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Bill to ban gene patents introduced to Lower House

Legal briefing | Tuesday, February 22, 2011

Echoing momentum in federal Senate, a private members' bill to introduce a ban on the patenting of biological materials has been introduced to the House of Representatives by four sponsors, including independent member Rob Oakeshott and former Liberal party leader Malcolm Turnbull.

The committee will report to Federal Parliament by December this year.

The house Patent Amendment (Human Genes and Biological Materials) Bill 2010 was introduced by Liberal member for Dickson, Queensland, Peter Dutton yesterday.

This article first appeared on AusBiotech.org under the title "Biologics ban push continues".
[Click here to view the original article.](#) »

It was read for the first time just before midday, with the second reading put down for the next sitting day, today.

Besides Oakeshott and Liberal member for Wentworth Turnbull, the private member's bill was also supported by National Party of Australia federal member for Malley John Forrest.

No Labor party MPs sponsored the bill.

The bill's content mirrors a November private members bill, already under review by a Senate committee which called for public comment by this Thursday.

Earlier today Institute of Patent and Trade Mark Attorneys of Australia spokesperson Dr Tania Obranovich argued the gene patents debate had been continually fuelled by misinformation.

In an IPTA statement the Davis Collison Cave partner argued the debate should never have been about the existence or not of patents on genes or other biological materials.

"It should have been about regulating how patent rights are exercised across all technologies."

Obranovich said the bottom line was if the Australian government wanted or needed to access a technology to meet public needs, it has powers under Crown use provisions.

"A member of the general public can apply to the courts to obtain a licence where the needs of the public are not being met and it has not been possible to negotiate a reasonable outcome with the patent owner.

"We would be better to focus on the effectiveness and accessibility of these safeguards."

AusBiotech chief executive Dr Anna Lavelle said there was no doubt the current legislation should be re-examined, particularly in relation to how a patent right is exercised.

"However, there is no compelling case to ban the patenting of biological materials."

Lavelle argued the Senate Committee Inquiry into Gene Patents, which reported in November, acknowledged this and recommended the focus should be on the proper working of these safeguards across all technologies.

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Obranovich said no one disputed that identifying the existence of a gene was not a discovery.

“The mere identification of a new gene does not produce technology and does not provide any basis for securing a patent.

“However, the act of determining its function and usefulness and achieving isolation from its natural environment produces technology that can be used for the benefit of mankind and can provide the basis for securing a patent.”

IPTA representative Obranovich expressed concern at a mistaken belief that a ban on biologics would affect patent rights over the BRCA breast cancer diagnostic.

In submissions to the Senate Legal and Constitutional Committee, IPTA and AusBiotech plan to argue the Patent Amendment (Human Genes & Biological Materials) Bill 2010 would be detrimental to Australia, a country endeavouring to retain its best and brightest, promote its intellectual talent and establish its footprint as an important biotechnology development centre.