particular type of IP that exists in original works that are recorded, in writing or otherwise, as explained in the University's *Copyright Guidelines for Staff and Students*

**Invention** means IP in new processes and products, however that IP is expressed

**Inventive contribution** means a creative or conceptual contribution to the development of an invention, without which the invention would not have been created

**Normal duties** means the duties defined in the relevant staff member's employment agreement with the University of Waikato

- (2) The terms IP, copyright and associated terms are explained in more detail in appendix 1 to this policy.

### **2. AUTHORITY TO MAKE DECISIONS UNDER THIS POLICY**

- (1) Authority to make decisions on behalf of the University under this policy rests with the Deputy Vice-Chancellor (Research).
- (2) Authority to approve variations to this policy on a case by case basis rests with the Deputy Vice-Chancellor (Research).

## **PART B — IP CREATED BY STAFF**

### **3. OWNERSHIP OF IPR IN RESPECT OF TEACHING MATERIAL**

- (1) The University reserves the right to assert ownership of all IPR associated with material created by staff in the course of their normal duties as University employees, specifically for teaching purposes, whether the material is created on the staff member's initiative or at the express direction of the University.
- (2) The IPR claimed by the University under this section includes, without limitation, copyright in any:
- resource materials
  - multimedia presentations (e.g. films, tapes, videos, CDs, DVDs etc)
  - computer programs.
- (3) If a staff member has prepared teaching material for external publication (e.g. as a text book), the University will normally waive its ownership of copyright in favour of the author(s) but may attach conditions to such waiver.
- (4) The University normally grants to the creator of the IP covered by this section, a non-transferable, perpetual, royalty-free licence to use that IP for teaching purposes but may attach conditions to such grant.

### **4. COPYRIGHT ASSOCIATED WITH RESEARCH PUBLICATIONS AND CREATIVE WORKS**

The University does not assert ownership of copyright of research publications (e.g. books, journal articles, conference papers) and creative works (e.g. art work, musical scores and recordings, computer programs), unless

- (b) the IP has been created specifically for teaching purposes (in which case section 3 applies); or
- (b) the IP has been created under an externally-funded research contract which provides that the University owns such IP.

## **5. OWNERSHIP OF IPR IN RESPECT OF EXTERNALLY-FUNDED RESEARCH**

Ownership of IPR associated with an externally-funded research contract is usually determined by the terms of the relevant contract. In the absence of any such provision the ownership of such IPR will be determined in accordance with the provisions of this policy.

## **6. OWNERSHIP OF IPR IN RESPECT OF INVENTIONS**

The University asserts ownership of all IPR in respect of inventions made or created by staff in the course of their normal duties.

## **7. REQUIREMENT TO REPORT POTENTIAL FOR COMMERCIALISATION**

Staff are required to report any clearly identifiable potential for commercialisation arising from an invention or any other IP created in the course of their normal duties, to the relevant chairperson of department and to the IP Manager of WaikatoLink Limited.

## **8. PROTECTION AND COMMERCIALISATION OF IP**

- (2) WaikatoLink Limited, which is a company wholly-owned by the University, is responsible, in consultation with the University, for the commercialisation of IP and the protection of the associated IPR.
- (2) As soon as it is made aware of the potential to commercialise IP, WaikatoLink Ltd will with all due expedition carry out a feasibility study of its potential value and discuss any commercialisation plans with the creator(s) of the IP.
- (3) Feasibility studies conducted under subsection (2) above will take account of any pre-existing contractual arrangements that may apply in relation to externally funded research or research conducted under collaborative arrangements with other organisations.
- (4) Decisions about the commercialisation of IP and the release of confidential information relating to it are the responsibility of WaikatoLink Limited, which may request the formal transfer to it of all registrable IP (patents, trade marks and registered designs) owned by the University.
- (5) All information relating to the protection and commercialisation of University IP must be treated as confidential until it is released by WaikatoLink Limited.

## **9. SHARING OF INCOME FROM COMMERCIALISATION OF IP**

- (1) The University has developed policies that allow creators of IP to share in any income arising from its commercialisation. Policies and mechanisms for the sharing of such income are set down in the University's [Policy on Sharing of Benefits from Commercialisation of Intellectual Property](#), which is provided as Appendix 2 to this policy.
- (2) The University seeks reimbursement for any legal costs or expenses incurred by it in relation to the research leading to the commercialisation of IP and in relation to the protection of IPR.

## **10. IPR ASSOCIATED WITH PRIVATE ACTIVITIES**

IPR derived from privately undertaken activities (i.e. unrelated to a staff member's normal duties and without using University time or resources) belongs to the staff member concerned.

## **PART C — IP CREATED BY STUDENTS**

### **11. IP AND IPR OF STUDENTS**

- (1) IP created by a student in the course of his or her study or research at the University is the property of the student unless:
  - (a) it has been legally transferred to another party with the informed agreement of the student; or

- (b) it involves inventive contributions from University staff members; or
  - (c) it incorporates existing IP belonging to the University or a third party.
- (11) Where subsection (1)(b) or (1)(c) applies, the University (or third party) shares ownership rights and will seek an agreement with the student which is fair to all parties.
- (3) A student who wishes to carry out research under an externally-funded research contract, or use existing IP belonging to the University or another party, may be requested to assign his or her IPR to the University or another party (sponsor) prior to, and as a condition of, commencing work on the research.
- (4) Before requesting the student to assign his or her IPR under subsection (3), the University will provide the student with an explanation of the reasons for the assignment and will advise the student to seek independent advice regarding the assignment.
- (5) The University will not enter into a contract that prejudices the assessment of a student's academic performance or a student's ownership of copyright in a dissertation, thesis or other assessable work.
- (6) Where students have assigned their IPR with respect to inventions or other potentially commercialisable IP to the University, they have the same rights and responsibilities as set out in sections 6-9 for staff.

## **PART D — IP CREATED BY VISITING RESEARCHERS**

### **12. VISITING RESEARCHERS**

Visiting researchers, whether or not they are paid by the University of Waikato, normally make use of the University's IP, facilities and resources during their visit. They will have the same rights and responsibilities as staff with respect to IPR, but the University recognises that the visiting researcher's employer may also be entitled to a share of the rights to any new IP created by the visiting researcher during his or her time at the University of Waikato.

## **APPENDIX 1**

### **What is Intellectual Property?**

Intellectual Property (IP) is a generic term for the range of property rights arising from creations of the mind, for which protection can be sought.

IP includes rights in relation to:

- Literary, artistic and scientific works;
- Performances by performing artists, sound recordings, films and broadcasts;
- Inventions in all fields of human endeavour;
- Scientific discoveries;
- Industrial designs;
- Trade marks, service marks and commercial names and designations;
- Protection against unfair competition; and
- All other rights resulting from intellectual activity in the industrial, scientific, literary, dramatic, artistic or musical fields.

### **IP Rights**

IP rights provide creators and inventors with the exclusive right, for a prescribed time and within a prescribed region, to control what others may do with their work.

Intellectual property rights may be bought, sold or leased like any other forms of property.

Licences are similar to leases. Licences are usually quite specific in prescribing what IP is to be licensed and how it can be used. For example, a licence may be exclusive or non-exclusive, it may have regional restrictions (e.g. New Zealand only), and it may relate to prescribed use (e.g. for the manufacture of paint only).

The transfer of ownership in intellectual property rights is normally described as an assignment.

### **Moral Rights**

Creators of IP have certain "moral rights" which include:

- The right to be identified as the author of a work (the right of attribution);
- The right to object to derogatory treatment of the work (the right of integrity); and
- The right not to have a work falsely attributed to them.

Moral rights cannot be assigned to another person except upon the death of the author.

Moral rights are separate from and additional to IP rights.

### **Types of Intellectual Property Protection**

#### **Copyright**

Copyright protects original material in literary, dramatic, artistic or musical works; sound recordings; films; broadcasts; cable programmes; and typographical arrangements of published editions.

#### **Patents**

Patents protect an invention that is a "method of new manufacture".

#### **Trade Marks**

Trade marks protect a sign or symbol used to distinguish the goods and services of one trader from those of another.

## Designs

Design rights protect the external appearance of a manufactured article.

