Mr. Brett Massey  
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By email: consultation@ipaustralia.gov.au

Dear Mr. Massey,

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

The Law Institute of Victoria (‘LIV’) is grateful for the opportunity to provide comments on the Exposure Draft of the Intellectual Property Laws Amendment (Productivity Commission Response Part 2 and Other Measures) Bill 2018 released by IP Australia (‘Draft Bill Part 2’).

Introduction - LIV submission process

The LIV is Victoria's peak body for lawyers and represents more than 19,500 people working and studying in the legal sector in Victoria, interstate and overseas. This submission has been informed by contributions from experienced practitioners on the LIV's Intellectual Property & Information Technology Law Committee (‘the Committee’).

Background

The LIV wishes to draw IP Australia's attention to its previous submissions on:


This submission considered the introduced amendments and addressed each of the amendments in turn. Where appropriate, the submission responded directly to specific Consultation Questions in the draft explanatory memorandum.

- IP Australia Consultation on Proposed Objects Clause in the Patents Act 1990 (Attachment B).

This submission expressed LIV’s general support for IP Australia's decision to adopt Option B out of the two options originally proposed in Paper 2: Introduce an objects clause into the Patents Act 1990 (Cth) (‘Patents Act’).
Exposure Draft of the Intellectual Property Laws Amendment (Productivity Commission Response Part 2 and Other Measures) Bill 2018

Consultation 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?

The LIV submits that there is generally no perceived significant practical effect of the difference between ‘in comparison with’ and ‘having regard to’. The main difference is that ‘in comparison with’ indicates a direct comparison with the prior art base is required whereas ‘having regard to’ is a slightly broader terminology and may allow for other considerations rather than just a comparison.

Consultation 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’?

Consistent with the LIV prior submission (Attachment B), the LIV considers that introducing a requirement of ‘technological’ to qualify ‘innovation’ is likely to narrow the patent eligibility threshold, that is, it may exclude certain subject matter from being patentable. For example, IP Australia is currently applying a conservative interpretation of the Federal Court decision in Commissioner of Patents v RPL Central\(^1\) to exclude a range of software inventions from patentability on the basis that they are simply not sufficiently technological and relate more to schemes or plans.

The term 'technological innovation' was introduced in the Agreement on Trade-Related Aspects of Intellectual Property Rights (‘TRIPS’) to satisfy the then-current European jurisprudence which was imposed on Europe by a decision in 1977 to exclude, in Article 52 of the European Patent Convention (‘EPC’), certain subject matter including ‘programs for computers’.\(^2\) The LIV submits this led to a series of European Patent Office (‘EPO’) and Court decisions in Europe. The EPO approach taken has been to read down the 1977 exclusions, sometimes resulting in inconsistency and contradictions.

In October 2008 the President of the EPO asked the EPO Enlarged Board of Appeal to consider a set of questions concerning the patentability of programs for computers. The LIV notes this is the subject of

\(^1\) [2015] FCAFC 177.

a May 2010 Opinion (G 0003/08) of the Enlarged Board which justifies the EPO approach, and highlights the difficulties associated with a statutory exclusion from patentability for computer programs. The LIV suggests this Opinion be considered carefully before following the EPO approach, including introducing “technological” to amend “innovation” in relation to patentability under Australian law.

The LIV also highlights the reservations expressed by some Australian Courts against introducing wording that limits patent eligibility:

National Research Development Corporation v Commissioner of Patents (‘NRDC’), 4 High Court of Australia, Dixon CJ, Kitto and Windeyer JJ:

“The purpose of s. 6, it must be remembered, was to allow the use of the prerogative to encourage national development in a field which already, in 1623, was seen to be excitingly unpredictable. To attempt to place upon the idea the fetters of an exact verbal formula could never have been sound. It would be unsound to the point of folly to attempt to do so now.” (Emphasis added).

Grant v Commissioner of Patents, 5 Full Court of the Federal Court of Australia:

“One thing that stands out from NRDC is the emphasis that their Honours put on the unpredictability of the advances of human ingenuity. What is or is not to be described as science or technology may present difficult questions now, let alone in a future which is as excitingly unpredictable now as it was in 1623 or 1959, if not more so. We think that to erect a requirement that an alleged invention be within the area of science and technology would be to risk the very kind of rigidity which the High Court warned against.” (Emphasis added).

