

Answer to question taken on notice at hearing 3 August 2009

The question on notice is contained on Page CA36. It related to whether patent pooling arrangements could be mandated under current provisions of the Patents Act 1990 (Cth), or whether amendments to the Act would be necessary to set up such arrangements. We have reviewed the Crown Use and Compulsory Licensing provisions, and concluded that such arrangements could possibly be established under these provisions, but this is far from clear. There is real uncertainty relating to the use of these provisions, and this would be exacerbated if we sought to use them for something as novel as patent pooling. Certainly previous US experience (for example in establishing the aircraft patent pool of 1917), that specific legislation was required to be enacted by Congress. The complex nature of most mandatory patent pools probably means that detailed consideration would need to be given to the terms of their establishment, something that may not be possible under the current provisions.

I trust this assists, please do not hesitate to contact us if we can be of any further assistance.

Kind Regards,
Jane Nielsen