



Industry, Technology and Commerce Legislation Amendment Act 1989

No. 91 of 1989

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SCHEDULE 1

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

SCHEDULE 2

REPEAL OF UNPROCLAIMED AMENDMENTS OF THE PATENTS ACT 1952



Industry, Technology and Commerce Legislation Amendment Act 1989

No. 91 of 1989

**An Act to amend various Acts relating to matters dealt with
by the Department of Industry, Technology and Commerce,
and for related purposes**

[Assented to 27 June 1989]

BE IT ENACTED by the Queen, and the Senate and the House of
Representatives of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Industry, Technology and Commerce
Legislation Amendment Act 1989*.

Commencement

2. (1) Subject to this section, this Act commences on the day on which
it receives the Royal Assent.

(2) Section 15 shall be taken to have commenced on 14 December 1988.

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(3) Subject to subsection (4), the provisions of Parts 4 and 5 commence on a day or days to be fixed by Proclamation.

(4) If a provision referred to in subsection (3) does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences at the end of that period.

**PART 2—AMENDMENT OF THE AUSTRALIAN INDUSTRY
DEVELOPMENT CORPORATION ACT 1970**

Principal Act

3. In this Part, “Principal Act” means the *Australian Industry Development Corporation Act 1970*¹.

Interpretation

4. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“ ‘eligible subsidiary’, in relation to the Corporation, means a subsidiary of the Corporation other than:

- (a) the receiving subsidiary; or
- (b) a subsidiary of the receiving subsidiary;

‘receiving subsidiary’ means the subsidiary of the Corporation that is nominated under subsection 29B (1);”.

Repeal of section 10A

5. (1) Section 10A of the Principal Act is repealed.

(2) The repeal effected by subsection (1) applies in relation to the financial year commencing on 1 July 1989 and each subsequent financial year.

Membership of Board

6. Section 11 of the Principal Act is amended by omitting from subsection (2) “Governor-General” and substituting “Minister”.

Qualifications for appointment as a Director

7. Section 12 of the Principal Act is amended by omitting from subsection (1) “Governor-General” and substituting “Minister”.

Resignation

8. Section 18 of the Principal Act is amended by omitting “Governor-General” and substituting “Minister”.

Termination of appointment

9. Section 19 of the Principal Act is amended:

- (a) by omitting from subsection (2) “Governor-General” and substituting “Minister”;

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- (b) by adding at the end of paragraph (3) (c) “or”;
 - (c) by omitting from paragraph (3) (d) “or”;
 - (d) by omitting paragraph (3) (e);
 - (e) by omitting from subsection (3) “Governor-General” (last occurring) and substituting “Minister”;
 - (f) by omitting subsection (4) and substituting the following subsection:
 - “(4) If the Minister is of the opinion that:
 - (a) the appointment of a Director to whom this section applies should be terminated on the ground that it is not in the best interests of the Corporation that the Director continue in office; or
 - (b) the performance of a particular Director to whom this section applies has been unsatisfactory for a significant period of time;
- the Minister may terminate the appointment of the Director.”.

Meetings of the Board

10. Section 21 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

“(2) The Chairman shall convene a meeting of the Board upon being requested in writing to do so by not less than 2 Directors.”.

11. After section 23A of the Principal Act the following Part is inserted:

“PART IIIA—CORPORATE PLANS

Corporate plans

“23B. (1) The Board shall prepare corporate plans.

“(2) The first corporate plan shall be for the period commencing on 1 July 1989 and ending on 30 June 1992.

“(3) Each subsequent corporate plan shall be for a period of 3 years commencing immediately after the period of the previous corporate plan.

“(4) The Board may review and revise a corporate plan at any time.

General matters to be included in corporate plans

“23C. Each corporate plan shall:

- (a) set out the objectives of the Corporation and its eligible subsidiaries; and
- (b) outline the overall strategies and policies that the Corporation and its eligible subsidiaries are to follow to achieve the objectives.

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Financial matters to be included in corporate plans

“23D. Each corporate plan shall:

- (a) include a financial target;
- (b) outline the overall financial strategies for the Corporation and its eligible subsidiaries; and
- (c) include a forecast of the revenue and expenditure of the Corporation and its eligible subsidiaries, including a forecast of capital expenditure and borrowings.

Matters to be considered in setting financial target

“23E. In preparing or revising a financial target, the Board shall have regard to:

- (a) the need to earn a reasonable rate of return on the Corporation’s capital and reserves;
- (b) the need to maintain the Corporation’s financial viability; and
- (c) any other commercial considerations the Board considers appropriate.

