

Submission to the Department of Education, Skills and
Employment (DESE)

ATSE submission on Higher Education Research Commercialisation (HERC) Intellectual Property (IP) Framework templates

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ATSE SUBMISSION ON HIGHER EDUCATION RESEARCH COMMERCIALISATION (HERC) INTELLECTUAL PROPERTY (IP) FRAMEWORK TEMPLATES

The Australian Academy of Technology and Engineering (ATSE) is a Learned Academy of around 900 independent, non-political experts helping Australians understand and use technology to solve complex problems. Bringing together Australia's leading thinkers in applied science, technology, and engineering, ATSE provides impartial, practical, and evidence-based advice on how to achieve sustainable solutions and advance prosperity.

ATSE welcomes the opportunity to provide a submission to the Department of Education, Skills and Employment (DESE)'s consultation on the Higher Education Research Commercialisation (HERC) Intellectual Property (IP) Framework templates. ATSE has previously contributed feedback to DESE's 2021 consultation on the University Research Commercialisation Scheme¹ and on the design of an IP Framework².

As part of this submission ATSE is making four key recommendations:

Recommendation 1: Provide templates as an optional resource, rather than a requirement for projects funded by the *Trailblazer Universities Program* or *Australia's Economic Accelerator Program*.

Recommendation 2: University-industry IP agreements should be recorded in a publicly available registry.

Recommendation 3: The *Framework Practical Guidance* should outline best practices concerning IP drawn from Traditional Knowledge, including communities' ownership of relevant IP.

Recommendation 4: Provide supplementary optional resources to assist collaborators in building partnerships and understanding IP.

A coherent national scheme to enhance research collaboration, translation and commercialisation

The HERC IP Framework is part of a broader effort to encourage innovation and research partnerships in Australia. ATSE's view is that there should be a coherent national scheme to support research collaboration, translation and commercialisation through university, industry and government partnerships³. Adequate funding for research commercialisation is a key enabler of this, and ATSE has welcomed the recent announcement of funding for university research commercialisation⁴. With a renewed Government agenda to increase university-industry research partnerships, it is crucial that policy settings, guidelines and resources are set up to support this effort.

¹ ATSE 2021, 'University Research Commercialisation Scheme consultation paper – Submission', accessed from <
<https://www.atse.org.au/wp-content/uploads/2021/04/SUB-2021-04-09-ATSE-URCS-submission.pdf>>

² ATSE 2021, 'Higher Education Research Commercialisation IP Framework Consultation Paper – Submission', accessed from <
<https://www.atse.org.au/wp-content/uploads/2021/11/SUB-2021-10-15-ATSE-HERC-IP-Framework-Submission.pdf>>

³ ATSE 2021, 'University Research Commercialisation Scheme consultation paper – Submission', accessed from <
<https://www.atse.org.au/wp-content/uploads/2021/04/SUB-2021-04-09-ATSE-URCS-submission.pdf>>

⁴ ATSE 2022, 'New research commercialisation fund a welcome step to bolster Australian skills and jobs', accessed from <
<https://www.atse.org.au/news-and-events/article/new-research-commercialisation-fund-a-welcome-step-to-bolster-australian-skills-and-jobs/>>

Providing flexibility for collaborative research

As [previously raised by ATSE](#) the provided IP templates will support the sector, but the choice to make them compulsory for the *Trailblazer Universities Program* and *Australia's Economic Accelerator Program* is concerning⁵. While the twelve provided templates cover currently foreseeable arrangements, issues may arise in future if there are any circumstances which are not covered by the templates. To provide flexibility and encourage collaborative research to flourish, ATSE suggests that the agreements should not be compulsory for any programs. The templates may be drawn upon as helpful resources however imposing the agreement creates a risk that industry partners may not wish to engage if the templates do not align with their needs.

Recommendation 1: Provide templates as an optional resource, rather than a requirement for projects funded by the *Trailblazer Universities Program* or *Australia's Economic Accelerator Program*.

Maintaining a secure and transparent IP registry

It is unclear how IP agreements will be tracked and managed. To support the development of collaborations between universities, industry and government, there should be a transparent and current registry to track IP agreements. This could provide confidence to SMEs engaging in research collaborations that may otherwise be reluctant to engage due to concerns about IP disputes.

Recommendation 2: University-industry IP agreements should be recorded in a publicly available registry.

Exemplifying best practice for IP ownership of Traditional Knowledge

The *Framework Practical Guidance* notes that Indigenous Knowledge can also be added to the contract templates, such as to establish attribution and govern the distribution of any benefits including financial. As previously noted by ATSE, the Framework should provide specific guidance for the use of Indigenous Knowledge in commercialisation partnerships⁶. While the advice provided in the *Framework Practical Guidance* is welcomed, there is an opportunity to extend this by promoting best practice for IP based on Traditional Knowledge. This should include Indigenous people having the right to the copyright and IP of their Traditional Knowledge⁷.

Recommendation 3: The *Framework Practical Guidance* should outline best practices concerning IP drawn from Traditional Knowledge, including communities' ownership of relevant IP.

Supporting the development of research partnerships

Assisting collaborators to efficiently reach IP agreements is an important mechanism to reduce barriers to commercialisation. There is scope to develop resources to enhance the usefulness of the templates in conjunction with the expertise available through IP Australia. Further support and resources alongside the templates would empower partnerships between universities, industry and government.

⁵ ATSE 2021, 'Higher Education Research Commercialisation IP Framework Consultation Paper – Submission', accessed from < <https://www.atse.org.au/wp-content/uploads/2021/11/SUB-2021-10-15-ATSE-HERC-IP-Framework-Submission.pdf>>

⁶ ATSE 2021, 'Higher Education Research Commercialisation IP Framework Consultation Paper – Submission', accessed from < <https://www.atse.org.au/wp-content/uploads/2021/11/SUB-2021-10-15-ATSE-HERC-IP-Framework-Submission.pdf>>

⁷ Heckenberg, S 2018, 'Nothing about us without us: Protecting Indigenous Knowledges through oral histories and culturally safe research practices' (doctoral thesis), accessed from < https://researchbank.swinburne.edu.au/file/1ffb3004-a81b-4605-8452-d95c563a6d46/1/sadie_heckenberg_thesis.pdf>

Other resources could include educational initiatives, pre-negotiation tools and processes, and checklists and guidelines to inform negotiations⁸.

Recommendation 4: Provide supplementary optional resources to assist collaborators in building partnerships and understanding IP.

⁸ ATSE 2021, 'Higher Education Research Commercialisation IP Framework Consultation Paper – Submission', accessed from < <https://www.atse.org.au/wp-content/uploads/2021/11/SUB-2021-10-15-ATSE-HERC-IP-Framework-Submission.pdf>>