## Plant Variety Rights

Plant variety rights give breeders control over the commercialisation of their varieties, thereby helping them to obtain a financial return from their efforts and investment.

## Layout Designs

Layout Design rights protect the layout designs of integrated circuits.

## Geographical Indications

Geographical Indications protect indications used on goods that have a specific geographical origin and possess qualities, reputation or other characteristic that are due to that place of origin

## Granting of IP Rights

Intellectual Property rights in New Zealand are managed by the IP Office of New Zealand (IPONZ). IPONZ is an office within the Ministry of Economic Development. For a more complete discussion of IP rights and the role of IPONZ, see [www.med.govt.nz/buslt/int\\_prop.html](http://www.med.govt.nz/buslt/int_prop.html) and [www.iponz.govt.nz](http://www.iponz.govt.nz).

## What is Copyright?

The term "copyright" refers to a bundle of exclusive rights conferred in relation to original works. These rights allow copyright owners to control certain activities relating to the use and dissemination of copyright works.

Copyright protection attaches to original expression. It protects the particular form in which an idea is expressed or information conveyed. In particular, there is no copyright in a literary, dramatic or musical work unless or until the work is recorded, in writing or otherwise.

## What Qualifies for Copyright Protection?

For a "work" or type of material to qualify for copyright protection, four conditions must generally be satisfied:

- It must fall within one of the categories or subject matter in which copyright can exist;
- It must be sufficiently "original";
- The "author" must be a "qualified person"; and
- Certain works must be fixed either in writing or some other material form.

Copyright protects original material in literary, dramatic, artistic or musical works; sound recordings; films; broadcasts; cable programmes; and typographical arrangements of published editions.

## Rights Conferred by Copyright

The owner of copyright in a work has the "exclusive right" to do certain "restricted acts" in relation to the work. These include:

- **Copying** the work;
- **Publishing**, issuing or selling copies of the work to the public;
- **Performing** the work in public;
- **Playing** the work in public;
- **Showing** the work in public;
- **Broadcasting** the work or including the work in a cable programme service;
- **Making an adaptation** of the work or doing any of the above activities in relation to an adaptation; and
- **Authorising any other person to do any of the restricted activities listed above.**

## **How Do You Protect Your Copyright?**

Copyright protection comes into existence automatically upon the creation of any original work.

Registration of copyright is not required and no formal system for the registration of copyright exists in New Zealand.

Although not required by law, it is a good idea to include a copyright statement or notice on a work. A common form of copyright notice consists of the © symbol, the name of the copyright owner and the year the copyright work was first published.

## **Copyright Protection Overseas**

Participation in various international agreements to which New Zealand is a signatory means that when an original work is created in New Zealand, it is not only protected by copyright in New Zealand, but also automatically protected under the copyright laws in other countries that are members of the World Trade Organisation. As in New Zealand, it is not necessary to register for copyright protection in these countries.

As copyright protection arises automatically upon the creation of any original work, original works created in other countries are also protected in New Zealand from the time of their creation.

## **Patents**

### **What Qualifies for Patent Protection?**

In New Zealand the two main criteria for the granting of a patent are:

- It is new: An invention is considered to be new if a description of the invention has not been published in New Zealand before the filing date of the application.
- It is a "manner of new manufacture": This has been interpreted by the Courts to exclude such things as "products of nature", mathematical operations, bare principles, mathematical algorithms, schemes or plans and methods of medical treatment of humans.

As a condition of the granting of a patent, a full description of the invention is required.

### **Rights Conferred By a Patent**

The grant of a patent for an invention provides the owner with a right to exclude others from making, using or selling the patented invention during the term of the patent. In return for the grant of a patent, the owner must make public a complete description of the invention.

---

The information presented in this Appendix is based on the Ministry of Economic Development's web site, [www.med.govt.nz](http://www.med.govt.nz). The reader is referred to this excellent site for more detailed information and useful links. For a detailed and informative overview of copyright in the University environment, see the University of Waikato's copyright site, [www.waikato.ac.nz/copyright/](http://www.waikato.ac.nz/copyright/).

## **APPENDIX 2**

### **POLICY ON SHARING OF BENEFITS FROM COMMERCIALISATION OF INTELLECTUAL PROPERTY**

#### **Preamble**

The University seeks to recover some of those costs involved in protecting and commercialising intellectual property, and also to direct some of the revenue from successful commercialisation towards advancing the purposes for which the University was established. At the same time, the University wishes to:

- (a) Give staff members and students the opportunity to share in any financial benefit the University may derive from the commercialisation of their research.
- (b) Return revenue to the areas from which the research arose to facilitate continued quality research in those areas.
- (c) Recognise that not all research has, nor should have, the potential to generate revenue through commercialisation. Some share of revenue should be available to facilitate further research in these other areas.
- (d) Develop an appropriate, quality infrastructure to effectively manage commercialisation.

#### **Policy Statement**

1. Where appropriate, protection of University intellectual property will be undertaken at the discretion of the Deputy Vice-Chancellor (Research) or the Director of the Research Office.
2. Benefits will commonly be distributed on the basis of one third of net revenue (after deduction of protection and commercialisation costs) derived from inventions or discoveries to the contributing researchers collectively, one third to the department(s) of the research staff, and one third to the University.
3. Exceptions to this policy will be made only on a case-by-case basis with the express approval of the Deputy Vice-Chancellor.



## **CHAPTER 7**

### **POLICY STATEMENT ON RESEARCH AND STUDY OFF CAMPUS BY GRADUATE STUDENTS**

#### **1. GENERAL**

The University of Waikato values its associations with Industry, Commerce and Crown Research Institutes which provide it with stimulating and intellectually challenging opportunities and experiences for its research staff and students.

In pursuit of the advantages of these associations the University seeks to manage its affairs so that the aims, quality and autonomy of its scholarly programmes of teaching and research are not limited or devalued.

#### **2. GUIDELINES FOR STUDENTS WORKING IN COLLABORATING INSTITUTIONS**

The University is responsible for the academic programmes and supervision of enrolled research students, and the examination of their work. The University must be closely involved with collaborating institutions to ensure that students are making appropriate progress. Accordingly, students may be permitted to undertake research off campus only where and when the following criteria are satisfied:

- (a) data collection and examination of base materials can only, or can best, be carried out off campus;
- (b) the resources of the collaborating institution or establishment are found to be appropriate for the needs of the student;
- (c) the staff of the collaborating institution who will provide day to day support to the student are willing, able and qualified to assist the student;
- (d) the collaborating institution will agree to ensure that the student will have access to all required resources for completion of the higher degree;
- (e) the collaborating institution is able to provide a stimulating research environment;
- (f) the collaborating institution will provide ready access of supervising university staff to the student and the research facilities used by the student;
- (g) students are encouraged to present seminars both in the collaborating institution and in the university.

#### **3. SUPERVISION**

The supervisory panel of an M.Phil and PhD student is appointed by the University's Postgraduate Studies Committee on the basis of the recommendation put forward by the proposed Chief Supervisor and the relevant chairperson of the academic department. The Postgraduate Studies Committee will seek to ensure that the candidate has been consulted and is satisfied with whatever supervisory arrangements have been made. The University encourages participation in the supervisory panel of staff from collaborating organisations who are active researchers in the general area of the student's research. The Chief Supervisor of a research student normally must be a member of the staff of the University. The Postgraduate Studies Committee arranges training for supervisors and chief supervisors.

Staff members of collaborating institutions who provide co-supervision for several university students may be beneficially recognised as honorary lecturers of the university. Some honorary lecturers may be recognised as chief supervisors.

The University expects its supervisory staff to work actively in the field of the student's research, and where co-supervision is being provided by the staff of the collaborating institution, to share in joint publications with the student and co-supervisor(s).

Further information on the University's supervisory and related requirements is contained in the "Postgraduate Studies Handbook".

#### **4. PROGRESS REPORTS**

All M.Phil and PhD candidates are required to submit to the Postgraduate Studies Committee six-monthly progress reports on their research. The form and process for submission is set out in the "Postgraduate Studies Handbook".

## **5. SUBMISSION OF THESES**

Where a thesis is used as a final report to a collaborating organisation, it is not forwarded until it has been formally accepted in fulfilment of the requirements for the award of a research degree by the University.

