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Human Genetics Society of Australasia

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4th February 2013

Patents Licensing Inquiry
Productivity Commission
Locked Bag 2, Collins St East
Melbourne VIC 8003

Email: patents@pc.gov.au

Dear Sir/Madam

RE: Compulsory licensing of patents: draft report.

Thank you for the opportunity to make a submission in response to the draft report.

The Human Genetics Society of Australasia (HGSA) is the peak Australasian professional body to provide a forum and, in some instances, certification for the various disciplines related to human genetics in Australia and New Zealand. Our members include clinical geneticists, genetic counselors, and laboratory scientists.

Whilst we have no expertise in relation to patent law, our members are involved in requesting and performing genetic testing for the diagnosis and monitoring of genetic disease and assessing risk in relatives. Our submission therefore focuses on gene patents and their potential impact on access to an affordability of genetic testing. We have no financial interests in any gene patents and have no conflict of interest in making this submission.

We applaud the Commission's view that there is a prima facie case for efficient and effective safeguards to address concerns about the patent system's impact on access to healthcare, especially with respect to gene patents.

HGSA broadly supports the proposed Draft Recommendation 6.2 regarding a new public interest test for compulsory licensing and the conditions proposed. We note however that concerns raised by various submissions prior to the publication of the draft report regarding the potential cost and time concerned for an application for a compulsory licence through the Federal Court makes this avenue unlikely to be used by providers of genetic testing.

HGSA supports the proposed Draft Recommendations 7.1 and 7.2 regarding Crown use provisions. The removal of any ambiguity regarding whether Crown use can be utilised by non-government healthcare providers where State or Federal governments have primary responsibility

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for providing or funding, is welcome. We also support the provision for emergency access to a patented invention without the requirements for negotiation with the patentee or 14 days notice of invoking Crown use provisions. This is especially important where genetic testing may have an impact on prenatal diagnosis.

HGSA has also reviewed Chapter 9 of the draft report relating to alternative mechanisms to compulsory licensing focusing on healthcare. We agree with the Commission that healthcare specific provisions are not warranted provided the proposed changes to Crown use provisions are adopted.

Yours sincerely

Associate Professor Kevin Carpenter
President