

6 April 2011

Ms Terry Moore
IP Australia
PO Box 200
WODEN ACT 2606

Dear Ms Moore,

**RE: INTELLECTUAL PROPERTY LAWS AMENDMENT (RAISING THE BAR) BILL
2011**

CropLife Australia (CropLife) welcomes the opportunity to make this submission in response to the Exposure Draft of the Intellectual Property Laws Amendment (Raising the Bar) Bill 2011.

CropLife Australia is the peak industry organisation representing the agricultural chemical and biotechnology (plant science) sector in Australia. CropLife represents the innovators, developers, manufacturers, formulators and registrants of crop protection and agro-biotechnology products. The plant science industry provides products to protect crops against pests, weeds and diseases, as well as developing crop biotechnologies that are key to the nation's agricultural productivity, sustainability and food security. The plant science industry is worth more than \$1.5 billion a year to the Australian economy and directly employs thousands of people across the country.

CropLife member companies spend more than \$13 million a year on stewardship activities to ensure the safe use of their products on the environment and human health. CropLife ensures the responsible use of these products through its industry code of conduct and has set a benchmark for industry stewardship through programs such as **drumMUSTER**, ChemClear® and Agsafe Accreditation and Training.

CropLife congratulates the Australian Government, and in particular IP Australia, on this important reform initiative. We encourage the Government to bring these amendments into force as soon as possible.

CropLife believes that many of the issues that are raised with certain classes of patents, particularly biological patents, are most effectively addressed by general reforms to the tests for patentability. The amendments in the Exposure Draft do this and are a timely contribution to discussions about patent eligibility. They are also highly preferable to current legislation proposals that aim to ban all patents on specific types of materials.

Whilst CropLife has not been able to perform a comprehensive legal analysis of the Bill, many of the measures proposed appear to be derived from the Australian Law Reform Commission report on gene patents that was published in 2004. CropLife fully supports the implementation of these recommendations, including the research use exemption, which will clarify what is already accepted practice in many industries, including our own.

CropLife does, however, have some concerns with some aspects of the Exposure Draft.



Schedule 1 - Item 8 (S40 (2)(a))

It appears that the Australian Government is contemplating introduction of a best mode requirement (which is something that only exists in the United States of America) at a time that the United States is looking to remove it from its patent law. If the United States does remove this provision, then Australian IP law will have a unique provision that is not found in any other nation's law and this could act as a deterrent to international companies who are considering developing new technologies in Australia.

Schedule 2 - Item 2

The Bill proposes to change the infringement exemptions, particularly by including work done for regulatory approvals. This is being broadened to subject matter other than pharmaceuticals. However, no change seems to be made to the patent term extension provisions (Section 70) so that these are broadened to classes other than pharmaceuticals. We cannot accept that regulatory work is being seen as non-infringing without at least having a patent term extension. CropLife believes that the Bill would be greatly improved if it did not discriminate between technical domains in this way.

CropLife does not believe that it is necessary to insert the terms "specific, substantial and credible use for the invention" into the Patents Act. These terms appear to have come from the US Patent and Trademark Office Guidelines for Patent Examiners and they are yet to be properly defined by US courts. CropLife suggests that these additional words would be more appropriate to include in the Australian Patent Office Manual of Practice and Procedure.

Finally, CropLife is concerned that some of the transitional arrangements that are proposed by the Bill may be problematic. In particular, the new requirements for sufficiency, support, utility and inventive step will apply to applications that have not been subjected to an examination report, including those that have submitted an examination request. It would be preferable if these provisions came into force for all applications that were yet to submit an examination request.

Thank you again for implementing these important reforms. I trust that these comments have been of assistance. If you have any further questions please feel free to contact Dan Quinn at CropLife on 02 62306399 to discuss these.

Yours sincerely,

(SIGNED)

Matthew Cossey,
Chief Executive Officer