

Ms Julie Dennett  
Committee Secretary  
Senate Standing Committee on Legal and Constitutional Affairs

Dear Ms Dennett

**Submission to the Senate Standing Committee on Legal and Constitutional Affairs' Inquiry into the Patent Amendment (Human Genes and Biological Materials) Bill 2010**

I commend Senators Heffernan, Coonan, Siewert and Xenophon for introducing the Patent Amendment (Human Genes and Biological Materials) Bill 2010 (the Bill), and urge the Committee to consider it favourably. In support of this end, please accept my submission to the Senate inquiry into the Bill.

The benefits to research and public health outcomes of proscribing patents on Biological Materials have been made out very ably and eloquently by Dr Lawson and Professor Kirk, whose theses will almost certainly be echoed and reinforced by other eminent clinical and subject matter experts. I do not presume to have anything to add to their analyses, and merely commend their compelling submissions to the Committee.

Further, the relevant aspects of IP law, and the historico-legal background to the Bill, have been more than adequately addressed by Senator Heffernan in his excellent Second Reading Speech, and elaborated upon by Mr Johnston in his interesting and engaging submission. I hope it will become evident to the Committee that the Bill takes a correct view of the law, and again, I will not presume to be able to add to the legal analyses offered in support of the Bill.

Instead, I wish merely to bring to the Inquiry the perspective of an interested citizen, since it is citizens, collectively, whose rights and interests should be to Parliament more important by magnitudes than those of pharmaceutical and biotech companies. I ask the honourable Senators on the Committee to forgive me for making points that may appear obvious.

That those with interests will tend to take action to protect them is, I contend, axiomatic. I am therefore confident that the Committee will not be surprised by the opposition to the Bill that will be almost certainly be expressed in any submissions it receives from pharmaceutical and biotech companies, and by such lobby groups that represent the interests of these companies.

I am further confident that the Committee will be sceptical of any direct or implicit claims by the entities behind these submissions that their opposition to the Bill is

motivated by the public interest, since protection of their profits and interests (the latter being to 'make space' for the further generating of profits) is plainly the key motivation of these entities, with any benefit to the public interest being purely incidental. (One need look no further for support of this assertion than the comparative levels of investment and trade by the immensely profitable pharmaceutical and biotech sectors in wealthy and poor nations.)

On the other hand, when the main support for the Bill, and the principles it furthers, arises from clinicians and academics whose interests extend beyond turning a profit and more broadly reflect those of the public, this should be a clear indicator to the Committee that the Bill will benefit society more generally. I will not labour this point, suffice to say that the motivations of the parties who make submissions to this Inquiry are highly relevant considerations, and I urge the Committee, in its deliberations, to give greatest weight to the interests of Australia's citizens.

Another point that may not be made in the submissions of experts, multinational companies, or powerful lobby groups is this: to the average citizen, I venture that the idea that a gene or gene sequence might be the subject of a patent – the privately held and aggressively protected intellectual property of a pharmaceutical or biotech company – is reprehensible. Our genes were not created by these companies, and nor do they belong to them. This is a powerful truth that no legal contrivance will dislodge from the mind of the people for whom Parliament governs. Relevantly, while I note IP Australia's contention in its submission to the recent Senate inquiry into gene patents that 'a patent over a gene sequence does not equate to ownership of that sequence', I would remind the Committee that this is an odd distinction which, if there be any truth to it at all, would in any case be lost on most people reading about the outcome of the current inquiry in their daily newspaper.

I wish to bring one final matter to the Committee's attention. While the current inquiry does not relate to non-human Biological Materials, it is my strong view that if human Biological Material is not a Patentable Invention for the reasons outlined in the Explanatory Memorandum and Second Reading Speech, then it is unsustainable to argue that Biological Material is a Patentable Invention simply because it is not of human origin. I therefore take this opportunity to urge the legislature to consider more comprehensive amendments to the *Patents Act 1990* to remedy this contradiction and to explicitly preclude patents from being made in respect of all Biological Material, whether human or non-human.

I extend my sincere thanks to the Committee for its consideration of my views.

Sincerely,

Chris Aitchison