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Go8 submission to DESE consultation on HERC IP Framework

The Group of Eight (Go8) is pleased to take this opportunity to respond to the Federal Government's Higher Education Research Commercialisation IP Framework (HERC IP) released on 20 September 2021. *Please note the Go8 consents to this submission being made public in full.*

The Go8 represents Australia's eight consistently leading research-intensive universities, with seven of its members ranked in the world's top 100 universities. It undertakes 70 per cent of Australia's university research and spends some \$6.5 billion on research each year. In addition:

- Collectively, Go8 universities attract industry funding for research that is twice that of the rest of the sector combined.¹
- In 2020 Go8 universities earned \$96 million in commercialisation revenue.²
- One member (the University of Queensland) earned over \$64 million in commercialisation revenue, which is 50 per cent more than CSIRO³.

As noted previously in April 2021 in the Go8 submission on the University Research Commercialisation Scheme, the Go8 welcomes the explicit acknowledgement that commercialisation has a critical role to play in driving Australia's future economic prosperity. In fact, without it, neither Australia nor Australians would enjoy economic prosperity.

In that context, the Go8 supports the intent of an IP Framework which can, as outlined by Government, help foster trusted relationships between Government, universities and industry.

However, in designing such a framework, we must, at all times, ensure it does not have the opposite effect, and actually prove to be counterproductive to collaboration and/or result in unintended consequences.

It is with that in mind that the Go8 makes the following recommendations:

1. **The Framework's agreement templates should not be mandatory. This is a threshold issue for the framework and the Go8.** Mandating risks making our universities less, rather than more, attractive to potential industry partners and will act as a roadblock to engagement, particularly with larger businesses which have less need for the guidance the Framework would offer.
2. The Government therefore **remove any mandatory plans** and instead work in collaboration with the university sector to introduce the HERC IP Framework as a **voluntary set of tools** that can be adopted at the discretion and agreement of both university and industry partners.

¹ *Go8 Facts of Distinction 2020*; see: https://go8.edu.au/wp-content/uploads/2020/01/Go8-Facts-of-Distinction_web.pdf

² 2021 Survey of Commercialisation Outcomes from Publicly Funded Research

³ Ibid

3. The Government provide greater policy clarity in relation to the Framework, including its intent, the desired outcomes and measures of success, as well as relationship with existing Government initiatives such as the IP Toolkit.
4. The Government re-set its assumptions around university collaboration with industry and work to promote the progress that has already occurred, and positively incentivise future effort by growing and improving such collaboration.
5. The details of the proposed Framework should be subject to further consultation before implementation to avoid unintended consequences.

Background in support of five Go8 recommendations

The Go8's record

Go8 universities have a strong track record in research commercialisation. Our universities are at the forefront of the research, innovation and technology we need to tackle the problems facing our nation. Our record in commercialisation is significant and growing - between 2017 and 2020, of commercialisation outcomes from publicly funded research, the Go8 was responsible for:

- 46% of new startup and spinout companies
- 44.2% of patent applications
- 45.4% of active patents held
- 53% of active licences, options and assignments (LOAs) held

In 2020 performance, a Go8 university led in seven of the 10 commercialisation indicators measured, ahead of CSIRO and other publicly funded research organisations: (*2021 Survey of Commercialisation from Publicly funded Research (SCOPR)*).

- Value of Research Contracts from for-profit companies (Sydney, Monash)
- Research Expenditure (Melbourne, Sydney, Monash, UQ, UNSW)
- Research Commercialisation Staff (UQ)
- Invention Disclosures (Sydney, UNSW, Melbourne)
- New LoAs (Sydney, UNSW)
- Commercialisation Revenue (UQ)
- New Start-Up and Spin-out Companies (Sydney, Monash)

See [Attachment A](#) for a detailed summary of Go8 2017-20 SCOPR results.

All Go8 universities have established, and successful, IP Policies. These address university research and its engagement with industry and other partners. It is also vital to take into consideration that all Go8 universities work in ways consistent with the *National Principles of Intellectual Property Management for Publicly Funded Research*.