## **6. SCHOLARSHIPS/STUDY AWARD PAYMENTS TO THE STUDENT**

Points of note are as follows:

- (a) The Income Tax Act defines incomes which are exempt from income tax and this includes: income derived by any person from any maintenance or allowance provided for or paid to that person in respect of the person's attendance at an educational institution in terms of a scholarship or bursary.
- (b) The University's guide to maintenance payments is based on the University scholarship regulations and the current value of payments should be obtained from the Research Office.
- (c) A contribution to the cost of tuition fees is normally offered in addition to the stipend. Fees are set on an annual basis by the University.
- (d) Where scholarships/study awards are built into budgets for a research project that is being undertaken in association with an external organisation, the budget would normally include a contribution to the costs of administration.
- (e) Where there is a scholarship or study award available for a specific project a selection process is undertaken and a formal offer is made to the selected student on specific terms and conditions. The conditions include a statement requiring satisfactory progress during the term of the award and may include adherence to confidentiality and IP arrangements (among others) where these are part of the contractual agreement for the project.

## **7. LOGISTICAL SUPPORT**

Collaborating organisations will often be able to provide the use of their facilities to the project. Such support should be formalised at the commencement of a project.

Collaborating organisations may also contribute to the marginal costs of the project. For example travel costs, consumables, sampling costs, photography and other costs which are additional to the tuition and support costs covered by the University's income.

## **8. PUBLICATIONS AND INTELLECTUAL PROPERTY**

The freedom to exchange ideas and to publish acquired knowledge are fundamental to the purposes of a university. Consequently, restrictions on freedom of access to information are acceptable to the University of Waikato only for limited periods, and for the purposes of permitting: the filing of patent applications; the protection of the pre-existing commercial secrets of a sponsor/collaborator; and the protection of national security. The duration of an embargo on a student's thesis will not normally be allowed to exceed two years and in most situations will not exceed one year.

The University claims ownership of intellectual property arising from academic research undertaken using its facilities and expertise (refer IP Policy, Chapter 6). Where intellectual property results from a collaborative or commissioned arrangement then the University recognises that the parties involved must negotiate to determine the ownership of the property.

The University is not a profit-making body and consequently does not necessarily have commercial objectives, but it is a steward of the resources bestowed upon it. Accordingly, it has an obligation to ensure that the benefits of any discoveries arising from research within the University are used to maintain and advance the purposes for which the University was established.

Formal terms of agreement with collaborating organisations must be negotiated through UNILink.

## **CHAPTER 8**

### **PROCEDURES TO BE FOLLOWED BY STAFF INTENDING TO UNDERTAKE SPONSORED RESEARCH PROJECTS**

#### **1. GENERAL STATEMENT**

Many organisations provide funding for research and allied activities in universities and the University encourages members of academic staff to apply to such bodies for financial assistance. At the same time the University has responsibility to ensure that arrangements are not entered into which are financially or contractually disadvantageous, and it requires that proposals for external funding are formally assessed and approved before being put to a sponsoring body. Main points to note are as follows:

- (a) Except in the case of Deans and Chairpersons of Department who exercise powers in areas specifically delegated to them, individual members of staff may not commit the University academically or financially, or in respect of employment, duties, and conditions of work of staff.
- (b) Staff are encouraged to consult with UNILink in the early stages of proposal or application development.
- (c) All applications and proposals for external funding for research must be submitted to UNILink, preferably before final draft form, so that a check can be made on the financial and contractual implications of the proposed arrangements to ensure compliance with University policies and practices.
- (d) The University, through the Vice-Chancellor or his or her delegate, is the signatory for all contractual arrangements.
- (e) Grant and contract monies must be paid directly to the University (through FSD) in terms of the contract or agreement. Payments should be made out to The University of Waikato.
- (f) Chairpersons of Departments are ultimately responsible for research accounts; over-expenditure of a research account may result in a charge against departmental funds.

#### **2. LOCATING SOURCES OF FUNDS**

Assistance in seeking funding sources is available from UNILink. New information is circulated to departments as it comes to hand, and is published monthly in UNILink News. UNILink also assists with agency application forms, conditions of awards, agency policy, etc.

Many private companies, societies and special interest organisations are interested in sponsoring and commissioning research and staff are encouraged to make contact with those potential supporters of research as and when they recognise opportunities in their own fields.

See Appendix B for general information on funding for research.

#### **3. PREPARATION OF PROPOSALS**

- (a) When drawing up research proposals staff are advised to consult Chapters 1, 2 and 3 of this 'Handbook' for policy with respect to sponsored research, and Appendices C and D for budget information.
- (b) If the proposal involves the employment of additional people, Human Resource Management Division must be consulted for information on current ruling award rates and advertising costs.
- (c) Chairpersons of Department must be given the opportunity to consider the space and resource implications of externally funded projects and the provision that has been made for them in the budget.
- (d) When the proposal is in preparation staff are advised to contact UNILink who will assist with proposal and budget preparation.

- (e) The completed Budget Spreadsheet and Approval Form must carry the signatures of the Chairperson of Department and Dean who thus certify that a contract arising from the proposal would not commit more departmental or school resources than the University can accommodate.
- (f) Once completed, the Budget Spreadsheet and Approval Form together with the proposal should be forwarded to UNILink for processing and submission to the outside organisation.

#### **4. CONSIDERATION OF PROPOSALS**

- (a) Each proposal is considered by UNILink. The following matters among others are specifically considered:
  - \* The costs and benefits to both the sponsor and the University
  - \* The nature of the sponsorship and the budget provision for recovery of both the direct and indirect costs of the project
  - \* The right to publish the results
  - \* Constraints on staff and/or students (time, confidentiality, etc.)
  - \* Ethical questions (especially where human or animal subjects are involved)
  - \* Cover for inflation, salary increases, etc.
  - \* The ownership of intellectual property rights
  - \* The need for additional insurance cover
  - \* The need for any disclaimer of liability
  - \* Protection of the right to examine a thesis.
- (b) Generally, proposals are approved for submission provided they comply with University policy and practice. If one or more of the conditions falls outside of policy or normal practice the proposal may be referred to the Deputy Vice-Chancellor (Research) before approval.
- (c) Once a proposal is approved it is forwarded to the agency by UNILink with an appropriate covering letter indicating University support for the proposal if required.

#### **5. FORMAL NEGOTIATION OF CONTRACTS**

- (a) All formal negotiations on contractual issues are carried out through UNILink.
- (b) If, as negotiations proceed, the outside agency makes formal contact with the member of staff, UNILink should be kept informed of developments.
- (c) On receipt of a formal offer of contract, or agreement, consideration must be given to the commitments to be honoured, and whether all that is promised complies with University policy. UNILink will arrange for this consideration to be given by the research supervisor, the Chairperson of Department and, where necessary, the Deputy Vice-Chancellor (Research).

#### **6. ADMINISTRATION OF CONTRACTS**

- (a) A separate account is opened by UNILink for each project; the project supervisor is provided with the details.
- (b) Recruitment of research project staff must be undertaken in consultation with the Human Resources Management Division and in accordance with the policy and procedures laid down by the University.
- (c) Expenditure for wages, salaries, or equipment must not be committed unless sufficient funds are available within the budget. Failure to observe this requirement may mean that over-expenditure will be charged against the Department.
- (d) Proposals to renew or extend existing research contracts must be submitted to UNILink for consideration.
- (e) The project supervisor has responsibility for providing research reports as and when required by the sponsor. Copies must be sent to UNILink, to enable a record of the discharge of the University's contractual obligations to be kept.

- (f) Statements of the project account are forwarded to the supervisor of the research on a monthly basis, by UNILink.
- (g) Financial reports to sponsors are compiled by UNILink in consultation with the supervisor and are submitted as required.

See Appendix E for notes on formulating a Research Contract.

