Intellectual Property Arrangements  
Productivity Commission Inquiry Report. No. 78, 23 September 2016.

Commonwealth of Australia 2016

**ISSN 1447-1329 (print)  
ISSN 1447-1337 (online)  
ISBN 978-1-74037-592-4 (PDF)  
ISBN 978-1-74037-593-1 (print)**



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An appropriate reference for this publication is:

Productivity Commission 2016, *Intellectual Property Arrangements*, Inquiry Report No. 78, Canberra.

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The Hon Scott Morrison MP

Treasurer

Parliament House

CANBERRA ACT 2600

Dear Treasurer

In accordance with Section 11 of the *Productivity Commission Act 1998*, we have pleasure in submitting to you the Commission’s final report into *Intellectual Property Arrangements*.

Karen Chester's signatureJonathan Coppel's signatureYours sincerely,

|  |  |  |
| --- | --- | --- |
| Jonathan Coppel  Commissioner | Karen Chester  Commissioner & Deputy Chair |  |

# Terms of reference

INQUIRY INTO AUSTRALIA’S INTELLECTUAL PROPERTY ARRANGEMENTS

I, Joseph Benedict Hockey, Treasurer, pursuant to Parts 2 and 3 of the Productivity Commission Act 1998, hereby request that the Productivity Commission undertake an inquiry into Australia's intellectual property arrangements, including their effect on investment, competition, trade, innovation and consumer welfare.

**Background**

Australia provides statutory protection for intellectual property through patents, trade marks, geographical indications, registered designs, plant breeders' rights, copyright, moral rights, performers' rights and circuit layout rights. Current laws are consistent with treaties under the auspices of the World Trade Organization, the World Intellectual Property Organization and the World Health Organization to which Australia has acceded, as well as bilateral and regional trade agreements.

The global economy and technology are changing and there have been increases in the scope and duration of intellectual property protection. The Australian Government seeks to ensure that the appropriate balance exists between incentives for innovation and investment and the interests of both individuals and businesses, including small businesses, in accessing ideas and products.

**Scope of the inquiry**

The Australian Government wishes to ensure that the intellectual property system provides appropriate incentives for innovation, investment and the production of creative works while ensuring it does not unreasonably impede further innovation, competition, investment and access to goods and services.

In undertaking the inquiry, the Commission should:

1. examine the effect of the scope and duration of protection afforded by Australia's intellectual property system on:
   1. research and innovation, including freedom to build on existing innovation
   2. access to and cost of goods and services
   3. competition, trade and investment.
2. recommend changes to the current system that would improve the overall wellbeing of Australian society, which take account of Australia's international trade obligations, including changes that would:
   1. encourage creativity, investment and new innovation by individuals, businesses and through collaboration while not unduly restricting access to technologies and creative works
   2. allow access to an increased range of quality and value goods and services
   3. provide greater certainty to individuals and businesses as to whether they are likely to infringe the intellectual property rights of others
   4. reduce the compliance and administrative costs associated with intellectual property rules.
3. in undertaking the inquiry and proposing changes, the Commission is to have regard to:
   1. Australia's international arrangements, including obligations accepted under bilateral, multilateral and regional trade agreements to which Australia is a party
   2. the IP arrangements of Australia's top intellectual property trading partners and the experiences of these and other advanced economies in reforming their IP systems to ensure those systems meet the needs of the modern economy
   3. the relative contribution of imported and domestically produced intellectual property to the Australian economy, for example to Australia's terms of trade and other economic impacts of IP protection, including on inward investment
   4. the Government's desire to retain appropriate incentives for innovation and investment, including innovation that builds on existing work, and production of creative works
   5. the economy-wide and distributional consequences of recommendations on changes to the existing intellectual property system, including on trade and competition
   6. ensuring the intellectual property system will be efficient, effective and robust through time, in light of economic and technological changes
   7. how proposed changes fit with, or may require changes to, other existing regulation or forms of assistance (such as research subsidies) currently providing incentives for the development of intellectual property
   8. the findings and recommendations of the Harper Competition Policy Review in the context of the Australian Government's response, including recommendations related to parallel import restrictions in the *Copyright Act 1968* and the parallel importation defence under the *Trade Marks Act 1995*
   9. the findings and recommendations of the Advisory Council on Intellectual Property's Review of the Innovation Patent System the Senate Economics References Committee's inquiry into Australia's innovation system the Australian Law Reform Commission's Copyright and the Digital Economy report.

**Process**

The Commission is to undertake an appropriate public consultation process, inviting public submissions and releasing a draft report to the public.

The Final report is to be provided to the Government within 12 months of receipt of this Terms of Reference.

J B Hockey

Treasurer

[Received 18 August 2015]

*Note that the Australian Government approved a revised delivery date of the final report from August to September 2016. (The inquiry timetable was impacted by the caretaker period associated with the Federal Election in 2016, which precluded full engagement with government departments and agencies.)*

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# Acknowledgments

The Commission is grateful to the many individuals and organisations who have taken the time to contribute to this inquiry, including those who participated in visits, roundtables, public hearings and provided submissions.

The Commission is also grateful for the assistance it received from IP Australia in preparing this report. Staff from IP Australia facilitated access to the Intellectual Property Government Open Data (IPGOD) database and provided helpful responses to many questions about existing arrangements.

# Abbreviations

|  |  |
| --- | --- |
| ABS | Australian Bureau of Statistics |
| ACCC | Australian Competition and Consumer Commission |
| ACIP | Advisory Council on Intellectual Property (now defunct) |
| ALRC | Australian Law Reform Commission |
| API | Active Pharmaceutical Ingredient |
| ARC | Australian Research Council |
| ASEAN | Association of South East Asian Nations |
| ASIC | Australian Securities and Investments Commission |
| AUSFTA | Australia-United States Free Trade Agreement |
| CCA | Competition and Consumer Act 2010 (Cth) |
| CLR | Circuit Layout Right |
| CSIRO | Commonwealth Scientific and Industrial Research Organisation |
| DFAT | Department of Foreign Affairs and Trade |
| DIBP | Department of Immigration and Border Protection |
| DIIS | Department of Industry, Innovation and Science |
| EC | European Commission |
| EPC | European Patent Convention |
| EPO | European Patent Office |
| EU | European Union |
| FCA | Federal Court of Australia |
| FTA | Free Trade Agreement |
| GDP | Gross Domestic Product |
| GI | Geographical Indication |
| IP | Intellectual Property |
| IPCRC | Intellectual Property and Competition Review Committee |
| IPEC | United Kingdom Intellectual Property Enterprise Court |
| IPGOD | Intellectual Property Government Open Data |
| IPR | Intellectual Property Rights |
| IPS | Innovation Patent System |
| IPTA | Institute of Patent and Trade Mark Attorneys of Australia |
| OECD | Organisation for Economic Cooperation and Development |
| PBR | Plant Breeder’s Rights |
| PC | Productivity Commission |
| PCT | Patent Cooperation Treaty |
| SITC | Standard International Trade Classification |
| SMEs | Small– and medium–sized enterprises |
| TPP | Trans‑Pacific Partnership |
| TRIPS | Agreement on Trade Related Aspects of Intellectual Property Rights |
| UPOV | International Convention for the Protection of New Varieties of Plants 1961 |
| USPTO | United States Patent and Trademark Office |
| WIPO | World Intellectual Property Organization |
| WTO | World Trade Organization |