Corporate plans to be given to Minister

“23F. When the Board prepares or revises a corporate plan, it shall, as soon as practicable, give a copy of the plan to the Minister.

Minister may direct certain variations of corporate plan

“23G. (1) When the Board prepares or revises a corporate plan and gives a copy of the plan to the Minister, the Minister may, within 30 days after receiving the copy of the plan and after consultation with the Board, direct the Board to vary the financial target under the plan.

“(2) In exercising powers under subsection (1), the Minister shall have regard to:

- (a) the matters referred to in paragraphs 23E (a) and (b); and
- (b) any other considerations the Minister considers appropriate.

“(3) A direction under subsection (1) shall be in writing and shall set out the Minister’s reasons for the direction.

“(4) The Minister shall cause a copy of any direction given to the Board under subsection (1) to be laid before each House of the Parliament within 10 sitting days of that House after the giving of the direction.

Board to notify Minister of significant affecting events etc.

“23H. If the Board forms the opinion that matters have arisen that may prevent, or significantly affect, the achievement of:

- (a) the objectives of the Corporation and its eligible subsidiaries under the corporate plan; or
- (b) the financial target under the corporate plan;

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the Board shall, as soon as practicable, notify the Minister of its opinion and the reasons for the opinion.”.

Liability to taxation

12. (1) Section 27 of the Principal Act is amended:

(a) by omitting from subsection (1) “Subject to subsection (1B), the” and substituting “The”;

(b) by omitting subsection (1B) and substituting the following subsections:

“(1B) The Corporation is subject to stamp duty or any similar tax under a law of a State or Territory in respect of transactions entered into by, and documents executed by or on behalf of, the Corporation.

“(1C) Nothing in subsection (1B) limits the regulations that may be made for the purposes of subsection (1A).”.

(2) The amendments made by subsection (1) apply in relation to a transaction entered into, or a document executed, on or after 1 July 1989.

(3) The reference in subsection (2) to a transaction entered into on or after 1 July 1989 does not include a reference to:

(a) the making of an advance on or after that date under a document executed before that date; or

(b) any other transaction that, under the regulations, is treated as the equivalent of a pre-1 July 1989 transaction for stamp duty exemption purposes.

(4) The reference in subsection (2) to a document executed on or after 1 July 1989 does not include a reference to a document that, under the regulations, is treated as the equivalent of a pre-1 July 1989 document for stamp duty exemption purposes.

(5) The Governor-General may make regulations under section 38 of the Principal Act as amended by this Act for the purposes of subsections (3) and (4) of this section.

Audit

13. Section 29 of the Principal Act is amended by inserting after subsection (7) the following new subsections:

“(7A) The Auditor-General is to be appointed auditor of each Australian subsidiary of the Corporation where any law of the Commonwealth, a State or a Territory relating to companies requires the appointment of an auditor for such a subsidiary.

“(7B) When the Auditor-General is appointed auditor under subsection (7A), he or she may appoint an agent to conduct the audit on his or her behalf.”.

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Interpretation

14. Section 29A of the Principal Act is amended by omitting the definition of “receiving subsidiary”.

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

15. Section 29ZD of the Principal Act is amended by adding at the end of the definition of “Net Value of Total Assets” in paragraph (1) (c) “, to the extent to which those liabilities are attributable to the transferred assets”.

Report and financial statements

16. (1) Section 37 of the Principal Act is amended by inserting after subsection (2B) the following subsection:

“(2C) The report of the Corporation’s operations for a financial year shall:

- (a) include the objectives of the Corporation and its eligible subsidiaries under the corporate plan;
- (b) include an outline of the overall strategies and policies of the Corporation and its eligible subsidiaries under the corporate plan;
- (c) include an assessment of the extent to which the operations of the Corporation and its eligible subsidiaries during the year have achieved those objectives;
- (d) specify the financial target applicable to the year under the corporate plan;
- (e) include an assessment of the Corporation’s progress in achieving the financial target under the corporate plan; and
- (f) specify the dividend payable to the Commonwealth for the year.”.

(2) The amendment made by paragraph (1) (a) applies in relation to the financial year commencing on 1 July 1989 and in relation to each subsequent financial year.

Application of amendments—appointment of Directors

17. The amendments made by sections 6 and 7 do not affect the appointment of a Director who was appointed by the Governor-General before the commencement of this section.

**PART 3—AMENDMENT OF THE AUSTRALIAN TRADE
COMMISSION ACT 1985**

Principal Act

18. In this Part, “Principal Act” means the *Australian Trade Commission Act 1985*².

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Membership of Board

19. Section 12 of the Principal Act is amended:

- (a) by omitting from subsection (1) "9" and substituting "10";
- (b) by omitting from subsection (1) "11" and substituting "12";
- (c) by omitting paragraph (1) (d) and substituting the following paragraph:
 - "(d) 2 government members; and";
- (d) by omitting from subsections (4), (7) and (8) "the government member" and substituting "a government member";
- (e) by omitting from subsection (5) "The government member" and substituting "A government member".

