

18 October 2021

University Research Commercialisation Committee
Department of Education, Skills and Employment
GPO Box 9880
Canberra ACT 2601

By email: urcs@dese.gov.au

Dear Committee members,

Higher Education Research Commercialisation (HERC) IP Framework

As the industry association for private capital in Australia, the Australian Investment Council is pleased to present its submission to the Department of Education, Skills and Employment on this consultation on the Higher Education Research Commercialisation (HERC) IP Framework. This complements the Council's submission in April 2021 on the Department's consultation on University Research Commercialisation.

Private capital investment has played a central role in the growth and expansion of thousands of Australian businesses and represents a multi-billion-dollar contribution to the Australian economy. Our members are the standard-bearers of professional investment and include private equity (PE), venture capital (VC) and private credit (PC) funds, alongside institutional investors such as superannuation and sovereign wealth funds, as well as leading financial, legal and operational advisers. Our members include both Australian domestic and offshore-based firms.

Private capital fund managers invest billions of dollars into Australian companies across every industry sector of the economy every year. Australian-based PE and VC assets under management reached \$37 billion in 2020 with an additional \$13.5 billion in equity capital available to be invested in the short-term. Companies that partner with private capital fund managers contribute one in every nine new jobs in Australia and provide 2.6% of our nation's GDP.¹ The private capital industry can be a significant contributor to and driver of Australia's economic recovery and the development of Australia's industries of the future.

At this time, we believe it is vitally important that steps be taken to strengthen collaboration between private sector firms and universities to ensure that Australia can continue to build its innovative capacity to drive the next wave of economic growth for the long-term. There is a significant economic payoff for the nation which comes from the scaling-up of new fast-growth businesses as these businesses will create new industries and new high-value jobs. We must ensure that investment into research and innovation is maintained in the short-term, given empirical data tells us that these areas can see a drop-off in support following a major economic shock such as that following a pandemic.

Over the past decade, venture capital has been at the forefront of driving innovation through investment into businesses supported by new technologies in areas such as FinTech, cyber security, food technologies and health and medical services. This is reflected in recent research by the Australian Investment Council which shows jobs in information technology or that are technology driven, account for a large proportion of job vacancies in venture capital-backed companies (we refer you to our earlier submission for details).

¹ Deloitte Access Economics (2018) *Private equity: growth and innovation*, April



As we have previously stated, this investment could be boosted further through closer collaboration between industry and higher research institutions to support and accelerate the commercialisation of research in industries aligned to jobs and businesses of the future. This would help drive innovation and boost Australia's sluggish productivity growth. It is recognised by the OECD that businesses which invest in research are generally more productive, with turnover growth for high R&D intensity firms between 5.9 to 7.3 times higher than low R&D intensity firms.

A sustainable funding pipeline must be supported through a framework that better supports commercialisation of world-leading research and ideas, early-stage businesses will have the ability to drive innovation and jobs growth for the Australian economy.

The Council therefore supports in principle the HERC IP Framework standard processes and documentation as it provides an important reference framework. However, the Council notes that there are many other challenges (which we identified previously in our earlier submission (see above)), that will also need to be addressed. We encourage the Government to keep considering the solutions to address the many other hurdles which currently exist to hinder greater collaboration between the universities and the private sector.

The Council also reiterates that there will always be importance placed by contractual counter-parties, whether in Australia or overseas, on the actual deal, ie taking into account the specific nature of the transaction and the intellectual property in question. Although it is helpful to have a \$100,000 monetary threshold to differentiate between customised and non-customised agreements, this should be only an indicator and greater emphasis should be placed on the complexity of the transaction and associated intellectual property rights. Accordingly, although having standard documentation is useful as a starting point in any discussions. However, given the complex array of subject matter and intellectual property rights (including multiple combinations of various different rights and protections), the standard documentation will never fully replace precedent documents which private capital investors and research institutions have developed historically for dealing with other parties and which take into account their own commercial needs. Any real or perceived inability to depart from the framework, should not be a barrier to commercialisation of research.

As you will appreciate, the ability to execute a successful transaction not only depends on a good contractual framework but also trust between the parties, even where the documentation is defective or unclear. Trust will not just be rooted in standard documentation, but rely on historic interactions and inter-personal relationships between all stakeholders involved. Although it is helpful to have standard documentation, often contracts are left to the lawyers for each side to nut-out, with all the detail finalised by legal professionals, rather than the principals where that trusted relationship may reside. Therefore, additional measures to foster collaboration and interactions will need to occur as part of a broader strategy to encourage such behaviour between principals. We refer you to our previous submission on more system-wide initiatives to encourage this type of collaboration.

The ability to strike different transactions is also a hallmark of the competitive nature between research institutions themselves and their counterparties. The competitive nature of these interactions has been a feature of the Australian institutional landscape for many decades now and will require broader consideration of how research institutions collaborate, as well as how they compete for research funding. These matters will need to be considered by the Government in a post-pandemic world given that international student numbers have drastically fallen and institutions now need to rely on different sources of funding. It is beyond the scope of this submission to address these matters and we again refer you to previous submissions made by the Council on this topic.



The Council looks forward to participating in any future discussion about the themes set out in this submission as part of the consultation process and gives consent for this submission to be publicly available. If you have any questions about specific points made in our submission, please do not hesitate to contact me or our policy team at policy@aic.co.

Yours sincerely

Yasser El-Ansary
Chief Executive