

1989

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INDUSTRY, TECHNOLOGY AND COMMERCE LEGISLATION
AMENDMENT BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Industry, Technology and Commerce,
Senator the Honourable John N Button)

INDUSTRY, TECHNOLOGY AND COMMERCE
LEGISLATION AMENDMENT BILL 1989

OUTLINE

The Industry, Technology and Commerce Legislation Amendment Bill is divided into six parts. Part 1 covers preliminary provisions relating to the commencement of the different parts of the Bill; Part 2 relates to activities of the Australian Industry Development Corporation; Part 3 amends the Australian Trade Commission Act 1985; Part 4 the National Measurement Act 1960; Part 5 amends some administrative provisions of the Designs Act 1906, the Patents Act 1952 and the Trade Marks Act 1955 and Part 6 repeals unproclaimed amendments of the Patents Act 1952.

The primary aim of Part 2 of the Bill is to provide for the implementation of accountability measures for the Australian Industry Development Corporation (the Corporation) and its eligible subsidiaries, (as defined in the Australian Industry Development Corporation Act 1970), by way of the preparation of financial targets and corporate plans. Some other amendments of a minor nature are also made.

Part 3 adds another government member to the Australian Trade Commission Board.

Part 4 amends the interpretation provision of the National Measurement Act 1960. Passage of uniform State and Territory legislation on Trade Measurement is imminent, and there is reference in that Uniform Legislation to the National Measurement Act's current definition of a 'measuring instrument'. This definition is considered inadequate for metrological purposes.

The main purpose of the proposed amendments made by Part 5 of the Bill is to align and extend the provisions of the Designs Act, Patents Act and Trade Marks Act providing for delegations of powers and functions by the Registrar of Designs, Commissioner of Patents and Registrar of Trade Marks. The proposed amendments will enable more flexible and streamlined administration of the Patent, Trade Marks and Designs Offices.

Part 6 of the Bill repeals certain unproclaimed amendments of the Patents Act dealing with the lodgment and preparation of abstracts of patent specifications.

FINANCIAL IMPACT STATEMENT

No financial impact is expected to arise from these amendments.

ABBREVIATIONS

The following abbreviation is used in this Explanatory Memorandum:

AIDC : The Australian Industry Development Corporation as established under the Australian Industry Development Corporation Act 1970

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 Short Title

1. Provides for the Act to be cited as the "Industry, Technology and Commerce Legislation Amendment Act 1989".

Clause 2 Commencement

2. Subclause (1) provides for the Act, other than those Parts of the Act referred to in subclauses 2(2), 2(3) and 2(4), to come into operation on the day it receives the Royal Assent.

3. Subclause 2(2) provides that clause 16 which deals with the treatment for capital gains tax purposes of shares issued to the AIDC by its receiving subsidiary, shall be taken to have commenced on 14 December 1988.

4. Subclause 2(3) provides that the provisions of Parts 4 and 5 will commence on a day or days to be fixed by Proclamation. This is to allow time for the necessary regulations to be drafted.

5. The effect of subclause 2(4) is that if there is no proclamation for the commencement of subclause 2(3) within six months of the Bill receiving Royal Assent, the subclause commences at the end of that period.

PART 2 - AMENDMENT OF THE AUSTRALIAN INDUSTRY DEVELOPMENT CORPORATION ACT 1970

Clause 3 Principal Act

6. Defines "Principal Act", for this Part, as the Australian Industry Development Corporation Act 1970.

Clause 4 Interpretation

7. Defines terms that are used in the Principal Act.

Clause 5 Repeal of section 10A

8. Subclause 5(1) repeals section 10A of the Principal Act.

9. Subclause 5(2) states that section 10A is repealed as of 1 July 1989 and each subsequent financial year.

Clause 6 Membership of Board

Clause 7 Qualifications for appointment as a Director

Clause 8 Resignation

10. Clauses 6, 7 and 8 effect amendments of a technical nature by omitting the expression "Governor-General" and inserting "Minister". This is in line with the increased level of accountability expected of Government Business Enterprises.

Clause 9 Termination of Appointment

11. Paragraphs 9(a) and (e) effect the same amendment as clauses 6, 7 and 8. The amendments contained in 9(b) and 9(c) effect amendments of a mechanical nature. Paragraph 9(d) omits paragraph 19(3)(e) of the Principal Act.

