

Higher Education Research Commercialisation IP Framework

25 February 2022

Thank you for the opportunity to provide feedback on the Higher Education Research Commercialisation (HERC) IP Framework (the Framework). This submission will focus on the policy settings for use of the Framework, rather than specific feedback on the IP agreement templates.

As the peak body representing 92 professional societies and nearly 90,000 scientists and technologists, Science & Technology Australia is a strong advocate for research translation and commercialisation. Our members include those working every day in research commercialisation.

A consistent and structured approach

Science & Technology Australia welcomes the HERC IP Framework (the Framework). It is a useful tool to help universities and businesses navigate the complex IP landscape that can arise in collaborative research projects. Removing barriers to stronger collaboration is in the best interests of the university sector, industry, and the nation.

The proposed IP Framework will provide a consistent and structured base for both universities and industry partners to commence their thinking and negotiations around IP.

Just as each research program has unique characteristics and goals, each university–industry collaboration has its own set of parameters and considerations. The Framework does recognise this, providing a suite of templates for various different types of collaborative agreements. The Framework also provides for both simpler, lower-risk projects (generally <\$100,000 in value) along with more complex, higher risk projects through the ‘Accelerated’ and ‘Standard’ agreement tracks respectively. This is a useful distinction.

The HERC IP Framework should not be mandatory

The [Higher Education Research Commercialisation IP Framework Practical Guide](#) (the Practical Guide) notes that flexibility has been built into both Accelerated and Standard track agreements to allow for cases where a standardised approach might be prohibitive.

While this ‘built-in flexibility’ may allow for some degree of tailoring to suit specific project needs, Science & Technology Australia reiterates previous input that the Framework should not be made mandatory across all university–industry collaborations. Nor should it be a condition of eligibility for funding under the Trailblazer Universities or Australia’s Economic Accelerator programs.

Even with the range of agreement templates provided within the Framework, there may still be some arrangements or partnerships for which these will not be suitable. The Practical Guide acknowledges this on p11:

“The Framework also recognises that there will be occasional projects where the use of the template agreements is not appropriate. For these situations, it is expected that parties will continue to seek independent legal advice and adopt their own agreements.”

However, despite this acknowledgement, the Practical Guide also indicates that use of the Framework will be mandatory for projects funded through the Trailblazer Universities and Australia’s Economic Accelerator programs. The ‘decision tree’ diagram on page 8 states:

Are you commercialising outputs from a project that is directly receiving funding from either the Trailblazer Universities Program or Australia’s Economic Accelerator Program? Yes: The HERC IP Framework must be used.

Further, page 66 of the [Higher Education Research Commercialisation Action Plan](#) states that part of the University Research Commercialisation Plan agenda is to “Require use of the IP framework in a limited set of publicly funded research grants”. On page 87, it states “The HERC IP Framework will initially be applied for a limited set of publicly funded research grants and programs with future expansion to be considered over time.”

The [Trailblazer Universities Program Guidelines](#) state that, to be eligible for this program, universities must agree to “an IP strategy that maximises benefits for Australia, incentivises collaboration and spurs innovation, including agreement to adopt the Higher Education Research Commercialisation (HERC) IP Framework for any IP resulting from Trailblazer Universities Program grants” (p6).

There is further apparent contradiction within the Practical Guide where it notes that the level of obligation for universities will differ according to the complexity of the agreement. There are lower levels of obligation for universities when using a Standard track agreement compared to when using an Accelerated track agreement. This is in acknowledgement of the higher degree of complexity involved in a Standard track agreement. On page 9, the Practical Guide states: “For the Standard track of agreements, the obligation for the university partner is to i) **make the industry partner aware** of the HERC IP Framework, and ii) **make the industry partner aware of the applicable standard agreement that *could be used* as a starting point for negotiations.**” (our emphasis).

The phrasing of these statements again indicate that use of the Framework template is, in fact, not mandatory.

The Practical Guide also notes there is no obligation on the industry partner to use the IP Framework template in either an Accelerated or Standard agreement. Further guidance on what course of action a university should take if the industry partner does not want to use the template should be included. In many cases, companies will prefer or only enter an agreement using their own agreement templates or terms. This is often the approach set by the head office for multinational partners – including major global companies. Constraints on how agreements can be reached could deter international collaboration and investment. This would be a significant unintended

consequence of making the Framework mandatory, and runs directly against the goal of supporting increased collaboration and research commercialisation.

Recommendation: While its use should be promoted widely, the HERC IP Framework should not be mandatory for university–industry collaborative projects, nor a condition of eligibility for projects funded under the Trailblazer Universities or Australia’s Economic Accelerator program.

Recommendation: The HERC IP Practical Guide should include clearer guidance on:

- whether it is mandatory to use the HERC IP Framework templates;
- the level of adaptability of each template;
- how to navigate situations where the templates may not be appropriate; and
- how to navigate situations where industry partners, and in particular, international companies and collaborators, do not wish to use the templates.

Accessibility of the HERC IP Practical Guide

The HERC IP Practical Guide is likely to be the first port of call for researchers, university administrators or industry partners when beginning their thinking or negotiations on a project. It would be helpful to all parties to refine the Practical Guide to remove length and repetition, and improve readability and clarity to make the process as simple and efficient as possible for both universities and industry partners.

It would also be useful for the Practical Guide to clearly outline the challenges and solutions the HERC IP Framework addresses. *Table 7: IP-related constraints to successful commercialisation and collaboration* in the University Research Commercialisation Action Plan (p85) outlines several areas where IP-related issues can cause challenges to university–industry collaboration. This would be a useful addition to the Practical Guide, with explanations of how the IP Framework helps to deal with specific challenges, and where more work may still be needed, either on the part of universities or industry partners.

Recommendation: Refine the Higher Education Research Commercialisation IP Framework Practical Guide to improve readability and clarity.

Indigenous Knowledge

Science & Technology Australia commends the inclusion of guidance for researchers and industry using or accessing Indigenous Knowledge within their work. It is important to enhance cultural capability across the research sector, noting that this must be done in partnership with, and/or led by, Indigenous leaders in the community.

Recommendation: All Indigenous Knowledge guidance should be co-designed with appropriate Indigenous Knowledge holders.

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