

OPINION: Patent system supports private investment

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FRIDAY'S Senate report on gene patents has called for changes to the existing system, but not an all-encompassing prohibition, AusBiotech chief executive Dr Anna Lavelle has argued.

Delivered just a day after a private members' bill was introduced to the chamber, The Community Affairs References Committee report made 16 recommendations on gene patenting.

This included a recommendation that the Senate refer the newly introduced Patent Amendment (Human Genes and Biological Materials) Bill 2010 to a relevant Senate committee for inquiry and report.

While that bill called for a ban on the patenting of any biological material, the Senate inquiry deliberately chose not to prohibit gene patenting.



AusBiotech chief executive
Dr Anna Lavelle

"A number of considerations persuaded the committee that it would not, at this point in time, recommend that the act be amended to expressly prohibit the patenting of genes," it said in an executive summary.

On Friday, the Legal and Constitutional Affairs Legislation Committee was asked to investigate the private members' bill and report back by June 16.

Describing the community affairs committee report, AusBiotech's CEO said it called for a number of changes already supported by the industry body.

"The Senate have not called for the banning of the patenting of genes," she confirmed.

Lavelle said discussions on the patenting of biological materials were complicated and predicted the government would face disappointment on discovering that some of the folk it had trusted may not have given it the full picture.

"Our job over the next few months is to educate people and make sure that all the information was on the table, not just pieces of it," she said.

In its fourth recommendation the community affairs committee recommended the government provide a combined response to its inquiry and a 2004 gene patent report of the Australian Law Reform Commission.

That response should also address an Australian Council on Intellectual Property review of what is patentable and an IP Australia review of the nation's patent system, the inquiry's report said.

Establishing common ground

AusBiotech's chief executive said the industry body was in agreement with the Senate on a couple of things.

"We believe that amendments to the patent legislation is required, in the area of clarifying access to biological materials from bona fide researchers," she said.

In recommendation 13, the committee said the Patents Act 1990 should be

amended to include a broad research exemption.

In recommendation 16, it called on the federal government to establish a patent audit committee.

"There could be an improvement to the current safeguards that are already existing in the Patents Act," Lavelle said.

Those safeguards could be made more accessible to small biotech companies, academics and members of the community, if they feel they have a legitimate concern about a particular patent, she suggested.

"We would like to see conversations about how the safeguards can be made stronger and more accessible to people."

That solution should be technology-neutral and not just focused on genetic patents, Lavelle recommended.

Keeping a social contract

Government is not in the business of paying for the development of innovative medicines or diagnostics.

Instead, these are delivered to the community by the private sector, under a social contract with the public sector, Lavelle argues.

"The private sector is very much an important deliverer or vehicle through which new medicines and diagnostics will be delivered to the community and that is not being properly, or fully, appreciated in some of the current comment around banning of patents for all biological materials."

Some of the suggestions made could reduce private sector willingness to invest, leading to the unintended consequence of a worsening of access to medicines and tests by patients.

"What people want to see is that patients have access to new medicines, innovative medicines and tests, many of them based on genes."

What they don't want to see is that patients have a worsening position in that regard, Lavelle said.

"We will continue to have those discussions going forward and hopefully people will understand that carving out material is an inefficient way of moving and also can have serious unintended consequences."