



AGRICULTURAL RESEARCH COUNCIL

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Ref.no

OoP/07/08

24 July 2008

Honourable G. Oliphant
 Chairperson
 Portfolio Committee on Science and Technology
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Dear Hon. Mr. Oliphant

Thank you very much for the opportunity you have given to institutions such as the ARC interact with the draft Intellectual Property Rights from Publicly Funded Research and Development Bill. I accept the invitation to give input and further request an opportunity to make an oral submission to the Portfolio Committee on 30 July 2008.

I offer my congratulations on such an important effort in the formulation of this Bill and believe that the Bill will contribute a great deal to the achievement of the policy goals articulated in the 10 Year Plan for Innovation. Further, it is our conviction that this Bill will facilitate success in, amongst others; the development of SMME's leading to growth in the South African economy through government's investment in R&D. The ARC shares these ideals and supports them.

The ARC gives input as follows:

Section 9 - Functions of NIPMO

With respect to guidelines for transactions with non-South African entities and individuals: we find the use of the word "provide" in section 9(4)(e) restrictive on the recipient. Though it may be argued that there will be consultation, this is not clear in the wording. It is suggested that the word "develop" substitutes the word "provide" in this subsection. This will ensure that the recipient's views are afforded greater consideration and that the recipient is part of decision making process. It is also suggested that the recipient be afforded the leverage to deviate from such guidelines at its own accord where necessary and thereafter inform

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NIPMO of such deviation. This is necessary as such transactions are different from case-to-case. Providing for greater input from the recipient ensures that there is sufficient room to maneuver within business constraints of an individual transaction. The ARC proposes that sub-section 9(4)(e) is re-formulated thus: "develop, in consultation with a recipient, guidelines for the transactions involving non-South African entities and persons, ensuring that the business interests of the recipient are not limited, and managing the implementation of the guidelines".

Section 10 - Rights of Intellectual Property Creators in Institutions to Benefit Sharing

Section 10(1) The ARC proposes that the wording "...provided that they are ordinarily South African or ordinarily resident in the Republic until such rights expire" is removed as it disadvantages the organization in terms of attraction of qualified researchers from countries other than South Africa. The ARC believes that this wording would also discourage international collaboration, which is a crucial element of scientific effort. The ARC is a world-renowned agricultural research and development institutions and as such, collaborates routinely with researchers and institutions that are funded outside the South African public sector. This provision in the Bill will ensure that the opportunities for the ARC to continue and seek new partnerships that will ultimately advance the goals envisaged by this Bill. The section as it stands constrains the ARC in pursuing bilateral and multilateral collaborative efforts supported and promoted by the government, especially those with developing countries such as India, Brazil and South Africa (IBSA) and the Consolidated Plan of Action for Science and technology in Africa.

Section 10 (2) specifies a minimum of 20% of the revenues generated from IP or a higher amount as provided by the Minister and the ARC proposes that this is removed from the Bill as this minimum portion to be shared with the creator is a management decision that should be entrusted on the Executive of a recipient organisation. The ARC proposes the following formulation of this section: "Intellectual Property creators at institutions and their heirs are entitled to share in the revenues accruing to a recipient; such share will be determined by institutional policies which have been created and are reflective of the principles of fairness". The Portfolio Committee is reminded that the ARC finds this Bill useful to both attract and retain talented individuals into the organisation and is convinced that providing for the portion in legislation is unnecessary.

Section 10(4) provides that the creators get first call of the revenues ahead of any institutional distribution. It is our understanding that this refers to net revenues and the section should reflect this.

Section 12-Restriction on offshore intellectual property transactions

Section 12(1)(b) provides that subject to paragraph (c) offshore intellectual property transactions may occur only in accordance with prescribed regulations and any guidelines contemplated in section 9(4)(e).