

DAO 99/19902

**Ms Kay Collins**  
**Director**  
**Intellectual Property &**  
**Competition Review Committee Secretariat**  
**Attorney-General's Department**  
**Robert Garren Offices**  
**BARTON ACT 2600**

Dear Ms Collins,

Thankyou for the opportunity to comment upon the IPCRC review of intellectual property and competition policy. I would like to offer the following comments and observations from the perspective of the Department of Defence.

Defence recognised the increasing significance of IP in 1998 when, as part of the Defence & Industry Strategic Policy, the Intellectual Property Policy & Support Centre (IPPS) was established. The purpose of the IPPS is to provide advice and practical support regarding the exploitation and management of Defence created IP, and the management of industry created IP of relevance to Defence. In 1998 Defence undertook extensive consultations within industry and Defence to produce the 1999 Defence Intellectual Property Policy. During these consultations it became apparent that while knowledge of the operation of IP laws was not extensive there was a widespread appreciation of the significance of IP. Defence is committed to achieving value for money in its procurement and thus applies the Commonwealth Procurement Guidelines, including the principle of 'Open and Effective Competition' as a means of achieving 'Value for Money', to all procurement.

Within the 98/99 financial year Defence spent \$2,895.7m on capital equipment.<sup>1</sup> However in the world arena Australia is not a premier market. Defence seeks a knowledge edge and self-reliance through technologically advanced capabilities.

Defence is a major purchaser of 'high tech' equipment often sourced from overseas suppliers. The negotiation of IP rights and access to its embodiment in technical information is a major component of most acquisition contracts. It has been the experience of Defence that many companies directly associate the monopoly granted by IP with their competitive edge. Often it is the monopoly provided by IP that enables Australian small to medium enterprises (SMEs) to play an important role in the acquisition of major capital equipment. The 1999 Defence IP Policy seeks to recognise the value of IP to industry, in particular SMEs, by striking a realistic balance between Defence and industry regarding ownership and access to IP.

---

<sup>1</sup> Defence Annual Report 1998-99 Table G.3

Given the importance to industry of the monopoly granted by IP it would be of concern to Defence if any monopolies granted by Australian law were radically reduced from international practice. Lesser monopoly rights within Australia may result in overseas companies being reluctant to contract for fear of exposing their IP (and competitive edge). However Defence does perceive, that in some areas, an unworkable situation has developed because either the monopoly granted by IP is unrealistic or unclear, for instance the current protection afforded to computer technology.

Currently computer programs are protected by copyright as literary works, which, it may be argued provides an unrealistically long term of protection over the source code but perhaps no protection over variants such as pseudo code or object code. Where a computer program produces a commercially useful effect it may be patentable, however the extent of such patentability does not appear to be clearly delineated. Defence appreciates Australia's international obligations to protect computer programs as literary works and does not presume to be able to offer an opinion as to the better method of protection. Rather Defence offers the opinion that the lack of clarity regarding the limits of the IP monopoly granted to computer programs may prevent innovation as innovators are aware of IP and are concerned that they may be infringing the monopoly of another.

While undertaking policy related consultations with industry, it became apparent that confidentiality was a popular method by which to protect IP. While Defence is not in a position to comment on the current protection provided by Australian law, Defence would suggest that any trend towards protection via confidential information would not greatly assist innovation, as there is no public disclosure from which other innovators may be inspired.

I wish the committee every success with their review. If you require any clarification or further information, please do not hesitate to contact Ms Lisa White 02 6265 1854.

Yours sincerely

**BRUCE PORTER**  
Director Intellectual Property

**R2-5-B086**  
**Tel. 02 6266 7655**

February 3, 2000