

## What is Intellectual Property?

### 1 Overview

Intellectual property is a valuable asset that covers a wide range of intangible material including inventions, literary and artistic works, computer programs, databases, broadcasts, films, sound recordings, trade marks and designs. Queensland Health intellectual property generally falls into one of the five categories discussed below: copyright, patents, trade marks, designs and trade secrets. It is possible that material can belong to more than one category. This Fact Sheet briefly explains five types of intellectual property and provides some examples of these that were developed within Queensland Health.

### 2 Copyright

In general terms, copyright is the exclusive right for a copyright owner to do certain things with their copyright material. In Australia, copyright is granted automatically by the *Copyright Act 1968* (Cth).

Copyright developed by employees of Queensland Health in the course of their employment is owned by the State of Queensland (Queensland Health). As it is government copyright, it lasts for 50 years from the year of first publication after which time it becomes public domain.

#### 2.1 Types of copyright material

Copyright material includes:

- Hard copy or electronic documents such as journal articles, books, published editions, patient assessment forms, material on websites, newsletters, news articles, directories, databases, public health educational information
- Computer programmes such as those developed in information and communication technology projects
- Artistic works such as photographs
- Sound recordings, films, broadcasts and multimedia.

#### 2.2 Exclusive rights of copyright owners

Copyright owners have the exclusive right to do certain things with their copyright material such as:

- Copy the material, which includes making a photocopy, scanning a hard copy into electronic format or printing an electronic document

- Publish a journal article, book, chapter or other work
- Perform a work or play it to the public, including at a meeting or conference
- Communicate the work to the public by making it available on the internet
- Communicate the work to the public by electronic transmission, including sending it by email to one or more people.

## 2.3 Using copyright material of other organisations

As a Queensland Health employee you have particular protection against infringing copyright when you copy documents as part of your job. This and other issues to consider are explained in the Fact Sheet titled *Copying of non-Queensland Health documents*.

## 2.4 Examples of Queensland Health copyright material

The Queensland Health Informed Consent project created Patient Consent Forms for surgical procedures. The forms were written and reviewed by Queensland Health employees within their course of employment. The forms may have been developed with reference to existing medical practice and general knowledge obtained from journals or other publications, however, employees have expressed this knowledge in an original way and not by simply cutting and pasting from existing sources.

Copyright has therefore been created because the forms are original written materials. The forms also utilise a template layout, and include diagrams that explain medical procedures. Copyright exists in the words, template layout and the diagrams.

Further examples of Queensland Health copyright include:

- Health promotion campaigns (Chief Health Officer / Health Promotion Branch)
- Multilingual Health promotion campaigns (Multicultural Health)
- Educational materials and risk management products (Centre for Healthcare Improvement / Patient Safety Centre / Queensland Centre for Mental Health Research)
- Medical forms (Information Directorate / Medical Forms Programme)
- Patient assessment forms and tools (Allied Health professionals including Occupational Therapists; Psychologists; Dieticians and Audiologists).

## 3 Trade Secrets

Trade secrets are essentially secret information. Their purpose is to enable one person to communicate secret information to another without destroying the potential to later register IP in the

form of a patent or design registration. Trade secrets do not require registration and can be protected under common law and through confidentiality agreements with third parties.

## 4 Patents

A patent is a right granted for any device, substance, method or process, which is new, inventive or useful. Patent rights are protected in Australia under the *Patents Act 1990* (Cth). Unlike copyright, it is not an automatic right and you must apply for a patent to obtain exclusive rights to exploit your invention. There are two types of patents in Australia:

- A standard patent gives long term protection for up to 20 years
- An innovation patent is a relatively fast, inexpensive option, lasting a maximum of 8 years.

Patents give effective protection if you have invented new technology with the potential for significant long-term commercial gain. In return, patent applicants must share their know-how by providing a full description of how their invention works. This information becomes public and can provide the basis for further research by others.

For a patent to be granted, the invention must:

- be new, ('novel') which means that the invention has not been publicly disclosed in any form, anywhere in the world
- involve an inventive step for a standard patent. This means that the invention must not be obvious to someone with knowledge and experience in the technological field of the invention or
- involve an innovative step for an innovation patent. This means that any variation between the invention and what is currently known about that technology, must make a substantial contribution to the working of the invention
- be a 'manner of manufacture'. It includes any device, substance, method or process, but it excludes artistic creations, mathematical methods, plans, schemes or other purely mental processes
- be useful. Your invention should do what you say it will do.

### 4.1 Examples of Queensland Health patents

- *Neisseria gonorrhoeae* Detection
- West Nile Virus Vaccine
- Schizophrenia Gene Test #1: A genetic marker of atypical antipsychotic and antidepressant response (jointly owned patent)

## 5 Trade Marks

A trade mark is a sign that is used in the course of trade to distinguish goods or services as coming from a particular source. A trade mark can be a word, phrase, letter, number, sound, smell, shape, logo, picture, aspect of packaging or a combination of these. A trade mark can be a valuable marketing tool.

Both registered and unregistered trade marks can be defended under common law, the *Trade Practices Act 1974* (Cth) or the *Copyright Act 1968* (Cth). Registered trade marks are protected under the *Trade Marks Act 1994* (Cth).

### 5.1 Examples of registered Queensland Health trade marks



## 6 Designs

A design is the overall visual appearance of a product, including its shape, configuration, pattern or orientation. A design can be protected only through registration under the *Designs Act 2003* (Cth). Registration requires the design to be new, meaning that it must not have been previously used in public or published. Registration also requires that the design is distinctive compared to other designs in the public domain.

## 7 Further Information

Document Custodian (see below).

State of Queensland (Queensland Health), *Intellectual Property Fact Sheet: Copying of non-Queensland Health documents* (2009) < [http://www.health.qld.gov.au/ohmr/html/rcpu/intel\\_prop.asp](http://www.health.qld.gov.au/ohmr/html/rcpu/intel_prop.asp) > at 5 January 2010.

The IP Australia website has information on patents, trade marks and designs <<http://www.ipaustralia.gov.au>>.

The Australian Copyright Council website has information on copyright <<http://www.copyright.org.au>>.

The Queensland Health intellectual policy, procedures and fact sheets as well as links to intellectual property web pages of the Queensland Government and other organisations are accessible from the Office of Health & Medical Research website: <http://www.health.qld.gov.au/ohmr>.

## 8 Document Custodian

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