



# Review of the accessibility of patents

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## Terms of Reference

### Background

The *Intellectual Property Laws Amendment (Productivity Commission Response Part 2 and Other Measures) Act 2020* commences the phasing out of Australia's second-tier patent system, the innovation patent. The innovation patent was intended to incentivise innovation among Australia's SMEs, however the evidence available to the Australian Government shows that it did not meet this objective. Very few Australian SMEs successfully used the innovation patent system to obtain enforceable IP rights, and the low standards inherent in the system left it open to undesirable strategic use by large and overseas businesses that were not the intended target of the system.

The standard patent application system provides Australian firms, including SMEs, with both patent protection in Australia, and a route for entry into the international patent system to protect their inventions in export markets. It also includes the option of a provisional application filing, which is a quick and cheap route to obtain a priority date for Australian and international filings while giving applicants 12 months to determine whether they wish to seek full patent protection. This system has significant advantages and Australian firms who hold standard patents are associated with a higher spend on research and development and stay in business for longer than other firms<sup>1</sup>.

But SMEs tell us that the patent system is complex and daunting for them to navigate, reducing their effective use of the system. This may be part of the reason that while Australia has world class research and innovation, use of the patent system to protect the products of that innovation by Australians both at home and abroad is low compared to other developed nations. This review seeks to understand what we can do to encourage appropriate use of the patent system by Australian SMEs.

### Scope of the Inquiry

The Australian Government wishes to ensure that the standard patent system is as accessible as possible to Australia's SMEs to protect their inventions in Australia and overseas without facing undue barriers or unreasonable costs.

The Australian Government also seeks to ensure that Australia's SMEs are well-informed about the availability of the standard patent system (including the option of a provisional filing), how to protect their IP, obtain appropriate advice and the processes involved.

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<sup>1</sup> IP Australia (2015), 'The economic impact of innovation patents', pp. 9-13.

## UNCLASSIFIED

1. Without limiting the consideration of the review, the review will investigate:
  - a. the cost of applications for patents; and
  - b. processing times of patents; and
  - c. advice provided by the Australian Government with respect to the patent application process; and
  - d. awareness of the patent application process; and
  - e. the cost and times required to enforce standard patents; and
  - f. any other barriers or impediments that prevent Australian businesses filing and obtaining patents; and
  - g. Government programmes to assist Australian SMEs seeking patent protection, including protection overseas.
2. The review should recommend changes that would improve the accessibility of the patent system in Australia to Australian SMEs, and improve the support provided to Australian SMEs applying for IP protection both in Australia and overseas, taking into account the factors to be considered above.