

## Knowledge Commercialisation Australasia (KCA) – Submission Re: Higher Education Research Commercialisation IP Framework

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The successful commercialisation of university research is a key role conducted by the 700+ individual members of KCA. Our trained professionals manage the relationships and are the key translation points between researchers and industry on behalf of their respective organisations. KCA launched the Survey of Commercialisation of Outcomes from Public Research (SCOPR)<sup>1</sup> in 2020 to fill the gap in research commercialisation data following the discontinuation of the National Survey of Research Commercialisation (NSRC). This is currently the only source of consolidated research commercialisation data from participating Australian universities.

Based on our members' experience, we have prepared the below response to the target questions. We thank the Department of Education, Skills and Employment (DESE) for providing a direct update to KCA members and reiterate the feedback that we provided during that process as well.

### What will the HERC IP Framework do?

*1. What would ensure the HERC IP Framework is applied consistently across universities (research institutes/centres, colleges, faculties, departments and researchers) and industry?*

The HERC IP Framework will be applied consistently across universities and industry if:

1. It is developed with genuine deep consultation across universities and industry;
2. It highlights the key challenges and drivers from each side and proposes practical, easy to use principles;
3. It develops high quality education materials that are designed for the different audiences and upskills individuals on the bespoke challenges of commercialising intellectual property;
4. It provides relevant and practical agreements for partnerships;
5. It acknowledges that some cases might require customisation to ensure the best impact for the relevant research; and,
6. It does not impose any undue burden on the parties involved.

KCA is concerned that there has been minimal direct consultation with industry and the investment community. If the Framework is going to achieve its objectives, it needs to have strong buy-in from all sides of the ecosystem.

*2. What parts of standard agreements must allow changes to accommodate variation? Why? How?*

Standard agreements often rely on project schedules to confirm project specific details and any variations to standard terms. The easiest way for this to occur is to ensure that the Project Schedule takes precedence over the terms and conditions. This will allow for any special conditions relevant to the project to be applied.

## Framework scope

*3. What should be in and out of scope for the HERC IP Framework to be useful, reasonable and practical?*

In Scope – bilateral agreements for collaborative research that are funded through DESE

Out of scope – more complicated agreements, i.e., IP licensing, multilateral agreements, and those with other publicly-funded research agencies (PFRAs)

*4. What are the strengths and limitations in the current Australian IP Toolkit that could be addressed in HERC IP Framework?*

The Australian IP Toolkit was developed and then reviewed and updated following significant consultation with the sector, including with KCA members. We would encourage the government to consider using these agreements.

*5. How could the demarcation between the HERC IP Framework and the Australian IP Toolkit be best set out to avoid confusion about applicability for different transactions?*

This could be achieved by merging the two schemes together and having a single point for intellectual property agreements provided by the Australian government.

*6. What information should be in the process maps, guidance and educational material? What formats are best?*

KCA recommends benchmarking any of this guidance on other international systems, as there is significant material already available to universities and industry partners. Consultation will be required, particularly to audiences where intellectual property management is a new area of activity. KCA would like to highlight the example from our ATTP co-member AUTM “Nine Points to Consider in Licensing University Technology”<sup>1</sup>, which outlines several areas to consider when licensing publicly funded research from universities.

*7. What other processes and agreements should be included in the HERC IP Framework?*

Any further development of the Framework should only be considered once the initial version has been rolled out and reviewed to determine whether it is achieving its objectives.

*8. Should the HERC IP Framework apply to (a) only ARC or DESE research programs; or (b) also extend to publicly funded research at federal level through departments, Rural Research and Development Corporations, the NHMRC and PFRAs?*

This will depend on how the framework is developed and what components are made mandatory. We refer to our answer in Q1.

*9. What specific issues in different fields of research should the HERC IP Framework include?*

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<sup>1</sup> See <https://autm.net/about-tech-transfer/principles-and-guidelines/nine-points-to-consider-when-licensing-university>

Deep consideration will need to be given to discipline-specific requirements, Indigenous Knowledge, and other issues relevant to existing legislative requirements, e.g., defence-related research funded through DESE.

### **Target audiences**

*10. What unique aspects of specific sectors and commercial situations should be accommodated in the HERC IP Framework? Why? How?*

Refer to Q2.

*11. What would make the HERC IP Framework attractive to collaborating and investment partners?*

Refer to Q1.

### **Key parameters guiding development and implementation**

*12. What specific activities in your organisation would not be amenable to a standardised agreement?*

Many commercialisation activities require bespoke contracts that reflect the complexity of the background intellectual property and other existing contractual requirements.

As the observed barriers to IP are often around IP ownership, a non-negotiable mandated set of IP principles detailing IP ownership, warranties and guarantees could be considered. The principles need to reflect that universities are managing IP on behalf of the Commonwealth, and this should be reflected in the IP principles.

*13. What design aspects – such as a \$100,000 investment, or significant background IP - should define the threshold for more complex agreements?*

If the HERC IP Framework involves a mandatory agreement component, the aspects highlighted in the consultation paper appear to be sufficient to move the arrangement to a more flexible agreement:

1. Project value is over \$100,000
2. Background intellectual property is included
3. More than two parties are involved

*14. What elements must be flexible to prevent barriers in complex, high value agreements? How would these work in practice?*

Refer to Q2.

### **Trust and culture**

*15. Would pre-negotiation tools (such as term sheets or non-binding agreements) help your organisation build trust and confidence in a partnership? What tools would help?*

The use of term sheets outlining the main deal points are commonly used by our members to

ensure alignment prior to drafting a commercialisation agreement. KCA strongly advocates their use prior to preparing a contract for the parties to review.

## Implementation

*16. What communication and educational subject material would help your organisation in implementing the Framework?*

There is a substantial amount of existing information and training currently available regarding commercialisation of intellectual property, e.g., IP Australia<sup>2</sup>, KCA<sup>3</sup>. We would encourage the review of these existing sources to ensure alignment and minimal duplication of content.

*17. How can performance of the HERC IP Framework be monitored without an undue administrative burden on users?*

If the HERC IP Framework and tools are high quality and improve the commercialisation process, they will be eagerly used by universities, industry partners and investors.

## About Knowledge Commercialisation Australasia

KCA<sup>4</sup> is the peak body leading best practice in industry engagement, commercialisation and entrepreneurship for research organisations. This involves activities from licensing technology to existing companies, academic consulting to industry, conducting sponsored research and spinning out new companies and increasingly a combination of these.

It represents a significant majority of the commercialisation offices of public sector research organisations across Australia and New Zealand, and works with similar bodies globally including the US, Europe, and the UK to develop best practice in developing the research business interface. It conducts the annual Survey of Commercial Outcomes from Public Research (SCOPR). KCA is a founding member of ATTP, the global association of knowledge transfer and commercialisation organisations<sup>5</sup>.

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<sup>2</sup> See <https://www.ipaustralia.gov.au/understanding-ip>

<sup>3</sup> See <https://techtransfer.org.au/ipc-training/>

<sup>4</sup> See <https://techtransfer.org.au/>

<sup>5</sup> See <https://attp.info>