## **CHAPTER 9**

### **GUIDELINES ON ETHICAL BEHAVIOUR IN RESEARCH: PROTECTIONS AGAINST FALSE ALLEGATIONS AND METHODS OF DEALING WITH SERIOUS MISCONDUCT**

Under review

# **APPENDICES**

## APPENDIX A

### GLOSSARY OF TERMS

**CAPITAL COSTS:** Capital costs are the costs which are incurred in the planning and erection of new buildings, alterations to existing buildings, the purchase and installation of equipment and facilities. Depending upon the circumstances and scope of the project in question, they may be treated in the budget for the project as a component of the direct costs or as a separate category of specific costs.

**CONFLICT OF COMMITMENT** is a situation in which outside activities would interfere with a staff member's obligations to students, colleagues, or the University.

**CONFLICT OF INTEREST** is a situation in which an individual would or could influence University decisions for personal gain or benefit.

**CONSULTANCY** is the act, or profession, of giving advice to a client, whether or not payment is made for this advice.

**CONTRACT:** A contract is an agreement between a sponsor and the University with respect to undertaking a research project at a more or less fixed price. A contract normally specifies the objectives, time limits, levels of payment, obligations, standards which will apply, how the agreement may be enforced and who will own or have control of the research findings. The details of a contract may be set out in a formal contract document or in an exchange of letters; an exchange of letters is no less legally binding than a formal contract.

**COST:** Cost means the sum of the actual direct costs (including capital costs) plus the indirect costs calculated as being applicable to a given piece of sponsored research. Cost is thus the actual amount for which the University becomes liable when it accepts a sponsorship, irrespective of whether the sponsorship is by way of a formal research contract or agreement or otherwise.

**DIRECT COSTS:** Direct costs are costs which are directly attributable to a sponsored research project and which the University would not have incurred if the University had not accepted the sponsorship. Such costs can be readily identified and calculated and incorporated into the project budget.

**GIFT:** A gift is funding/resources which a sponsor makes available to the University irrevocably and without the imposition of contractual obligations or more than general specification of the purposes for which the gift may be used. An offer of support is not considered unconditional if the sponsor:

- \* Claims the right to receive written reports on the research findings;
- \* Is entitled to have products tested;
- \* Requires statements on how the funding has been used;
- \* Specifies the objectives of the research, the methodology and personnel to be employed or the way in which the findings may be used;
- \* May, at his/her own discretion, terminate the sponsorship;
- \* Claims the right to have any surplus funds or tangible resources refunded or returned once the project has been completed;
- \* Asserts ownership, in whole or in part, of the outcomes of the research irrespective of whether those outcomes take the form of written reports, computer programs or patentable inventions or discoveries;  
or
- \* Claims the right to be consulted about or to veto the publication of the research findings.

**GRANT:** A Grant is funding/resources which are made available to the University or to a named member or members of staff for a specific purpose or under specified conditions

**INDIRECT COSTS:** Indirect costs are the costs which an institution incurs in providing general services which facilitate the basic operation of the organisation; they may also be referred to as overhead costs. The fact that they are general costs does not make them any the less real costs. Following a review by the NZVCC during 2003, the University has adopted a procedure of allocating indirect costs as a percentage of the direct cost of academic salaries included in the programme; the current percentage is 110% for fully funded programmes.

**INVENTION:** An invention is a "method of manufacture" which is novel, has an inventive step and is useful. It may cover such things as new or improved devices, systems, circuits, chemical compounds etc. It is probable that an



invention has been made when something new and useful has been conceived or developed, or when unusual, unexpected, or non obvious results have been obtained and can be exploited. An invention can be made solely or jointly with others. To be recognised legally, a co-inventor must have conceived of an essential element of an invention or contributed substantially to the general concept. An invention, although unpatentable for various reasons, may still be valuable and important - for example it may involve trade secrets and technical "know-how" encompassing proprietary information of a valuable and confidential nature.

**OPPORTUNITY COSTS:** Opportunity costs is a name sometimes used to describe the "penalty" which the University suffers when the price it charges for undertaking a piece of sponsored research is less than the full amount of the direct and indirect costs which the University incurs in doing the research

**PAID OUTSIDE WORK:** is funded entirely from sources outside the University and for which the funds are not administered by the University.

**PATENT:** A patent is filed to give an inventor the right to exclude all others from making, using, or selling the invention without permission within the specified countries for a period of years. When a patent application is filed in a country, it is reviewed by the country's Patent Office to ascertain if the invention is novel, inventive, and non obvious and, if appropriate, grants a patent giving protection within that country. Not all patents are necessarily valuable or unsusceptible to challenge. Not all inventions are patentable.

An important criterion of patentability is that an invention must not be obvious to a worker with ordinary skill in that particular field (*Non-obviousness*). It also must not have been publicly known or used by others or patented or described in a printed publication anywhere prior to the date of invention or, more generally, the date of initial filing of the patent application (*Non-disclosure*).

**PRICE:** The price is the amount which the University agrees to charge a sponsor with respect to both direct and indirect costs for undertaking or participating in a particular research project. To the extent that the price is less than the full amount of both the direct and indirect costs which the University incurs in the project, the University is subsidising the project.

**RESEARCH:** There is a spectrum of activities that are carried out under the name of research. Classifications range from *fundamental (or basic) research* in which the aim is understanding for its own sake, to *strategic research* which is carried out to learn things which have a common application to a range of problems, to *applied research* where the work is carried out to solve a specific problem.

The OECD defines research and experimental development as follows;

*'Research and experimental development comprises creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of 'people', culture and society, and the use of this stock of knowledge to devise new applications.'*

Any activity classified as research and experimental development in a University is characterised by *originality*; it should have *investigation* as a primary objective and should have the potential to produce results that are sufficiently *general* for humanity's stock of knowledge (theoretical and/or practical) to be recognisably increased.

**SPONSOR:** A sponsor is an individual, agency, corporation, government department, or similar entity which makes funding or other tangible support available to the University or to a specific member or members of the academic staff in order that research may be undertaken.

**SPONSORED RESEARCH:** Sponsored research is research for which funding or other tangible resources are provided in whole or in part by a sponsor. Sponsorship may be either specific or general depending upon the extent to which the particular sponsor prescribes the purposes for which the funding/resources may be used.

## **APPENDIX B**

### **FUNDING FOR RESEARCH**

#### **1. UNIVERSITY FUNDING**

The University is a national research institution and the annual operating grant from government includes basic support for staff research activities. Schools and/or Departments can choose to make specific grants to staff from school/departmental budgets for research project costs, either on a contestable or non-contestable basis. Such grants are operated through UNILink.

#### **2. EXTERNAL FUNDING**

External funding is secured to promote research projects of common interest. The major external sources of funding for university research are the Foundation for Research, Science and Technology (FRST), Ministry of Education (MOE), Crown Research Institutes (CRI's), The Royal Society of New Zealand (RSNZ) various Government Departments and private sector companies, which make money available for specified research tasks, usually under contract. Other associations, foundations, councils, boards and trusts may also provide finance, usually for specific projects. Funding can vary from grants for scholarships, or payment of research assistants and travel, to block sums directed towards a particular problem. Appendix C details the different types of external funding for research.

##### **2.1(a) The Foundation for Research, Science and Technology (FRST)**

FRST's primary function is the allocation of Government funds for research and development.

The bulk of the funds for public good science is allocated to specific research activities in accordance with published priorities and broad funding levels set by the government.

FRST also administer the Science and Technology Post Doctoral Fellowship Scheme, and the Tuapapa Putaiao Maori Fellowship. Their business sector, Technology New Zealand, administers the Technology for Industry Fellowship Scheme (TIF), the Technology for Business Growth (TBG) Scheme, and support staff and/or students in joint research projects with industry.

##### **2.1(b) The Royal Society of New Zealand (RSNZ)**

RSNZ administers the Marsden Fund which aims to support research which will enhance New Zealand's scientific knowledge and skill base. This fund is not subject to the socio-economic criteria set for the PGS&T, but is for the support of fundamental research.

##### **2.1(c) Tertiary Education Commission**

The Tertiary Education Commission administers the Bright Futures Scheme comprising the Top Achiever Doctoral Scholarships and the Enterprise Scholarships. With the Enterprise Scholarship, TEC match company funding to support student projects.

#### **2.2 Crown Research Institutes (CRIs)**

The CRIs are government owned companies for scientific research. It is part of the CRIs' function to create better collaboration in fields of research and development. The CRIs research functions are summarised below.