12. Paragraph 9(f) omits existing subsection (4) and substitutes new paragraphs 19(4)(a) and 19(4)(b) which allow the Minister to terminate a director's appointment if he considers it in the best interests of the Corporation, or if that director's performance has been unsatisfactory for a significant period of time.

Clause 10 Meetings of the Board

13. The amendment effected by this clause is necessary as a consequence of a previous amendment made to the Principal Act.

Clause 11

14. Inserts a new Part 111A relating to Corporate Plans into the Principal Act.

Proposed
Section 23B

Corporate Plans

15. The Board is required to prepare corporate plans which cover a period of 3 years. This is in line with the policy guidelines for Government Business Enterprises which were issued in October 1987. The first of these plans shall be for the period commencing 1 July 1989.

16. The plans may be reviewed or revised at any time by the Board.

Proposed
Section 23C

General matters to be included in corporate plans

17. The corporate plan will set out the objectives of the AIDC and its eligible subsidiaries. It is not considered appropriate for the listed subsidiary to be subject to government direction in regard to corporate planning.

Proposed
Section 23D

Financial matters to be included in corporate plans

18. Each corporate plan shall include an agreed financial target, an outline of financial strategies and a forecast of revenue and expenditures of the AIDC and its eligible subsidiaries.

Proposed
Section 23E

Matters to be considered in setting financial target

19. This proposed section lists the matters which the Board must take into consideration when it determines its financial target. It should be noted that the Board of AIDC and the Minister shall have an agreed financial target.

Proposed
Section 23F

Corporate plans to be given to Minister

20. Once the Board has prepared or revised a corporate plan it shall give a copy of the plan to the Minister as soon as is practicable.

Proposed
Section 23G

Minister may direct certain variations of corporate plan

21. The Minister has a period of 30 days from receipt of the plan to direct a variation of the submitted financial target. Subsection (2) directs the Minister to take into account certain matters when exercising the powers of variation under subsection (1).

Proposed
Section 23H

Board to notify Minister of significant affecting events etc

22. This proposed section provides that where there is a change of circumstances which may prevent or significantly affect the achievement of the corporate plan or the financial target, the Board shall notify the Minister as soon as is practicable.

Clause 12 Liability to taxation

23. This clause omits the current subsection 27(1B) and replaces it with new subsections 27(1B) and 27(1C). Subsection (1B) subjects the Corporation to State or Territory stamp duty or similar tax in respect of transactions entered into by and documents executed by or on behalf of the Corporation.

24. The new proposed subsection 27(1C) provides that regulations may be made which exempt the Corporation from stamp duty; and subsection 27(1B) does not limit this.

25. Subclause (2) provides that the proposed amendments apply in relation to a transaction entered into, or a document executed, on or after 1 July 1989.

26. Subclause (3) makes it clear that an advance made on or after 1 July 1989 under a document executed before that date will be exempt from stamp duty.

27. Subclause (4) prevents a document that is executed on or after 1 July 1989 from being subject to stamp duty if the regulations treat that document as a pre-1 July 1989 document for stamp duty purposes.

28. Subclause (5) allows the Governor-General to make regulations to give effect to subclauses (3) and (4).

Clause 13 Appointment of Corporation auditor

29. This clause is to enable AIDC to operate on the same footing as its commercial competitors by allowing the Board to recommend to the Minister the appointment of an auditor on the basis of services and cost. The AIDC is currently subject to audit by the Auditor-General but it can appoint a private sector auditor at additional cost. Clause 18 covers the commencement of this provision.

Clause 14 Audit

30. This clause, by omitting the word 'Auditor-General' and substituting 'Corporation auditor', allows the AIDC to have either the Auditor-General or a private sector auditor appointed as 'Corporation auditor'.

Clause 15 Interpretation

31. This clause omits the definition of 'receiving subsidiary'.

Clause 16 Treatment for capital gains tax purposes of shares issued to Corporation by receiving subsidiary

32. This clause corrects a definitional problem that occurred in the amendments of 1988.

33. The partial exemption from capital gains tax, allowed by 29ZD, on any capital gain made on a future sale by AIDC of shares issued to it by the receiving subsidiary is determined by the number of pre-CGT shares that is a proportion of all the shares issued to the AIDC under section 29N. This equates to the proportion of "Net Value of Total Assets" represented by "Net Value Of Pre-CGT Assets".

