

The Hon Christopher Pyne MP
Minister for Industry, Innovation & Science
Parliament House
Canberra ACT 2600

Dear Minister Pyne

Consumer concerns re IP Australia's proposal to negate High Court Decision re patents on genes; and call to amend the Patents Act to reflect the High Court's decision

We wish to express our extreme concern about the news that IP Australia has formally proposed to continue to permit the patenting of biological material sourced from nature, more specifically the human body. We find this decision to be absolutely extraordinary considering the recent High Court unanimous decision in *D'Arcy v Myriad Genetics* (2015) HCA 35 which held that biological materials sourced from nature that have been merely 'isolated' from their natural environments are not 'inventions'. The Court also held that even if synthetically made, biological materials, being indistinguishable from the corresponding naturally occurring counterpart, are also not 'inventions'.

Cancer Voices Australia is the independent, 100% volunteer voice of people affected by cancer, working to improve the cancer experience for Australians, their families and friends. We are active in the areas around diagnosis, information, treatment, research, support, care, survivorship and policy. To achieve this we work with decision-makers, ensuring the patient perspective is heard.

Cancer Voices facilitates the Australian Cancer Consumer Network of 30 consumer related groups, and has led the cancer consumer movement in Australia since 2000.

Our specific interest is the ability of researchers, clinicians and service of genetic service providers to be able to benefit patients through free access to biological materials unfettered by patents. This access has become very important as our cancer treatment becomes more personalised according to genomic profile (the BrCa1 gene is a good example, and hence the focus of the High Court case). Of course this medical science development applies more broadly to other human diseases and illnesses as well; including pathogens that are cause such diseases and illnesses.

Cancer Voices Australia was an original party, alongside Yvonne D'Arcy, to this case which has now passed through three levels of Australian courts, with the final decision made by the High Court in October. We and other health consumers, consumer organisations, researchers and the media warmly welcomed the decision, which brings Australia into line with patent law in the United States. It also brings us into line with the view of the great majority of people – who are amazed that we have been allowing IP Australia to grant patents over the last thirty years in respect to things that no one invented.



We have received legal advice if IP Australia's proposal is approved, that 98% of the human genome will continue to be the subject of Australia patents. This is an absurd result.

We aware that IP Australia's business is the protection of intellectual property rights, including patents of *inventions*, and of course fully support this important role. However, we most strongly query their right to contravene a High Court decision, by their current proposal.

To resolve this indefensible situation, Cancer Voices recommends that Government hastens to enact a simple Amendment to the Patents Act which clearly reflects the High Court's decision and the expectations of Australians. Such an amendment was proposed in the *Patent Amendment (Biological Materials) Act 2010*, and had the support of the Hon Peter Dutton MP and the Hon Malcom Turnbull MP, now Prime Minister, amongst many others now in Government.

At the time the Senate Legal & Constitutional Affairs Committee rejected the Bill. But since then and in view of the fact the fact that the U.S. Supreme Court and our High Court decisions have unequivocally endorsed the effect of that Bill, we believe that the Australian Parliament should decide decisively reintroduce it. Attempting to keep IP Australia in line is beyond the ability and resources of organisations such as ours and unfair to brave people like Yvonne D'Arcy who carried the burden of taking the Appeal to the High Court.

I have attached is a copy of Dr Luigi Palombi's submission to the Senate Committee. As you will see, the Bill, which we understand was drafted by Dr Palombi, is consistent with the High Court's decision.

We welcome further discussion with you and your Department to progress our suggestion.

Yours sincerely



Sally Crossing AM
Convenor

9 November 2015

Copies to:
The Hon Malcom Turnbull MP, Prime Minister
Sen George Brandis, Attorney-General

