COMMONWEALTH OF AUSTRALIA

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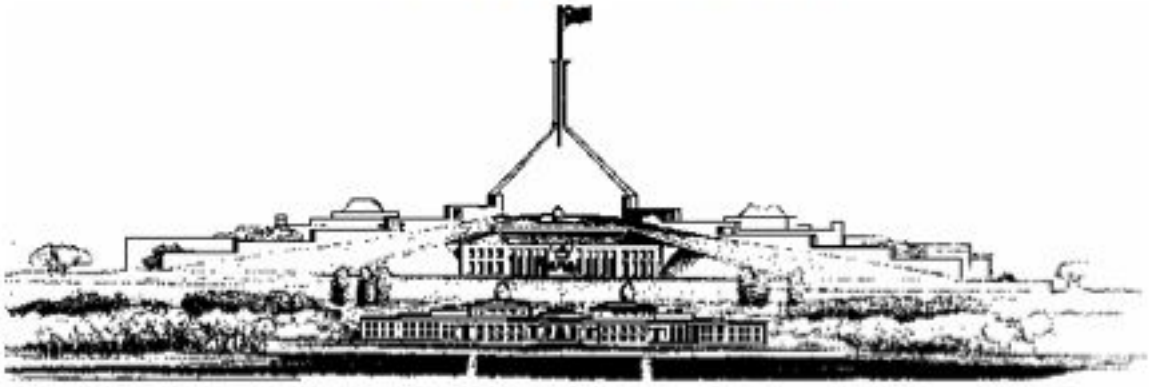

HOUSE OF REPRESENTATIVES

BILLS

Intellectual Property Laws Amendment Bill 2014

Second Reading

SPEECH

Thursday, 25 September 2014

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date	Thursday, 25 September 2014	**Source**	House
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Questioner		**Responder**	
Speaker	Zappia, Tony, MP	**Question No.**	

Mr ZAPPIA (Makin) (12:22): The Intellectual Property Laws Amendment Bill 2014 is similar to the Intellectual Property Laws Amendment Bill that had been introduced by Labor in May 2013. Labor support this bill because it contains a number of important measures which we first sought to progress in Labor's IP Laws Amendment Bill 2013 and which I will refer to in my remarks.

The patent system underpins our intellectual property system and, by extension, Australia's innovation system. The key to an intellectual property system is striking the right balance between encouraging innovation while ensuring people have access to new technologies. The patent system is particularly important for encouraging innovation in the biotech and pharmaceutical sectors because of the high costs and risks associated with developing new medicines. Without adequate patent protection, many new products would never make it through the development and commercialisation phase and would therefore never reach consumers.

A well-balanced IP system advances the interests of Australian innovators by lowering business costs and by making it easier to access export markets. But it also allows Australia to provide assistance to developing countries when it is needed most. When Labor were in government, we introduced the IP Laws Amendment Bill 2013, which contained a suite of measures to make the Australian IP system more responsive to the needs of consumers, more efficient for entrepreneurs and more supportive of other countries facing health emergencies. The primary purpose of Labor's bill was to clarify the scope of Crown use and its operation, particularly in the context of health care, and to implement the Trade-Related Aspects of Intellectual Property Agreement—otherwise known as the TRIPs protocol.

After scrutiny with various House of Representatives and Senate committees, Labor's bill reached the Senate in June 2013; however, it lapsed with the commencement of the 44th Parliament in November 2013. This bill amends the Patents Act 1990, the Trade Marks Act 1995, the Designs Act 2003 and the Plant Breeder's Rights Act 1994. The main purpose of this bill is to implement the TRIPs protocol, which would enable manufacturers of generic pharmaceuticals to apply to the Federal Court for a compulsory license to make and export a patented pharmaceutical product to address health crises in developing countries. Countries that implement the TRIPs protocol are able to export patented medicines under compulsory license to countries in need.

The TRIPs protocol is a World Trade Organisation agreement drafted in 2005 that sets out the minimum requirements for intellectual property protection for WTO member states. Australia has been a signatory to the TRIPs Agreement since September 2007, but has yet to implement these provisions via legislation. According to the World Health Organisation there are more than 100 countries currently experiencing one or more serious epidemics. In 2011 an estimated 262 million people were infected with malaria, HIV-AIDS or tuberculosis, causing 3.8 million deaths. Many of the countries suffering from such epidemics are developing countries that do not have the capacity to manufacture or distribute the necessary medicines. We are seeing this right now with the Ebola epidemic in West Africa.

The WTO has tried to address this situation through the TRIPs Agreement, which enables a country that is experiencing a serious epidemic to access patented drugs. Under the TRIPs protocol, member countries with limited or no manufacturing capacity can access patented pharmaceuticals made under compulsory license in another WTO country. The TRIPs protocol aims to encourage patent owners to either provide medicines to least developed countries at affordable prices or to issue a voluntary licence to generic manufacturers to provide medicines at affordable prices. If the patent owner is unwilling to do this, the protocol provides a mechanism to force the patent owner to issue a compulsory license. Schedules 1 and 2 of this bill, like Labor's 2013 bill, will enable manufacturers of generic pharmaceuticals to apply to the Federal Court for a compulsory license to make and export a patented pharmaceutical product to address health crises in developing countries, delivering on our commitment to the WTO's TRIPs protocol. It is important that we implement a proper mechanism to ensure access to essential medicines for countries in need.

