

**Supplementary Submission to  
Legal and Constitutional Affairs  
Australian Senate:  
Patent Amendment (Human Genes  
and Biological Materials) Bill 2010**

1. I made submission number 21 in respect of this Bill. In paragraphs 31 and 32 of that submission I mentioned the recognition of the patentability of microorganisms by virtue of Australia's accession to the Budapest Treaty.
2. I should also have mentioned that Australia also has an obligation under article 27.3(b) of the TRIPS agreement **not** to exclude microorganisms from patentability. The relevant wording is:

*“ Members may also exclude from patentability:*

*(b) plants and animals **other than micro-organisms**, and essentially biological processes for the production of plants or animals **other than non-biological and microbiological processes.**”*

3. New clause 18(2)(b) would exclude from patentability “biological materials”. “Biological materials” are defined in new subsection 18(5) to include DNA, RNA, proteins, cells and fluids. Although microorganisms are not listed among the examples biological materials in s18(5) they are not excluded.
4. A microorganism is an organism that is too small to be seen unassisted by a microscope. It would be a very strained interpretation of the meaning of “biological materials” to suggest that it does not include microorganisms. Therefore, new clause 18(2)(b), by excluding microorganisms from patentability would be in breach of article 27.3(b) of TRIPS.

5. I acknowledge that I am making this supplementary submission well after the deadline set by the committee. But I note that other submissions have been made to clarify or expand on earlier submissions and I ask that the committee receive and consider this additional submission in that context.