AusBiotech’s response to the *Commercialising Business Ideas* discussion paper

To: Department of Industry, Innovation and Science  
GPO 2013  
Canberra ACT 2601  
IP.consultation@industry.gov.au

5 July 2019

From: AusBiotech Ltd  
ABN 87 006 509 726  
Level 3, 15 Queen Street  
Melbourne VIC 3000  
Telephone: +61 3 9828 1400  
Website: www.ausbiotech.org
AusBiotech is pleased to provide comments on the Commercialising Business Ideas consultation paper developed by the Department of Industry, Innovation and Science (‘the Department’). We note the consultation is being conducted to facilitate the Department’s understanding of the needs of innovative Australian Small and Medium Enterprises (SMEs) seeking to commercialise their business ideas, which is of particular interest to AusBiotech and its members.

AusBiotech is a well-connected network of over 3,000 members in the life sciences industry, which includes bio-therapeutics, medical technology (devices and diagnostics), food technology, industrial and agricultural biotechnology sectors. While AusBiotech’s members are diverse in size, approach and structure, many of its current members would meet the definition of an Australian SME or have successfully grown from relatively small beginnings.

We also note that this paper relates to consultations conducted by the Department in 2018, with the intent of seeking feedback on the findings of the 2018 consultations to help inform policies to address the issues identified during that process.

We have not attempted to provide a detailed response to each of the issues and proposals identified in the discussion paper, instead focusing on those of most relevance to our members. We have framed our response around the feedback questions, as requested in the consultation paper.

Summary

AusBiotech supports attempts to assist any Australian entity (but particularly SMEs) commercialise their business ideas. The discovery, development and commercialisation of life sciences products is contingent on building intellectual property (IP) capital (as defined in the report), appropriate use of IP protection, and being able to navigate the IP environment in Australia but more importantly also on the international stage.

We recommend prioritising activities that equip SMEs with the knowledge they need to successfully commercialise their products.

All policies should also be formulated in a way that is mindful of any unintended resourcing or regulatory burden to industry.

Response to proposal

Overarching comments

AusBiotech is supportive of the Department’s efforts to identify actions to support the needs of innovative SMEs seeking to commercialise their business ideas.

We all have a stake in ensuring Australia adopts the optimal settings for maximising innovation occurring in the life sciences industry and ensuring successful commercialisation of that innovative output. Innovations in agritech and foodtech, biotherapeutics (including stem cells and regenerative medicine) and digital health seek to treat diseases such as cancer, hepatitis C and HIV/AIDS and find ways to feed the world’s growing population, which is expected to exceed nine billion by 2050.
Australia’s life sciences industry operates in a globally competitive market that demands we create and maintain the business conditions that maximise our competitiveness.

In this context, IP (or intellectual capital as used in the report) is integral to the industry. Without it, products can be readily copied and the substantial costs accrued in developing life science products (especially relative to other industries) cannot be recovered. It is the cornerstone on which life sciences companies are created, and the fundamental means through which revenue is generated. Developing intellectual capital (like any other asset) can be expensive and time-consuming for any entity but must be done if it wishes to see its developments successfully commercialised on the world-stage.

The challenge for the sector is that IP is also highly portable. Decisions on where to locate the management, manufacture, registration and sale of life sciences-based products is therefore highly dependent on the business and public policy environment, inclusive of IP arrangements.

Australia has a strong track record of innovation but a recognised deficiency in creating the business and public policy environment that keeps technologies in Australia. To grow Australia’s biotechnology and medtech sectors we need to create the environment that the sector relies on to compete in an increasingly competitive global market. As a start, the comments in the report demonstrate that there is a clear need for enhanced knowledge of the international intellectual property framework and the important role patent attorneys and other advisors in the IP space play in helping clients navigate that framework.

Responses to Discussion Paper questions

1. In your view, do the opportunities for further action described above provide a robust basis for addressing the challenges Australian businesses face when commercialising their intellectual capital?

On balance, we consider that only some of the opportunities for further action identified would assist Australian life science companies commercialise their IP.

Supporting education in the sector in particular would be welcomed. Developing a technology and product from scratch is a challenging process, and many start-ups and SMEs developing a new technology do so in a resource-constrained environment. They do not always have the capacity or time to fully engage with the range of regulatory, technical, commercial, scientific and competitive challenges they face, and in this context targeted information to enhance their IP literacy would be a useful value-add.

We also support the proposal within the report to further build the evidence base relied upon for recommendations by incorporating appropriate questions within existing reporting documents, assuming this does not involve a significant burden on SMEs. As acknowledged within the report, the current consultations are relatively limited and we would recommend caution in proposing any sweeping changes on the basis of such a limited data set.

2. In your view, are there any important opportunities for action missing from the above list? If so what are they?

AusBiotech would appreciate the opportunity to engage further with the Department and specifically to talk about some of the initiatives it is driving to enhance innovation.
commercialisation in the life sciences sector.

