

## IP Australia – Response to Circular 8261 of 19 April 2013

### Exceptions and limitations to patent rights

Australia has recently introduced an infringement exemption for use of a patent that is solely for the purpose of gaining regulatory approval for a product, method or process in Australia or overseas (Section 119B of the Patents Act 1990). This change effectively expands the pre-existing exemption (which was limited to pharmaceutical inventions) to all technologies; recognizing that technologies other than pharmaceuticals may also suffer delays in bringing products to market as a consequence of lengthy pre-market and pre-manufacturing regulatory approval processes.

Australia has also recently introduced an infringement exemption (Section 119C of the Patents Act 1990) aimed at drawing a clear line between research and commercial activities, leaving researchers free to conduct their experiments without fear of prosecution in relation to patent infringement. The intention of this exemption is to give broad and clear protection to research and experimental activities in order to maximize the potential for research and innovation in Australia.

While this updated information is reflected in *Revised Annex II of document SCP/12/3 Rev. 2: Report on the International Patent System*; the initial questionnaire at <http://www.wipo.int/scp/en/exceptions/> does not reflect the change to Australia's laws. IP Australia requests that the questionnaire also be updated.