



Delivering a world leading IP system

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31 July 2025

The Hon Dr Jim Chalmers MP

Treasurer

PO Box 6022

House of Representatives

Parliament House

Canberra ACT 2600

Senator the Hon Katy Gallagher

Minister for Finance

PO Box 6100

Senate

Parliament House

Canberra ACT 2600

Via email [REDACTED]

Dear Treasurer and Minister,

Thank you for your letter of 4 July 2025, seeking my assistance in identifying regulatory reform opportunities within IP Australia to bolster productivity growth.

IP and the productivity challenge

The intellectual property (IP) system supports productivity growth. It can be an important policy lever for Government to promote innovation, dynamism and productivity-enhancing resource allocation within the economy.

Patents, designs and plant breeder's rights (PBRs) encourage innovations which improve efficiency and living standards. Along with trade marks, which help investors and customers to identify high quality firms, these rights help facilitate the flow of resources to the most productive firms, including small innovators, and promote foreign direct investment.

Research shows that the grant of patents, trade marks and designs is linked to higher labour productivity, R&D and exports in Australian firms.¹ Firms with the highest growth potential tend to acquire IP rights early in their lifecycle, resulting in faster growth, higher product quality and variety, and more commercialised innovations.²

¹ Kollmann et al., 2020.

² Zhang, 2021; Dinlersov et al., 2023; Higham, de Rassenfosse & Richardson, 2025.

Recent successes

IP Australia is constantly looking to improve the IP system so that Australians continue to benefit from great ideas. A key aspect of this is reducing the burdens on our customers: freeing them to devote time and money to improving their products and their business. Recent examples include:

- Simplifying the processes to renew trade mark registrations and remove trade marks from the register, and repealing spent patents legislation in the *Intellectual Property Laws Amendment (Regulator Performance) Act 2023*.
- Analytics and economic research which has informed industry policy (e.g., critical technology policy) and educational initiatives in partnership with universities, startup accelerators, investor forums, public research and service agencies and international organisations. This has improved understanding of how to leverage IP for growth.
- Launching TM Checker, a free tool that provides customers with an instant check of possible issues with their trade mark. The tool also provides a simple breakdown of costs, timelines and other content, making the whole process easier and saving time.

Immediate actions

Building on the above, I commit to implementing three productivity enhancing initiatives before the end of 2026 (or in many cases, much sooner):

1. **Greater choice for international patent search and opinions.** By opening IP Australia to greater competition from IP offices in Europe or Singapore, Australian exporters could benefit from lower domestic fees, fast track processing, and Chinese language expertise.
2. **Improving business' ability to enforce their IP rights.** An online tool would help Australian small businesses better understand their options and avoid or reduce the cost of IP litigation.
3. **Increasing IP literacy and driving engagement with the IP system.** A public education and awareness drive would encourage small businesses to use IP, so they can access its benefits.

More detail on the immediate actions is in **Attachment A**.

Longer-term legislative reforms

The detailed legislative framework governing IP rights administration means most productivity-enhancing reforms would require legislation. I have identified four legislative reform packages:

4. **Facilitating growth and innovation in the design sector.** This would expand design protection to include the look of a product when turned on, and to permit protection for part of a physical product. Effective protection for these types of designs would encourage greater investment, particularly in the tech industry.
5. **Streamlining and simplifying IP regulation.** Thirteen potential reforms have been identified, including shortening the process for resolution of disputes; reviewing timeframes for actions; simplifying and harmonising procedures across the IP rights; clarifying areas of uncertainty for customers; and repealing unnecessary requirements.
6. **Supporting business by aligning trade mark regulations with international requirements and making improvements to dispute processes.** This would simplify processes and create certainty for customers.
7. **Review to ensure IP rights are supporting productivity, innovation and competition.** This would ensure that the policy settings for our two largest IP rights (patents and trade marks) are correctly calibrated to maximise productivity growth. The review would make use of the latest economic research to ensure that any reforms are evidence-based.

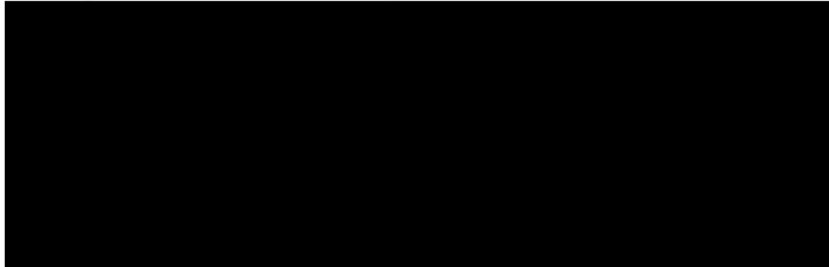
More detail on these proposed legislative reforms is in **Attachment B**. Some of these measures – particularly item five – could be included in any cross-government regulation reform omnibus bill. If

officers from your departments would like to discuss my proposals the contact officer in my agency is



I trust you will agree that the above actions and proposals will help drive the Government's productivity agenda to the benefit of all Australians. Thank you for the opportunity.