- **Industrial Research Ltd (IRL)**

Research and services leading to innovative industrial processes and products and to developing the application of new technologies by New Zealand's numerous manufacturing businesses.

- **NZ Forest Research Institute Ltd (trading as SCION)**  
Research to exploit New Zealand's advantages in production forestry and to assist in producing new and differentiated wood products which can yield high profit margins while protecting the environment.
- **AgResearch Ltd (AgResearch)**  
Research to produce high quality differentiated products based on the pastoral livestock industries and the development of associated cost efficient sustainable systems for dairying beef, sheep, deer and equine production.
- **Institute of Geological and Nuclear Sciences Ltd (GNS)**  
Research on the non-living core and crust of the planet, providing a scientific basis for managing mineral and energy resources, assessment and mitigation of geological hazards.
- **Institute of Environmental Science and Research Ltd (ESR)**  
Research, analytical and consulting services in public health, environmental science and forensic sciences.
- **NZ Institute for Crop and Food Research Ltd (Crop & Food Research)**  
The company's main focus is an integrated approach to the production and processing of arable crops, vegetables, flowers, ornamentals, essential oils, medicinal crops and seafood.
- **The Horticulture and Food Research Institute of New Zealand Ltd (HortResearch)**  
HortResearch undertakes research for the horticulture and food industries. Major strengths are in food science, processing and sensory evaluation and in the storage, breeding, molecular biology and production of fruit, flowers and other horticultural crops.
- **Landcare Research NZ Ltd (Landcare Research)**  
Research to provide a scientific basis for managing New Zealand's land environments through sustainable land use strategies and prediction of the impacts of major resource utilisation proposals.
- **National Institute of Water and Atmospheric Research Ltd (NIWA)**  
Research into natural processes and human influences operating in atmospheric, marine and freshwater systems in order to provide a scientific basis for effective environmental and resource management.

### 2.3 Government Ministries and Departments

There are also a number of other government ministries and departments that contract out research and development to support their own activities. This includes research which supports the development and effective implementation of policy and research that contributes to the performance of a regulatory function. Departments with substantial research requirements include:

- Ministry of Education
- Ministry of Maori Development (Te Puni Kokiri)
- Department of Conservation
- Ministry of Agriculture and Forestry
- Ministry for the Environment
- Ministry of Civil Defence and Emergency Management
- Ministry of Transport (transport research funding is usually via Transit NZ)
- Ministry of Research, Science & Technology

## **2.4 The Health Research Council**

The Health Research Council (HRC) is the main funder of health research in New Zealand. The Council supports a range of research which includes basic biomedical, clinical, public health and health services research. In addition to making awards for research projects the HRC also awards a number of fellowships, scholarships, and travel and conference grants.

## **2.5 Community Services**

There are a large number of Councils, Trusts, Foundations and Boards that have money available for research support. Community organisations which have supported numerous research projects at the University of Waikato include:

- The Hamilton City Council
- Trust Waikato
- Alcohol Advisory Council of New Zealand
- Cancer Society of New Zealand
- Road Safety Trust
- Waikato Medical Research Foundation

## **2.6 Industry Funding**

Private companies are willing to sponsor/commission research at the University to facilitate technological developments. Collaborations arise from staff making contact with company representatives as and when they recognise opportunities for mutual benefit.

## **2.7 Overseas Funding**

Many overseas organisations will fund research in New Zealand universities, usually under contract, and these often originate by liaison between individuals in those organisations and University staff

Further information on sources of funding is available from UNILink, including contact names and addresses, and application procedures.

## APPENDIX C

### COSTING AND PRICING RESEARCH WORK AND THE DISBURSEMENT OF INCOME RECEIVED

#### 1. TYPES OF FUNDING

The main types of external funding for research are grants-in-aid, research contracts and consultancies. For the purposes of this document they are differentiated as follows:

##### (a) **Research Grants-In-Aid**

Research grants-in-aid are defined as funding given by bodies whose purpose is to support research in universities and similar institutions but who themselves derive no financial benefit from the research they support. Examples of sources of research grants for this University are the Cancer Society and the Neurological Foundation. Such bodies normally have their own detailed application procedures and timetables and grant conditions which are not negotiable.

##### (b) **Research Contracts**

Externally sponsored funding for a research project is normally covered by a research contract. The sponsoring body will normally stand to gain financially or otherwise from the research carried out under the contract, for example through increased knowledge, greater efficiency or improvement of a service for which it is responsible. Typical organisations with whom the University has contracts with are the Foundation for Research, Science and Technology (FRST), Government departments, Crown Research Institutes and industrial or commercial companies. Such bodies will require a written agreement covering the conditions governing the research and its results.

##### (c) **Consultancies**

**Consultancy is defined** as the provision of advice to a client, such advice being based upon the pre-existing professional knowledge and skills of the consultant. Consultancy is distinguished from research in that it does not usually require the creation or discovery of new knowledge by the consultant. University consultancies usually involve the provision of expert advice or specialist facilities on a fully commercial basis. Often there will be a very firm obligation to the commissioning agency to deliver results within a specified time limit and within a set price.

#### 2. PROJECT COSTING

##### (a) **Assessing the Full Economic Cost of Research Projects**

To calculate the *full* cost of a research project three elements are taken into account: **direct or marginal costs**, which is the new or increased cost resulting from carrying out the project, **eligible cost in addition to marginal cost**, which is the cost of those University staff and services which can be *directly* attributed to the project, and **overhead or indirect costs**, which is an estimate of the proportion of the University's *general* costs which are attributable to the project.

For research contract or consultancy activities it is important to assess the full cost of the research activity regardless of what price is eventually charged to a sponsor/client. In this way the University can be aware of the extent to which it will be providing its own resources to support a project, when it decides to charge a price at less than full cost. This exercise is undertaken by UNILink at the proposal development stage.

See Appendix D for examples of costs and how to calculate them.

**(b) Budgets for Research Grants-in-Aid**

Since research grants-in-aid support the University's own programme of research, for which some basic provision is provided through the block grant, the grant funding normally covers only the direct or marginal costs of the research and, where possible, a contribution to the indirect costs.

**(c) Budgets for Research Contracts**

Research contracts can range in type from collaborative research agreements where the costs are shared between the parties, to fully commercial contracts where the University is charging full cost.

As the University receives no block grant provision for research other than its own academic research, it is necessary that the full economic cost of carrying out a potential research contract is assessed. In certain defined situations, the price to the sponsor may be increased, or decreased, from the estimated full cost. Any proposed reduction of the full cost as a charge to the potential sponsor requires explanation and approval by the University. Some of the possible reasons for a reduction are:

- i) the project will be undertaken in collaboration with the sponsoring body, which will itself provide accommodation, research effort, knowledge, services or other benefits.
- ii) it is desired to encourage a connection which may lead to future co-operation or to interest in the work of the Department.

The University requires that the full economic cost of a project be assessed and that reductions occur only for good reasons when agreeing the charge. Reductions involving departmental/School costs (including overheads) requires written authorisation by the relevant Chairperson/Dean. Reduction in the central fund overhead component must be approved by UNILink. This procedure is essential for ensuring a justifiable and consistent approach in negotiating the price of contracts.

Where the University stands to gain little benefit from a research contract, or the sponsor stands to make a considerable profit from the results of the research, or where it might appear that the University is being used as a cheap substitute for the sponsor's or other research services, it is proper to charge full cost and to consider adding an element of profit to the full economic cost.

**(d) Consultancies**

In all cases the work should be carried out on a full cost basis plus an element of profit. The value of the work in the market should also be taken into account, and the opportunity costs where rights are assigned or constraints imposed.

See Appendix D for the basic pricing formula.

**3. ALLOCATION OF INCOME ARISING FROM GRANTS, CONTRACTS AND CONSULTANCIES**

The University's policy regarding the allocation of income arising from grants, contracts and consultancies is summarised in table form on the following page. Points to be noted are:

- (a)** Budgets for research contracts and consultancies will usually include costings for University staff time and resources and the allocation of this income should be agreed between project leaders and Chairpersons prior to the commencement of the work. The UNILink budget and approval form has been designed for this purpose.
- (b)** Under University research contract arrangements staff may not take income as salary on top of their regular University salary, unless the Dean approves a case based on extraordinary circumstances.
- (c)** Where there is a flow of income back to the Department, the income can be put into a **tagged department account** at the Chairperson of Department's discretion for ongoing research in the area.
- (d)** For most types of outside activity the contribution to central administrative costs is normally 10% of the project budget. This sum is a contribution towards the cost of financial services, insurance premiums, legal costs, audit and tax services and University management services.

