Knowledge Commercialisation Australasia (KCA) submission to the Intellectual Property Laws Amendment Bill 2018

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Knowledge Commercialisation Australasia (KCA[1]) is the peak body leading best practice in industry engagement, commercialisation and entrepreneurship for research organisations. It represents a significant majority of the commercialisation offices of public sector research organisations across Australia, and works with similar bodies globally including the US, Europe and the UK to develop best practice in commercialising early stage research. This involves activities from licensing technology to existing companies, to conducting sponsored research and spinning out new companies and increasing a combination of these.

KCA is supportive of the proposed changes to the *Patents Act 1990* (Cth) but has some concerns.

1. Proposed amendments to Crown use and compulsory licensing provisions may cause issues to some KCA members who are corporate commonwealth entities (CCE). CCE's are a body corporate that has a separate legal personality from the Commonwealth, and can act in its own right exercising certain legal rights such as entering into contracts and owning property. Most of KCA's CCE members are financially separate from the Commonwealth and have operated as independent of the Crown. The impact of the addition of the new section 160A may have unintentional implications considering CCE's are government entities with services completely funded by the Australian Commonwealth. **(Consultation questions Schedule 4 – Compulsory licenses)**

2. KCA is also concerned with the changes which are designed to raise the bar on the inventive step requirements, specifically the alignment with the European Patent Office (EPO) where prior art base will include combinations of documents. Our members have noted that in practice, the EPO examiners appear more willing to combine prior art documents and introducing a high level of subjectivity into inventive step determination (It is the age old argument that what is not obvious in the knowledge creation and invention may seem very obvious in hindsight), and we have concerns that this enthusiasm will spill over into Australian examiners. **(Consultation questions Schedule 1, Part 1 – Inventive step)**

3. The introduction of the new objects clause it is not clear exactly whose economic wellbeing is in fact to be promoted. With respect to the term 'technological innovation' in the objects clause, the Explanatory Memorandum states that it is not intended to narrow or change the subject matter eligibility threshold for grant of a patent, however KCA are concerned that there is a risk that it could be used as such in practice. **(Consultation questions Schedule 1, Part 2 – Object of the Act)**

[1] See https://www.kca.asn.au/