Yours faithfully,



Michael Schwager
Director General, IP Australia

Short-term non-legislative actions

The following actions can be implemented in the short term (before end of 2026 or sooner), do not require legislation or extra resources and are within IP Australia's existing remit.

1. Greater choice for international patent search and opinions

This measure would allow Australian applicants filing via the Patent Cooperation Treaty (PCT) to choose to have their international searches and preliminary examinations done by the European Patent Office (EPO) or the Intellectual Property Office of Singapore (IPOS).

Size, scope and impact of action

The measure would affect up to 800 patent applications a year, and would benefit applicants with reduced domestic patent fees and fast track examination in Europe, and access to search, examination and language expertise offered by IPOS.

Who will benefit from the action

Australian businesses filing patent applications through the PCT who intend to seek protection in Europe or Singapore.

When the action will be implemented or take effect

These measures will be implemented by late 2025 or early 2026 (IPOS) or by the end of 2026 (EPO). The exact start date will be negotiated once an implementation plan is in place.

How will any trade-offs or risks be managed

Losing large volumes of work could degrade IP Australia's patent examination sovereign capability. This risk will be managed by having a 2-year pilot with EPO. IPOS volumes are expected to be small.

2. Improving business' ability to enforce their IP rights

Building on exploratory work, an interactive online tool 'IP First Response' would help small businesses engage with protecting and enforcing their IP, an area that is notoriously complex, and often distressing and expensive for businesses.

Size, scope and impact of action

IP First Response would support businesses (particularly small or medium enterprises or SMEs) to use the IP system more effectively. The online tool would provide accessible information about how to take or respond to enforcement action, including in more cost-effective ways. This will help businesses extract value from their IP and encourage future innovation.

Additional features may include integration of a generative AI overlay to make it easier for non-expert users to understand this complex field by interacting with it on their own level of knowledge. This feature is dependent on satisfying various risk, compliance and governance concerns.

Who will benefit from the action

Small businesses with limited resources. Without support, SMEs are particularly vulnerable to either not being able to defend their IP against infringement (particularly by larger corporations), and to capitulating when another business unjustly accuses them of infringing their IP.

When the action will be implemented or take effect

IP First Response could be implemented late 2025.

How will any trade-offs or risks be managed

Risks are managed through continuous user testing and development and stakeholder consultation, including with other regulators. AI risks are managed through careful governance in accordance with the Policy for the responsible use of AI in government and Australia's AI Ethics Principles.

3. Increasing IP literacy and driving engagement with the IP system

This measure boosts our public education program to promote more informed management of IP by SMEs, startups and entrepreneurs, universities/researchers, and secondary school students. The program provides accessible tools and resources, and is delivered through a partnership model with commonwealth and state government agencies, peak industry associations, chambers of commerce, accelerator hubs and universities. Examples of resources include: fact sheets, case studies, podcasts, live information sessions, online business resources and AI assisted online tools.

Australian SMEs have low levels of IP literacy and limited understanding of the broader commercialisation process. Reaching SMEs is a significant challenge. We need to 'cut through the clutter' assisted by customer research, conducted by our Customer Insights and Improvement Team.

In Australia, SMEs that own IP rights are larger than SMEs with no IP rights, are more likely to experience high growth than their peers after filing for new rights and are more likely to pay higher wages than their peers with no IP rights. Despite these potential benefits, only 7% of active SMEs own registered IP rights.

Size, scope and impact of action

The scope of the education program is broad, targeting SMEs, universities/researchers, secondary schools, start-ups and entrepreneurs, maximising reach across all segments through a comprehensive and diversified communications and engagement strategy. Discrete programs of work address under-represented groups such as women, First Nations peoples and youth.

Delivering programs through a partnership model allows access to high-volume networks, maximising reach to businesses within a trusted context. Programs share accessible tools and resources, promoting the positive impacts of informed IP management.