- (e) Where for any reason research contracts do not recover the level of indirect cost recovery appropriate for the circumstances then the first charge on any income arising after meeting marginal costs will be the contribution to central costs.
- (f) Any surplus on a contract will normally be credited to departmental funds and any deficits charged to departmental funds.

#### DISBURSEMENT OF INCOME FROM CONSULTANCIES AND CONTRACTS

TYPE OF OUTSIDE ACTIVITY	CHARACTERISTICS	DISBURSEMENT OF INCOME	FINANCIAL/LEGAL RESPONSIBILITY
University Consultancy - small scale	University resources used	i) Contribution to University costs normally 10%. ii) Balance to project/department account.	UOW receives income UOW carries liability COD to approve arrangements
University Consultancy - large scale	University resources used	i) Contribution to University costs normally 10%. ii) Disbursement of balance to be discussed with COD/Dean.	UOW receives income UOW carries liability COD/Dean to approve arrangements
Research Grant-in-Aid (Student Support only)	i) Direct Project costs budgeted ii) Contribution to indirect costs as appropriate for sponsorship arrangements	i) To project account to meet direct costs. ii) 5% of total budget to University costs. Balance of contribution to department.	UOW receives income UOW carries liability COD/Dean to approve arrangements
Research Contract	i) Direct Project costs budgeted ii) Professional time budgeted iii) Indirect/overhead costs budgeted	i) To project account to meet direct running costs. ii) For replacement staff, or salary reimbursement to department. iii) 10% of total budget to University costs. Disbursement of balance of indirect cost to be discussed with COD/Dean (usually 10% to School and 10% to department).	UOW receives income  UOW carries liability COD/Dean to approve arrangements
FRST Funding	i) Direct Project costs (including new staff) ii) Salary recovery for existing staff iii) Premises iv) Depreciation v) Overheads/Indirect Costs	i) To project account to meet direct costs. ii) To be negotiated with COD/Dean. 10% budget to University costs. Balance to be negotiated with COD/Dean (usually 10% to School and 10% to department).	UOW receives income UOW carries liability COD/Dean to approve arrangements

## APPENDIX D

### 1. **GUIDE FOR THE PREPARATION OF BUDGETS FOR RESEARCH PROJECTS**

In presenting budgets the costs associated with the project should be shown in such a way that UNILink will be able to check that provision has been made for recovery of all the appropriate costs. A Budget Spreadsheet and Approval Form is available for this purpose. The completed Budget Spreadsheet and Approval Form must be submitted to UNILink for approval **before** estimates for work are given to potential sponsors.

Assistance with the costing and pricing of research budgets for proposals is available from UNILink.

#### **(a) Direct Project Costs**

For the purpose of research costing, Direct Project cost is defined as the increase in cost to the University of carrying out the research. It may comprise the following:

##### **(i) Staff appointments to the project**

Where casual or fixed term staff appointments to a project are being made budgets should include details of the salary levels appropriate to the project positions. Starting salaries will preferably reflect those of staff in similar posts in the same department, particularly if there is a possibility that the person may later be appointed to an established University post. All appointments must be arranged through the Human Resources Division.

Salary related costs such as ACC levies, superannuation, appointment and removal expenses, and advertising should be included in the project budget.

##### **(ii) Student study awards**

A study award is a maintenance payment to an enrolled research student working on the project. The full amount of the award, including additional costs where provided (e.g., tuition fees and/or a thesis allowance) should be included in the budget.

##### **(iii) Travel and subsistence**

Travel costs can be budgeted at the standard public transport rates currently prevailing, or at University reimbursement rates. Information on current University mileage, car hire, accommodation or subsistence rates can be obtained from the Payments Section, Financial Services Division, or the UoW website.

##### **(iv) Equipment and related items**

Equipment purchases and if appropriate accessories, installation costs, delivery charges, transit insurance, testing and maintenance charges should be included in the budget. For equipment which is to be manufactured in the University the cost of materials and components, design time, workshop time, installation and other relevant costs should be estimated.

##### **(v) Consumables**

Consumables can include materials consumed, items used or charges paid during a project. The major sponsors often list examples which can range from materials and components to specialist publications, field work costs, and maintenance, relocation or rental of equipment.

##### **(vi) Office expenses**

Office expenses may include the costs of photocopying, word processing, postage, telephones, faxes, where these are identifiable and are not already included in the indirect cost calculation. Survey costs for example would be a direct project cost.



**(vii) Internal services**

Advice on costs for the use of internal University services (e.g., photography, printing, workshop, computing etc) may be obtained from the relevant departmental managers

**(viii) Other costs**

Other costs may include special library purchases, insurance for unusual risk, legal fees, fees for external consultants, contingency allowances etc., where these are a direct cost to the research programme.

**(b) University Costs which may be Eligible Project Costs in Addition to Direct Project Costs**

**(i) Existing staff**

The cost of existing academic, technical or secretarial staff who will work directly on the project is estimated from their annual salary, including superannuation and ACC levies, and the percentage of their time that they will spend on the project each year.

**(ii) Use of equipment**

Where there is use of highly specialised University equipment for an outside project it may be appropriate to include a specific charge in the budget. Assistance with calculations can be provided by the Deans Offices. As a rough guide \$0.50 per hour per \$1,000 of equipment is a reasonable charge. If the associated staff time and consumables have already been allowed for, then a figure of \$0.25 per hour per \$1,000 may be more appropriate.

**(iii) Use of accommodation**

Occasionally there are circumstances where the cost of using significant laboratory or other accommodation for a project should be estimated at market rates. Advice on rates should be sought from the relevant Dean's Office.

**(c) Calculation of Indirect or Overhead Charges and Full Economic Costs**

Indirect costs (or overheads) are the costs of the institution/department which can reasonably and fairly be attributed to a project but which are not readily identifiable. The University uses a standard approach followed by all New Zealand universities, and that is to calculate overhead on a basis of the staff salary component of the budget. This follows international practice and the full cost overhead charge for the University of Waikato is 110% of staff salary. Any variance to this must be approved by UNILink. UNILink staff can assist with all costing and pricing calculations relating to research.

## **2. COSTING AND PRICING CONSULTANCIES**

The price of a consultancy should normally reflect the full cost to the University of performing the work and therefore be the sum of:

- i) the direct project costs associated with the work (eg travel costs, consumables etc) and,
- ii) the cost of the labour and all indirect support services, often known as a professional charge-out rate which includes actual salary cost, all support services, accommodation costs, insurance and capital costs.

The basic formula for pricing in full the labour and the related indirect support element can be calculated on an hourly rate basis as follows:

$$\text{hourly rate} = \frac{\text{annual salary}}{1500 \text{ (see note a)}} \times 2.75 \text{ (see note b)}$$

**note:**

**a = number of effective working hours in the year**

**b = multiplier for calculating indirect support costs.** (Where the client has particularly severe requirements, or hardship may be involved, a charge-out rate using a greater multiplier may be appropriate. For other special circumstances a case may be made for alternative pricing arrangements).

An example of a price for consultancy work undertaken is as follows:

Researchers A and B are asked to report on an environmental problem. Researcher A is involved for 10 hours, Researcher B for 37 hours. There are other direct costs involved. Work is priced as follows:

Researcher A				
10 x \$35	=	\$350 x 2.75	=	\$962.50
(actual hourly salary)		(multiplier for indirect costs)		
Researcher B				
37 x \$27	=	\$999 x 2.75	=	\$2,747.25
		(multiplier for indirect costs)		
Total labour charge out				\$3,709.75
Sampling and analysis costs - external				\$475.00
Consumable & analysis costs - internal				\$240.00
Travel costs				\$220.00
				<hr/>
				\$4,644.75 + GST
				<hr/> <hr/>

## **APPENDIX E**

### **FORMULATING A RESEARCH CONTRACT**

A contract is any agreement between parties to undertake a specified task. It is equally enforceable in law whether it is called an agreement, an exchange of letters or a contract. The University of Waikato is the legal party for all university contracts. UNILink (as the University's representative), in consultation with the researchers, will prepare and negotiate contract agreements for all externally sponsored research.

