

# Intellectual Property Policy

## Control

<b>Policy Name:</b>	Intellectual Property Policy		
<b>Number:</b>	BP BRD 006	<b>Version:</b>	2
<b>Policy Approver:</b>	Board	<b>Approved Date:</b>	10 June 2014 ( <i>reviewed and amended February 2018</i> )
<b>Policy Owner:</b>	Company Secretary / Legal Counsel	<b>Next Review:</b>	December 2020

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## 1. Context

- 1.1 Sugar Research Australia Limited (**SRA**) recognises that intellectual capital consists of various forms of knowledge that can be converted to beneficial outcomes and that this can exist in at least four different forms:
- know how** - which is practical information that is held by a person in their mind about how to do or achieve something;
  - data** - which is recorded information, for example, information which is recorded in documents and databases;

- (c) **intellectual property (IP)** - which consists of a series of legal rights of a proprietary nature which relate to copyright, trademarks, patents, circuit layouts, registered designs and Plant Breeder's Rights (some of which must be registered and some of which exist automatically); and
- (d) **other related rights** - which are rights related to intellectual property rights, such as moral rights.

1.2 SRA is a knowledge based company that:

- (a) invests in the development of IP through investment in RD&A activities; and
- (b) delivers benefits to the Australian sugar industry by translating this IP into products and services.

## 2. Purpose

2.1 The purpose of this policy is to support the objects of SRA by providing clear direction to SRA and its personnel, and also Research Provider personnel, in respect of the identification, protection and management of IP rights (**IPR**) arising from SRA's RD&A investment. This is to ensure that the products and services arising from this investment are delivered to the Australian sugar industry through the most efficient and appropriate route to adoption and without excessive encumbrances.

## 3. Application

- 3.1 This Policy applies to all RD&A activities of SRA including IP generated by SRA employees and contractors.
- 3.2 This Policy shall be reflected in the terms of the SRA Project Agreement or any multiparty research agreement developed with SRA and Research Providers.
- 3.3 Where a number of parties are involved in RD&A activities for the development of Project IP, SRA may, at its sole discretion, develop a multiparty research agreement to ensure all parties agree to the terms and conditions for managing IP and its potential commercialisation.

## 4. Policy

### Background Intellectual Property

- 4.1 All SRA Background IP contributed to a Project will remain the property of SRA.
- 4.2 All Research Provider Background IP contributed to a Project will remain the property of that Research Provider (or the party that licensed it to the Research Provider, if it is Third Party IP).
- 4.3 SRA will grant to the Research Provider a royalty free, non-exclusive right to use the SRA Background IP to the extent necessary to carry out a Project.
- 4.4 Research Providers will be required to grant to SRA a royalty free, non-exclusive right to use the Research Provider Background IP and any Third Party IP licensed to the Research Provider, to the extent necessary to carry out a Project and to undertake dissemination and any agreed commercialisation of Project IP.

- 4.5 Research Providers will upon request, provide SRA with copies of any contracts or licensing agreements developed with a third party detailing rights for use of their Third Party IP for the purpose of carrying out a particular Project and any agreed commercial rights to Project IP.
- 4.6 Both parties will be required to take all reasonable steps to protect the Background IP of the other party including all Third Party IP provided by the other party.
- 4.7 Both parties will be required to give each other prompt notice of any infringement of the IPR of the other party or a third party of which they become aware.

### **Project Intellectual Property**

- 4.8 It is SRA's preferred position that SRA and the Research Provider(s) will jointly own Project IP as tenants in common, in proportion, based on their Contributions to a Project. The ownership of Project IP and the Contributions of SRA and the Research Provider(s) will be set out clearly in the SRA Project Agreement.
- 4.9 Research Providers will upon request, provide SRA with copies of any subcontracts or other agreements developed with a third party detailing rights to:
  - (a) use any Research Provider Background IP or SRA Background IP for the purpose of conducting the Project; or
  - (b) ownership of Project IP or to have rights in any future use or Commercialisation of Project IP.
- 4.10 SRA and Research Providers must maintain laboratory notebooks recording key activities specific to the development of Project IP. Such notes will include tasks completed by Research Providers and others involved in the development of Project IP.
- 4.11 SRA's standard employment agreement and services agreement will provide that all IPR developed by SRA employees and contractors, respectively, in the course of their employment or performance of services, including in relation to Projects, will be assigned to and owned by SRA.
- 4.12 SRA's standard employment agreement will provide that, pursuant to s.195AWA(4) of the Copyright Act, SRA employees consent to use of IP generated in the course of their employment in a manner that would otherwise constitute an infringement of their Moral Rights, provided that it is for a purpose connected with SRA's operations.

