Dear Mr. Moore,

Re: Intellectual Property Laws Amendment (Raising the Bar) Bill 2011

I am writing to provide a response to the exposure draft of the above Bill. In doing so, I recognise that there have been extensive earlier rounds of consultation during 2009 and 2010 conducted on by IP Australia. My comments are therefore confined to those aspects of the Bill that are most relevant to the activities of Ninti One and our partner organisations.

This response draws on the research we have undertaken through the Desert Knowledge Cooperative Research Centre (DKCRC) and contract research projects for clients including Federal, State and Territory Governments. In addition, our experience in the planning process and implementation of the Cooperative Research Centre for Remote Economic Participation (CRC-REP), which commenced operation in July 2010, is also relevant. Ninti One manages CRC-REP as well as the Australian National Feral Camel Management Project. The company constitution provides for a board with 50% of the members being Aboriginal and Torres Strait Islander people and 50% who are non-Aboriginal or Torres Strait Islander. One-third of the 52 formal partners to Ninti One are Aboriginal or Torres Strait Islander organisations.

Schedule 2 of the Intellectual Property Laws Amendment (Raising the Bar) Bill 2011 proposes changes designed to give researchers greater certainty about where they have freedom to operate around patented technology. While we recognise that this section of the Bill refers to uncertainty about liabilities for patent infringement, we wish to draw your attention to Aboriginal intellectual property as it applies to subjects including, for example,
plant breeding, natural resource management and Aboriginal and Torres Strait Islander technical knowledge.

The core business of Ninti One is research for remote Australia and so we support the need for researchers to be able to work with clarity and confidence. This was one reason why we invested in developing the Aboriginal Knowledge and Intellectual Property Protocol. The Protocol received a national award for innovation from the Cooperative Research Centre Association in 2010.

The Protocol acknowledges that there have been past instances of Aboriginal people’s knowledge and intellectual property being misappropriated and exploited. It states that:

‘Researchers must respect local Aboriginal ethical protocols. All projects in which Aboriginal people participate, and that involve Aboriginal knowledge, Aboriginal intellectual property, and other intellectual property, (should) only be carried out if they have received ethical clearance from relevant committees (such as university ethics committees). They should also meet appropriate ethical standards, consistent with those such as the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Guidelines for Ethical Research in Indigenous Studies (2000), the National Statement on Ethical Conduct in Human Research (2007)...’ (p.8).

We believe that data relating to Aboriginal intellectual property should be handled in accordance with the Information Privacy Principles contained in the Privacy Act 1988. It should be stored in appropriate and sensitive ways, in consultation with and with the free prior informed consent of relevant Aboriginal people. It should not be used for any purpose other than for which it was collected without the free prior informed consent of the Aboriginal persons who originally provided the information.

While we understand the objectives of the Bill in amending the Patents Act to enable researchers to operate without concern about the patent system, thereby promoting and maximising research, our commitment is to ensuring that Aboriginal intellectual property receives proper respect. This means ensuring that Intellectual Property Laws support sound and rigorous practice in this area.
We therefore ask that IP Australia takes into account these important points in the work you do to develop policy and legislation on intellectual property. Should you require further information or advice, please do not hesitate to contact me directly.

Yours sincerely,

Jan Ferguson
Managing Director

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