Recommendations:

Recommendation 1. The Framework's agreement templates should not be mandatory. This is a threshold issue. Mandating in this way risks making our universities less, rather than more, attractive to potential industry partners and will act as a roadblock to engagement, particularly with larger businesses that have less need for the guidance the Framework would offer.

As noted within the first Go8 recommendation this is a threshold issue for the Go8. It cannot be supported.

The Go8 does accept that a percentage of potential businesses which wish to access university IP may be challenged with how to achieve this unless they have previous experience. This may particularly be the case for smaller and less resourced businesses which cannot easily obtain specialist legal advice.

Given this, there are indeed some circumstances in which standard agreement terms or even templates can serve a purpose guiding or providing exemplar advice to businesses.

However, it remains opaque what the reasons could be for mandating the *HERC IP Framework* template forms, or how doing so could better assist small businesses with their university engagement?

There are also significant differences between Australia's 39 universities, and they take differing approaches to IP.

The UK approach – Lambert IP Toolkit - which has served as one of the models for the Australian framework, was developed over a number of years and **is not mandatory**.

This Toolkit, released in 2004, was the result of lengthy consultation, is regularly reviewed and updated. A review of the Lambert Toolkit in 2013 found that despite high awareness, **there was minimal usage of unmodified templates as industry partners had a preference for their own agreements**.

Mandating the HERC IP Framework for university led research projects will result in mandatory requirements for industry partners. This may be detrimental to existing university-industry relationships, where future project agreements are already in place and the industry partner is not receptive to being subject to the new mandatory framework.

At least one major pharmaceutical has indicated that it will resist uptake of the Government's mandated templates, while IP Group Australia, with whom the Go8 has brokered a \$200 million commercialisation deal, has warned the Go8 that it is naïve to assume major companies would sign on to standard Government template agreements.

The Go8 recommends the IP Framework should be an opt-in given the differing nature of partnerships and existing practices and measures by some universities, accommodating existing university/institutional frameworks if they already meet the Government's objectives.

Recommendation 2. *The Government therefore **remove any mandatory plans** and instead work in collaboration with the university sector to introduce the HERC IP Framework as a **voluntary set of tools** that can be adopted at the discretion and agreement of both university and industry partners.*

It is the experience of Go8 universities that the effectiveness of template agreements is influenced by widespread collaboration and consultation with all stakeholders over a period of time; informed legal advice, and expert drafting of agreements that are not of a mandatory nature.

Go8 universities have extensive experience in the development of custom template agreements to establish standard terms of engagement with Government agencies and industry. Examples include research arrangements with the Department of Defence, developed by the Defence Science and Technology Group (DST) and universities under Defence Science Partnerships program; and Multi-Institutional Agreements (MIAs) between universities and industry partners to collaborate on NHMRC and ARC funded projects, through the Australasian Research Management Society (ARMS).

The Go8 notes that consideration of international best practice approaches in university IP management, during the development of the Framework appears to have focussed on European examples such as the UK's Lambert Toolkit and Ireland's Model Transfer Agreements. It is important to note that the current approach to IP management among Go8 universities has been refined over decades, informed by legal developments and leading practice in Australasia and Europe, and also by leading performers in research commercialisation in North America and Israel.

Recommendation 3. *The Government provide greater policy clarity in relation to the Framework, including its intent, the desired outcomes and measures of success, as well as relationship with existing Government initiatives such as the IP Toolkit.*

The Go8 proposes that the Government be more open regarding the basis of the draft *HERC IP Framework*, and that such transparency will be essential for an effective uptake of the final framework.

The draft currently lacks evidence and rationale (such as for mandating the framework or basing it on the UK Lambert Toolkit) as well as detail of intent (such as which specific DESE programs might be subject to the framework⁴).

The development of a measure as significant as a set of instruments to underpin management, negotiation and ultimately exchange of IP between universities and industry should be based on consensus and careful development. While the Australian Government is a major - although often only a part - funder of research proposed to be impacted by the Framework, the Go8, with its existing and potential industry partners most often has an already in-depth understanding of the research collaboration arrangements.

The Go8 accepts the premise that many university and industry participants may need encouragement and assistance to enter productive working partnerships based on IP flow.

