On 9 February 2015, the Intellectual Property Laws Amendment Bill was passed, resulting in the implementation of the amended TRIPS Protocol in Australia. This permitted Australian pharmaceutical manufacturers to export patented medicines to countries with health crises under compulsory license.

A compulsory licence has never been granted in Australia. There have been only three cases where an application has been made, but none were successful (see *Fastening Supplies Pty Ltd v Olin Mathieson Chemical Corporation* (1969) 119 CLR 572; *Wissen Pty Ltd v Kenneth Mervin Lown* (1987) 9 IPR 124*; Amrad Operations Pty Ltd v Genelabs Technologies Inc* (1999) 45 IPR 447).

The relevant section of the Australian Patents Act 1990 is copied below.

PATENTS ACT 1990 - SECT 136B

Simplified outline of this Part

The Federal Court may make an order under this Part requiring the grant of a compulsory licence to exploit a patented pharmaceutical invention for manufacture and export to an eligible importing country.

The court may order a compulsory licence to be granted if the proposed use of the pharmaceutical product is to address a public health issue in the eligible importing country:

(a) in a national emergency (or other extremely urgent circumstances); or

(b) by the public non-commercial use of the product.

The order may be amended or revoked by another order of the court.

The patentee must be paid an agreed amount of remuneration, or an amount of remuneration determined by the court.

Part 1—Compulsory licences (general)

12.1 Applications for orders for compulsory licences

(1) For the purposes of subsection 133(1) of the Act, the period of 3 years after the date of granting of the patent to which the application relates is prescribed.

(2) An applicant must lodge with the Registrar of the Federal Court:
(a) a copy of the application that includes:
(i) the name and address of the applicant; and
(ii) the address for service in relation to the application; and
(iii) the identity of the patent; and
(iv) if the applicant relies on the ground mentioned in paragraph 133(2)(a) of the Act—facts supporting the assertion that the reasonable requirements of the public with respect to the patented invention have not been satisfied; and
(iva) if the applicant relies on the ground mentioned in paragraph 133(2)(b) of the Act—facts supporting the assertion that the patentee has contravened, or is contravening, Part IV

of the *Trade Practices Act 1974* or an application law (as defined in section 150A of that Act) in connection with the patent; and

(v) for an innovation patent—the date that the patent was certified; and

(b) a declaration by the applicant to the effect that the facts in the statement are true to the best of the knowledge of the applicant.

(2A) For subparagraph (2)(a)(ii), the address for service must be an address that is mentioned in Rules made by the Federal Court for the service of the application, as in force from time to time.

Note: In a transitional period after this subregulation commences, there may be different Rules made by the Federal Court to deal with suitable addresses for service in particular circumstances.

(3) The applicant must:

(a) serve a copy of the application and declaration on the patentee and any other person who claims an interest in the patent as soon as practicable after lodgment; and

(b) lodge with the Registrar notice of the date when, and the place where, he or she complied with paragraph (a).

(4) For subregulation (3), the applicant must serve the copy in accordance with Rules made by the Federal Court for the service of the application and declaration, as in force from time to time.

Note: In a transitional period after this subregulation commences, there may be different Rules made by the Federal Court to deal with service in particular circumstances.