
Intellectual Property Laws Amendment Bill 2013

Introduced into the House of Representatives on 30 May 2013

Portfolio: Industry, Innovation, Climate Change, Science, Research and Tertiary Education

Summary of committee view

1.21 The committee seeks clarification as to whether a person whose patent is affected by Crown use receives compensation and/or can seek review of this use, and whether the Crown use provisions are consistent with the right to benefit from one's scientific production.

1.22 The committee seeks clarification as to whether the disclosure of personal information to New Zealand officials is consistent with the right to privacy.

Overview

1.23 This bill seeks to amend several areas of Australia's intellectual property legislative framework. It is intended to introduce improvements across the system to increase efficiency and effectiveness. In particular, the bill

- modifies the Crown use provisions in the *Patents Act 1990* to strengthen the circumstances around when Crown use may apply;
- implements the Protocol amending the *World Health Organization Agreement on Trade-related aspects of Intellectual Property* to allow Australian generic medicine producers to manufacture and export patented pharmaceuticals to countries experiencing a health crisis;
- provides plant owners with quicker and cheaper alternatives to enforcing their rights in federal courts;
- provides for a single application and examination process for Trans-Tasman patents.

Compatibility with human rights

1.24 The bill is accompanied by a self-contained statement of compatibility that states that the bill promotes the right to health as it enables the export of generic versions of patented medicines to developing countries that are experiencing serious public health issues. It notes that patent owners of affected pharmaceutical product will be compensated.

Right to benefit from scientific production

1.25 Article 15 of the International Covenant on Economic, Social and Cultural Rights provides for a right of everyone to 'benefit from the production of the moral

and material interests resulting from any scientific, literary or artistic production of which he is the author'. The committee notes that Schedule 1 to the bill seeks to amend the *Patents Act 1990* to strengthen provisions which permit the Commonwealth or a State (or their authorised person) to exploit an invention described in a pending patent application or granted patent without the need for authorisation by the owner – known as 'Crown use'. The explanatory memorandum explains that this 'provides a safeguard to ensure the patent system does not impede governments from acting in the public interest'.

1.26 The committee notes that the application of the right in article 15 does not necessarily coincide with intellectual property rights under Australian law, and that this right must be balanced with the right of everyone to enjoy the benefits of scientific progress. The committee notes that enabling governments to act in the public interest is an important and legitimate objective. However, the committee notes that the statement of compatibility does not refer to this right, and as such, the committee is unable to fully assess the human compatibility of this provision. In particular, it is not clear to the committee whether the person whose patented invention is used receives any compensation for this use or is able to seek any review of the use.

1.27 The committee intends to write to the Minister for Climate Change, Industry and Innovation to seek clarification as to whether a person whose patent is affected by Crown use receives compensation and/or can seek review of this use, and whether the Crown use provisions are consistent with the right to benefit from one's scientific production under article 15 of the ICESCR.

Right to privacy

1.28 Schedule 5 of the bill introduces a process for patents from Australia and New Zealand to have a single application and examination process and will allow for a single trans-Tasman patent attorney regime, including common qualifications for registration. Item 16 of Schedule 5 amends section 183 of the *Patents Act 1990* to allow for the disclosure of information (including personal information) by the Designated Manager to the Register of Companies of New Zealand or a New Zealand delegate. No information is given in the statement of compatibility as to what safeguards are in place once personal information is disclosed to officials in New Zealand.

1.29 The committee intends to write to the Minister for Climate Change, Industry and Innovation to seek clarification as to whether the disclosure of information to New Zealand officials is consistent with the right to privacy under article 17 of the International Covenant on Civil and Political Rights.