### **Registration of Intellectual Property Rights**

- 4.13 SRA and the Research Provider(s) will be required to consult with each other as to the best methods to obtain protection for Project IP (e.g. protection through registration).
- 4.14 SRA and the Research Provider(s) will be required to cooperate with each other and promptly take all necessary steps for the purpose of protecting all Project IP that they have agreed will be protected.

### **IP Register**

- 4.15 SRA will ensure that an IP Register is maintained by the Research Provider for each Project, substantially in the form of Attachment A to this Policy.
- 4.16 The IP Registers for each Project will then be amalgamated into a master IP Register maintained by SRA (ideally in the form of a database which can be searched and from which reports can be generated).

4.17 The role of the IP Registers will be to:

- (a) track ownership and licensing of Project IP provided for, or arising from, Projects;
- (b) record any limitations on the use of Background IP or Third Party IP provided; and
- (c) track any dissemination and commercialisation.

4.18 The IP Registers must be regularly updated so that they reflect the current state of all IP used or created in a Project, or held by SRA, at any point in time.

### **Adoption of Intellectual Property**

4.19 SRA will seek to ensure the delivery of the Project IP arising from its RD&A investment as products and services for the benefit of the Australian sugar industry by selecting the most efficient and appropriate route to adoption, by communication and/or commercialisation.

4.20 SRA will ensure that it develops an adoption/commercialisation strategy either prior to entry into each SRA Project Agreement, or at an appropriate time during its performance.

4.21 The adoption/commercialisation strategy will set out how SRA intends to either:

- (a) communicate the Project IP to the Australian sugar industry and encourage its adoption; or
- (b) commercialise the Project IP for the benefit of the Australian sugar industry.

4.22 The guiding principle for the strategy will be that knowledge, data and know-how generated from SRA's RD&A investment should be openly available for use (with acknowledgement), by communication and/or commercialisation, unless there is a compelling reason otherwise. This will promote greater use, further development of and building on Project IP, by a wide range of researcher and industry stakeholders.

4.23 SRA may license some of its RD&A to other parties for limited purposes by use of the Creative Commons licensing system.

4.24 A further principle is that SRA directors and employees, and their associates, should not benefit from the commercialisation of Project IP any more than they might as general users of the commercialised product or service.

### **Enforcement of Intellectual Property Rights**

4.25 SRA may, subject to Board approval and if it is appropriate and cost justified, seek to enforce its rights in respect of Project IP if these rights are being infringed in any country by another party and that infringement may have an adverse impact on the Australian sugar industry.

## **5. Roles and Responsibilities**

Role	Responsibility
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5.1	Company Secretary/Legal Counsel	To maintain the SRA IP Register and any SRA IP management plan in existence from time to time and to assist the RFU in negotiating the contractual provisions for protection and adoption/commercialisation of any Project IP arising from Projects.
5.2	RFP	To ensure the treatment and protection requests in respect of Background IP and Project IP from Research Providers are clearly understood, and acceptable to SRA, before recommending the selection of a Project.
5.3	RFU	To appropriately negotiate (in conjunction with Company Secretary/Legal Counsel) the contractual provisions for the protection and adoption/commercialisation of any Project IP arising from Projects selected for SRA investment by the RFP selection process.

## 6. IP Audit

- 6.1 An IP audit will be undertaken every two years to monitor how successfully SRA's IP portfolio is being managed with respect to registration, protection, licensing, use and dissemination.

## 7. Definitions

	Term	Definition
7.1	Background Intellectual Property or Background IP	Any IPR embodied in SRA Contributions or Research Provider Contributions to a Project.
7.2	Contribution	The cash, plant and equipment, human resources and Background IP contributed to a Project by SRA or the Research Provider.
7.3	Intellectual Property or IP	Has the meaning given in clause 1.1 of this Policy.
7.4	IP Register	A register of IP kept by a Research Provider or SRA (as the case may be) in respect of a Project and in the form set out in Attachment A.
7.5	IPR or IP rights	Has the meaning given in clause 2.1 of this Policy.
7.6	Moral Rights	Has the meaning given in the <i>Copyright Act 1968</i> , which, in relation to an author, means:  (i) a right of attribution of authorship; and  (ii) a right not to have authorship falsely attributed; and  (iii) a right of integrity of authorship.