The LIV notes the High Court in D’Arcy v Myriad Genetics Inc 6 also followed this important principle.

The LIV submits that the term ‘technological’ as a qualification to ‘innovation’ in the Objects clause should not be introduced.

Consultation Question 3

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

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4 (1959) 102 CLR 252, [15].

5 [2006] FCAFC 120, [38].

6 [2015] HCA 35.
The LIV submits the factors listed in the proposed amendment should be considered in the same manner as those which relate to the licence to exploit the dependent patent (same as in relation to the original patent). These are the right of the patentee to obtain a return on investment having regard to the risk of the invention, and the public interest in the efficient exploitation of the invention.

Consultation Question 4

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

The LIV submits that the cross licence is granted to address the potentially inequitable situation of a compulsory licence allowing the patentee of a dependent patent to exploit the dependent patent, which necessarily includes an exploitation of the original patent, but without a corresponding right being immediately granted to the patentee of the original patent. Not revoking the cross licence if and when the compulsory licence is revoked would create a potentially inequitable situation, similar to the one that the cross licence is intended to address in the first place. Allowing for the cross licence to be revoked under such circumstances complements the amendments limiting the application for a compulsory licence for an original patent to the owner of the dependent patent, with a cross licence in favour of the patentee of the original patent. In the LIV's view, this is appropriate.

Consultation Question 5

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

The LIV is unable to identify whether there are any unforeseen consequences which have not been considered.

Other relevant considerations

Schedule 2 Crown use of patents and Schedule 3 Crown use of designs

The LIV submits the Draft Bill Part 2 appears to adopt the preferred options supported by the LIV in its past submissions (Attachment A and B). Generally, the proposed amendments are positive in that they clarify the circumstances in which the Crown use provisions can be invoked.

The LIV submits that it would be desirable for the legislation to be clear that if the Crown use provisions are invoked, the patent owner is entitled to remuneration. The LIV acknowledges that whilst s165 sets out the basis for determining any remuneration, it is not clearly stated that a patentee is in fact entitled to remuneration.⁷

Schedules 5, 6, and 7

⁷ Patents Act 1990 (Cth).
The LIV considers Schedule 5 aligns the seal provisions of the *Patents Act* 1990 (Cth) and *Trade Marks Act* 1995 (Cth) with the *Designs Act* 2003 (Cth) by allowing for the impression of the seal to be electronic.\(^8\) Further, the LIV considers Schedule 6 corrects an oversight in the Raising the Bar amendments so that an "omnibus" claim cannot be made at any stage of the patent process, not just at the initial examination stage.\(^9\) In addition, the LIV considers Schedule 7 aligns the provisions of the *Patents Act* regarding documents open to public inspection with the Patent Co-operation Treaty Regulations, by allowing the Commissioner to redact documents that contain sensitive information, rather than having to exclude the whole document from public inspection.

**Further consultation and contact**

The LIV would be pleased to discuss this submission with you in greater detail. Please contact Angela Gidley-Curtin, LIV Senior Lawyer and Sections Counsel, on (03) 9607 9409 or at agidleycurtin@liv.asn.au to arrange a time to meet together with representatives of the Committee.

Sincerely yours,

Belinda Wilson

**President**

**Law Institute of Victoria**

*Encl.*

\(^8\) 1995 (Cth); 2003 (Cth).

\(^9\) See *Intellectual Property Laws Amendment (Raising the Bar) Act* 2012 (Cth).
Dear Mr. Massey,


The Law Institute of Victoria (‘LIV’) is grateful for the opportunity to provide comments on Draft Legislation: Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Bill and Regulations released by IP Australia (the ‘Draft Bill’ and ‘Draft Regulations’ respectively; together, the ‘Draft Legislation’).

Introduction – LIV submission process

The LIV is Victoria’s peak body for lawyers and represents more than 19,500 people working and studying in the legal sector in Victoria, interstate and overseas. The LIV has a long history of contributing to, shaping and developing effective state and federal legislation, and has undertaken extensive advocacy and education of the public and of lawyers on various law reform and policy issues. The LIV also assures the standards and professionalism of lawyers, including accreditation and specialisation in contemporary legal disciplines.