However, all of those captured by this proposed Framework should have significant input into the underpinning policy development as well as the practical tools. This is needed because of the complexity of contexts for IP generation, ownership and management, including when it comes to indigenous knowledge.

⁴ For example it is unclear if projects funded by the National Collaborative Research Infrastructure Strategy (NCRIS) or supported by the Research Block Grants would be subject to the Framework.

The Go8 also notes that this measure **is in addition** to guidance already provided by the Australian IP Toolkit, implemented in 2015 under the National Innovation and Science Agenda. It would therefore seem appropriate for the Government to conduct a proper review of the Australian IP Toolkit to detect any barriers to the level of uptake, whether there is opportunity to build on that which is already in place and identify lessons for the development of the HERC IP Framework.

An extended dialogue is needed between stakeholders to determine clear shared goals and co-design specific elements in IP handling. This should draw from successful examples of sector experience (of which the Go8 can provide many). A “Team Australia” approach is recommended so that the three sectors – universities, business and Government – work genuinely together to build on Australia’s research commercialisation performance.

Recommendation 4: The Government re-set its assumptions around university collaboration with industry and work to promote the progress that has occurred and positively incentivise future effort in growing and improving such collaboration.

The HERC IP Framework alone will not ‘shift the needle’ on research commercialisation, as the Go8 has previously stated, nor should it be expected to, either by universities, industry/business or by Government. However, it can provide in principle recognition of the importance of effective management and sharing of research-based IP, and the value in driving solutions, products and research innovation.

The need for a supportive policy environment for research commercialisation and research industry engagement in Australia was set out in the Go8’s submission on the University Research Commercialisation Scheme. This environment would cater for the less resourced, and less innovation-ready small and medium enterprises (SMEs) which dominate in Australia, by making up over 99.9 per cent of Australian business⁵.

Akin to the development of the Defence Science Partnerships, the Government should also be aware that Go8 universities engage in similar consultation with industry partners, to develop forms of arrangements agreeable to both parties. Such understanding between partners is cultivated sometimes over several years. It entails industry as well as university effort and resources. This effort is it, anecdotally, calculated to be in the millions of dollars.

As an indication of breadth of IP partner that already exists and works well - one smaller Go8 university indicates that in the past three years alone, it has executed more than 5000 research agreements with external parties and works with over 1600 companies from around the globe.

Such arrangements form the basis for future projects, not only for existing projects. This is an important distinction in light of the consultation paper’s proposal to exempt existing projects NOT existing arrangement between partners.

Where these arrangements already exist and can be seen to be working successfully, it would be reasonable for the Government to take a hands-off approach, or an approach that simply recommends that parties with well-

⁵ Australian Bureau of Statistics (ABS) 2021, Counts of Australian Businesses, including Entries and Exits, June 2017 to June 2021. Based on definition of SMEs as businesses employing 0 to 199 employees.

formulated partnerships - or the capability to develop such – consider reviewing their arrangements against the HERC IP Framework.

The Government and stakeholders should also consider that companies who might otherwise become involved in university-led research may be deterred from doing so if they are required the use of the Framework in preference to existing company approaches.

At the core of what the Government is seeking to resolve, is how can industry best engage with universities. Key principles framing this are needed to ensure greater understanding between the two sectors. This, (rather than the brief foundational principles pointing to existing resources in the consultation paper⁶) would enable successful individual partnerships.

Recommendation 5. The details of the proposed Framework should be subject to further consultation before implementation.

Given the importance and complex nature of this policy, the Go8 is concerned about the urgency to implement the Framework and recommends that further consultation be undertaken with key stakeholders to ensure the Framework is fit for purpose and widely adopted as a guiding principle in the future.

Importantly, the Go8 notes the **absence of detail regarding transparent and formal governance structures** to oversee the development of the Framework and facilitate its ongoing review and refinement in consultation with stakeholders.

Coupled with legitimate concerns about timing and the proposed mandatory nature of the Framework, it is therefore important that further consultation and input be sought from stakeholders during the development phase and prior to implementation of the Framework.

The Go8 looks forward to working with the Government, DESE, industry and stakeholders to develop a HERC IP Framework that is widely embraced and promotes greater collaboration between universities and industry to boost the successful commercialisation of research in Australia.