1) The **Research and Development Tax Incentive (RDTI)** is the biggest programme for the commercialisation of IP, offering eligible companies accelerated growth and supporting the commercialisation of medical research.

Removing this commercialisation support would significantly impact our sector. Life science companies are uniquely vulnerable because they require large investments, and typically dwell in a pre-revenue stage for 10-15 years; access to capital helps them through this critical period and supports the sector to grow and develop. The preservation of the RDTI is therefore critical to supporting future commercialisation.

2) AusBiotech has worked with stakeholders across the industry to develop an **Australian version of a patent box incentive**. The incentive is based on similar initiatives in the UK but has been tailored to suit local needs. Unlike the UK model, in addition to supporting manufacturing and innovation, and retaining IP locally, it also has a safeguard so it only supports home-grown IP.

Building plant and manufacturing in Australia is less attractive than in other jurisdictions. Australian companies will be faced with North America, Europe and China all operating with tax reductions on corporate tax rates for companies manufacturing locally and using local IP. To remain globally competitive, Australia needs to adopt a comparable solution. The patent box will help address this need.

The IP developed during R&D and underpinning the value of cutting-edge technologies is globally portable. The proposed incentive has been developed as a complementary tax incentive policy to support and retain home-grown IP locally, and to support manufacturing and innovation. It encourages the research activities funded by Australia to stay in Australia long term, instead of going offshore. Australian-based companies can choose from multiple countries all operating with no or low tax jurisdictions. To remain globally competitive, Australia needs to adopt a comparable solution. The incentive is amongst one of a few policies that would create favourable economic conditions to help address this need.

3) AusBiotech is also developing a **Commercialisation Guide** for the medtech industry. The 'Commercialisation Guide for Medical Device & IVD Innovators' will assist Australian medtech innovators (looking to commercialise medical devices, diagnostics, or drug/device combinations) at the early-to-medium stage of development. The Guide will assist them understand what to do, the order in which to do them, mistakes to avoid, and other actions to take to successfully commercialise their ideas.

Resources such as the Guide – which includes coverage of the importance of IP – are an important part of facilitating the commercialisation of business ideas because they assist businesses better understand what they need to do to commercialise successfully. This is particularly useful for smaller entities whose expertise and resourcing may not cover the full range of skills and knowledge base required to commercialise, including technical knowledge, marketing expertise, regulatory awareness and IP knowledge.

The Guide meets a fundamental need in our sector. However, we require funding to progress it further.
We would appreciate the opportunity to partner with the Department to bring these opportunities to fruition.

3. Of the opportunities for further action described above, which do you think have the greatest likelihood of materially improving the ability of Australian businesses to commercialise their intellectual capital?

Companies have capital constraint challenges yet need to know about the IP landscape. In this context, further education initiatives would be particularly valuable. Any assistance in raising awareness of the value and importance of IP within SMEs and providing them with the skills to better identify, record, track and manage that IP is potentially beneficial. Government can assist in ensuring funding is available for such education to occur but AusBiotech is of the view that companies will often generally need to seek out additional advice which is specific to their individual needs.

4. Please provide any other comments on the discussion paper.

As noted above, the sample size of the survey conducted by the Department appears quite small, with relatively few respondents categorised as being in the manufacturing sector. No breakdown seems to be provided of the sector in which these companies operate or how long they have been in operation. Further consideration is required by the Department on whether the data underpinning the proposed actions deliver policy actions that are cognisant of the entire IP eco-system. Whilst consultation has been conducted in 2018, the scale of the survey risks the integrity of the data set on which the proposals are developed and by extension, solutions seem to be proposed for the wrong problems.

The biotechnology industry also faces different pressures when compared with other industries, such as specific regulatory requirements and different business cycles, where products can often take 10-15 years to reach market. This needs to be acknowledged when developing policy actions for SMEs in this sector.

5. Would you like the department to contact you to discuss your comments and/ or would you like to be involved in the ongoing policy development process?

AusBiotech consents to being contacted by the Department to discuss our response if required.

We would like to be involved in the ongoing policy development process. IP is integral to the life sciences industry, and is the cornerstone on which start-ups and SMEs build their business. AusBiotech has many start-ups and SMEs in its membership, and a keen interest in being involved in these policy discussions going forward.

AusBiotech is supportive of the Department’s work to identify ways of helping small businesses commercialise their technologies and ideas. All Australians have a vested interest in the growth of the biotechnology industry, and we hope the Department’s recommendations will help ensure the future policy direction is evidence-based and appropriately targeted.
We appreciate this opportunity to comment on the discussion paper, and on future IP consultations. When relevant, we would also appreciate advance notice of implementation of the proposed policies.

AusBiotech looks forward to working with the Department on behalf of its members in relation to further consultations on IP.

AusBiotech Ltd
ABN 87 006 509 726
Level 3, 15 Queen Street
Melbourne VIC 3000 Australia