In addition to implementing Australia's commitment to the World Trade Organisation's TRIPs protocol, this bill also contains a number of important measures, which we first sought to progress in Labor's IP Laws Amendment Bill 2013. Those measures included: firstly, extending the jurisdiction of the Federal Circuit Court to include plant breeders rights; secondly, allowing for a single trans-Tasman patent attorney regime and single patent application processes for Australia and New Zealand; and, thirdly, minor administrative changes to the Patents Act, the Trade Marks Act and the Designs Act.

I will turn for a moment to plant breeder's rights. Schedule 3 of this bill amends the Plant Breeder's Rights Act to enable the owners of the plant breeder's rights to take action against alleged IP infringements in the Federal Circuit Court. The amendment will provide a quicker and more efficient means of resolving disputes about the infringement of plant breeder's rights which could previously only be dealt with in the Federal and High Courts.

With respect to the single Australian-New Zealand patent examination process, the bill also makes some changes. Schedule 4 of this bill proposes a single patent application and examination process and a single trans-Tasman patent attorney regime to support the single economic market arrangements between Australia and New Zealand. The aim of these amendments is to streamline the process for applying for patents in Australia and New Zealand, thus reducing duplication and saving costs for investors and inventors.

I now turn to the administrative matters. Schedule 5 of the bill contains a number of minor administrative matters, including removing document retention provisions in the Patents Act, the Trade Marks Act and the Designs Act so that IP Australia's retention of documents is governed only by the Archives Act. It also makes changes to minor oversights in the drafting of the Intellectual Property Laws Amendment (Raising the Bar) Act 2012 and technical corrections to drafting oversights in the Patents Act.

The major difference between Labor's 2013 bill and this bill is the deletion of schedule 1 of the 2013 bill, which modified the operation of Crown use provisions. Crown use is an important but rarely used safeguard that allows governments to access patented inventions without the owner's authorisation and can be invoked when an invention is used for the services of the Commonwealth or a state. It is an exceptional use that enables the government to use a patent for the benefit of community need without first negotiating a licence. Crown use provisions are currently enshrined in sections 163 to 170 of the Patents Act. Governments can apply Crown use provisions in a similar way to compulsory licensing; however, the Crown use provisions are a less costly and more effective option. With Crown use, patented inventions can be used without first seeking the owner's permission. The patent holder is, however, entitled to remuneration.

Crown use provisions provide a safeguard to ensure that the patents system does not prevent the government from acting in the public interest. Labor's bill would have amended the Patents Act to clarify the scope of Crown use and its operation. Schedule 1 of Labor's bill made it clear that Crown use can be exercised when an Australian state or territory government has the primary responsibility for providing or funding the provisions of a service. Labor introduced these measures in response to community concerns regarding gene patents and access to health care and to clarify the circumstances where governments could intervene to address unreasonable patent holder conduct that could result in patients being denied reasonable access to health care.

The Productivity Commission examined Crown use in its inquiry *Compulsory licensing of patents* that was released in March 2013. Their report addressed several reasons why Crown use provisions were rarely used. These issues were what schedule 1 of Labor's Intellectual Property Laws Amendment Bill 2013 sought to address, specifically in response to community concerns on the issue of gene patents and health care. While the bill currently before the parliament does not include Labor's measures around Crown use, it does contain other important changes which are indeed long overdue. However, we note the removal of Crown use provisions and call on the government to continue monitoring the situation with gene patents and access to health care very closely.

I now turn to Crown use and gene patents. In recent years there has been growing debate over gene patents and their impact on research and access to health care. In government, Labor took this issue very seriously and implemented a number of measures to address community concerns around gene patents, including multiple reviews and long-running consultation processes, while still maintaining a strong patents system that encourages innovation. In Australia there have been three substantial government reviews of gene patents in the past decade and several inquiries have been conducted into the impact of gene patents on access to health care—namely, the 2004 Australian Law Reform Commission report on genes and ingenuity, the 2010 Senate Community Affairs

References Committee report on gene patents and the 2011 Senate Constitutional and Legal Affairs Legislation Committee report on the Patent Amendment (Human Genes and Biological Materials) Bill 2010.

The 2004 Australian Law Reform Commission review made a number of recommendations, including amendments to the Patents Act, that specify healthcare services or products as a rationale for invoking Crown use provisions. The report noted that, while Crown use provisions are rarely used, they constitute an important mechanism in helping to ensure that patent protection does not adversely affect significant public interest. The Australian Law Reform Commission did not recommend amending the Patents Act to exclude genetic materials or technologies from patentability.

As I said at the outset, this legislation effectively implements legislation that was introduced in this place just over a year ago by the previous Labor government. There are some minor differences but, notwithstanding those differences, we believe these measures are long overdue. Labor will be supporting this bill.