

16 August 2021

Mr Paul Fischer  
A/g Assistant Secretary  
Corporate and International Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600  
Email: [PatentBoxConsultation@treasury.gov.au](mailto:PatentBoxConsultation@treasury.gov.au)

Dear Mr Fischer

### **Go8 response to Patent Box consultation**

The Go8 is pleased to have this opportunity to provide a brief submission to the Patent Box consultation.

By way of context, the Go8 undertakes 70 percent of Australia's university-based research and annually secures research funding from industry and other non-government sources which is twice that of the rest of the sector combined.

Importantly for the nation's economy, in 2019 the Go8 collectively earned \$81.4 million in research commercialisation income, and it was responsible for most of Australia's new and active start-ups and spinouts attributable to public research and the majority of active licences, options and assignments (LOAs).

The Go8 outperforms CSIRO in each of these categories. Go8 universities filed 56 per cent of all patents in 2019 and held in that year 53 per cent of active patents for the research sector. \*note the Attachment contains further details of this.

This submission aims to make some high-level observations rather than respond to the consultation's detailed questions. It draws on the advice of the Go8 Innovation and Commercialisation leads in each of the eight Go8 universities.

Please note that this response should not be taken as endorsement of particular features or areas in the consultation which are not explicitly mentioned here.

## Recommendations

1. That Government move to introduce a suite of remedies and incentives that drive commercialisation across the spectrum of translation (discussed elsewhere by the Go8<sup>1</sup>). This must include, if these remedies and incentives are to be successful, accessible validated research, sufficient capital, skills, and positive incentivisation of researchers in addition to business.
2. That Government recognise that the patent box measure could most likely result in any improvement being *chiefly* in the R&D operations of larger companies. Yet this sector is already, or more greatly resourced than small businesses to progress their use of patents. It is SMEs which most need the support.
3. That Government make the Patent Box initiative sector-agnostic to capitalise from inception on the possible benefits across the economy, rather than focus on medical and biotechnology only.
4. That Government consider bringing forward the timeframe for eligibility to patents that were applied for before 11 May 2021, for example to 11 May 2020.

## Discussion

The Go8 appreciates the rationale behind adopting a Patent Box solution given other competitor nations have already introduced similar measures and their variable success. However, **in Australia, the business sector environment is different. We are a nation significantly dominated by small to medium enterprises (SMEs) and therefore the environment is not wholly conducive to the fruitful implementation of such an initiative as set out by Government.**

**A Patent Box in Australia is unlikely to markedly shift the needle towards the stated aspirations** of encouraging companies to base their R&D operations in Australia, nor will it likely assist in retaining the ownership of eligible patented inventions in Australia.

The Go8 has significant experience in generating new ideas, intellectual property and in successful lodgement of patents. Many such discoveries are targeted for translation through university spin-outs, start-ups, or even in association with small and large companies. **However, to achieve that critical mass needed to ensure the viability of the idea, investment needs to occur along a lengthy spectrum of activity from proof-of-concept to scaled-up commercialisation.**

It is so critical that Government understands that, even when interested, our nation's smaller business partners often simply do not have the financial wherewithal to support the cashflow needed to enable the full gamut of translation.

While they may be able to contribute to the process, the tax incentive is unlikely to be sufficient to assist them in significantly uplifting their participation to such a level that either enables the retention of the invention ownership, or the related R&D operations in Australia.

- **The Go8 therefore would support a measure such as this if it can be shown it would assist in boosting R&D by smaller companies** and encouraging such companies to facilitate in-country operations as a result.
- However, **the Go8 also advocates that a steady flow of research, sufficiently validated through both proof-of-concept processes to raise investor and industry appetite, and readily attainable capital to more broadly advance commercialisation (including patent licensing) is most definitely needed.**

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<sup>1</sup> <https://go8.edu.au/go8-response-to-the-university-research-commercialisation-consultation-paper>

It is **more likely that a consequence of the introduction of a Patent Box measure will be that larger companies and investors** which already have a significant (or potentially significant) footprint in Australia will be able to take advantage of its features, to sustain and boost their existing and future R&D operations.

Such R&D operations of larger companies draw in part from collaboration with universities and therefore the Go8 appreciates what the proposed measure could bring to further uplifting the country's R&D via these larger companies and investors. **In addition, the Patent Box measure may not, without the Go8's advocated additional incentives and assistance, deter patent holders, spinouts and startups from seeking readier, more substantial investments and support of overseas multinational companies. These companies are** seemingly better able to support their innovation than Australian companies and investors.

- Timing is often key in highly competitive technological advances
- Australian innovators often may not have the luxury of waiting in the Australian market for the proof-of-concept funding needed to take their idea to a more investable level

**The Go8, which expends nearly 40 per cent of the higher education sector's total R&D on health (2018)<sup>2</sup>, supports this measure's focus on medical and biotechnology. However:**

- Medical and biotechnology should not be the sole target of the Patent Box, albeit the Government is also seeking views on its extension to low emissions technologies, which the Go8 also supports.
- There are other significant areas of innovation, notably space, artificial intelligence, quantum, agtech – to name but a few – that should not be excluded from this measure without clear rationale.

