

# Submission to IP Australia on the Intellectual Property Laws Amendment Bill 2014

Pirate Party Australia

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# 1 Introduction

Pirate Party Australia would like to thank IP Australia and the Australian Government for the opportunity to submit on the important issue of intellectual property reform. Intellectual property rights impact everyone in our modern society.

Although other intellectual property rights such as trademarks and copyrights are far more visible in the public consciousness, the patent system has been used to protect a significant number of inventions in Australia and worldwide. Patents are prominent in the pharmaceutical industry, and public awareness has been steadily increasing, especially concerning patents and their effect on access to medicines.

The reforms proposed in the Intellectual Property Laws Amendment Bill 2014 will generally go a long way to improving access to medicines in developing and less-developed countries, reducing the harm caused by major health crises.

## 1.1 About Pirate Party Australia

Pirate Party Australia is a political party registered under the *Commonwealth Electoral Act 1918*. The Party was founded in late 2008, and contested its first Federal Election in 2013. The Party's main areas of concern are intellectual property rights reform, privacy rights, increased governmental transparency, and opposition to censorship.

Pirate Party Australia is a member of a worldwide movement that began in Sweden in 2006, and has since spread to more than 40 different countries. Pirate Parties have been elected to all levels government — local, state, national and supranational — with 45 state seats in Germany, three seats in the Icelandic Parliament, and two Members of the European Parliament.

## **2 Compatibility with Human Rights**

Pirate Party Australia concurs that the Bill does not negatively affect any of the applicable rights or freedoms; the Bill does in fact appear to improve the application of the right to health, one of the most important rights.

### **2.1 Right to health**

Although Pirate Party Australia would prefer a radically different approach to the development of pharmaceuticals that obviates the need for pharmaceutical patents, the Party acknowledges that significant changes are unachievable in the current international framework, and considers the amendments regarding generic versions of patented medicines for export to less-developed and developing nations to be a move in the right direction.

The Party is satisfied that the amendments honour the spirit of Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 24 of the Convention on the Rights of the Child (CRC), and agrees that they 'will advance the human right to health for everyone, including children, in developing countries by assisting with the treatment of serious health problems such as HIV/AIDS, malaria and tuberculosis.'

As with any right, the right of everyone 'To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author' (ICESCR, Article 15) must give way to other rights where necessary and/or appropriate. Pirate Party Australia is in favour of moves that place the right to health above intellectual property rights. Furthermore, it should be acknowledged that Article 15 also promotes 'the right of everyone ...To enjoy the benefits of scientific progress and its applications.' Pirate Party Australia believes that the explanatory memoranda is accurate in saying that 'the Bill will not impact on human rights of patent owners or the human rights outlined in Article 15 of the ICESCR.'

## **2.2 Right to privacy**

Pirate Party Australia acknowledges that the sharing of information between Australia and New Zealand in the context of the Bill is appropriate and does not unnecessarily interfere with the right to privacy given that the information is required for the successful administration of the patent system as proposed, which ultimately benefits patent holders and applicants.

## **3 Schedule 1—TRIPS Protocol interim waiver**

Pirate Party Australia is broadly in favour of these amendments.

### **3.1 Proposed process for obtaining and exercising compulsory licences under the interim waiver / TRIPS Protocol**

Pirate Party Australia is in favour of the process as described, agreeing that is in line with the TRIPS Protocol and within the constraints of the TRIPS Agreement is likely to be the most appropriate process.

### **3.2 Items 1 to 10: List of definitions**

Pirate Party Australia finds no issue with the proposed definitions.

### **3.3 Items 11, 12 and 13: Extensions of patent term**

Although Pirate Party Australia is generally not in favour of extensions of patent terms, the Party recognises that delays in administrative processes may warrant an extension for the patent holder to realise the full benefit of the patent. However, given the Party's commitment to the abolition of pharmaceutical product

patents in Australia, the Pirate Party opposes these extensions on principle.

### **3.4 Items 14 to 18: Compulsory licences (general)**

Pirate Party Australia supports the differentiation and clarification introduced by these amendments.

### **3.5 Item 19: Patented pharmaceutical invention compulsory licences (for manufacture and export to eligible importing countries)**

Pirate Party Australia is in favour of the provisions, and praises the amount of consideration given to ensuring the compulsory licence process operates transparently and accessibly, as well as the thought given towards efficiency by allowing multiple licences to be granted under one application.

Revocation of a licence in the circumstances could have a damning effect on the interests of the importing country's national health. Pirate Party Australia is satisfied that the proposed paragraph 136H(2)(b) is an appropriate means of ensuring that compulsory licences are not revoked for minor or inconsequential breaches; or revoked in situations where it would perpetuate a national health problem or crisis.

Pirate Party Australia is favour of the proposed 'remuneration' provisions, provided that the proposed section 136G and paragraph 136H(2)(b) allow for licensees to apply for an amendment to the licence if they are unable to meet the remuneration requirements per the licence. This may occur where a generic manufacturer is reliant on third-party payment and/or donations, for example. Pirate Party Australia believes that the proposed provisions would apply (and that this is the intention of the Bill), but would like it explicitly stated to avoid confusion.

### **3.6 Items 20—35**

The Pirate Party has no objection to these items, and commends the flexible approach to defining ‘eligible importing country’ as well as the broad definitions relating to patented pharmaceutical inventions and pharmaceutical products.

### **3.7 Item 36**

Pirate Party Australia is wholeheartedly in favour of this item and agrees that it ‘is consistent with the intention of providing a mechanism to provide least-developed and developing countries with the medicines they need to address health problems.’

## **4 Schedule 2—TRIPS Protocol: later commencing amendments**

Pirate Party Australia believes these amendments are appropriate to implement the TRIPS Protocol.

## **5 Schedule 3—Plant Breeder’s Rights Act 1994: Federal Circuit Court**

Pirate Party Australia is in favour of extending the jurisdiction of the Federal Circuit Court to include actions under the *Plant Breeder’s Rights Act*, and the amendments to provide it with the powers necessary to apply the Act. Such changes would make the administration of the *Plant Breeder’s Rights Act* more efficient while not compromising the ability for disputing parties to achieve fair outcomes.

## **6 Schedule 4—Australia New Zealand Single Economic Market**

Pirate Party Australia has no concerns about Schedule 4 except for an issue relating to bilateral arrangements with New Zealand. The trend when drafting international agreements has been to keep them secret until they are finalised and signed by representatives of each Party's government. This frequently means that Australia gains new, often significant, international obligations before the text is made publicly available for criticism and contribution. The lack of genuine civil consultation with regard to opaque agreements has been noted in recent times in relation to two major intellectual property related treaties: the Anti-Counterfeiting Trade Agreement and the Trans-Pacific Partnership Agreement.

The Pirate Party's stance on the issue is that the public should be given the opportunity to make comments on the draft text of all international agreements at regular intervals, and that there should be an opportunity to submit and consult on the draft text *prior* to Australia being committed to any arrangement between Australia and, in the case of the proposed reforms, New Zealand.

## **7 Schedule 5—Other Amendments**

### **7.1 Part 1—Document Retention**

Pirate Party Australia supports the proposed reforms that will reduce duplication of retained documents, and place the retention of material under the provisions of a single act (i.e. the *Archives Act*).

### **7.2 Part 2—Technical amendments**

Pirate Party Australia finds no issues with the proposed amendments.