This submission has been informed by contributions from experienced practitioners on the LIV’s Intellectual Property & Information Technology Committee (‘the Committee’).

The LIV has not had an opportunity to consider the Law Council of Australia’s (‘LCA’) final submission on the Draft Legislation. As a constituent body of the LCA, however, this submission is to be taken as an endorsement of the LCA submission insofar as the two submissions are consistent or where the LIV has not made comment.

Background

The LIV has contributed a number of submissions in response to the Productivity Commission’s Review of IP Arrangements in Australia (‘PC Review’), as well as in response to consultations on the implementation of recommendations arising from the Review.

In particular, the LIV wishes to draw IP Australia’s attention to its previous submissions (including attachments, if any) on:

- the Draft Legislation: Intellectual Property Laws Amendment Bill and Regulation, dated 17 February 2017 (Attachment A); and
- IP Australia’s Public Consultation on Several IP Matters, dated 17 November 2017 (Attachment B).
These submissions considered the relevant proposals both in terms of their effect on IP practice, and broader impact on the industry and economy.

The LIV notes that the Draft Legislation will introduce amendments to:

1. commence the abolition of the innovation patent system (‘PC recommendation 8.1’);
2. repeal s 76A of the Patents Act 1990 (Cth) (‘Patents Act’), which requires patentees to provide certain data relating to pharmaceutical patents with an extended term (‘PC recommendation 10.1’).
3. reduce the grace period for filing non-use applications under the Trade Marks Act 1995 (Cth) (‘Trade Marks Act’) (‘PC recommendation 12.1(a)’);
4. clarify the circumstances in which the parallel importation of trade marked goods does not infringe a registered trade mark (‘PC recommendation 12.1(c)’); and
5. expand the scope of essentially derived variety (‘EDV’) declarations in the Plant Breeder’s Rights Act 1994 (Cth) (‘PBR Act’) (‘PC recommendation 13.1’);

The submissions below address each of the above amendments in turn. Where appropriate, the submissions respond directly to specific Consultation Questions in the draft explanatory materials, for ease of reference.

Submissions

1. PC recommendation 8.1 – Abolition of the innovation patent system

The LIV notes that the Draft Legislation will abolish the innovation patent system, in accordance with PC recommendation 8.1. As this has already been agreed to by the Government, the LIV does not propose to make any submissions on the merits of this abolition.

We have reviewed the proposed drafting and do not consider that there will be any unintended consequences.

2. PC recommendation 10.1 – Repeal of s 76A of the Patents Act

The LIV welcomes the proposed repeal of s 76A of the Patents Act, which imposes an additional notification requirement for extensions of term for pharmaceutical patents.

The repeal of s 76A would reduce the regulatory burden on patent owners under circumstances where the relevant data can be obtained from other available sources. We consider that a forward-looking approach articulating the intended use of any data that patentees must provide is efficient and appropriate.

3. PC recommendation 12.1(a) – Reduction of the grace period for filing non-use applications under the Trade Marks Act

The LIV considers that the Draft Legislation implements the PC recommendation as intended. However, it provides the following general comments:

- It is presumed that applications filed before the Draft Legislation is enacted will be subject to the existing s 93(2) (not vulnerable to non-use until five years from filing date). If this is the case, the commentary for Item 40 in the draft explanatory memorandum to the Draft Bill should be amended as follows:

  ‘This item provides that the amendments in item 39 apply to trade mark applications with a filing date on or after the commencement of this Part. Accordingly, the new time period in subsection 93(2) applies only to trade marks where the application for the registration of the trade mark has a filing date on or after the date item 39 commences. A non-use application made in relation to a trade mark which has a filing date that is earlier than the commencement date of this Part will be subject to the previous s 93(2) and therefore cannot be made within five years from that filing date.’

The LIV submits that the proposals may give rise to a potential unintended consequence where, unless the proposed reduction of examination timeframes and abolition of extension requests is introduced, applicants can seek multiple extensions of an acceptance deadline to defer registration of a trade mark, until there is use, to avoid the registration being vulnerable to cancellation for non-use.

