

Higher Education Research Commercialisation Intellectual Property Framework Materials

IRU response – 25 February 2022

The Innovative Research Universities (IRU) appreciates the opportunity to provide feedback on the Australian Government's Higher Education Research Commercialisation Intellectual Property Framework (HERC IP Framework) materials and the Draft Practical Guide.

The IRU position is that the HERC IP Framework should be voluntary, with refinement after a piloting and testing phase. Implementation should be supported by a steering committee to guide a fuller stakeholder consultation. The HERC IP Framework should contain a clear implementation timeframe that clarifies its scope and intent. The IRU will not provide feedback on specific agreement clauses because we believe that this should occur after a pilot phase, with practical feedback from participating universities and industry partners.

The draft materials provide universities with examples of standard processes and agreements for local adaptation to assist negotiations involving IP. The Draft Practical Guide provides further guidance on the activities targeted by the Framework and specific advice on complex areas of IP negotiation, including Indigenous Knowledge. The HERC IP Framework has the potential to support the objectives of the Australian Government's broader University Research Commercialisation Action Plan, which spans the commercialisation and research career continuum. However it is not clear if the draft materials have been developed in line with feedback provided by universities and industry partners on the original HERC IP Framework consultation paper in late 2021.

The management of intellectual property is an important part of facilitating greater commercialisation, translation, and achieving more commercial benefits from our world leading higher education research. However, the general principles behind the HERC IP Framework and implementation timeframe, as outlined in the Draft Practical Guide and previously in the HERC IP Framework consultation paper, urgently need to be reconsidered and clarified.

As outlined in the IRU [response](#) to the original HERC IP Framework consultation paper in October 2021, a mandated HERC IP Framework is inconsistent with international best practice and could place Australian universities in a disadvantageous position in IP negotiations. Expedited implementation in advance of full stakeholder consultation, piloting and refinement, risks undermining the success of the programs the Government seeks to support.

The IRU position remains that the Government should:

1. Delay introduction of the HERC IP Framework;
2. Establish a steering committee and undertake a fuller stakeholder consultation;
3. Pilot, test and refine the HERC IP Framework, then consider full implementation with voluntary uptake.

None of the IRU's above recommendations appear to have been addressed in the Draft Practical Guide or information contained on the HERC IP Framework [website](#).

The HERC IP Framework appears to be proceeding according to the expedited implementation timeline contained in Section 4.2 of the HERC IP Framework consultation paper. This is despite delays in the release of the HERC IP Framework materials, initially planned for December 2021. The Draft Practical Guide and HERC IP Framework website contains no information about updated timeframes, or any information on steering committees to assist with the development and implementation of the Framework.

The Draft Practical Guide is clear that the preliminary HERC IP Framework will only be mandatory when commercialising outputs funded from the Trailblazer Universities Program and Australia's Economic Accelerator Program. This is consistent with the HERC IP Framework consultation paper. However, the Draft Practical Guide contains no information about whether the final HERC IP Framework will retain the original intention to progressively mandate its implementation across all commercialisation activities by January 2023. If the long term intent of the HERC IP Framework has changed, this needs to be clarified.

Consistent with the position put forward by Universities Australia, the IRU recommends that the HERC IP Framework should, at the very least in the first instance, be voluntary in all circumstances. We also ask the Government to publish an updated implementation timeline to clarify the intent of the HERC IP Framework.