34. In general terms "Net Value of Pre-CGT Assets" is the market value of assets acquired by the AIDC before 20 September 1985 and transferred to the subsidiary LESS liabilities (both transferring and on-transferring) which are attributable to those assets.

35. "Net Value of Total Assets" should be, in keeping with "Net Value of Pre-CGT Assets", the market value of all assets transferred to the subsidiary LESS liabilities (both transferring and non-transferring) which are attributable to those assets.

36. The definition in the Principal Act does not include words which would allow the deduction of liabilities which are attributable to transferred and non-transferred assets.

Clause 17 Report and financial statements

37. This proposed subsection specifies further matters that Board should take into account when preparing a report of its operations for a financial year. This aims to bring AIDC into line with other Government Business Enterprises by the formalisation of its reporting process through the inclusion of performance indicators against known targets.

38. The amendments effected by this proposed subsection are to take effect from the commencement of the financial year 1 July 1989.

Clause 18 Application of amendments - Corporation auditor

39. The amendments made by clause 13 and paragraphs 14(1)(a) and 17(1)(b) are not to take effect until 1 July 1990.

Clause 19 Application of amendments - appointment of Directors

40. Directors who were appointed by the Governor-General will not have their appointments affected by the amendments made by clauses 6 and 7.

PART 3 - AMENDMENT OF THE AUSTRALIAN TRADE
COMMISSION ACT 1985

Clause 20 Principal Act

41. Defines 'Principal Act' in this Part as the Australian Trade Commission Act 1985.

Clause 21 Membership of Board

42. This clause adds an additional Government member to the Board of Australian Trade Commission, thus increasing the total number of Board members to twelve. Currently the Secretary of the Department of Industry Technology and Commerce sits on the Board; this amendment will allow other interests in the Government to be represented.

PART 4 - AMENDMENT OF THE NATIONAL MEASUREMENT
ACT 1960

Clause 22 Principal Act

43. Defines 'Principal Act' in this Part as the 'National Measurement Act 1960'.

Clause 23 Interpretation

44. The definition of "pattern" is omitted in the Principal Act and a new definition of "pattern" is substituted.

45. The definition of "instrument" is omitted from the Principal Act.

46. A definition of "component" is inserted into the Principal Act. The definition of 'component' in the Oxford English Dictionary is 'a constituent element or part'. Applying these definitions literally, a device may only be a component if it forms a whole with the instrument to which it is connected. If it is merely 'associated with' the instrument then it is not a component in the natural meaning of the word. This meaning is not sufficiently broad to include separate devices that are linked to a main measuring instrument and that carry out part of the measurement process. Therefore a wider definition of 'component' for the context of the Principal Act has been provided. Paragraph (a) is not meant to apply to "associated things" to which measurement data is transferred manually e.g. cash registers, calculators.

47. A definition of "material measure" is inserted into the Principal Act. This is necessary because the new definition of 'standard of measurement' refers to this term. The definition is consistent with the International Vocabulary of Basic and General Terms in Metrology.

48. A definition of "measuring instrument" is inserted into the Principal Act. This definition is necessary as it will be referenced by the new uniform trade measurement legislation of the States and Territories.

49. A definition of "standard of measurement" is inserted into the Principal Act. This is necessary to avoid confusion with written standards. The definition, while being consistent with the International Vocabulary of Basic and General Terms in Metrology, also includes reference to a formula used to determine the magnitude of a physical quantity. This is necessary so as to include in the definition of Recognized-Value Standards of Measurement that are the subject of section 8A of the Principal Act.

50. A definition of "use for trade" has been inserted into the Principal Act. The word "tax" for the purposes of this definition is "a compulsory exaction of money by a public authority for public purposes, enforceable at law, and is not a payment for services rendered." see *Mathews v Chicory Marketing Board* (Vict) [1938] 60 CLR 263 @ 276.

Clause 24 Functions of the Commission

51. The amendments effected by this Clause are consequential to the amendments made to the definitions "measuring instruments" and "use for trade".

Clause 25 Audit

52. This clause repeals subsection 18H(6) and 18H(7) of the Principal Act as section 14B of the Audit Act 1901 gives the Auditor-General access to accounts and records of the National Standards Commission.

Clause 26 Patterns of measuring instruments

53. The amendments effected by this Clause are consequential to the amendments made to the definition "measuring instruments".

