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# **Inquiry into the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge**

## **Submission**

Joint Standing Committee on Treaties



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**Submitted by CropLife Australia**

Submission to the Joint Standing Committee on Treaties

## **1. Introduction**

CropLife Australia (CropLife) is the national peak industry organisation representing the agricultural chemical and plant biotechnology (plant science) sector in Australia. CropLife represents the innovators, developers, manufacturers, formulators and suppliers of crop protection products (organic, synthetic and biologically based pesticides) and agricultural biotechnology innovations. CropLife's membership is made up of both large and small, patent holding and generic, Australian and international companies and accordingly, CropLife advocates for policy positions that deliver whole of industry and national benefit. Our focus is, however, specifically on an Australian agricultural sector that is internationally competitive through globally leading productivity and sustainability. Both of which are achieved through access to world-class technological innovation and products of the plant science sector.

CropLife Australia welcomes the opportunity to provide input to the Joint Standing Committee on Treaties' inquiry into the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (the Treaty).

CropLife Australia recognises the objective of the Treaty to provide a framework that improves transparency in the patent system and acknowledges the role of genetic resources (GR) and associated traditional knowledge (ATK). However, implementation must ensure that disclosure remains strictly a transparency measure and does not expand access and benefit-sharing obligations into Australia's patent law. The principal risk lies in national implementation choices that introduce additional burden or legal uncertainty, undermining innovation pathways and Australia's broader ambition to drive productivity and innovation in its agricultural and biotechnology sectors. This in turn will limit the effectiveness of the Treaty in delivering a tangible benefit to owners of ATK through denying the investment necessary to develop commercial benefit to be distributed.

While the disclosure requirement is intended to enhance transparency, it may also create practical challenges for biotechnology innovation if not carefully implemented. CropLife supports the objective of transparency; however, recommends that any implementation of the Treaty by the Australian Government does not undermine the effectiveness, predictability and global consistency of the patent system or unintentionally limit the ability to translate Australia's First Nations knowledge into new innovations that creates shared benefits. Stakeholder consultations undertaken by IP Australia have also highlighted the importance of avoiding unnecessary burdens on researchers and innovators that could otherwise stifle innovation.

## 2. Key principles

- **Ensure disclosure remains a procedural and transparency-based requirement, and does not introduce new substantive conditions for patentability;**
- **Apply a clear and appropriately targeted disclosure trigger, limited to inventions genuinely based on genetic resources or associated traditional knowledge;**
- **Maintain legal certainty by ensuring that non-compliance with disclosure obligations does not affect patent validity, enforceability or scope, except in cases of fraud;**
- **Preserve the separation between the patent system and Access and Benefit-Sharing (ABS) frameworks, recognising that ABS obligations should be addressed through existing regulatory mechanisms; and**
- **Ensure implementation is proportionate, practical and avoids unnecessary administrative burden, particularly in sectors where genetic resources have complex or multi-origin supply chains.**

## 3. Refining Disclosure Requirements

### ***Principle***

*Ensure disclosure remains a procedural and transparency-based requirement, and does not introduce new substantive conditions for patentability*

CropLife Australia supports the Treaty's objective of improving transparency and recognising the contribution of Indigenous and First Nations knowledge. However, further refinement is needed to ensure the disclosure requirement is appropriately targeted.

The proposed disclosure requirement, as stated in Article 3 of the Treaty, creates legal uncertainty for patent applicants. In many cases, particularly in plant breeding and biotechnology, the country of origin or source of genetic resources is unclear or has multiple origins. Additionally, the threshold for when an invention is considered to be “materially” or “directly” based on those resources is not well defined in the Treaty.

Consideration should be given to ensuring disclosure obligations are appropriately targeted to circumstances where genetic resources or ATK are derived from identifiable Indigenous or First Nations sources. This would ensure any regulatory requirement is aligned with the intended purpose, while avoiding disproportionate obligations in cases involving widely available or globally exchanged genetic materials.

#### 4. Maintain legal certainty

***Principle***

*Maintain legal certainty by ensuring that non-compliance with disclosure obligations does not affect patent validity, enforceability or scope, except in cases of fraud*

CropLife Australia recognises that the Treaty includes important safeguards, notably those provided for in Articles 3.3–3.6 and Articles 5.2–5.4. These provisions clarify that non-compliance with disclosure obligations should not, in itself, result in the revocation, invalidation or unenforceability of a patent, except in cases of fraud as outlined in Article 5.3 of the Treaty. This reflects an appropriate and constructive approach and is an important step in preserving the integrity of the patent system.

However, further clarification will be critical at the national implementation stage to ensure these safeguards are fully realised in practice. Without clear guidance, there is a risk that disclosure obligations could become linked, either directly or indirectly, to patent examination outcomes, enforcement, or post-grant challenges, thereby introducing legal uncertainty for applicants<sup>1</sup>.

