

We refer to Circular C. 8481 dated 4 September 2015 seeking information on our experiences and case studies on the effectiveness of exceptions and limitations to patent rights, in particular, in addressing development issues.

IP Australia has not conducted research on the use and effect of the exemptions and limitations to patent rights, and in particular, in addressing development issues. However, while litigation concerning those provisions is rare, we are aware that they can be relevant to the resolution of disputes between parties and the terms of licence agreements. Since such agreements tend to be confidential the extent and effect of the exemptions and limitations remains difficult to determine.

In relation to specific development issues, Australia has now implemented the TRIPS protocol interim waiver (and the TRIPS Protocol, when it comes into effect) into our domestic legislation. Under the new scheme, Australian laboratories will be able to apply to the Federal Court for a compulsory licence to manufacture generic versions of patented medicines and export these medicines to developing countries that are experiencing serious public health issues. IP Australia will monitor the effect of this implementation over the coming years.