1. **Australians can already access the Hague System**  
*Why do so few Australian businesses use the existing routes to access the Hague System?*

I believe due to lack of knowledge of this option (including within the profession). Also, very few Australian businesses that file designs have places of residence, etc. in overseas Hague countries.

2. **Australians who file abroad pay less**  
*Is our assessment of the fee savings realistic? Why or why not? Is our assessment of the red tape costs realistic? Why or why not?*

Including local (AU) and overseas attorney’s charges, typical filing costs are US ($2.5-3K); Europe - RCD ($4-5K); China ($3+K); NZ ($1.5K); Canada ($2.5-3K); and so on. The cost benefit (i.e. high cost compared to narrow scope of protection) is a deterrent for most to incur the considerable o/s expenses. If the Madrid protocol is anything to compare with, a Hague filing will be considerably cheaper than the current need to file directly via agents.

3. **Benefits for new applicants**  
*Is there any reason to doubt that the expected profit would be the same as the fee and red tape savings identified in the previous section? Why or why not? If not, what better empirically-verifiable method should be used to estimate the profit?*

Hague has the potential to avoid post-filing procedural costs, in that formality-type objections from many offshore jurisdictions can likely be reduced or eliminated. Assuming offshore registration can be achieved without requiring the intervention of an offshore agent, the fee, time and procedural savings will be significant.

4. **Additional local designs only generated by the incentive of the longer protection of the term**  
*Is there any other reliable empirical evidence that a longer term would incentivise additional design innovation? As we have been unable to quantify this impact, do you have any other comments of a qualitative nature that should be considered?*

I can only provide an anecdote. The profession would be able to sell the benefits of a longer design term to businesses. Also, local AU clients often ask why the AU term is so short in comparison to overseas jurisdictions. But, moving from 10 to 15 years, in and of itself, is unlikely to incentivise more design filings by local designers. However, the ability to participate in Hague will almost certainly incentivise more AU design filings by AU companies. This has happened with Madrid.

5. **Benefits to Australia IP professionals**  
*Is the assumption that non-residents filing through Hague would only engage an Australian IP professional if they ran into problems in Australia realistic? Why or why not? Is our assessment of the additional fees that Australian IP professionals would receive realistic? Why or why not?*

With AU joining Hague, AU IP professionals will definitely lose out on designs filings revenue. For some firms, this lost revenue will not be insignificant. Also, it is not clear whether there will be any compensating revenue for AU firms in being appointed to handle Hague applications for filing formalities objections if/when taken, and/or in dealing with substantive examination objections (whether or not examination remains optional). The benefit of AU joining Hague will be realised by AU individuals and organisations, and this may lead to increased work for AU IP professionals, but I expect this will be unlikely to compensate for the lost filing revenue for a number of frims.

6. **Additional international benefits**  
*As we have been unable to quantify this impact, do you have any other comments of a qualitative nature that should be considered?*

Australian joining Hague means, once again, Australia playing its part in international IP forums/agreements – i.e. governmental and professional body benefits. Also, it may give rise to increased interest in o/s companies performing some of their design work in Australia.
7. **Australian consumers will pay more to foreign designers** Are our assumptions about the costs that Australians would pay to non-resident designers realistic? Why or why not? If not, what better empirically-verifiable method should be used to estimate the profit that would flow overseas to non-resident designers?

Design rights are far less “monopolistic” than patents. Design rights are, in most cases, easy to avoid. Local designers can in most cases make design changes to avoid design infringement without compromising functionality. If overseas companies are selling product into Australia, they will still secure design rights for key products in Australia, whether or not Australia is a member of Hague. In other words, for those companies that are most likely to take action for design infringement, they would have been taking action already. So, for overseas companies, whether or not AU is a member of Hague will be less of a determinative factor as to the commercial significance of the AU market.

Whilst almost certainly there will be increased filings into Australia, many of these will be speculative, and I expect unlikely to be enforced unless there is an actual and growing market for the product in Australia that can be attributed to the design.

Also, a minuscule amount of design litigation has occurred in Australia. It’s hard to see this increasing to any significant extent if AU joins Hague. Usually, design litigation accompanies patent litigation, with the main monopoly enforced being the patent rights, rather than the design rights. Enforcement solely of designs rights is comparatively rare.

8. **Social welfare impacts of the extended maximum protection term of designs in Australia** Are there any other reliable ways to quantify social welfare loss? As we have been unable to quantify this impact, do you have any other comments of a qualitative nature that should be considered?

I very much doubt any adverse social welfare impacts, given the considerably lesser scope of design rights. But, in any case, this could easily be dealt with by requiring a much higher renewal fee (e.g. for the 3rd five-year term) and/or by requiring substantive examination to be undertaken as part of applying for the 3rd five-year term.

9. **Australian designers will have to avoid more international registered design rights in AU** Are there any other reliable ways to quantify the costs of avoiding more design rights? If so, what evidence or methodology would enable this? As we have been unable to quantify this impact, do you have any other comments of a qualitative nature that should be considered?

There will be more design rights to consider when assessing freedom to operate, but freedom to operate advice in relation to designs is far more straight-forward than with patents. Having more overseas designs on the AU Designs Register may also be of some benefit, where the AU designer is looking to exploit overseas, as the AU Designs Register will provide an early indication of potential offshore rights to avoid.

10. **IP professionals will undertake costs to prepare for Hague** Is our assessment of the one-off preparation costs for IP professionals realistic? Why or why not?

If a comparison with the implementation of the Designs Act is anything to go by, I would say one-off costs would likely include one experienced professional spending up to 2 full working weeks getting across the changes – systems and process-wise, along with associated IT and programming costs. Allow around $25-$50K/firm.