

# SUBMISSION TO THE CONSULTATION ON A HIGHER EDUCATION RESEARCH COMMERCIALISATION IP FRAMEWORK

October 2021

Universities Australia welcomes the opportunity to make a submission on the Higher Education Research Commercialisation IP Framework.

Universities Australia is the peak body for Australia's 39 comprehensive universities. Our member universities are spread across Australia, in both regional and metropolitan areas. They educate more than a million students each year and undertake all of the university research in Australia that adds to this country's stock of knowledge, and to Australia's economic and social wellbeing.

## RECOMMENDATIONS

Universities Australia recommends that:

- Government delays the introduction of the HERC IP Framework.
- Government establishes a formal, collaborative governance structure.
- Government, through this formal governance structure, conducts a broader and longer consultation across the Commonwealth, industry and universities to identify impediments to success and test assumptions underlying the HERC IP Framework.
- Following this consultation, businesses and universities undertake a substantial pilot of the proposed framework and agreements, and provide feedback on:
  - the utility of the framework and agreements;
  - whether the framework is leading to an increase in collaboration; and
  - whether the efficiencies the framework is designed to produce are being realised.
- Government considers feedback from the pilot and works toward either an opt-in or opt-out model in the long-term, to support businesses and universities as they navigate IP arrangements.

## EXECUTIVE SUMMARY

Universities Australia understands and strongly supports the Government's drive to lift economic prosperity and strengthen society through research commercialisation. We also understand that the Government wishes to expedite the introduction of the framework. The combination of speed, lack of broad consultation during development and mandated legal agreements that have not yet been widely reviewed by the sector is, however, problematic.

Universities Australia is deeply concerned that, without clear and formal governance and a broader, more comprehensive consultation period before the first elements of the framework are introduced, the framework will fail to achieve its goals. This may lead to adverse outcomes, including a reduction in collaboration and commercialisation, and an increase – rather than decrease – of legal complexities.

As investors in Australian research, and with an exemplified history of productive industry/university collaborations, it is important that the system is well designed and well tested. Universities Australia understands that industry has similar concerns.

The experience of the UK's Lambert IP Toolkit indicates that, without mandating a system, it has led to greater standardisation and more informed negotiations. Moreover, the fact that the 2013 review of the Lambert Framework found that only three per cent of surveyed entities were using the Toolkit's agreements unmodified suggests a strong need for the proposed Australian framework to have the flexibility to negotiate principle built into it.

A framework and agreements that are useful for businesses and universities, developed with widespread buy-in from those using them, is far more likely to have lasting impact.

To maximise outcomes, Universities Australia recommends the establishment of a formal governance structure. This should include a steering group and further consultation, followed by staged, opt-in pilot phases to test the framework, its standardised agreements and other resources. Universities Australia commends the *Defence Trade Control Act 2012*'s implementation steering group as a model.

## INTRODUCTION

Australia's innovation landscape relies heavily on the contributions which both the industry and university sectors make to applied research. Universities Australia is, therefore, very interested in any mechanisms that would support universities and businesses to work more closely together.

In considering the proposed HERC IP Framework, it is essential to differentiate between the broader issues in research commercialisation, such as encouraging an increase in industry/university collaboration and lifting absorptive capacity in existing and new businesses. The focus of the framework should also be considered: practical support to unlock the value of Australian knowledge to our economy and society.

There are elements of the HERC IP Framework that could be very useful for increasing collaboration and commercialisation, such as clearly defined terminology, and guidance and education material. However, the timelines, breadth of activities in scope, lack of widespread consultation and lack of detail on the agreements make it difficult to provide detailed comment, or to express support for a fast implementation of the framework.

The framework mechanisms need to be well tested to ensure they are fit for purpose and do not lead to unintended consequences.

Universities Australia is concerned that the consultation paper focuses on the university side of partnerships, but there is little discussion of the appetite from businesses to be part of a mandated IP framework.

Universities Australia strongly recommends strengthened governance and further consultation, followed by a pilot program to give businesses and universities an opportunity to test the agreements and provide feedback into their development, to ensure the framework and contracts are fit-for-purpose.

Untangling legally binding, multi-year contracts further down the track will be costly and time consuming. A whole-of-government, long-term commitment to governance and partnership with industry, universities and other stakeholders with phased pilots makes good business and public policy sense.

## KEY ISSUES

Universities Australia understands the framework is designed to assist universities and businesses which might not normally collaborate, or have encountered obstacles to collaboration in the past. This is welcome – support for drawing more industry members into Australia’s innovation system is important.

However, while the consultation paper assumes that introducing a mandatory HERC IP Framework will lead to increased collaboration, the evidence for this is not provided. Indeed, evidence from the Lambert Toolkit, and industry appetite to utilise the toolkit’s model agreements, suggests that mandating it may be counterproductive.

