

February 23 2011

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

Dear sir / madam,

Re: Patent Amendment (Human Genes and Biological Materials) Bill 2010

Foursight Associates Pty Ltd is a leading Australian life sciences and technology consultancy firm comprising internationally recognised specialists in science and business with exceptional national and global expert networks.

With regard to the proposed amendments to the Patents Act 1990 that are the subject of the current private members Bill that was introduced to the Senate on 24 November 2010 by Senator Bill Heffernan we, the Principals and CEO of Foursight Associates, wish to make the following comments.

1. We are of the opinion that patent systems such as those currently operating in Australia have been effective in promoting innovation, entrepreneurship and disclosure of technological advances over several centuries and that these patent systems comprise a cornerstone of the innovation process that will be essential to improve quality of life of individuals and the sustainability of populations in the future.
2. We consider that Australia's membership of the World Trade Organisation is highly advantageous compared to the situation that would apply if Australia was not a member and that Australia is obliged to comply with the core trade-related treaties to which it is a signatory, including the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) that is administered by the WTO.
3. We consider that novel, inventive and useful developments in the life sciences of the form allowable under TRIPS ought to be inherently patentable in Australia without restriction of the inherent patentability of biological molecules and non-human biological organisms.
4. We believe that scientific research should be as free of constraint and affordable as is possible, save for the paramount requirements that it be conducted safely and ethically. Nevertheless, we acknowledge that the rapid advancement of the experimental sciences, including in particular the biological sciences, depends in large measure on technological advances developed and/or enhanced by commercial enterprises and made widely available by commercial processes, and that incentives for innovation such as patents have been and remain critical to the rapid development and dissemination of these enabling technologies.

5. We consider that the patent system in Australia is sufficiently robust and informed to deal effectively with complex issues regarding the appropriateness of thresholds for inventiveness in the context of the rapid evolution of biological technologies. Furthermore, we believe that it possesses the capability, should the need arise, to provide necessary and sufficient safeguards to ensure access by Australians to patented biological inventions of importance without restricting the patentability of biological materials; for example, by means of current or amended provisions for compulsory licensing or Commonwealth use.

6. We consider that the availability of patent protection in the major developed nations of the world for inventions in the life sciences, including novel and inventive biological molecules and organisms, has been essential for the development of important diagnostics, medicines and agricultural products that have generated enormous benefits for individuals, populations and environments around the world (including many developing nations). The continued availability of such patent protection is absolutely essential for organisations and individuals to invest in the expensive, complex and risky programs that will be required to develop innovative biological products in the future. Accordingly, we believe that it would be reprehensible for Australia to alter its patent legislation so as to reap the benefits of innovative biological products developed under (and because of the existence of) patent protection in other countries without allowing for the possibility of granting similar protection for these products in Australia.

We thank you for the opportunity to make this submission to the Committee.

Yours sincerely,

Professor Ian Cooke
Chief Executive Officer
Foursight Associates Pty Ltd

Communicated on behalf of, and with the express approval of, the Principals of Foursight Associates Pty Ltd: **Dr Graham Mitchell AO, Sir Gustav Nossal AC CBE, Professor David Penington AC and Dr John Stocker AO.**