

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**INDUSTRY, TECHNOLOGY AND REGIONAL DEVELOPMENT LEGISLATION
AMENDMENT BILL 1993**

EXPLANATORY MEMORANDUM

**(Circulated by the authority of the Minister for Industry,
Technology and Regional Development, Senator the Hon Peter Cook)**

**THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS
MADE BY THE SENATE TO THE BILL AS INTRODUCED**

INDUSTRY, TECHNOLOGY AND REGIONAL DEVELOPMENT LEGISLATION AMENDMENT BILL 1993

OUTLINE

This Bill is an omnibus Bill for legislation administered within the Industry, Technology and Regional Development portfolio. Its purpose is to make a number of amendments to existing legislation.

The Bill makes the following amendments:

Amendment of the Designs Act

The *Designs Act 1906* is amended to make minor changes consequent on the incorporation of the Patent, Trade Marks and Designs Offices into the Australian Industrial Property Organisation (AIPO). These changes facilitate administrative rearrangements that will devolve the statutory role of the Registrar of Designs from the Division Head of AIPO to the head of the Patents and Designs Offices.

The delegation provisions are also amended to limit their operation to persons, employees and classes of persons or employees prescribed by the Designs Regulations.

The Act is further amended to allow the Registrar of Designs, on his or her own initiative, or on request, to amend an entry in the Register of Designs for the purpose of correcting a clerical error or obvious mistake. This rectification is currently only possible by application to a prescribed court, a costly and time consuming procedure.

An amendment is also effected to remove a limitation on which countries can be declared "Convention countries" for the purposes of the *Designs Act 1906*, bringing the provision into line with the corresponding provision in the *Patents Act 1990*.

Amendment of the Patents Act

The *Patents Act 1990* is amended to make minor changes consequent on the incorporation of the Patent, Trade Marks and Designs Offices into the AIPO. These changes facilitate administrative rearrangements that will devolve the statutory role of the Commissioner of Patents from the Division Head of AIPO to the head of the Patent and Designs Offices.

The definition of "employee" in the Patents Act is also amended to limit its scope to persons, officers, employees and classes of persons, officers or employees prescribed by the Patents Regulations.

Amendment of the Trade Marks Act

The *Trade Marks Act 1955* is amended to make minor changes consequent on the incorporation of the Patent, Trade Marks and Designs Offices into the AIPO. These changes facilitate administrative rearrangements that will devolve the statutory role of the Registrar of Trade Marks from the Division Head of AIPO to the head of the Trade Marks Office.

The delegation provisions are also amended to limit their operation to persons, employees and classes of persons or employees prescribed by the *Trade Marks Act 1955*.

An amendment is also effected to remove a limitation on which countries can be declared "Convention countries" for the purposes of the *Trade Marks Act 1955*, bringing the provision into line with the corresponding provision in the *Patents Act 1990*.

Amendment of the Industry, Research and Development Act 1986

The amendment will change the termination date for the Discretionary and Generic Technology Grants schemes from 30 June 1994 to 31 December 1995, thereby giving effect to the Government's decision to maintain the Industry Innovation Program competitive grants schemes to the end of 1995, of which these schemes are a part.

FINANCIAL IMPACT STATEMENT

The amendments of the *Designs Act*, the *Trade Marks Act* and the *Patents Act* have no financial impact. The continuation of the Industry Innovation Program will involve provision for approval of new projects in 1994-95 up to a value of \$40m and around \$20m in the first half of 1995-96. The estimated discharge of additional approvals will be \$11.025m in 1994-95, \$16.68m in 1995-96, \$13.825m in 1996-97 \$8.188m in 1997-78 and \$2.425m in 1998-99.

NOTES ON CLAUSES

PRELIMINARY

Clause 1 - Short title

1. This clause provides that the Act may be cited as the *Industry, Technology and Regional Development Legislation Amendment Act 1993*.

Clause 2 - Commencement

2. This clause provides that the Act commences on a day to be fixed by Proclamation.

Clause 3 - Amendment of Acts

3. This clause provides that the amendments to the Acts specified in the Schedule are set out in the Schedule.

Clause 4 - Transitional Provisions

4. This clause has been inserted to put beyond doubt that regulations made for the purposes of subsection 48(1) of the *Designs Act 1906*, and subsection 108(1) of the *Trade Marks Act 1955*, and in force immediately before the commencement of this Act, continue to have effect after commencement.

SCHEDULE

AMENDMENTS OF ACTS

AMENDMENTS OF THE DESIGNS ACT 1906

Registrar and other officers Delegation by Registrar

5. The statutory role of Registrar of Designs is to be devolved from the Director-General of the Australian Industrial Property Organisation (AIPO) to the head of the Patent and Designs Offices. New subsections 8(1) and 8(1A) replace current subsection 8(1) and provide that there will be a Registrar of Designs with such powers and functions as are conferred on him or her by the *Designs Act 1906*, or any other Act. The reference to "any other Act" is required in order to pick up the additional responsibilities that the Registrar of Designs has under the *Olympic Insignia Protection Act 1987*, and other Acts administered by AIPO.

