

Higher Education Research Commercialisation – IP Framework consultation

Overview

UNSW Sydney welcomes the opportunity to contribute to this consultation.

UNSW is committed to accelerating the translation of the excellent research in our universities into new industries which create new jobs and provide economic benefit to Australia.

We acknowledge that intellectual property (IP) management and negotiation of agreements is a perceived barrier to collaboration between universities and industry which can negatively impact research translation and commercialisation.

We broadly support the proposed IP Framework outlined in the consultation paper.

At the same time UNSW strongly recommends that the Australian Government address other significantly more important barriers to collaboration between universities and industry to improve Australia's performance in commercialisation.

University-Industry Collaboration

Based on our experience there are a number of factors required for successful university-industry research collaboration:

- High levels of trust based on alignment of purpose and mutual understanding of strengths, contributions and benefits. This enables the negotiation of contractual terms, not the other way around;
- A flexible engagement model that responds to the size, scale and requirements of the proposed industry collaborator;
- Agility given that research by its nature is inherently uncertain;
- Recognition that there are multiple pathways for research to create impact and every technology and engagement with a collaborator will have unique characteristics.

The UK has conducted several reviews of university-industry collaboration, partly in response to the launch of the Lambert template agreements in 2005. It is recognised that every jurisdiction has its own nuances however there are also commonalities. These conclusions are worthy of consideration. The McMillan report in 2016 concluded that *'One-size-fits-all policies for technology transfer do not work; universities, technologies and places vary'*. The Rees report in 2019, led by industry, concluded *'one size does not fit all, so detailed national policies on terms, for example, of Intellectual Property (IP) transfer between universities and investors or businesses, are not appropriate.... There is complexity, which means there is not one solution.'*

Proposed IP Framework

UNSW broadly supports the proposed IP framework. The terms described are essentially in place at most universities as the *starting point* for negotiation of contract research agreements directly with industry and/or collaborative research agreements that include a component of government funding including ARC ITRP/Linkage grants, NHMRC Development/Partnership grants and ARENA.

Standardising terms and making them mandatory up to a specified dollar threshold across all university-industry collaboration has the benefit of simplifying joint research and commercialisation projects. It may avoid 'forum shopping', where a collaborator may look for more favourable terms at one university over another. The focus instead will be on the skills and expertise required to deliver an outcome.

One of the most significant benefits of mandatory/standard terms is awareness raising and expectation setting across industry of reasonable commercial terms from a university perspective. From discussions with colleagues in the UK this was one of the key outcomes from the process of establishing the Lambert agreement toolkit. Although use of Lambert agreements is not mandated, the extensive consultation between university and industry in preparing the templates led to significant improvements in understanding the perspectives and objectives of both sides. It changed the nature of engagement to be more collaborative and was accompanied by UK government policy *for full economic cost recovery* (see below) for industry funded research which is a very significant lever for contractual negotiations.

A standard contract template for "contract research" projects under \$100k is especially welcome. UNSW spends an inordinate amount of time negotiating with companies that insist on using their own "procurement purchase terms" which are not fit for purpose for a research engagement. This is especially the case with large corporate partners and government departments (i.e. large bureaucratic organisations).

Challenges

UNSW recognises that mandatory IP and contractual terms will not on its own be the cure for improved university-industry collaboration.

If the parties are reaching the point of signing up to standard terms, it assumes a pre-existing appetite and willingness to collaborate. This is not the case in Australia. As indicated in our earlier submission in April 2021, one of the critical barriers to university-industry collaboration is a lack of diversity and absorptive capacity in our economy which is required to innovate and commercialise discoveries, particularly amongst SMEs.

Furthermore, in the absence of a high trust relationship where there is genuine and mutual understanding of the perspectives and objectives of each party, mandating standard terms where the university owns the project IP may actually be a disincentive to collaboration.

A necessary first step is a joint campaign from government and industry in particular, with universities engaged as required, to promote the mutual benefits for all parties in collaborating and a recognition of the different but important objectives of each party in doing so.

One financial incentive available to the Australian Government to drive this outcome is the R&D Tax Incentive. Many universities, including UNSW in our April 2021 Higher Education Research Commercialisation (HERC) submission, have proposed an adjustment to tax incentive arrangements to reward Australian companies that collaborate with universities in creating and commercialising new technologies. This could take the form of a premium on top of the base rate of tax incentive. UNSW supports tax incentives for research translation as recommended by the 2016 *Review of the Research & Development Tax Incentive* and the *Australia 2030: Prosperity Through Innovation* report (2018). We



endorse the 2016 review's recommendation for a collaboration premium up to 20% for the non-refundable R&D tax offset (a rise from 38.5% to 58.5%).

Full cost recovery

There is one reference to 'full cost recovery' in the discussion paper without any additional narrative or analysis. The context is universities providing R&D services or contract research to industry, and the first 'feature' is identified as '*Priced at **full cost recovery plus margin***'. Recommended use is '*when the contracting party is a customer procuring R&D services from the research organisation and those services are based on using existing in-house IP and technical expertise*'. The standard terms proposed include the research organisation owning IP.

The costing of research is a very significant unresolved issue in Australian higher education, heightened by the pandemic and the loss of international student fee income.

It is well known within universities and government, though perhaps not in industry, that the full economic cost of research at universities is at least two times the direct costs typically funded by a grant or an industry collaborator. Only a small fraction of this is recovered from government block grants and/or an indirect cost charge applied by universities (~35% typically). Applying a 'margin' is very rare or non-existent in the Australian context given that indirect costs are only partially reimbursed.

As indicated above, the introduction of the Lambert templates in the UK was accompanied by an extensive and detailed *full economic cost* policy from government that was embraced by industry.

This is not the case in Australia and it needs to be addressed, otherwise UNSW believes that the IP framework will not be adopted nor applied consistently across universities and industry.

Furthermore, without effective consultation and awareness raising with industry, any shift to full cost recovery by universities is likely to reduce collaboration with industry. Ongoing and increased support for existing government co-funding schemes (ARC ITRP/Linkage, CRCP) is an important lever for increased collaboration.

Other barriers to collaboration and commercialisation

UNSW reiterates some of the key points from our April submission as we strongly believe that unless these are directly addressed by the Australian Government we will not achieve the desired outcomes in improving commercialisation of university research. These include:

- Establish an Australian Translational Research Fund (ATRF) for non-health disciplines, to help drive research commercialisation in priority areas;
- The creation of a network of 8-12 translational research partnerships (TRPs) across Australia. TRPs, funded via the ARTF, will bridge the gap between discovery research at universities and the commercialisation of research with industry;
- Insufficient genuine early stage investment to bridge the valley of death from university laboratory to market. This is the role of government, to respond to market failure. We await further advice from the government on the HERC scheme. The UK Rees report identified that '*on balance, the challenges on access to investment are probably greatest*';
- Capacity building and development of potential CEOs with the necessary skills to drive deep technology spinouts in the early stages post creation. This is coupled with lack of funding and deep domain expertise for early-stage commercialisation activities in universities such as development of business cases and models;
- Different and misaligned expectations on collaboration between universities and industry (e.g. industry, particularly SMEs often have low risk appetite);



- Commercialisation does not conform to linear pathways, it requires a long-term perspective, stable policy settings, flexibility and patient investment capital. It also does not happen organically.

Conclusion

Mandatory/template IP terms alone are insufficient to significantly scale up commercialisation of research in Australia. Whilst UNSW broadly supports the proposed IP framework, it will not, on its own, deliver the outcomes that government, industry and universities agree are critical for our future.