Universities Australia is concerned that adopting the proposed HERC IP Framework without piloting or testing of the framework and its agreements in businesses and universities could lead to the opposite of what is intended: that it may drive a reduction in research collaboration.

There are likely to be differences between the uptake in SMEs with little in-house expertise and major companies with established arrangements. A rushed consultation and implementation timeframe, no widespread visibility of the agreements that industry and universities will be expected to use as part of this consultation, and little public discussion between industry, Government and the university sector during the development of HERC IP Framework, means that a period of testing and refining the system, before any consideration of mandating, is essential.

Establishing formal governance structures that encourage collaborative development and piloting of the system is an important step towards a system that is fit for purpose. The *Defence Trade Control Act 2012*’s implementation steering group worked very well to produce intended outcomes, and Universities Australia would be pleased to work with Government to establish a similar steering group for the HERC IP Framework.

Universities Australia is concerned that some of the assumptions underpinning the design of the framework need to be further tested. This includes issues regarding the management and ownership of IP and copyright matters.

Allowing for a broader, more inclusive and more public consultation period, with strong engagement between Government, industry representatives and university representatives, would identify issues that are likely to limit the utility of the framework or cause implementation, legal and reputational difficulties in the future. In particular, working with universities to move towards aligned IP policies and underlying principles across the sector would be a valuable first step.

Universities Australia would be interested in whether Government is considering how to lift knowledge and capacity in businesses, particularly SMEs, to develop connections and, ultimately, agreements with universities.

There are several important and useful questions in the consultation document. They go to ensuring the success of the framework, details of the agreements, the type of research that may need different arrangements, how this framework should align with IP Australia’s existing IP Toolkit and the type of material that would support implementation.

All of these are important, but there appears to be limited time for careful consideration of feedback, given the statement that implementation of the framework is to be expedited.

## WHAT IS AT STAKE?

Research collaboration and innovation comes from a meeting of minds; the formal agreement process comes afterwards. Given this, and the value of these relationships to Australia's economy introducing a HERC IP Framework without first having broad buy-in and a piloting period is a serious risk.

Australia's future prosperity is at stake. Ensuring businesses and universities can harness each other's expertise is vital to Australia's future prosperity. A framework to support this is welcome but to move from no framework to a mandatory one in an expedited manner, without the important steps of extensive consultation, building support and undertaking a pilot phase, carries legal, reputational and outcome risks.

Formal collaborations between Australian businesses and universities generate \$12.8 billion a year in revenue directly for the firms who partner with universities. By the time this flows through to the economy, these collaborations are contributing \$26.5 billion a year to Australia's economy and have created an estimated extra 38,500 full-time jobs across the country. Modelling by Deloitte Access Economics estimated the total economic return on investment at \$5 in GDP for every dollar invested in higher education research.<sup>1</sup>

It is essential that any new piece of public policy, such as the proposed HERC IP Framework, is well designed and tested to support an increase in collaborations.

## THE INTERNATIONAL EXPERIENCE

The consultation paper notes UK's Lambert IP Toolkit and Knowledge Transfer Ireland's model agreements.

The Lambert IP Toolkit's stated objectives are to facilitate negotiations, reduce the time, money and effort required to secure agreement and provide examples of best practice. Notably, the toolkit explicitly states that model agreements are starting points and that their use is not compulsory.

A [2013 review](#) was conducted into the use of the toolkit and another is currently under way. Some interesting points of feedback from the 2013 review include that, whilst awareness amongst universities and businesses was high (with the exception of SMEs), only three per cent were using the agreements unmodified.

Where the agreements were used, they were often used in practice – not as a first choice but as a compromise position. This was largely because businesses preferred using their own agreements, with research institutions much more likely to suggest using the toolkit than businesses. There were also concerns that it was challenging to utilise the agreements with international partners.

The potential impact on existing and new international business partnerships in implementing a mandatory HERC IP Framework should be considered, given the barriers experienced in forming international industry/university partnerships with model agreements that were not obligatory.

Knowledge Transfer Ireland provides [guidance and model agreements](#) for research entities entering into agreements with businesses. The guidance material states that the model agreements are to be used as starting points for drafting and neither businesses nor research institutions are mandated to use the model agreements.

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<sup>1</sup> Deloitte Access Economics, *The importance of universities to Australia's prosperity*, March 2020

Australia would do well to understand why neither the UK nor Ireland have mandated the use of standard contracts.

## **CONCLUSION**

Universities Australia understands the imperatives driving the development of the HERC IP Framework. Universities Australia and our member universities are ready and willing to work with Government and industry on policies that support increased research commercialisation.

However, a hasty introduction of the proposed HERC IP Framework, given the number of issues and claims not yet tested, is of real concern. Universities Australia strongly recommends further work before introducing the framework.