Seeking legal redress where one party fails to fulfil the terms of the contract is usually so expensive that it is not worthwhile unless the sums of money involved are very large. The penalty for failure to complete is, therefore, loss of good name of the investigator and the University and inability to obtain further contracts.

The best way to avoid difficulties is to ensure that a contract is well designed at the outset and well understood by both parties. To achieve this a certain amount of time and effort must be devoted to the setting up of the contract. Careful attention should be given to the following:

#### **1. THE LEADERSHIP OF THE PROJECT**

The effectiveness of a contract depends upon committed project management and monitoring during the contract period. The composition of a contract management group will depend on the size and complexity of the project. If the contract is a large one, an advisory committee may also be required.

Where a contract depends upon a particular person and when students are involved, the provision of a deputy leader is a wise precaution to ensure completion of the project and adequate supervision of the students in the event that the leader is absent from the University.

#### **2. CLEARLY DEFINED GOALS AND OBJECTIVES**

A clearly specified research proposal including clearly defined research objectives is fundamental to the success of the contract. Objectives must also be realistic.

Sometimes modifications to contract terms become necessary during the progress of the research where objectives may change because of discoveries being made. Provision for regular reviews can avoid potential problems and any necessary modifications should be agreed to by all parties. Modification may also be necessary if the timetable cannot be achieved.

#### **3. THE BUDGET**

The project leader is responsible for preparing a fair and realistic budget in consultation with UNILink. The extent to which each of the parties is supporting the research should be clearly understood.

#### **4. PAYMENTS**

Financial arrangements must be stated including the timing of payments which may depend on progress reports.

#### **5. A REALISTIC TIMETABLE**

The expected duration of the project should be agreed on with the sponsor, and the start and finish dates quoted. Should the objectives of the project not be completely fulfilled within the agreed time span then agreement should be reached in writing before the expiry of the contract that:

- i) the sponsor will accept reduced objectives as fulfilling the requirements of the contract; or
- ii) the duration of the project will be extended and funding increased if appropriate; or
- iii) a new application will be lodged for further support.

## **6. REPORTING**

It is important that there is clear agreement on the frequency, detail and form of reporting which will be required during the course of the project. The reporting procedure keeps sponsors informed of the progress being made and also helps keep the objectives in view.

## **7. PUBLICATION RIGHTS**

In general the University must maintain the rights of its staff and research students to freely publish the results of their research. However it is reasonable for sponsors to see a draft of a publication before it is released, and if they are paying a fair price it is reasonable for them to seek a delay. In the case of a thesis the University cannot accept a total embargo on publication and must insist on a limited time restriction on publication - in most cases 6 months, but in special cases where the sponsor may have given major support and provided the majority, or all, of the costs of research then a maximum of two years may be agreed upon.

## **8. OWNERSHIP OF INTELLECTUAL PROPERTY (Copyright, Patents etc)**

In the absence of a contrary provision the university will own the intellectual property arising out of a research programme. If agreement is reached to assign the rights to exploit intellectual property to the sponsoring organisation it must be done so for value, for example an appropriate increase in the contract price. Assigning the ownership of intellectual property can restrict research opportunities with other collaborating partners, and consideration must be given to the University's future position.

## **9. CONFIDENTIALITY AND NON-DISCLOSURE**

As a general rule, clauses requiring confidentiality are unacceptable because the exchange of information, discussion and interchange of ideas are basic elements of all University research. However, some confidentiality clauses may be acceptable. A sponsor may request that no publicity be given to a particular research project without their prior approval as the publicity will render any research results unpatentable. A sponsor may make commercially sensitive information available to staff or students who may be required to sign a confidentiality agreement (or non-disclosure agreement).

## **10. EARLY TERMINATION OF A CONTRACT**

In the event that either party is in default of any of the provisions of the contract early termination may be necessary. The termination clauses should specify that if the sponsor terminates for reasons not connected with fault on the part of the University then unspent funds will still be available to permit completion of these by students engaged in the project.

## **11. OWNERSHIP OF EQUIPMENT**

The research contract should define who will own the equipment purchased under the contract. Ownership should if possible rest in the University. Some granting organisations retain nominal ownership but permit retention and use by the University on expiry of the contract.

## **12. INSURANCE**

Equipment owned by the University will normally be covered by its existing policies. If more specific insurance is required then the responsibility for this must be included in the contract.

## **13. LIABILITY AND DISCLAIMER CLAUSES**

Disclaimer clauses are used when one party wishes to limit their contractual liability and are included in many types of agreements. A balance must be struck between protecting the interests of the University and not deterring outside parties from contracting with the University.

The University cannot accept any contract provisions which establish firm deadlines, impose penalties for failure to make progress, or provide for the withholding of payment if the sponsor is not satisfied with the results.

#### **14. ETHICAL CONSIDERATIONS**

Any research involving human or animal subjects must be approved by the appropriate University ethical committee before the work can proceed.

#### **15. CONFLICT OF INTERESTS**

This has both academic as well as legal significance. A prime requirement for researchers is that they should pursue understanding and knowledge without fear or favour. This independence may be difficult or impossible to maintain if the University supervisor or senior research worker has financial, social or legal obligations or associations with the sponsor. Concealing such associations may come to be regarded as unprofessional, unethical or criminal behaviour. To avoid such problems the supervisor and researchers must declare their conflict of interest on the page provided within UNILink's budget and approval form.

#### **16. STUDENTS AND RESEARCH WORKERS**

It is essential that students understand the part they play in any contract and any obligations they have as beneficiaries. UNILink will arrange for participants to be informed by letter of any of the following which may be applicable:

- rights to present the research as a thesis;
- rights to retain data, analyses, samples, reports, theses etc.;
- rights to publish;
- obligations to respect confidentiality;
- obligations to present reports by specified dates;
- obligations to supply data, samples, analyses, computer programs etc.;
- obligations with respect to sale of copies of a thesis.

#### **17. RESOLUTION OF DISPUTES**

Disputes are not common but a clause providing for resolution in accordance with the provisions of the Arbitration Act is desirable.

#### **18. SIGNATORIES**

Signing a contract is the responsibility of the appointed representative(s) of the University, and should be arranged through UNILink. Under no circumstances may an individual staff member sign a contract on behalf of the University, or be the principal signatory to a contract involving the use of University resources.

Advice on contract formulation and budgets is readily available from UNILink and staff are available to assist staff in regard to University policies.

Once the contract is finalised staff should liaise with UNILink regarding administrative agreements.

### **SUMMARY CHECK LISTS**

#### **Initial Stages**

- Discuss research with Chairperson of Department and obtain approval in principle.
- Discuss with potential colleagues and especially a deputy leader.
- Discuss draft proposal and budget with UNILink.
- Discuss details of research design and project management with sponsor.

#### **Points for contract formulation**

- Nominate the Project Leader and a deputy.
- Set out a full statement of objectives and a description of the work to be done.
- Include a complete budget proposal.
- Specify the payment schedule, preferably in advance, by stages if necessary.
- Specify rights to publish.
- Copyright and patent rights and ownership of discoveries remain with the University, but may require specific agreement.
- Specify final ownership of equipment especially purchased for the project; this should normally give the University continued use even if nominal ownership is retained by the sponsor.

- Any clauses relating to University liability must be developed in consultation with UNILink.
- Specify responsibilities for reporting and supervision.
- Specify termination provisions.
- Specify conditions relating to modification of contract terms.
- Specify right to sales, royalties and other income.

**Additional agreements with participating staff and students**

- Specify rights and restrictions regarding ownership of: patents, copyright, publication, data etc.
- Specify obligations to respect confidentiality.
- Specify right to shares in royalties.
- Specify obligations for reporting etc.