4. PC recommendation 12.1(c) – Clarification of circumstances in which parallel importation of trade marked goods does not infringe a registered trade mark

The LIV has not sought to respond directly to Consultations Questions 1 and 2. However, we provide the following general comments regarding potential unintended consequences and drafting issues in the Draft Legislation:

- **Implied consent**

  S 97A of the Trade Marks Act 2002 (NZ), which was introduced to address the exhaustion of rights of registered trade mark owners, refers to ‘express or implied’ consent of the trade mark owner. That language is not mirrored in the Draft Bill, which only refers to ‘consent’. Therefore, it is unclear as to whether the Draft Bill contemplates implied consent as a defence under the proposed s 122A.

  For example, in *Lonsdale Australia Limited v Paul’s Retail Pty Ltd* [2012] FCA 584, the respondent (‘Paul’s’) argued that the applicant (‘Lonsdale’) granted consent to the parallel importation activities conducted by Paul’s. This was on the basis that Lonsdale did not take action against its foreign licensee, Punch, for not taking steps to prevent its customers from on-selling goods that Punch had marked with the Lonsdale trade mark outside of Punch’s licensed territory. This argument was unsuccessful in the first instance, and ultimately unsuccessful on appeal.

  It is not clear whether the proposed protections under s 122A would extend to a parallel importer where the consent they are relying on is implied (by conduct, omission or otherwise).

- **Associated or connected entities**

  In its 2014 submission, titled *Parallel Importing of Trade Marked Goods*, to the Competition Policy Review, the Advisory Council on Intellectual Property (‘ACIP’) proposed that the term ‘connected entity’ in s 64B of the Corporations Act 2001 (Cth) (‘Corporations Act’) be adopted, rather than the term ‘associated entity’ in s 50AAA of the Act. Connected entity is a broader concept, which includes natural persons, partnerships and bodies corporate, whereas an associated entity must be a corporation.

  Further, even in respect of bodies corporate, connected entity is broader than an associated entity. For example, a connected entity that is a body corporate only needs to have material influence over the body’s activities or internal affairs. In comparison, an associated entity must not only have significant influence, but also a qualifying investment in an entity, and its interest must be material. Which term is used depends on how broadly the defence in s 122A is intended to extend.

  The onus of proof remains on the parallel importer to establish that it was reasonable for them to assume the trade mark had been applied with consent of one of the persons in s 122A(c). By contrast, ACIP’s submissions proposed that the onus should be on the complainant to prove that they did not consent. This is because parallel importers may not have, and have no feasible way of obtaining, the information necessary to satisfy the onus of proof. This reasoning remains applicable, despite the Draft Legislation requiring the parallel importer to establish that it was reasonable for them to assume that a trade mark was applied with the consent of the relevant person, rather than proof of actual consent.

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2 *Lonsdale Australia Limited v Paul’s Retail Pty Ltd* [2012] FCA 584.

5. PC recommendation 13.1 – Expansion of the scope of EDV declarations in the PBR Act

Consultation Question 3

Part 12 of Schedule 2 provides for a PBR exclusive licensee to bring infringement proceedings. Should an exclusive licensee of the PBR grantee also be able to make an application for a declaration?

The LIV agrees with the amendment to give the exclusive licensee the right to bring an action for infringement of a PBR, aligning the PBR Act with, for example, the Patents Act in this respect.

Given the similarity between the objectives of the two acts – broadly, to incentivise innovation by protecting a rightsholder’s ability to profit from their inventions or plant varieties – and the established use and workability of a similar provision for exclusive licensees of patents, it would be appropriate to extend this right to exclusive licensees of PBRs.

An application for a declaration that a plant variety is an EDV, with the resulting extension of the PBR to include the EDV, is an important means to protect the interests of the rightsholder, in addition to bringing infringement proceedings.

The reasoning that an exclusive licensee may want to enforce the rights that they have licensed even where this is not in the interest of the PBR grantee (as set out, for example, in Part 12 of the Explanatory Memorandum) is similarly applicable to the right to seek a declaration that a variety is an EDV. If strengthening the ability of exclusive licensees to enforce their licensed rights is desired, this right should be included.