Increased engagement with the IP system would translate into:

- a higher number of businesses accessing the benefits of IP rights ownership
- reducing upfront costs to SMEs by providing a credible, independent, free service that enables a reduced reliance on third parties (professional services) to provide initial advice on IP identification and management
- an increase in safeguarded Australian innovation.

Who will benefit from the action

Australian SMEs not engaging with the IP system and SMEs currently engaging with the IP system but not leveraging full value; university researchers, entrepreneurs, innovators, women, youth and First Nations businesses.

When the action will be implemented or take effect

The public education program of work will roll out across the full financial year.

How will any trade-offs or risks be managed

Increased engagement with the IP system may put pressure on current workforce capacity, threatening IP Australia's ability to meet commitments in the Strategic Corporate Plan. This could be mitigated through reconsideration of our timeliness commitments, increased hiring (if the ASL cap could be more flexible for fully cost recovered agencies), or longer term through implementation of automation and AI tools to assist in examination of IP right applications.

Longer-term actions

The following actions will take longer to implement and will require legislation.

4. Facilitating growth and innovation in the design sector

This reform would expand the scope of the Australian design right system to include protection for the look of a product when turned on, for example, the look of a smartphone including the graphical user interface (GUI). This reform would also introduce design protection for a part of a whole product, for example a handle design for a cup, mug, jug and beer stein. Designers have told IP Australia that not being able to effectively protect these types of designs is limiting their ability to use the registered design system to support good design, and is internationally inconsistent.

By our estimates, the contribution to Australia's GDP of design-related industries and workers was approximately AU\$67.5 billion per annum by 2018, or more than 3.5% of GDP – equivalent to the size of the construction industry. Effective protection for the above types of designs would encourage greater investment, particularly in the tech industry: benefiting innovators, industries, and consumers.

Size, scope and impact of action

Based on research conducted by Swinburne University and a sample of the designs register we expect to see over 1,000 additional design right applications per year that seek to protect the active components of the design or designs in part of a product.

Who will benefit from the action

Potentially all Australian designers, particularly those in the tech industry, who have been awaiting the reforms for many years.

When the action will be implemented or take effect

Legislative proposals will be subject to policy authority. Drafting instructions have been developed.

How will any trade-offs or risks be managed

Risks will be managed through stakeholder consultation on proposed legislative changes.

5. Streamlining and simplifying IP regulation

This measure would streamline regulatory processes across the IP rights framework. It would remove unnecessary compliance burdens for Australians seeking to protect their IP. Changes would be to patents, designs, trade marks and PBR legislation. The exact measures will depend on the outcome of further policy analysis and stakeholder consultation, but could include the following:

Cross-IP right reforms

- Rationalise the different types of extensions of time to reduce complexity for customers and remove requirements to file a supporting declaration for short, low-risk extensions.

- Enable patent and design owners to use virtual marks to put the public on notice that they have IP rights, avoiding the need to update physical packaging as the right's status changes.
- Remove the requirement to file certificates of verification of translated documents.

Patent reforms

- Reduce uncertainty around pharmaceutical patents for patentees and generic competitors in the market by allowing the Commissioner to shorten oppositions to extensions of term.
- Repeal the arguably redundant requirement for a patent applicant to describe the best method of using a patent, reducing litigation costs when patents are challenged in court.
- Broaden the scope of exclusive licensees' ability to bring infringement proceedings, saving the patentee having to commence infringement proceedings at the behest of the licensee.
- Repeal redundant provisions aimed at preventing restrictive trade practices, which are already covered by the *Competition and Consumer Act 2010*.

Trade mark reforms

- Allow owners of registered trade marks to correct ownership and other administrative errors without having to re-file their trade mark, or have their trade mark reinstated when removed in error.
- Reduce the burden on trade mark owners to take legal action to avoid release of counterfeit imports that are seized by the Australian Border Force (ABF).
- Avoid having to continuously update the *Trade Marks Regulations 1995* every time version updates are made to the Madrid Protocol Regulations (governing international trade marks) and the Nice Classification (governing the classification of trade mark goods and services), providing ongoing certainty for businesses as to the meaning of these terms in the regulations.

PBR reforms

- Reduce burden on applicants to pay examination fees well ahead of when examinations are undertaken.

Patent and trade mark attorney reforms

- Remove the requirement for a registered patent attorney to be in attendance at a physical office and in continuous charge of the patents work done in that office, enabling patent attorneys to benefit from the efficiencies of working from home.
- Address the loophole of patent attorneys handing in their registration to avoid disciplinary action, which leads to considerable time and cost in administering the trans-Tasman regime.

