Queensland University of Technology

Response to the Department of Education, Skills and Employment's
***Higher Education Research Commercialisation IP Framework* Consultation Paper**

The Queensland University of Technology (QUT) welcomes the opportunity to comment on the Department of Education, Skills and Employment (DESE) proposal for a Higher Education Research Commercialisation (HERC) Intellectual Property (IP) Framework (the Framework).

QUT notes the response of Universities Australia (UA) and endorses its recommendations, namely to:

- hold off on implementation prior to mature development;
- consult more widely and at greater length;
- test assumptions and identify real-world impediments;
- run a substantial opt-in pilot as a genuine development phase;
- aim to produce a final, non-compulsory resource for industry-university collaboration.

The present response supplements the UA submission and reinforces the UA recommendations that the Framework requires further development. Any attempt to compulsion would undermine the valuable intentions of the Framework.

Overview

QUT has a long experience of strong and productive relationships with industry partners, reinforced by our recent establishment of a dedicated Business Development function, led at the Deputy Vice-Chancellor level, that successfully handles many of the issues the Framework seeks to address.

QUT welcomes the provision of new tools, templates and guidance material as valuable additions to the broader toolkit, and we thank the Department for the very useful work it has done in developing this helpful resource. However, we consider it highly likely that the attempt to apply a standardised framework down to the level of agreements across the substantial diversity of disciplines, industries and projects will produce unintended consequences antithetical to the Framework's stated objectives and to the priorities and interests of Government, industry and universities alike.

As we point out below, **all** unique aspects of specific sectors and commercial situations must be accommodated within the Framework, including those that are unforeseeable or it will deter rather than facilitate collaboration. Flexibility and optional uptake are central to this condition of success.

Even under current arrangements, it is the experience of most universities that the greatest challenge to collaboration articulated by industry partners is a perceived rigidity regarding IP; likewise, it is already common for university researchers to seek outside structures through which to collaborate, in the pursuit of greater flexibility. The imposition by Government of a compulsory, highly standardised Framework would only exacerbate these existing challenges.

As prior experience shows (in the Cooperative Research Centre program, for example), when industry and researchers encounter rigid, compulsory processes that impede easy and effective collaboration, they will either find work-arounds that sidestep the obstacle or will simply walk away from potential commercialisation opportunities.

These impediments are avoided in the international best practice examples cited in the Consultation Paper, namely the UK's Lambert IP Toolkit and the Knowledge Transfer Ireland Model Agreements, which are presented as models guidance templates rather than as mandatory structured agreements.

QUT therefore anticipates that the imposition of the Framework as currently proposed could in fact discourage industry collaboration with universities and would result in a reduction in industry investment in and commercial exploitation of university research.

Accordingly, QUT strongly recommends that the Framework be implemented without compulsion, in the form of guidelines, templates and tools for use as required and appropriate to the specific circumstances of the individual project and the industry and university partners, with flexibility afforded to all projects regardless of dollar value and the number of partners. The best guide to the Framework's utility would be its uptake under these conditions, with the Department then well placed to make further improvements based on detailed, practical feedback from businesses and universities.

Instead of a mandate, QUT advises encouragement. Specifically, we recommend that the Government legislates to provide a premium rate within the Research and Development (R&D) Tax Incentive for industry collaboration with publicly funded research organisations (PFROs) including universities, as recommended by the Review of the R&D Tax Incentive conducted for the Government in 2016 by Bill Ferris, Alan Finkel and John Fraser. The Review found that the R&D Tax Incentive – the single most expensive R&D support mechanism operated by the Commonwealth – 'does not encourage collaborative R&D.'[1]

Responses to discussion questions

1. Consistent application of the framework will only be achieved if industry is also comfortable and supportive of the framework. Rigidity and compulsion will preclude that objective. Seamless application of the framework will also rely heavily on high quality training and support across universities as well as industry.
   Additionally, we note the necessity of first establishing clarity on the ownership of university IP, which is highlighted in the submission to the present consultation of a group of expert researchers, including QUT's Emeritus Professor Tom Cochrane and Dr Kylie Pappalardo, who are currently exploring just these issues with the aid of an

[1] Ferris et al (2016). *Review of the R&D Tax Incentive*, p.30. https://www.industry.gov.au/data-and-publications/2016-review-of-the-rd-tax-incentive

Australian Research Council (ARC) Discovery Grant, *Producing, Managing and Owning Knowledge in the 21st Century University* (ARC DP200110578). Without this essential first step, all the rest risks being moot, as 'the question of who owns IP generated in Australian universities is less straightforward than the Consultation Paper assumes' and 'harmonising IP policies across the sector is a necessary prior step *before* the framework envisaged by the Consultation Paper could have utility in practice.'[2]

2. All parts must be flexible to ensure each agreement is fit for purpose, and take into account relevant aspects such as project scope, duration, budget and use of funds, deliverables, background intellectual property, as well as contributions from research collaborators and industry partners. Flexibility will be required around background and foreground intellectual property, improvements, commercialisation options, publication rights, student involvement, warranties, indemnities and liabilities (inter alia).