## **APPENDIX F**

### **PROTECTION OF INTELLECTUAL PROPERTY**

#### **1. INTELLECTUAL PROPERTY (See Chapter 6)**

Intellectual property relates to ideas, technology, products, processes, designs, plant varieties, goodwill and trade marks. Although intangible, the law recognises intellectual property to be just as much a form of property as land, housing or jewellery. Thus, intellectual property can be sold, leased, damaged and trespassed upon.

Since intellectual property is intangible, it is important that its scope and ownership is clearly defined to enable the legal rights of the owner to be enforced. This is made possible with patents, design registrations, trade mark registrations, plant variety rights and copyright protection.

When a new product or process is developed it is essential to consider intellectual property protection before details are published. "Publication" involves any disclosure which is not made in confidence, such as offers for sale, advertising, use or display of the product.

Valid patent and design protection generally cannot be obtained if there has been publication before filing an application. Where required, confidentiality agreements can be used if it is necessary to disclose details of an invention or design to another party prior to filing an application. Legal remedies are available for **unauthorised** disclosure of confidential information.

It is not necessary to register a trade mark before you use it. Registration can be obtained subsequently. However, it is dangerous to use a trade mark without first determining whether such use would infringe someone else's existing trade mark rights.

WaikatoLink Limited is responsible for management of such of the University's intellectual property as has been transferred to it.

#### **2. ASSIGNMENTS/LICENSING**

Intellectual property may be bought, sold or leased in a manner similar to real estate.

The transfer of ownership in intellectual property rights is termed an assignment. It is important that an appropriate deed of assignment accompanies all sales. More often than not, the sale of a business will involve an assignment of intellectual property.

Licences are similar to leases.

Licensing is a common method of deriving profit from intellectual property because it enables a patentee, for example, to commercialise an invention without having to risk capital in setting up a manufacturing and marketing operation. At the same time they can retain ownership of the intellectual property.

A licence agreement usually provides an initial payment to the licensor as well as on-going royalties. Other topics which a licence agreement could be expected to cover include:

- term of licence,
- the right to sub licence,
- quality control,
- ownership of improvements made by the licensor to the invention,
- production and marketing,
- right of termination of the licence,
- liabilities and responsibilities of both parties.

#### **3. INTERNATIONAL PROTECTION**

Intellectual property rights may be protected overseas. There is however no such thing as a "world patent" or the equivalent for designs or trade marks. Registration of your rights must be obtained in each country separately - so it is important that you have an idea of the overseas territories in which your product or process

might be of commercial value. One of the few exceptions to this general advice is Europe, where a single patent application may cover up to thirteen European countries.

**The importance of novelty:**

In New Zealand, an invention is patentable and a design is registrable only if it is "novel". New Zealand law defines an invention or a design as being novel if it is not known, published or used in New Zealand prior to the date of the application for protection.

Most other countries have a different definition of "novelty". In many countries once an invention is published or known anywhere in the world it is no longer regarded as having the necessary novelty to be entitled to protection under patent and design laws. However, an agreement known as the International Convention allows you to file applications in other countries within the "convention period" claiming the priority date of the New Zealand application. The "convention period" for patents is 12 months, and for designs and trade marks it is six months.

The advantage of the International Convention is readily apparent. In the case of a new invention, it allows you up to 12 months to publish or market your invention after filing a patent application in New Zealand, and then subsequently obtain valid patent protection overseas back dated to the date of the New Zealand application - thereby ensuring the foreign patent application dates from a time when the invention was novel, and providing priority over patent applications relating to inventions similar to your own, filed after your New Zealand priority date.

#### 4. FORMS OF INTELLECTUAL PROPERTY PROTECTION

##### PATENTS

A patent is a grant to the owner thereof of a monopoly to manufacture, sell, use, import and license an invention.

**Novelty** - With a few exceptions an invention which is the subject of a patent application must not have been known, published, sold, used or otherwise publicly disclosed in New Zealand prior to the patent application date.

##### Procedure

**Patent Search** - Searches relevant subject matter in published New Zealand patents.  
- Determines if current patents are likely to be infringed.  
- Indicates the degree of novelty of the invention (hence patentability).

**Application** - Applicant and inventor details recorded.  
- Provisional specification prepared which describes the invention and may include drawings.  
- Application with provisional specifications filed at Patent Office.  
- Applicant receives application number and filing date.  
- Once application number received applicant can promote and market the invention freely.

**Complete Specification** - Within twelve months of application date a complete specification is required to be filed.  
- Complete specification contains detailed description of invention and claims defining the scope of the invention for which protection is sought.

**Overseas Applications** - Should preferably be filed within the twelve month period following the initial application date.

##### DESIGNS

Design registration confers a monopoly similar to that conferred by a granted patent, but in relation to only the look of an article and not for the idea behind its construction.



- Novelty** - Similar to patent novelty requirements.
- Procedure** - Application filed at patent office including applicant details, representations of design and statement of novelty.  
 - Representations are usually black and white photographs or simple line drawings depicting the article to which the design is applied from a number of angles.  
 - Statement of novelty defines the features for which design registration is sought.

**PLANT VARIETIES**

Plant Variety rights confers upon the owner the exclusive right to produce for sale, sell, import, propagate and licence reproductive material of the plant variety for which a grant of rights has been given.

- Novelty** - not for sale in New Zealand for more than twelve months before the date of application for rights, and  
 - for woody plants, it has not been sold overseas for more than six years before application, and  
 - non-woody plants, it has not been sold overseas for more than four years before application.
- Procedure** - Applicant details and variety characteristics are filed at the Plant Registers Office.  
 - Seed and/or access to growing plants must be made available to MAF offices.

**COPYRIGHT**

Gives protection against someone copying a substantial part of a literary or artistic work.

Copyright is an automatic protection and does not have novelty requirements, official procedures or costs associated with gaining copyright protection. It is recommended however that literary artistic works are marked with the international copyright symbol, ©, the date and the name of the author.

**TRADE MARKS**

Trade mark registration confers a monopoly to use a certain name or logo with respect to designated goods.

Preferably trade marks should be distinctive and non-descriptive of the goods to which they are applied, for instance, Xerox, Kodak, and Ajax.

- Novelty** - Must not be confusingly similar to other marks on the register for related goods.
- Procedure**
- Trade Mark Search** - Searches all alphabetically, graphically and phonetically similar marks published in the patent office in related classes of goods.  
 - Determines whether proposed mark is available for use and registration.
- Application** - Applicant details and representations of the mark are filed at the Patent Office.  
 - A mark may be used before an application has been filed, although it is advisable to place an application for registration of a mark on the register as early as possible to establish Common Law Rights.

**5. INTELLECTUAL PROPERTY AND EXAMPLES OF WHAT IT CAN BE APPLIED TO**

**PATENTS**

Chemical Processes  
 Drench Guns  
 A Method of Pollination  
 A Method of Packaging

Pharmaceutical Products  
 Chemical Filters  
 Building Strap  
 Board Game

Robotics Exercise Machine  
Aids Vaccine  
Method of Firing Glass  
Nozzle Ventilation System  
Security Envelope  
Vine Support System

Pack Harness  
Method of Extinguishing Fires  
  
Stereo Amplifiers  
Building Construction

### **DESIGN**

A Bottle  
Table  
Tank  
Chair  
Car

Roadside Beacon  
Bed  
Mobile Canteen  
Raincoat

### **COPYRIGHT**

Computer Programs  
Operators Manual  
Audio Recordings

Printed Circuit Boards  
Videos  
Plays

Three Dimensional Articles Made From Engineering Plans and the Like

### **TRADE MARKS**

Logos  
Xerox  
Woolrest  
Kamakuze  
Nikon  
IBM  
Canon  
Lion Brown  
Continental  
Colgate  
Ajax

Kodak  
Coca-Cola  
Levi's  
Puffin  
Watties  
Castrol  
Schwarzkopf  
Beaurepaires  
Palmolive

### **PLANT VARIETY RIGHTS**

Any variety of hybrid or clone that is novel according to the requirements, stable, homogeneous and distinct.

Blueberry varieties with bigger fruit  
Apples that fruit earlier  
A new variety of cut flowers that last longer in water  
A blue chrysanthemum  
A man eating venus fly trap

### **SOURCE OF INFORMATION**

James & Wells  
Patent & Trade Mark Attorneys  
Hamilton.