



Consumers
Health Forum
of Australia

24 February 2011

Ms Julie Dennett
Committee Secretary
Senate Legal and Constitutional Committees
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Ms Dennett

Submission to the Senate Legal and Constitutional Affairs Committee inquiry on the Patent Amendment (Human Genes and Biological Materials) Bill 2010

The Consumers Health Forum of Australia (CHF) welcomes the opportunity to provide a submission to Legal and Constitutional Affairs Committee inquiry on the *Patent Amendment (Human Genes and Biological Materials) Bill 2010* (the Bill), introduced to the Senate on 24 November 2010. The aim of the Bill is to amend the Patents Act 1990 to prevent the patenting of human genes and biological materials existing in nature.

CHF is the national peak body representing the interests of Australian healthcare consumers. CHF works to achieve safe, quality, timely healthcare for all Australians, supported by accessible health information and systems..

We are unable to respond in detail to this inquiry due to the complexity of the subject matter and the need for more extensive consumer consultation. However, we have consulted briefly with some of our members on this issue. We have some serious concerns with the current Bill and consider that more consultation is required on this issue to develop appropriate legislation.

Access and equity of health services is essential for all consumers. CHF argues that Australian consumers should have access to the best and most innovative medical tests and therapies and this should not be prohibited by the patenting of genes.

We acknowledge the patenting of genes is an area that requires serious consideration, particularly in light of ongoing innovation in this area. However, we feel calls to ban the patenting of genes will not improve consumer access to services such as diagnostic tests, for example BRCA, as in that instance the test itself would still have a valid patent which could prevent consumer access.

This Bill will also not prevent patenting of therapeutic methods and non-biological products such as chemotherapy. CHF believes this Bill, in its current form, does not work towards better access for health consumers.

We are concerned this Bill is too broad and may result in unintended consequences for consumers. Removing patenting from *all* biological materials goes well beyond the legislative environment in other developed countries and could result in diminished interest in biotechnology development in Australia. Other stakeholders have suggested that the built-in safeguard provisions in current patent legislation be reviewed and strengthened instead of removing gene patenting all together. CHF would support this move if the safeguards better protect consumer needs. CHF would also support the establishment of a tribunal or ombudsman to support consumers' access to the improved safeguards.

We are aware that in the coming weeks a second Bill, the *Intellectual Property Law (Raising the Bar) Amendment Bill 2011*, will be introduced into Parliament, and we have reviewed the exposure draft of this Bill. This Bill's provisions are much more specific than the *Patent Amendment (Human Genes and Biological Materials) Bill 2010*. CHF argues that the two Bills should be considered in conjunction, and that it may be necessary to develop legislation that combines aspects of both Bills.

This issue is a very complex and contentious one. Several consumer groups have informed CHF that they do not feel able to confidently comment on this issue due to its complexity, and they have chosen not to make submissions for this reason. CHF would like to emphasise the importance of appropriate and thorough consumer consultation on this issue, with appropriate support to ensure that consumers understand the implications of changes to the legislation. Any changes to legislation may have a considerable impact on Australian health consumers and so it is essential that their input is appropriately sought and considered.

Please do not hesitate to contact me on [redacted] should you wish to discuss the content of this submission further.

Yours sincerely ,

Carol Bennett
CHIEF EXECUTIVE OFFICER