

HERC IP FRAMEWORK CONSULTATION PAPER

WEHI POINTS FOR SUBMISSION

1. Overview

WEHI (the Walter and Eliza Hall Institute of Medical Research) is a non-profit medical research institute with a track record of successfully commercialising research outcomes. As an independent academic organisation with considerable experience in partnering with academia as well as industry, we have experienced and overcome many of the challenges of research commercialisation and collaboration with both parties. Our submission outlines our recommendations for addressing the issues arising in commercialising research produced by universities.

2. Utility of standard agreements

The HERC IP Framework consultation paper proposes that the higher education sector adopt a mandatory suite of standard agreements to overcome the issues that are hampering commercialisation of university research. We believe the implementation of this proposal would be detrimental, and is unlikely to achieve the intent of the HERC framework.

We believe that mandating the use of fixed standard agreements could deter industry from working with Australian universities. For example, from our experience, we doubt that big pharma or other large, multinational companies would be willing to adopt an Australian Government-mandated contract for collaborations with an Australian academic organisation, and there is a significant risk that the company would simply go elsewhere. Such requirements risk undermining Australia's international reputation as a flexible market economy. In this sense, the approach proposed in the consultation paper could be counter-productive, especially in relation to higher-value, more complex partnerships. In addition, mandatory use of standardised agreements will not assist Australian institutions to develop the skills and sophistication that will lead to genuinely collaborative, value-adding and high-quality partnerships. As an organisation with extensive experience in research commercialisation, we note that issues that arise in this area vary from project to project, and are largely overcome by bespoke, negotiated agreements. Even for low-value projects, mandatory non-negotiable agreements would be largely unworkable in our view.

In our experience, the difficulties commonly associated with research commercialisation usually stem from:

- misalignment between the interests of academic and commercial entities;
- lack of appropriate skills and resources within academic institutions; and
- a difference in expectations regarding the technology readiness level of research discoveries versus 'productisation'/market readiness.

For example:

- There is a cultural gap between academia and industry – scientists often have a limited understanding of industry drivers and requirements. They may find it confronting, after a discussion about “collaboration”, to see a contract that has the industry partner own IP that they have created.

- Universities and other academic institutions do not see themselves as ‘service providers’, and do not want to (and should not) be perceived as solely contract research organisations (CROs) responsible for meeting client specifications.
- It can take multiple interactions for researchers to understand and be comfortable with the requirements of industry and to develop a feel for how, and what, to negotiate. Also, there are many different scenarios in which commercialisation discussions and transactions can arise – so situational flexibility is required to develop successful partnerships (including the contracting aspect).

We can see value in making available a balanced agreement for early-stage research collaborations with SMEs and strongly encouraging the use of this as a starting point for negotiations. Promoting a consistent approach amongst universities may also help streamline the commercialisation process between similar organisations (e.g. HEPs, MRIs and hospitals). A successful example of this is provided by the Melbourne Academic Centre for Health (MACH), a joint venture between Victorian healthcare providers, independent medical research institutes and universities. MACH has developed a template collaboration agreement which is now widely used by members wishing to undertake research collaborations. Legal and business development teams in members organisations are familiar with this agreement, and this facilitates faster review, amendment and execution. However, this agreement is not mandatory, is generally used only for academic projects (not commercial ones) and has significant flexibility. We advocate for a similarly flexible suite of documents to be made available that universities can adapt to the needs of a specific collaborative or commercial agreement.

Two further questions should also be investigated prior to implementing a new framework:

- The consultation paper refers to suites of agreements developed to assist commercialisation in a number of different countries. However, to our knowledge none of these are mandatory. Are there countries where such agreements have been made mandatory, and what has the impact been on rates of commercialisation?
- What is done in countries where universities and other academic institutions have a high rate of successful commercialisation of publicly funded research?

• **3. An alternative approach**

WEHI works extensively with universities and industry. Many of our industry partnerships are collaborative, long-term and complex. We pursue varied approaches to commercialise WEHI’s research – based on assessment of the market value of the technology, its stage of development, and WEHI’s capacity/desire to stay involved. These mechanisms include collaborations, creation of spinout entities, joint ventures, venture capital and traditional out-licensing.

WEHI also has long-term experience collaborating with a range of Australian universities. This has given us insight into some challenges that can arise. In our experience, executing even straightforward arrangements can take a long time (sometimes months) and relatively simple changes can result in significant delays and disjointed negotiations. Getting agreements signed after they are agreed can also sometimes take many weeks – which can delay commencement of projects for partners who are not willing to start work ‘at risk’.

From WEHI’s perspective, successful negotiation of technology transfer agreements requires a multi-disciplinary approach, with a combination of technical, legal and commercial skills.

Scientists understand the technology but typically will not fully appreciate the legal or commercial issues, although this understanding is enhanced as they participate in more industry and commercial partnerships. Similarly, lawyers may understand the legal issues but will typically not have a full understanding of the technology or commercial environment. Without this multi-disciplinary approach, negotiations can become protracted because those involved may not appreciate what is reasonable or when compromises should be made.

To overcome the traditional issues described in this paper, WEHI has invested significantly and strategically in its technology transfer capabilities – both in terms of business development as well as legal and IP specialists. This team works closely with scientists and partners and plays an important role in ‘bridging the gap’ and helping researchers to develop the non-scientific understanding required to partner successfully with industry, including via activities such as entrepreneurship programs and training. It also enables development of bespoke, targeted approaches to the commercialisation of individual projects and negotiation of appropriate agreements to support these.

We believe that many of the issues outlined in the paper could be successfully addressed if all Australian academic research organisations had the benefit of access to appropriate resources such as training and development opportunities related to IP management and research commercialisation. Specifically, we would encourage additional investment in the training of university technology transfer professionals who could help bridge the gap between technical, commercial and legal issues. This would be akin to the training and development opportunities already available to Australian researchers to undertake placements or secondments into industry, which in WEHI’s experience have been very valuable. Examples of successful initiatives aimed at researchers include:

- **MTPConnect’s REDI Initiative:** provides industry experiences and skills development for students, researchers, clinicians, MTP (medical technology, biotechnology and pharmaceutical) sector professionals, entrepreneurs and innovators. It addresses a set of nine identified skills gaps.
- **MTPConnect’s BioMedTech Horizons Program:** includes mentoring and commercialisation advice for researchers as part of a translation program.
- **The Australian Government’s Accelerating Commercialisation program:** provides small and medium businesses, entrepreneurs and researchers with access to expert advice and funding to help get a novel product, process or service to market, and is open to all sectors.

In conclusion, WEHI does not think that the IP Framework as proposed in the consultation paper will solve the problems with negotiation of commercialisation agreements that have been identified in the review. This approach will certainly not support the development of more complex, sophisticated and value-adding commercial partnerships. In fact, imposing a mandatory suite of agreements could undermine industry’s interest in working with Australian research organisations and Australia’s reputation as a flexible market economy. WEHI would welcome the opportunity to participate more broadly in the development of solutions for this very complex problem.