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Enter Phase 1: Australia's government tables new IP law amendments but omits abolishing innovation patents

John Collins, Sumer Dayal (Clayton Utz) · Wednesday, May 16th, 2018

On 28 March 2018, the Australian Government introduced the [Intellectual Property Laws Amendment \(Productivity Commission Response Part 1 and Other Measures\) Bill 2018](#) to the House of Representatives.

This follows IP Australia's public consultation in October 2017 of an exposure draft of amendments for Australia's IP laws that included, among other matters, a mechanism to phase out the innovation patent system and repeal certain data requirements relating to pharmaceutical patents with an extended term (our coverage of the exposure draft can be found [here](#)).

The bill formalises the proposed repeal of section 76A of the Patents Act, thereby removing the abovementioned data requirements. However, the bill does not include the anticipated repeal of the innovation patent system as was the case in the original exposure draft.

This begs the question, why did the Government remove the proposed amendments?

Innovation patents – will the guillotine drop?

In its response to public submissions with respect to abolishing innovation patents, IP Australia reaffirmed its support for this course of action and noted that “[n]o significant new evidence on the value of the innovation patent system was presented by the submissions that had not already been considered by the Productivity Commission and the Government in reaching that decision“.

IP Australia was also of the view that the amendments in the exposure draft struck the right balance to phase out the innovation patent system without affecting existing rights. The amendments in the exposure draft allowed for innovation patents that would have a priority date prior to the commencement of the amendments.

However, the Government appears to want to consider the matter further. IP Australia's [policy release](#) states that it has “decided to undertake further industry consultation targeted at better understanding the needs of SMEs before the phase out of the innovation patent occurs“.

Notably, there is no timeline for this consultation period – all we know is that further information will be provided in ‘due course’.

Innovation patents appear to have survived the guillotine this time around – but watch this space.

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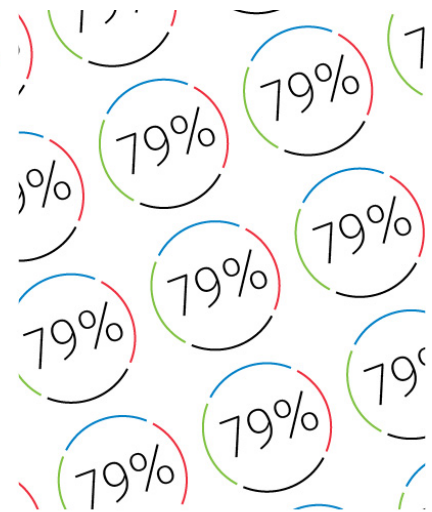
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This entry was posted on Wednesday, May 16th, 2018 at 11:32 am and is filed under [Australia](#), [Pharmaceutical patent](#)

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