An unintended consequence may arise in relation to the exclusive licensee, as contemplated by question 6. If a declaration for an EDV is made, ‘the right granted in the initial variety extends, with effect from the date of the declaration, to that other plant variety’⁴. This means the right to the EDV accrues to the grantee of the PBR for the initial variety.

If an exclusive licensing agreement exists between the grantee and a license holder, it may or may not contemplate the possibility of declarations for EDVs being subsequently made in addition to the initial variety subject of the license, depending on how the scope of the license is drafted. Prior to any EDV declaration being made, such a license excluding rights in subsequent EDVs would be exclusive, as any future EDV rights are merely a contingency.

After a declaration of an EDV is made, and the PBR right expands to encompass the right in the EDV, the licensee may no longer be considered an exclusive licensee in relation to the PBR that now encompasses both rights in the initial variety and the new variety (LIV’s response to Question 7 contains further details about the meaning of exclusive licensee). This is because the question of whether a licensee is considered an exclusive licensee must be answered by reference to the contractual arrangements granting the license, not by reference to the statutory rights held by the grantee.

For the licensee, this may mean losing enforcement rights such as the right to bring an infringement action, or to seek a declaration for a subsequent EDV.

This consequence of an EDV declaration would not have arisen previously because the exclusive licensee lacked the right to bring infringement proceedings, or to seek an EDV declaration.

Consultation Question 4

Is it appropriate for the second variety to meet all the ordinary criteria for registration in subsection 43(1)? If there are reasons why a particular criterion is not appropriate to include, please provide reasons. For example, is the requirement in s 43(1)(e) an unreasonable requirement to impose on the applicant for a declaration when they may not be aware of previous sales by the second breeder?

The criteria under s 43(1) should apply but with the requirement under s 43(1)(e) PBR Act modified to exclude prior use other than recent use in relation to the priority date of the initial variety. Such a requirement would support the objective of EDV declaration as protecting the rights of the grantee of the initial PBR.

⁴ Plant Breeder’s Rights Act 1994 (Cth) s 12.
Consultation Question 5

Does the commercial-in-confidence test strike the right balance between protecting the privacy of parties and ensuring that all information relevant to the decision is available to all interested parties?

The LIV considers that it does, and suggest that applicants should be required to clearly indicate which parts of their applications they consider to be commercial-in-confidence.

Consultation Question 6

Is it appropriate for the applicant for a declaration to pay all costs associated with the test growing, or is another arrangement more appropriate? For example, should the second breeder instead pay those costs?

If it were required that the second breeder would pay the costs of the test growing, there might be a higher risk that a first breeder would bring an application for an EDV declaration in relation to a competitor exploiting a competing variety, even if there is no reasonable basis to consider the variety to be essentially derived. However, it could be considered if an award of such costs from the breeder of the EDV could be made where an application leads to an EDV declaration being made, taking a ‘loser pays’ approach.

Consultation Question 7

Is the definition of exclusive licensee appropriate? Would it be interpreted as requiring an assignment or a transmission to the licensee?

In view of the close and intentional alignment between the PBR Act and Patents Act, any interpretation of the intended provision defining exclusive licensee would be informed by the extensive case law around the analogous provision in the Patents Act.\(^5\)

Whether a party is relevantly considered to be an exclusive licensee is a matter of fact and degree under the circumstances, particularly the details of the licensing agreement between the licensee and the grantee, indicating whether the grantee has retained any of the exclusive rights afforded to the patent owner.\(^6\) An interest as licensee of a patent must also be relevantly registered.\(^7\)

Overall, it appears likely that the proposed definition of exclusive licensee to amend the PBR Act would be enlivened by an exclusive licensing agreement that meets the common law requirements as developed in relation to exclusive patent licensees.

Further consultation and contact

The LIV would be pleased to discuss this submission with you in greater detail. Please contact Barton Wu, LIV Commercial Law Section lawyer, on (03) 9607 9357 or at bwu@liv.asn.au, to arrange a time to meet together with representatives of the Committee.

Yours faithfully,


Belinda Wilson
President
Law Institute of Victoria

Encl.

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\(^5\) Patents Act 1990 (Cth) sch 1 (definition of ‘exclusive licensee’).

\(^6\) See, eg, Actavis Pty Ltd v Orion Corporation [2016] FCAFC 121; see also LexisNexis, Patents, Trade Marks and Related Rights (at Service 197) [18.105].

