



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

28 August 2018

Paul Gardner
IP Australia
PO Box 200
Woden ACT 2606

By email: consultation@ipaustalia.gov.au

Dear Mr Gardner

CONSULTATION –INTELLECTUAL PROPERTY LAWS AMENDMENT (P C PART 2) BILL 2018

We do not consider that the amendments proposed will ease the regulatory burden for small business to obtain and protect intellectual property (IP). While the amendments go some way towards simplifying the application process they do not address the legalistic language or reduce the complexities of the underlying legislation.

The costs to SMEs to secure, use and protect their IP often exceeds the benefits. This is due to the complexity of the system, the cost of technical and legal resources and the time and stress associated with the process.

Innovation is often the seed to start or grow a business, that is, our small to medium enterprises (SMEs). SMEs do not have in-house legal expertise to interpret the law. The only option SMEs have is to engage external expertise at significant cost. Even where the SME invests its time and money to secure IP, when challenged by a larger party, they cannot afford to defend their IP.

We have firsthand experience of the difficulties SMEs face to protect their IP with cases managed by our assistance team. For example, a small business had a new product in the food and grocery industry. The SME had failed to obtain proper IP protection as, due to its limited resources, had not engaged an expert in IP law to assist with registration. Subsequently a renowned, large, Australian company copied and sold the product across its national distribution network. As the sales of this product was the primary source of income for the SME, it has closed down. Other cases reflect the difficulties in defending IP. In the event an SME starts a court process, the costs and time involved can result in the SME going out of business.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Jill Lawrence on 02 6263 1558 or at jill.lawrence@asbfeo.gov.au.

Yours sincerely,

Kate Carnell AO
Australian Small Business and Family Enterprise Ombudsman

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