6. The amendments of subsections 8(4) and (5), 8(5A), 8(5B) and section 8A (first occurring) are consequential on new subsection 8(1A).

7. As there is now no requirement for the statutory position of Assistant Registrar of Designs, current subsection 8(6) is omitted.

Delegation by Registrar

8. New section 8A limits the delegation of the Registrar of Designs' powers to prescribed persons, or prescribed classes of persons, holding or performing the duties of an Australian Public Service office in the Designs Office, and to prescribed employees (within the meaning of the *Public Service Act 1922*), or prescribed classes of persons, employed in the Designs Office.

Correction of the Register of Designs

9. Current section 33 makes provision for the keeping of a Designs Register into which specified particulars are entered. These particulars include the names and addresses of the owners of registered designs, dates of registration and expiry of registration, and notifications of assignments and transmissions. Other than provisions for the changing of the name or address of a registered owner, the only way a clerical error or obvious mistake in the Register can be corrected is on the application of an owner of a registered design to the Federal Court or a State or Territory Supreme Court. This is not only costly but also puts an unnecessary impost on already heavily loaded courts.

10. New subsection 37(1A) and paragraphs 37(1B)(a) and (b) enable the Registrar of Designs, either on his own motion, or on the request of an owner of a registered design, to amend or alter an entry in the Register of Designs for the purposes of correcting a clerical error or obvious mistake.

Convention countries

11. New subsection 48(1) removes a limitation on which countries can be declared "Convention countries", for the purposes of the Act, bringing this provision into line with the corresponding provision in the *Patents Act 1990*.

AMENDMENT OF THE INDUSTRY, RESEARCH AND DEVELOPMENT ACT 1986

12. New subsection 28(2)(a) replaces the sunset date, "30 June 1994", for the making of discretionary grants by the Industry Research and Development Board, with the date "31 December 1995".

13. New subsection 31(2)(a) replaces the sunset date, "30 June 1994", for the making of generic technology grants by the Industry Research and Development Board, with the date "31 December 1995".

AMENDMENT OF THE PATENTS ACT 1990

Commissioner of Patents

14. The statutory role of Commissioner of Patents is to be devolved from the Director-General of AIPO to the head of the Patents and Designs Offices. New subsection 207(2) provides that the Commissioner of Patents will have such powers and functions as are conferred on him or her by the Patents Act, or any other Act. This amendment is required in order to pick up the additional responsibilities that the Commissioner of Patents has under other Acts administered by AIPO.

Deputy Commissioner of Patents

Delegation of Commissioner's powers and functions

15. The amendments of subsections 208(2) and (3), 208(4) and (5) and 209(1) are consequential on new subsection 207(2).

Schedule 1 (definition of "employee")

16. The new definition of "employee" is limited to a person, other than the Commissioner of Patents or a Deputy Commissioner, who is a prescribed officer or employee, or within a prescribed class of officers or employees, within the meaning of the *Public Service Act 1922* and is employed in the Patent Office; or is not such an officer or employee but is a prescribed person, or within a prescribed class of persons who perform services in the Patent Office, for or on behalf of the Commonwealth.

AMENDMENT OF THE TRADE MARKS ACT 1955

Registrar and other officers

Delegation by Registrar

17. The statutory role of Registrar of Trade Marks is to be devolved from the Director-General of AIPO to the head of the Trade Marks Office. New subsection 10(1) provides that there shall be a Registrar of Trade Marks, removing the current limitation that he or she has chief control of the Trade Marks Office under the Minister. New subsection 10(1A) provides that the Registrar of Trade Marks will have such powers and functions as are conferred on him or her by the *Trade Marks Act 1955*, or any other Act. This amendment is required in order to pick up the additional responsibilities that the Registrar of Trade Marks has under other Acts administered by AIPO.

18. As the head of the Trade Marks Office is to be the Registrar of Trade Marks, current subsection 10(2) which provides that the Commissioner of Patents shall be the Registrar of Trade Marks, is omitted.

19. The amendments of subsections 10(3A) and (3B), 10(3C) and 10(4) and section 11 (first occurring) are consequential on new subsection 10(1A).

20. The positions of Assistant Registrar of Trade Marks are to be abolished therefore current subsection 10(5) is omitted.

Delegation by Registrar

21. New section 11 limits the delegation of the Registrar of Trade Marks' powers to prescribed persons, or prescribed classes of persons, holding or performing the duties of an Australian Public Service office in the Trade Marks Office, and to prescribed employees (within the meaning of the *Public Service Act 1922*), or prescribed classes of employees, employed in the Trade Marks Office.

Convention countries

22. New subsection 108(1) removes a limitation on which countries can be declared "Convention countries" for the purposes of the Act, bringing this provision into line with the corresponding provision in the *Patents Act 1990*.

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