3. The Framework should be optionally available for use for any industry-university collaboration.

4. The Australian IP Toolkit provides a very good foundation for researchers and business. Additional components that might be useful include a Best Practice Guide on the management of intellectual property with information and advice on creation, use, protection and commercialisation of IP, as well as access to high quality training and peer-to-peer support.

5. A single point of access and support for the IP Framework would avoid confusion and reduce transaction costs.

6. The starting point is understanding why the process map is required and/or beneficial to the user. It would also require clear definitions of key components of the process map and clearly identified stages and actions.

7. QUT supports the development of a small number of optional and flexible agreements such as a standard template for Student Intellectual Property and Confidentiality Deed for students involved in industry projects.

8. ARC Linkage Projects and DESE research programs in the first phase of the roll-out. If it is successfully adopted by industry and proved to facilitate transaction times and rates, consideration could be given to ARC Discovery and other government programs and PFROs.

9. Consideration of engagement with Aboriginal and Torres Strait Islander peoples and Indigenous Culture and Intellectual Property (ICIP) across a range of research fields must be addressed in a sensitive and respectful manner. Best practice principles and guidelines in this area that align with existing mandatory obligations, including ARC Responsible Conduct of Research, NHMRC Ethical Guidelines and the AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research would be beneficial.
   The different requirements of HASS and STEM must also be taken into account, as well

[2] Bowrey, et al (2021). *HERC IP Submission*. Supplied.

as the unique characteristics of cross-disciplinary collaborations, and significant variations within the main cognate groups.

10. **All** unique aspects of specific sectors and commercial situations must be accommodated within the Framework, including those that are unforeseeable and emerge in different technologies at different, or it will deter rather than facilitate collaboration. Specifically, the Framework needs to be able to accommodate activities across the full spectrum of industry – SMEs through to large multi-nationals. Most SMEs are not equipped to invest in the effort required to review and negotiate agreements and are not as focused on IP management as larger commercial enterprises. In order for the Framework to be effective, this type of variance needs to be considered, with the possibility of options for the intended audience to navigate.

11. Flexibility, optional participation, reduction in time to negotiate and execute agreements, well-defined background intellectual property, clarity on IP ownership resulting from investment and clear pathways to commercialisation.

12. The following activities are not amenable to standardised agreements:
    - Licences with Option to Assign
    - Spin-out/start-up agreements
    - Joint Ventures
    - Joint appointments

13. There should be no threshold. It would be invidious in practice to define and measure its determinants; and QUT does not support its application.

14. Every element should be subject to flexibility if the Framework is not to deter collaboration, including but not restricted to:
    - Intellectual property (foreground and background)
    - Commercialisation pathways
    - Publication rights
    - Students
    - Insurance, indemnities and liabilities
    - Termination provisions
    - Performance
    - Special conditions (if required)

15. Yes. Memoranda of Understanding and carefully constructed Term Sheets with clearly defined terms and definitions that are socialised as soon as practical are a useful vehicle to fast-track contract development and negotiation.

16. Consolidation of the information provided by IP Australia and the proposed IP framework would be sensible. Access to highly quality training and peer-to-peer support for university's and industry would be particularly useful for new staff coming into a university or industry R&D setting. It would be beneficial to highlight success stories through cases studies and workshops involving university and industry representatives. The Framework needs to be underpinned by a significant and sustained investment by the Commonwealth in translation and commercialisation capacity and activities as well as industry incentives for collaboration.

17. The best way to measure performance while avoiding undue administrative burden is to roll the Framework out optionally and measure its uptake while seeking detailed, ongoing end-user feedback for improvement. Consideration should also be given to reforming and broadening the Survey of Commercialisation on Outcomes from Public Research undertaken by KCA, which provides reasonable data and analysis. [3]

[3] (2021) *2020 Survey of Commercialisation Outcomes from Public Research (SCOPR)* https://techtransfer.org.au/metrics-data/