Yours sincerely



VICKI THOMSON
CHIEF EXECUTIVE

SCOPR 2017-20: Go8 summary commercialisation outcomes and share of total outcomes

Survey of Commercial Outcomes from Public Research (SCOPR) collects data from Australian and New Zealand universities, medical research institutes and publicly funded research agencies. It enables national and international benchmarking of respondents and helps to inform decisions by research organisations, government and industry stakeholders seeking to enhance industry engagement and research commercialisation.¹

	Go8 total	Go8 % of All Australian participants	Largest Go8(s)	Leaders
Intellectual property activity 2017-20				
Invention disclosures (6465)	3003	46.5%	USyd 547 , UQ 514, UNSW 482, Monash 464	USyd 547 , UQ 514, UNSW 482, Monash 464
Patent Applications filed (2159)	954	44.2%	UNSW 204 , Monash 198, USyd 155, UniMelb 130	CSIRO 263 , UNSW 204, Monash 198, USyd 155
Active patents held (13003)	5908	45.4%	Monash 1331 , UQ 1124, USyd 1027, UNSW 914	CSIRO 2699 , Monash 1331, UQ 1124, USyd 1027
New non-patented technologies approved for technology transfer (1595)	532	33.4%	UQ 203 , USyd 94, UniMelb 73, Adelaide 69	UQ 203 , CSIRO 197, USyd 94, UniMelb 73
Active non-patented technologies held (6812)	2302	33.8%	UQ 808 , USyd 691, Adelaide 263, Monash 219	CSIRO 1434 , UQ 808, USyd 691, Adelaide 263
Start-up company activity 2017-20				
New start-up and spinout companies incorporated (220)	102	46%	USyd 23 , Adelaide 16, UNSW 16, Monash 15	USyd 23 , CSIRO 18, Adelaide 16, UNSW 16
Active start-up and spinout companies that institution held equity in (1125)	521	46%	UQ 125 , USyd 101, UNSW 78, Monash 55	UQ 125, USyd 101, CSIRO 86, UNSW 78
Total value of the equity in all start-up and spinout holdings ² (\$1.23B)	\$489.9M	41%	UQ \$284.4M , UNSW \$89.2M, Adelaide \$50.3M, Monash \$33.5M	UQ \$284.4M , CSIRO \$275.7M, Deakin \$166.9M, UNSW \$89.2M

¹ <https://techtransfer.org.au/metrics-data/>

² Note ANU did not report on Total value of the equity in all start-up and spinout holdings. ANU has 43 active startups 2017-20

	Go8 total	Go8 % of All Australian participants	Largest Go8(s)	Leaders
Licensing activity 2017-20				
New LOAs executed (2371)	1110	47%	UNSW 345 , USyd 236, Monash 128, UniMelb 110	UNSW 345 , CSIRO 286, Macquarie 286, USyd 236
Active LOAs held (10644)	5609	53%	UNSW 1652 , UniMelb 893, USyd 828, ANU 636	CSIRO 1810 , UNSW 1652, UniMelb 893, USyd 828
Research commercialisation income 2017-20				
Total research commercialisation income (\$1.3B)	\$283M	22%	UQ \$163M , Monash \$36.7M, Adelaide \$21.7M, UWA \$20M	WEHI \$430M³ , CSIRO \$186M, UQ \$163M, ANSTO \$43M
Research income 2017-20				
Total research income (\$23.8B) ⁴	\$11.4B	48% without UQ 2020	UniMelb \$2.1B , Monash \$1.81B, UNSW \$1.78B, USyd \$1.66B	CSIRO \$5.2B , UniMelb \$2.1B, Monash \$1.81B, UNSW \$1.78B
Resourcing for commercialisation 2017-20				
Dedicated research commercialisation staff FTE (476.08)	135.03	28%	Monash 53 , UQ 31.1, UNSW 12.8, USyd 10	Monash 53 , UQ 31.1, CSIRO 23, UNSW 12.8

³ \$342M of WEHI's total 2017-20 \$430M from commercialisation income occurred in 2017.

⁴ University of Queensland – along with several other PFRs GRDC, MLA, Peter MacCullum, Newcastle– did not report research income for 2020