To mitigate these risks, Australian legislation should clearly establish that disclosure is a declaratory and procedural requirement only, and should explicitly exclude any

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<sup>1</sup> <https://www.dfat.gov.au/international-relations/treaties/australian-treaties-database>

impact on patent validity, enforceability or scope. Measures to address incomplete or missing disclosure should be limited to administrative and corrective mechanisms.<sup>2</sup> At the same time, enforcement of Access and Benefit-Sharing (ABS) obligations should be addressed through relevant ABS regulatory frameworks, rather than within the patent system.<sup>3</sup>

In addition, implementation should provide clear, practical guidance on compliance expectations, including the circumstances in which disclosure is required and the level of detail expected. This will reduce uncertainty and compliance burden. This is particularly important for biotechnology and plant breeding sectors, where genetic resources often have complex and multi-origin histories.

A clear and proportionate legislative approach will ensure that the Treaty's transparency objectives are achieved, while maintaining legal certainty and supporting continued investment and innovation in Australia's agricultural biotechnology sector.

## 5. Avoid administrative burden

### ***Principle***

*Preserve the separation between the patent system and Access and Benefit-Sharing (ABS) frameworks, recognising that ABS obligations should be addressed through existing regulatory mechanisms*

CropLife Australia emphasises that any measures addressing non-compliance with disclosure requirements should be limited, proportionate, and procedural in nature.

Enforcement of access and benefit-sharing obligations should occur within appropriate ABS regulatory frameworks, rather than through the patent system. Australia already has established legal frameworks to manage access to its biological and genetic resources and support equitable benefit-sharing outcomes, with different arrangements operating across Commonwealth, state and territory jurisdictions. Duplicating these requirements within the patent system risks creating unnecessary complexity, cost and regulatory overlap.

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<sup>2</sup> <https://www.cbd.int/abs/doc/protocol/icnp-1/australia-en.pdf>

<sup>3</sup> <https://www.dcceew.gov.au/science-research/australias-biological-resources/nagoya-protocol-convention-biological>

The patent system is not designed to assess or enforce ABS compliance and linking disclosure obligations to patent-related penalties risks undermining legal certainty and the integrity of the IP system.

In addition, introducing compliance and verification obligations within the patent system would impose an unnecessary administrative burden and cost to applicants. This is particularly the case in sectors such as plant breeding and biotechnology, where genetic resources often have complex and indeterminate origins.

Requirements for verification of origin or source information are unlikely to be practicable for patent offices and may result in increased delays, uncertainty and compliance costs without delivering meaningful improvements in transparency or ABS outcomes.

Evidence from other jurisdictions shows delays, increased costs, and uncertainty resulting from disclosure requirements. These impacts may discourage innovation and investment.<sup>4</sup> This has a particular consequence for sectors reliant on genetic resources, with the unintended consequence of reducing the number of new products developed, which in turn limits the overall benefits available for sharing with owners of ATK.

This highlights the importance of ensuring the mechanism effectively supports, rather than unintentionally undermines, the Treaty's objective of delivering meaningful benefits to Indigenous and First Nations communities. In Australia, Aboriginal and Torres Strait Islander peoples, as Traditional Owners, are central to the stewardship of knowledge associated with genetic resources, while industry plays a key role in enabling its application through innovation. A clear and proportionate disclosure framework will support collaboration between Traditional Owners and industry, ensuring that knowledge is recognised and translated into shared benefits.

## 6. Conclusion

CropLife Australia supports the Treaty's objective of improving transparency and recognising the contribution of Indigenous and First Nations knowledge. CropLife Australia emphasises that implementation must preserve the integrity of the patent system, avoid over-regulation, and maintain a focused, procedural disclosure requirement. The preservation of Traditional Knowledge represents a natural

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<sup>4</sup> <https://www.nature.com/articles/s41477-024-01880-z>

advantage for Australia, with First Nations communities holding a wealth of knowledge about native flora, sustainable land management and its uses developed over generations.

The Treaty introduces a disclosure obligation into the patent system that, while intended as a transparency measure, risks creating legal uncertainty, administrative burden, and practical challenges for biotechnology innovation. The key issue is not the objective of transparency, but ensuring implementation does not undermine the effectiveness, predictability and global consistency of the patent system or unintentionally limit the ability to translate First Nations knowledge into new innovations and shared benefits.<sup>5</sup>

Realising these outcomes will depend on implementation settings that support effective partnerships between Traditional Owners and industry, while avoiding unnecessary burden or uncertainty that could undermine innovation pathways.

A targeted and proportionate implementation will ensure that the Treaty delivers on its objectives while supporting innovation, strengthening collaboration, and enabling meaningful and sustained benefits for First Nations communities.

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<sup>5</sup> <https://www.dfat.gov.au/sites/default/files/iacepa-1a-national-interest-analysis-including-attachments.pdf>