

# MEDIA RELEASE



**Warren Entsch, MP**  
Parliamentary Secretary to the  
Minister for Industry, Tourism and Resources

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## REVIEW OF CROWN USE PROVISIONS FOR PATENTS AND DESIGNS

Federal Industry Parliamentary Secretary, Warren Entsch MP, today released the report, *Review of Crown Use Provisions for Patents and Designs* by the Advisory Council on Intellectual Property (ACIP).

The Crown relies on provisions in the *Patents Act 1990* and the *Design Act 2003* to allow it to use patents and designs owned by other parties, without first obtaining authorisation from the owner. When this occurs, the Crown cannot be sued for infringement, although the patent or design owner must still be notified and compensated.

“The underlying purpose of such provisions is to ensure the Crown can use particular patents or designs in the public interest, particularly in times of national emergency,” Mr Entsch said.

“It is important that the Crown can continue to access patents in times of genuine need, but these provisions should not be seen as an easy and convenient method of acquiring technology cheaply.

“ACIP was asked to report on whether the existing Crown use provisions continue to reflect the current needs of government, business and the Australian public,” Mr Entsch said.

Some issues investigated include: the increasing uncertainty about which government organisations can rightfully invoke the provisions; whether the provisions are being used appropriately; and whether patent and design owners have sufficient bargaining power to negotiate fair compensation for the use of their intellectual property.

The ACIP report recommends that a more transparent and accountable process for utilising the Crown use provisions be introduced.

The recommendations include requirements for the Crown to seek prior consent from the patent or design owner and to seek Ministerial approval before invoking the provisions. These requirements can be temporarily waived in special and urgent circumstances such as emergencies or national security. ACIP also recommends introducing a remuneration standard and a process to facilitate an agreed remuneration for the patent or design owner.

The ACIP recommendations continue to ensure the Crown use provisions are readily accessible by Australian governments, and they propose the introduction of safeguards to prevent these powers from being used inappropriately.

Mr Entsch thanked ACIP for their report and noted that the Government will consider it in detail before making a final decision. A copy of the report is available at [www.acip.gov.au](http://www.acip.gov.au).

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