\(^7\) See, eg, Patents Act 1990 (Cth) s 187; Patents Regulations 1991 (Cth) reg 19.1.
16 March 2018

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Dear Mr. Gardner,

IP Australia Consultation on Proposed Objects Clause in the *Patents Act 1990*

The Law Institute of Victoria (LIV) welcomes the opportunity to provide further input regarding IP Australia’s proposed wording for the objects clause to be inserted into the *Patents Act 1990* (*Patents Act*).

The LIV is grateful to IP Australia for providing, for its consideration, proposed drafting instructions, as well as a summary of the consultation outcomes and reasoning behind the proposed changes. The LIV respects the confidential nature of these documents and, accordingly, have circulated them to a limited number of members of its Intellectual Property & Information Technology Committee. These were also the members who originally provided input on Paper 2: Introduce an objects clause into the *Patents Act 1990 (Paper 2)* of IP Australia’s Consultation on Several IP Matters in 2017.

Proposed wording

The LIV supports IP Australia’s decision to, broadly, adopt Option B out of the two options originally proposed in Paper 2. Consistent with the LIV’s original submission, we consider that Option B is better aligned with the international nature of patent law.¹

It is noted that the only modification to Option B now proposed by IP Australia is the addition of the underlined words below:

> ‘The purpose of this Act is to provide a patent system in Australia that enhances the wellbeing of society by promoting economic wellbeing through technological innovation and the transfer and dissemination of technology. In so doing, the patent system should over time balance the interests of producers, owners, users of technology, and the public.’

The matter of introducing an objects clause into the Patents Act was also addressed in IP Australia’s paper: ‘Patentable Subject Matter – Consultation on an objects clause and an exclusion from patentability’,² and the Productivity Commission’s Draft Report on *Intellectual Property Arrangements Key Points and Recommendations*.³ The relevant LIV submissions are enclosed.

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¹ Law Institute of Victoria, Submission to IP Australia, *Consultation on Several IP Matters*, 17 November 2017, 13.
² IP Australia, ‘Patentable Subject Matter – Consultation on an Objects Clause and an Exclusion from Patentability’ (Consultation Paper, July 2013).
In both instances, the LIV supported objects clauses that did not include the words ‘economic wellbeing’ and ‘technological innovation’. The LIV’s concerns with regards to the proposed inclusion of those words in Option B are provided below.

**Economic wellbeing**

The LIV did not previously express concerns with the phrase ‘wellbeing of society’ but notes that submissions from other stakeholders raised concerns which prompted the proposed addition of ‘economic wellbeing’.

The LIV does not consider that the additional words substantially add to the previous wording for Option B. In fact, it is contemplated that introducing an additional economic dimension will likely invite further scrutiny as to its intended meaning.

Economic wellbeing is a broad, multidimensional concept. The words ‘economic wellbeing’ by themselves do not necessarily qualify ‘wellbeing’, nor do they provide any additional guidance as to how the patent system would balance the interests of ‘producers, owners, users…and the public’.

**Technological innovation**

The LIV acknowledges IP Australia’s position that it is necessary to include the term ‘technological innovation’ rather than simply ‘innovation’ as it incorporates the Productivity Commission’s recommendations on the inclusion of an objects clause (which was accepted by Government).

However, while the LIV did not previously provide any comments on the inclusion of ‘technological innovation’ in the wording for Option B, after further consideration, it now submits that the additional technological dimension will likely narrow the patent eligibility threshold. It is noted that the High Court of Australia in the NRDC case⁴ warned against fettering the development of the patent system by putting such constraints on eligible subject-matter.

**Conclusion**

Notwithstanding the above comments, the LIV maintains its preference for Option B even if IP Australia decides it is necessary to include the phrases ‘economic wellbeing and ‘technological innovation’ in the objects clause.

**Contact details**

Should you have any queries on the issues raised, please contact Barton Wu, LIV Commercial Law Section Lawyer, at bwu@liv.asn.au.

Yours faithfully,

Belinda Wilson  
President  
Law Institute of Victoria

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⁴ National Research Development Corporation v Commissioner of Patents (1959) 102 CLR 252.