



The  
Medical  
Research  
Council

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### Re: Intellectual Property Rights from Publicly Financed Research Bill [B 46-2008] - Comments from the Medical Research Council

The mission of the Medical Research Council of South Africa (MRC) is to build a healthy nation through research. The MRC recognizes that, in order to have an impact on the health status of the nation, the research conducted by MRC Units must be translated into new and improved health solutions. The MRC Innovation Centre is therefore tasked with identifying, protecting, managing and commercializing intellectual property (IP) developed using MRC funding for such a purpose to the benefit of the MRC, the researchers and the people of South Africa.

As a science council and a recipient of public funding, the MRC is directly affected by the Intellectual Property Rights from Publicly Financed Research and Development Bill. The MRC hereby submits comments and suggestions on the Bill aimed at ensuring that it is workable and will have the desired effect, i.e. to stimulate and facilitate IP management and commercialization activities within the organization and country-wide.

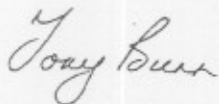
The MRC supports the general principles, purpose and intentions of the Bill, and acknowledges the vast improvement of the Bill published in Government Gazette No. 31130 of 13 June 2008 over the first draft released for public comment in 2007. We would, however, like to raise the following issues before the Bill is finalized:

- 1.) **Section 1 (Definitions):** The definition of "revenue" should not include non-monetary benefits, as these will likely be very difficult to share with IP creators.
- 2.) **Section 4 (4) (b):** If a private entity provides funding that may result in IP, they should get the first option to own and protect the IP ahead of NIPMO.

- 3.) **Section 5 (2) (f)**: It is not possible and/or practical for the TTO to assess all publicly financed R&D for IP that may be prejudiced by publication.
- 4.) **Section 7 (1)**: It may not be possible for all TTOs to find such appropriately qualified personnel. Persons with such interdisciplinary knowledge, qualification and expertise are very rare and expensive. It is therefore not practical to make this compulsory for institutions.
- 5.) **Section 7 (2) (a)**: Should read: "develop and implement, on behalf of the institution or region, policies for disclosure, identification, protection, development, and commercialisation of intellectual property and benefit-sharing arrangements"
- 6.) **Section 7 (2) (e)**: Should read "refer disclosures to NIPMO on behalf of an institution in terms of Section 4."
- 7.) **Section 10 (1)**: The restriction of benefit sharing to South African citizens and residents may act as a disincentive to foreign academics working in South Africa to develop and/or disclose IP and may result in the loss of valuable IP offshore.
- 8.) **Section 10 (2)**: This section should be qualified as follows: "..... are entitled to at least 20 per cent of the revenues received by the institution from such IP, after the deduction of commercialization costs incurred by the institution....."
- 9.) **Section 11 (1) (b)**: The following phrase should be added: "preference must be given to BBBEE entities and SMMEs provided they have the capacity and skills to exploit the IP."
- 10.) **Section 12**: Offshore IP transactions already require Reserve Bank approval to ensure that the country does not lose out on potential revenues and/or other benefits. It will be a duplication and a waste of time to go through this process with NIPMO as well.
- 11.) The Bill does not make provision for a situation where 2 institutions are involved in publicly financed R&D (e.g. MRC and a university) and how to deal with the IP in these cases.

I trust that you will take the above comments, concerns and suggestions into consideration when finalizing the Bill.

Yours sincerely



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