Intellectual Property Laws Amendment Bill 2014

(Mr Bandt)

(1) Clause 2, page 2 (after table item 3), insert:

3A. Schedule 2A The 28th day after this Act receives the Royal Assent.

[Crown use]

(2) Page 22 (after line 12), after Schedule 2, insert:

Schedule 2A—Crown use

Patents Act 1990

1 Section 3 (list of definitions)

Insert “services”.

[1] Crown use
2 At the end of section 163

Add:

(4) Without limiting subsection (1), the exploitation of an invention by or for the Commonwealth is taken to be for the services of the Commonwealth if the following process is followed:
   (a) the Minister considers that the Commonwealth has tried for a reasonable period, but without success, to obtain from the nominated person or patentee, an authorisation to work the invention on reasonable terms;
   (b) the Minister approves the proposed exploitation by instrument;
   (c) at least 14 days before the exploitation starts, the Minister gives the nominated person or patentee:
      (i) a copy of the instrument of approval; and
      (ii) a copy of the statement of reasons for approving the exploitation.

Note: Section 25D of the Acts Interpretation Act 1901 sets out rules about the content of a statement of reasons.

(5) Without limiting subsection (1), the exploitation of an invention by or for a State is taken to be for the services of the State if the following process is followed:
   (a) the Attorney-General of the State considers that the State has tried for a reasonable period, but without success, to obtain from the nominated person or patentee, an authorisation to work the invention on reasonable terms;
   (b) the Attorney-General approves the proposed exploitation by instrument;
   (c) at least 14 days before the exploitation starts, the Attorney-General gives the nominated person or patentee:
      (i) a copy of the instrument of approval; and
      (ii) a copy of the statement of reasons for approving the exploitation.

Note: Section 25D of the Acts Interpretation Act 1901 sets out rules about the content of a statement of reasons.

(6) In this section:

services:
   (a) in relation to the exploitation of an invention by or for the Commonwealth, includes:
      (i) a service that is primarily provided or funded by the Commonwealth; or
      (ii) a service that is primarily provided or funded by the Commonwealth and one or more of the States; or
      (iii) research that is primarily funded by the Commonwealth; or
      (iv) research that is primarily funded by the Commonwealth and one or more of the States; and
   (b) in relation to the exploitation of an invention by or for a State, includes:
      (i) a service that is primarily provided or funded by the State; or
      (ii) a service that is primarily provided or funded by the State and one or more of the other States or the Commonwealth; or
      (iii) research that is primarily funded by the State; or
      (iv) research that is primarily funded by the State and one or more of the other States or the Commonwealth.
3 Schedule 1

Insert:

services has the meaning given by subsection 163(6).

4 Application

The amendments made by this Schedule apply in relation to the exploitation of an invention by the Commonwealth or a State that starts, or is proposed to start, on or after the day this item commences.

5 Transitional—negotiations

If, before the commencement of this Schedule, the Commonwealth or a State has tried for a period, but without success, to obtain from a nominated person or patentee, an authorisation to work an invention on reasonable terms:

(a) in the case of the Commonwealth—the Minister must take that period into account in considering whether paragraph 163(4)(a) of the amended Act is satisfied in relation to the exploration of the invention; and

(b) in the case of the State—the Attorney-General of the State must take that period into account in considering whether paragraph 163(5)(a) of the amended Act is satisfied in relation to the exploration of the invention.

[Crown use]