

# Media release



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## Supporters of open letter say 'Patent Amendment Bill' misses the point

**An open letter with signatories including AusBiotech, Medicines Australia, Research Australia, the Walter and Eliza Hall Institute of Medical Research and Foursight has been addressed to members of the Australian Parliament, urging them to reject the '*Patent Amendment (Human Genes and Biological Materials) Bill 2010*' as it misses the point on patient access and research exemption.**

The letter says that should the Bill become law the signatories hold grave concerns about the unintended consequences on the access of Australians to life-changing medicines and diagnostics, on the ability of scientists to conduct medical research in this country and on the future of the Australian biotechnology and medicines industry. Instead of addressing community concerns about access to innovative medicines and diagnostic tests, the Bill puts at risk such potentially life-altering products being available in a timely manner to anyone in Australia.

The letter is signed by organisations representing research, science, patient and consumer groups, the legal community and investors: AusBiotech, Medicines Australia, Research Australia, Foursight, Walter and Eliza Hall Institute of Medical Research (WEHI), IVD Australia, Osteoporosis Australia, the Federation of Australian Scientific and Technological Societies, IBMcom, The Institute of Patent and Trade Mark Attorneys of Australia (IPTA) and GBS Venture Partners.

Australians can today be assured that the identification of a naturally-occurring biological material such as a gene is a discovery not an invention. The existing law protects this difference by requiring patent applicants to provide substantive evidence about their technology in support of its novelty, utility and inventiveness. Without reservation, supporters are in favour of the rigorous and consistent application of the patent system in this country, in relation to all technologies, to ensure the granting of high quality patents and the continued distinction between discovery and invention.

The Bill's sponsors claim that its purpose is to "advance medical and scientific research and...cure human illness and disease...by enabling free and unfettered access to biological materials." The signatories says that while the Bill is no doubt well intentioned, they challenge how it can be possible and believe that the Bill's architects have missed several fundamental points.

There is no evidence to support the notion that patents stifle research or that there is currently anything other than free and unfettered access to biological materials among the Australian research community. Nevertheless, the common practices undertaken by our researchers would definitely benefit from an explicit research use exemption being enshrined in the law. Yet free and unfettered access of clinicians and researchers to biological materials alone will never equate to more new medicines for Australians. Indeed the opposite is more likely with fewer innovative products and technologies reaching the community since the absence of patents for biological materials will be a serious disincentive for foreign and domestic private investors and others interested in commercialising innovation in Australia.

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As the Government and our hospitals are not in the business of spending the millions of dollars necessary to translate technologies from 'bench to bedside', Australia must rely on companies and financiers to take the risks and invest in the commercialisation of novel medicines and diagnostic technologies.

Far from advancing medical research, the ambiguous language of the Bill will seriously delay research progress by tying up parties in the Courts for what could amount to years of legal debate and cost to determine what can and what cannot be patented. Such uncertainty will surely be further disincentive to investors as it will drive up the costs of research. It's also possible that such uncertainty coupled with the lack of investor confidence arising from the absence of patents for biological materials in Australia could spill-over into other parts of our economy and trigger real or perceived views of the country's sovereign risk.

The Bill will not address the specific concern being expressed by the Australian public about access to diagnostic tests (eg: to the BRCA diagnostic test or to other potentially life-changing tests) because the patent for the test itself will still be allowable under the Bill. However, the interests and needs of the public can be protected via existing provisions that already exist in law. A review of these safeguards is needed followed by an effective legislative response to ensure the safeguards are readily-accessible and not cost-prohibitive if required.

If the Bill becomes law, it will discourage innovation and investment in scientific and medical R&D in this country and thereby diminish or delay access to the longed-for cures and treatments for illnesses and diseases. This Bill must be rejected lest Australians be denied the improved access to health care that originally stimulated the debate.

## ENDS

### **About AusBiotech**

AusBiotech is Australia's voice on biotechnology, and represents more than 3,000 members, encompassing medicines, medical diagnostics and devices, agriculture, alternative fuels and climate change.

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