

Exposure Draft Intellectual Property Laws Amendment (Productivity Commission Response Part 2 and Other Measures) Bill 2018

Consultation questions

Schedule 1, Part 1 – Inventive step

Question 1:

For item 2, the amendment to subparagraph 7(2) (definition of inventive step) uses the terminology 'in comparison with' the prior art base instead of the previously proposed 'having regard to' the prior art base. This change was made for consistency with the rest of the Act, but differs from the wording used in the European Patent Convention. Are there any unforeseen consequences of using this wording?

Schedule 1, Part 2 – Object of the Act

Question 2

For item 8, does the term 'technological innovation' restrict or narrow the concept of 'innovation' to suit certain industries only? Which industries? What subject matter that is currently patentable would not be considered 'technological'?

Note that the TRIPS Agreement refers to 'technological innovation' (Article 7) and states that patents shall be available 'in all fields of technology' (Article 27).

Schedule 4 – Compulsory licenses

Question 3

For item 5, amendments to paragraph 133(5)(b), are the factors listed relevant to the dependent patent licence?

Question 4

For item 7 – this amendment would allow a cross licence to be revoked under subsection 133(6). Is this appropriate?

Question 5

For item 11, the application provisions, are there any unforeseen consequences which we have not considered?