**The Go8 considers that patents applied for in an agreed timeframe before 11 May 2021 should also be considered under this measure**, given the long gestation period in achieving benefits from a patent – illustrated by a standard patent lasting up to 20 years from filing date of application.

Yours sincerely



**VICKI THOMSON**  
**CHIEF EXECUTIVE**

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<sup>2</sup> Australian Bureau of Statistics 2020, Research and Experimental Development, Higher Education Organisations, Australia, 2018

## Appendix: SCOPR 2019 – Go8 summary commercialisation outcomes and share of total outcomes

Survey of Commercial Outcomes from Public Research (SCOPR) collects data from 49 Australian and New Zealand universities, medical research institutes and publicly funded research agencies. It enables national and international benchmarking of respondents and helps to inform decisions by research organisations, government and industry stakeholders seeking to enhance industry engagement and research commercialisation.

**Table: Institutional responses to the Survey of Commercial Outcomes from Public Research (SCOPR) – 2019 data**

	Go8 total	Go8 % of All Australian participants	Largest Go8(s)	Leaders
<b>Intellectual property activity</b>				
Invention disclosures	790	58%	UQ 145, Monash 125, USyd 125, UNSW 124	UQ 145, Monash 125, USyd 125
Patent Applications filed	256	56%	UNSW 59, Monash 43, UniMelb 42	CSIRO 68, UNSW 59
Active patents held	1539	53%	Monash 346, UQ 282, USyd 254	CSIRO 679, Monash 346, UQ 282
New non-patented technologies approved for technology transfer	151	41%	UQ 64, USyd 23	UQ 64, CSIRO 63
Active non-patented technologies held	597	39%	UQ 244, USyd 181, Adelaide 65	CSIRO 359, UQ 244, USyd 181
<b>Start-up company activity</b>				
New start-up and spinout companies incorporated	25	60%	USyd 9, Adelaide 4, UNSW 3	USyd 9, Adelaide 4, UNSW 3, CSIRO 3
Active start-up and spinout companies that institution held equity in	132	57%	UQ 29, USyd 24, UNSW 23	UQ 29, USyd 24, UNSW 23, CSIRO 23
<b>Licensing activity</b>				
New commercial LOAs executed	243	40%	UNSW 79, USyd 36, Monash 34	Macquarie 99, UNSW 79, CSIRO 65
Active commercial LOAs held	1507	55%	UNSW 558, UniMelb 206, Monash 142	UNSW 558, CSIRO 426, UniMelb 206
<b>Research commercialisation income</b>				
Total research commercialisation income	\$81.4M	46%	UQ \$36.4M, Monash \$21.6M	CSIRO \$44.3M, WEHI \$43M, UQ \$36.4M

SCOPR<sup>3</sup>

<sup>3</sup> <https://techtransfer.org.au/metrics-data/>

The inaugural SCOPR conducted by Knowledge Commercialisation Australasia (KCA) covers the calendar years 2017, 2018 and 2019. Forty-nine institutions including 34 Australian (of which 24 were universities) and 15 New Zealand research organisations responded to the survey.

The SCOPR report<sup>4</sup> published in 2020, charts institutional responses to the survey as per the above table.

### **SCOPR Measures**

An **invention disclosure** describes an invention in detail and is used to determine its creators, novelty and potential for social impact and/or commercialisation.

A **patent** grants an inventor exclusive rights to the IP for a designated period in exchange for a comprehensive disclosure of the invention. **Non-patented IP** includes plant breeders' rights, confidential know-how, registered designs, circuit layouts, trade secrets, software, trademarks, apps etc.

**Licences, Options and Assignments (LOAs):** Licences may grant another party (licensee) the rights to make/sell/use the IP owned by the licensor. Options grant the potential licensee time to evaluate the IP and negotiate the terms of a licence agreement. Assignments convey all rights and title to, and interest in, the licensed IP to the assignee.

**Spin-out and startup companies** are founded through licensing or assignment of IP. Spin-outs are launched by the research organisation. Start-ups are launched by other parties through licensing or assignment of IP.

**Commercialisation revenue** is gross income from all LOAs, material transfers and sales of products or services based on expertise or IP, plus cashed-in equity, minus any cost of acquiring the equity. (Excluded: research funding, copyright income, non-cash value exchanged for equity holdings, value of equity not cashed-in, patent expense reimbursement, consultancies and contract research – unless or until new IP is created.)

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<sup>4</sup> <https://techtransfer.org.au/wp-content/uploads/2020/09/SCOPR-REPORT-FINAL-for-web.pdf>