Clause 27 Offences

54. The amendments effected by paragraph (a) are consequential to the amendment made to the definition "measuring instrument". The amendment effected by paragraph (b) is necessary because the penalties of this provision were last changed in 1984, and do not reflect current economic conditions. The penalty for a body corporate is omitted and will now be determined by subsection 4B(3) of the Crimes Act 1914. The penalty for an offence committed by a natural person has been increased by \$2000 to \$6000.

Part 5 AMENDMENTS RELATING TO THE ADMINISTRATION
OF THE DESIGNS ACT 1906, THE PATENTS ACT 1952
AND THE TRADE MARKS ACT 1955.

Clause 28 Amendments relating to the administration of the
Designs Act 1906, the Patents Act 1952 and the
Trade Marks Act 1955

55. This clause provides for amendments to be made
as set out in Schedule 1.

Clause 29 Saving of existing delegations

56. This clause ensures that existing delegations
will remain in force as though they were made
under the amended provisions.

PART 6 - REPEAL OF UNPROCLAIMED AMENDMENTS OF THE
PATENTS ACT 1952

Clause 30 Repeal of unproclaimed amendments of the Patents
Act 1952

57. This clause provides for amendments to be made
as set out in Schedule 2.

SCHEDULE 1

AMENDMENTS RELATING TO THE ADMINISTRATION OF THE DESIGNS ACT
1906, THE PATENTS ACT 1952 AND THE TRADE MARKS ACT 1955

Amendments of the Designs Act 1906

The proposed amendment of subsection 8(1) provides for the
Registrar of Designs to have, under the Minister, chief control
of the Designs Office. This aligns the provision with existing
provisions in the Patents Act and the Trade Marks Act.

The proposed new subsections 8(5A) and (5B) clarify the nature
of the powers and functions of the Deputy Registrar of Designs
vis-a-vis the Registrar.

The proposed repeal of section 8A and substitution of a new
section 8A will have the effect of streamlining the delegation
of powers by the Registrar. The new section 8A will enable
delegations to be made to officers and employees who are under
the control of the Registrar, including both those carrying out
the duties of statutory offices under the Designs Act and other
Australian Public Service officers performing administrative
work.

Amendments of the Patents Act 1955

The proposed amendments of section 6 simplify the definitions of
"the Commissioner" and "Examiner".

Proposed new subsections 10(2A) and (2B) clarify the nature of
the powers and functions of the Deputy Commissioner of Patents
vis-a-vis the Commissioner.

The proposed amendment of subsection 10(5) is consequential on
the proposed redefinition of "Examiner" in section 6.

New subsection 10(6) is proposed to replace existing subsection 10(6) which has no continuing operation. Proposed new subsection 10(6) provides for the division of the offices of Examiners of Patents into classes. The office of Supervising Examiner of Patents will be re-established administratively as a class of Examiner of Patents; positions will continue to be created in practice under the Public Service Act 1922.

The proposed repeal of section 11 and substitution of a new section 11 will have the effect of streamlining the delegation of powers by the Commissioner. The new section 11 will enable delegations to be made to officers and employees who are under the control of the Commissioner, including both those carrying out the duties of statutory offices under the Patents Act and other Australian Public Service officers performing administrative work.

Amendments of the Trade Marks Act 1955

Proposed new subsections 10 (3B) and (3C) clarify the nature of the powers and functions of the Deputy Registrar of Trade Marks vis-a-vis the Registrar.

The proposed repeal of section 11 and substitution of a new section 11 will have the effect of streamlining the delegation of powers by the Registrar. The new section 11 will enable delegations to be made to officers and employees who are under the control of the Registrar, including both those carrying out the duties of statutory offices under the Trade Marks Act and other Australian Public Service officers performing administrative work.

SCHEDULE 2

REPEAL OF UNPROCLAIMED PROVISIONS OF THE PATENTS ACT 1952

Certain unproclaimed amendments to the Patents Act, made by Statute Law (Miscellaneous Provisions) Acts in 1983, 1984 and 1985, and relating to the lodgment and preparation of abstracts of patent specifications, are proposed to be omitted from the amending Acts.

The proposed repeal of the unproclaimed provisions recognises that there are no immediate plans to proclaim commencement of the amendments, which would if proclaimed require the devotion of resources within the Patent Office, while the Office's present emphasis on reduction of delays in dealing with applications continues.

