1. Does the draft IP Toolkit offer useful guidance and tools to simplify and improve discussions on IP in research collaborations?

It is too long. If written for an IP lay person, it is terribly confusing. I have worked with many IP lay persons, and I can assure you, their eyes would be swimming immediately. Most people interested in IP for the first time are highly educated. Yet, it is still a very confusing subject. You have done nothing to simply it. For example, in the second paragraph you say: "There are two types of IP rights, registered or unregistered." Why is that relevant in the second paragraph? That is only relevant when you are talking about trade secrets, copyrights and unregistered trademarks. How is making a statement like that in the second paragraph going to make this complicated topic understandable?

Under "What is IP?" you should talk about what is IP. Instead you launch into subtopics.

Include a simple list of the most common IP rights. Putting this in paragraph form is confusing.

The first issue that should be addressed is how to lose patent/design rights since those are the easiest to accidentally destroy. It happens all of the time - and in Australia, where the understanding of IP is nil, you should start with the most important thing. Public disclosure destroys patent rights. I did not see that issue mentioned anywhere.

Then, why do you mix up the discussions? Talk about the different types of IP in different sections. Most lay persons have enough trouble understanding that a copyright is not a trade mark. But then, you talk about them randomly. The most important thing is that the lay person understands that each type of IP has different requirements for procurement, and provides a different set of rights. The way you have addressed different types of IP makes it impossible to sort out which type requires what.

The list of questions in Section A1 that you provide does not include their relevance. What is the point of each question? If it is to make you think about certain issues, you have not provided a background as to why the issue is important. Moreover, the questions are not necessarily directed to IP issues, so I do not see why there are so many. Is this document about IP or about all collaboration issues?

a. What is the most useful part and why?

None that I can see given its lack of structure and randomness.

b. What is the least useful part and why?
This document seems to try to be all things. It is addressing substantially more than the IP issues. Sorting out who owns what IP should be a simple part of a contract. There certainly are many other issues that you brush against, like indemnification against 3rd party infringement actions, but you also miss the requirement to perform due diligence to make sure that activities being carried out are without legal consequence. What about foreign filing? Who is going to pay for that? Patent rights in Australia are essentially insignificant. Obtaining rights worldwide is the only way to be able to participate in the worldwide knowledge-based capital economy.

2. Are there any gaps in the information provided?

Again, you also miss the requirement to perform due diligence to make sure that activities being carried out are without consequence, and who is at fault if one or both parties gets sued. You only touch on indemnification but in my book, that is easily the most important issue in this discussion.

Who is going to pay to secure and maintain "registered" IP rights? No discussion.

What are the obligations to protect "unregistered" rights (trade secrets) and what are the consequences if best efforts are not used? People frequently walk off with trade secrets and exploit them. Not addressed.

Again, what about foreign filing? Who is going to pay for that? Patent rights in Australia are essentially insignificant. Obtaining rights worldwide is the only way to be able to participate in the worldwide knowledge-based capital economy. No discussion of that.

In a cursory reading I can easily find flaws. For example, from Page 10:

"The patent was registered and owned by CSIRO and a licence granted to Laserlife Littlejohn. Mr Engel stated that whilst the company does not own the IP from the project, the outcome was beneficial given the IP ownership responsibilities fell to CSIRO, with financial contributions provided by Laserlife Littlejohn. CSIRO’s reputation and the resources they have to prosecute and defend the patent mean they are in a better position to undertake these tasks."

I didn't see anywhere in the document reference to a term that guaranteed the owner of the patent would use best efforts to enforce the rights. In the example given, if Laserlife believes that CSIRO would spend resources defending Laserlife's rights, then Laserlife didn't get good legal advice. Why Laserlife only received a license, is beyond me. Patents
are not only for enforcement. They are for defensive purposes too. If another entity were to sue Laserlife for patent infringement, Laserlife has no chance of counter-claiming and would not have any patent rights to trade in settlement. This outcome is outrageous.

3. How could the draft IP Toolkit be improved for the target audiences of SMEs and researchers?

It needs structure and simplification. The model contract is like a sieve, missing scores of IP issues.

4. Any other comments or suggestions for improvement?

Do you really want me to go on? I suggest you start over again, and have me write it.

Best Regards, Paula