7.7	Project	An RD&A activity being conducted pursuant to a Project Agreement.
7.8	Project Intellectual Property or Project IP	Intellectual Property generated in the performance of a Project.
7.9	RD&A	Research, Development and Adoption.
7.10	Research Provider	Any external organisation engaged by SRA to conduct a Project.
7.11	Research Provider Contribution	The Contribution made to a Project by the Research Provider.
7.12	RFP	SRA Research Funding Panel (a Committee of the SRA Board).
7.13	RFU	SRA Research Funding Unit.
7.14	SRA	Sugar Research Australia Limited ACN 163 670 068.
7.15	SRA Contribution	The Contribution made to a Project by SRA.
7.16	SRA Project Agreement	Contractual arrangement between SRA and a Research Provider(s) to conduct a Project on behalf of the Australian sugarcane industry.
7.17	Third Party Intellectual Property or Third Party IP	Any IP that is owned by a party other than SRA or the Research Provider.

## 8. Review

- 8.1 This Policy must be reviewed at least every three years, in the light of current good practice and regulatory advice.

## ATTACHMENT A – IP Register

### PART 1: Background IP (BIP) and Third Party IP (TPIP) to be used in the Project

#### PAST SRA Investments:

List any **previous or existing** SRA (BSES or SRDC) funded projects that has contributed to the BIP: Past/existing Project Codes: \_\_\_\_\_

\_\_\_\_\_

BACKGROUND INTELLECTUAL PROPERTY REGISTER (BIP)								
No	Date #	Owner of Background IP or Third Party IP(s) Note: if Third Party IP – list the name of the person or organisation who provided it	IP Category (e.g. Plant variety, Genes, Formulation; Software; Thesis; Report, Data etc..)	Specific Description of IP	Nature of IP Legal basis for how the IP is protected (e.g. copyright / Patent / confidential Information) Include: Registration / Application details. (e.g. Registration No)	Is there <b>any</b> restriction on research and commercial use rights over the IP? ( <b>Yes /No</b> ) If Yes list restrictions in space provided*	Intended Purpose of use of BIP or TPIP	Will the BIP be required for Commercial use of Project IP (Yes/ No)? <b>If yes</b> define how it will be used in Project IP.
1								
*Restriction and/or encumbrances on use. - If not for Public Domain use, state the conditions of use for the BIP or TPIP listed above:*								
2								
*Restriction and/or encumbrances on use. - If not for Public Domain use, state the conditions of use for the BIP or TPIP listed above:*								
3								
*Restriction and/or encumbrances on use. - If not for Public Domain use, state the conditions of use for the BIP or TPIP listed above:*								

Add more Rows as required

# Date in which details were initially listed and or modified in the Schedule

\* **Provide details of conditions retaining to the use of the stated BIP** e.g. licence conditions, security conditions, encumbrances, including confidentiality and any restrictions on publications of projects results and/or use of Project IP and ownership of Project IP. Note: **if no conditions over the use of the BIP exist SRA will assume that the BIP is for free Public Domain use and dissemination)**

**PART 2: Intellectual Property to be developed (Project IP)**

INTELLECTUAL PROPERTY REGISTER – PROJECT IP								
No	Date #	IP Category (e.g. Plant variety, Genes, Formulation; Software; Thesis; Report, Data etc..)	Specific Description of IP	Owner IP	Nature of IP Legal basis for how the IP is to be protected (e.g. copyright / Patent / confidential Information) Include: Registration / Application details. (e.g. Registration No)	Is there <b>any</b> restriction on future research and commercial use rights over the IP? <b>(Yes /No)</b> If Yes list restrictions in space provided*	Purpose of IP for the Industry	Is use of the IP dependent of any other IP developed within or outside the project (BIP or TPIP)? <b>If yes</b> please list such dependent IP? Reference number of BIP or TPIP listed in Part A of Register)
1								
Conditions of use or restrictions on Commercialisation of the Project IP listed above: **								
2								
Conditions of use or restrictions on Commercialisation of the Project IP listed above:								
3								
Conditions of use or restrictions on Commercialisation of the Project IP listed above::								
4								
Conditions of use or restrictions on Commercialisation of the Project IP listed above:								

Add more Rows as required

# Date in which details were initially listed and or modified in the Schedule

**\*\* Provide details of conditions retaining to the future use and or Commercialisation of the listed Project IP** e.g. licence conditions, confidentiality conditions including any limitations on rights to publish research outcomes, encumbrances, including any restrictions on publications of projects results and/or use or commercialisation of Project IP. Note: **if no conditions over the use of the Project IP exist SRA will assume that the Project IP is for free Public Domain use and dissemination)**