



**Australian Vice-Chancellors' Committee**  
*the council of Australia's university presidents*  
(ACN 008 502 930 - ABN 53 008 502 930)

**AVCC Submission to the Advisory Council on Intellectual Property Review on Patents and Experimental Use**

The Australian Vice-Chancellors' Committee (AVCC) welcomes this opportunity to provide feedback on the Patents and Experimental Use Options Paper produced by the Advisory Council on Intellectual Property. This inquiry is of particular relevance to universities, who undertake the bulk of Australia's research and development.

The options paper provides a clear explanation of both the issues in hand and the range of possible responses. The AVCC would like to provide the following general comments on the options proposed:

**Option A – Expressly exclude experimental use from allowable activity**

As noted in the options paper, this approach would remove the current legal ambiguity surrounding experimental use of patented items. It would, however, serve to stifle research and innovation.

*The AVCC does not support this option.*

**Option B – No change**

Maintaining the status quo would have some benefit. However, increasing awareness of the value of intellectual property means that more cases challenging the experimental use of patented items are likely to arise in future. The existing legal ambiguity should be resolved sooner rather than later.

*The AVCC does not support maintaining the current situation as there is a clear need for action on this issue.*

**Option C – Introduce an express provision allowing experimental use**

Amending the *Patent Act 1990* to allow for experimental use would provide greater clarity for researchers, and serve to encourage further research and innovation. As a general approach to the problem this would prove very useful. However, many of the eight alternatives set out under Option C would result in unnecessarily prescriptive legislation, or allow for extremely narrow interpretations of the Act.

The AVCC believes that, as a general principle, some degree of flexibility is desirable: setting out specific examples or guidelines, defining terms, or otherwise establishing limits – as would be the case with Options C7 and C8 – would not be useful.

Option C1 – which would allow for experimental use without further defining the term – has clear merits.

There is also a case for adopting an approach which would lead to greater consistency in the broader legal treatment of intellectual property. Option C4 presents the possibility of introducing provisions analogous to the 'fair dealing' arrangements in copyright law. Including such provisions would provide greater protection for patent holders while still encouraging research and innovation.

*The AVCC supports the introduction of an express provision allowing experimental use, and endorses Options C1 and C4 in particular.*

**Option D – Introduce a provision relating to invention utility that subsequently allows experimental use**

*and*

**Option E – Statutory licensing for experimental use**

Both these options would lead to greater complexity in the experimental use of patented items, and, in the case of Option E, are likely to lead to substantially increased costs for universities.

*The AVCC does not support Options D and E.*

Further discussion of this issue will prove useful especially since, as the options paper notes, there are other inquiries currently under way which may lead to changes to the *Patents Act 1990*. The AVCC would be happy to provide more detailed feedback on this matter, or to meet with ACIP as part of the consultation process.