Size, scope and impact of action

IP Australia has identified a number of possible legislative amendments that could streamline and simplify businesses' interaction with the IP system and reduce compliance costs, allowing them to divert resources to more productive activities. The exact number of initiatives and the size of their impact will depend on further policy analysis and stakeholder consultation, noting the above list is indicative.

Who will benefit from the action

Applicants for and owners of patents, trade marks, designs and PBRs. In some cases, the reforms may benefit competitors who need to determine their freedom to operate around IP rights.

When the action will be implemented or take effect

We plan to analyse the proposals, develop preferred options and drafting instructions, and seek policy authority before the end of 2026.

How will any trade-offs or risks be managed

The initial list of policy proposals will be analysed and any that do not result in a net benefit will be discarded. We would ideally consult with stakeholders, to ensure no unintended consequences.

6. Supporting business by aligning trade mark regulations with international requirements and making improvements to dispute processes

A series of upcoming technical amendments to the Trade Marks Regulations would keep our trade marks system in line with international requirements, simplify processes and create certainty for business (including as part of disputes). Increased certainty will help give trade mark-reliant businesses the confidence to scale up and move into export markets.

Size, scope and impact of action

Practices and certain timeframes will be brought into line across international and domestic trade mark applications, reducing burdens and uncertainty for business. Exporters with an international trade mark portfolio may see reduced costs as they no longer need to maintain partially duplicative domestic and international trade marks on the Australian register. Businesses requesting a hearing related to their trade mark application will no longer need to apply for extensions of time to keep their applications active. Finally, the backlog of opposition matters that today otherwise cannot be finalised will be resolved – removing ongoing uncertainty for those businesses and interested third parties.

Who will benefit from the action

Australian businesses looking to export, users of the trade mark system and interested third parties.

When the action will be implemented or take effect

Drafting has commenced. We anticipate the amended regulations will be in place first half of 2026.

How will any trade-offs or risks be managed

We will consult on the draft regulations before they are made.

7. Review to ensure IP rights are supporting productivity, innovation and competition

This action would see IP Australia conduct a review of its patent and trade marks systems to ensure they are enhancing productivity and economic growth by:

- Incentivising the creation and implementation of innovations, which help businesses and workers be more efficient and improve living standards.
- Facilitating investment in and access to advanced technologies.
- Ensuring that the IP system promotes competition, dynamism and productivity-enhancing resource allocation within the economy.
- Removing barriers to productive small and new firms participating in the IP system (like the fear of expensive patent litigation).

The content and scope of the review is yet to be determined. However, areas for analysis and possible reform may include:

Patents

- Consider raising the level of inventive step to ensure that overly broad, low-quality patents do not stymie competition and follow on innovation.
- Check if 'manner of manufacture' (the test for what is patentable subject matter) is still appropriate for a modern digital economy.
- Investigate if oppositions and divisionals strike the right balance between giving applicants freedom in their prosecution strategy and reducing competitors' uncertainty.
- Ensure barriers to enforcement are not preventing SMEs from using the patent system to stimulate innovation and disrupt entrenched technology markets.

Trade marks

- Consider whether timeframes for assessment and registration of trade marks should be shortened to provide greater business certainty and more accurately reflect the modern pace of the economy.
- Investigate options to address 'clutter' on the Register of Trade Marks, as this creates barriers to new entrants accessing the system and third party businesses understanding their freedom to operate.
- Ensure rules around eligibility for registration (including distinctiveness) do not needlessly burden businesses.
- Review the operation of the ABF seizure scheme to reduce barriers that are preventing legitimate businesses from protecting their IP.

Size, scope and impact of action

The exact size, scope and impact of any reforms will depend on what the review finds and recommends. Reforms would be evaluated for their potential impacts in driving business investment and innovation, lifting business productivity, reducing business costs or regulatory burdens; in promoting economic dynamism and competition; and/or delivering benefits for consumers such as increasing product quality or variety.

Who will benefit from the action

Impacts from reform could include benefits to innovative businesses and organisations. As of 2024, there were 194,172 entities active in Australia that held an IP registration or grant. Benefits from reform could extend to third parties, such as applicants' competitors, consumers and society-at-large.

When the action will be implemented or take effect

The review will commence by the end of 2026. Decisions around any associated legislative reforms will be made following completion of the review.

How will any trade-offs or risks be managed

The review will analyse all proposals for both their costs and benefits, consistent with the government's Impact Analysis guidance. Together with extensive stakeholder consultation this will ensure that trade-offs and risks are identified and mitigated appropriately before any subsequent legislation is introduced.