**PART 4—AMENDMENT OF THE NATIONAL MEASUREMENT
ACT 1960**

Principal Act

20. In this Part, "Principal Act" means the *National Measurement Act 1960*³.

Interpretation

21. Section 3 of the Principal Act is amended:

- (a) by omitting from subsection (1) the definition of "pattern" and substituting the following definition:
 - "'pattern', in relation to a measuring instrument, includes a sample of the measuring instrument;";
- (b) by omitting from subsection (1) the definition of "instrument";
- (c) by inserting in subsection (1) the following definitions:
 - "'component', in relation to a thing (in this definition called the 'basic thing') by means of which a measurement of a physical quantity may be made, includes another thing (whether or not forming part of the basic thing) where:
 - (a) the basic thing is so designed or constructed as to include, or have associated with it, the other thing; and
 - (b) the other thing is designed or intended to do any or all of the following:
 - (i) carrying out a conversion of the result of a measurement made by the basic thing;
 - (ii) calculating a number, tax or price by reference to the result of a measurement made by the basic thing;
 - (iii) correcting the result of a measurement made by the basic thing;

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- (iv) providing or repeating information consisting of or relating to any or all of the following:
 - (A) the result of a measurement made by the basic thing;
 - (B) a conversion of the result of a measurement made by the basic thing;
 - (C) a calculation of a number, tax or price calculated by reference to the result of a measurement made by the basic thing;
- (v) controlling the measurement process carried out by the basic thing;

'material measure' means a thing designed or intended to conserve or reproduce, in a permanent manner during the use of the thing, one or more known values of a physical quantity;

'measuring instrument' means:

- (a) a thing by means of which a measurement of a physical quantity may be made; or
- (b) a component of such a thing;

'standard of measurement' means:

- (a) a material measure, measuring instrument or measuring system designed or intended to define, realise, conserve or reproduce:
 - (i) a unit of measurement of a physical quantity; or
 - (ii) one or more known values of a physical quantity;

in order to transmit that unit or those values to measuring instruments by way of comparison; or

- (b) a formula designed or intended to define the magnitude of a physical quantity;

'use for trade', in relation to a measuring instrument, means use of the measuring instrument for either or both of the following purposes:

- (a) determining the consideration in respect of a transaction;
- (b) determining the amount of a tax;”.

Functions of the Commission

22. Section 18 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (e) and subparagraph (1) (f) (i) “instruments” and substituting “measuring instruments”;
- (b) by omitting from subparagraph (1) (f) (i) “use in trade” and substituting “use for trade”.

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Audit

23. Section 18H of the Principal Act is amended by omitting subsections (6) and (7).

Patterns of measuring instruments

24. Section 19A of the Principal Act is amended:

- (a) by omitting from subsections (1), (3) and (5) “instruments” (wherever occurring) and substituting “measuring instruments”;
- (b) by omitting from subsection (4) “an instrument” and substituting “a measuring instrument”;
- (c) by omitting from subsections (4) and (5) “the instrument” (wherever occurring) and substituting “the measuring instrument”.

Offences

25. Section 19B of the Principal Act is amended:

- (a) by omitting “an instrument” (wherever occurring) and substituting “a measuring instrument”;
- (b) by omitting the penalty and substituting the following penalty:
“Penalty: \$6,000.”.

**PART 5—AMENDMENTS RELATING TO THE ADMINISTRATION
OF THE DESIGNS ACT 1906, THE PATENTS ACT 1952 AND THE
TRADE MARKS ACT 1955**

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

26. The Acts specified in Schedule 1 are amended as set out in that Schedule.

Saving of existing delegations

27. In spite of the repeal of section 8A of the *Designs Act 1906*, section 11 of the *Patents Act 1952* and section 11 of the *Trade Marks Act 1955* effected by this Part, delegations in force at the commencement of this section under those repealed provisions continue in force as if made under the corresponding provisions of the *Designs Act 1906* as amended by this Act, the *Patents Act 1952* as amended by this Act or the *Trade Marks Act 1955* as amended by this Act, as the case may be.

**PART 6—REPEAL OF UNPROCLAIMED AMENDMENTS OF THE
PATENTS ACT 1952**

Repeal of unproclaimed amendments of the *Patents Act 1952*

28. The Acts specified in Schedule 2 are amended as set out in that Schedule.

SCHEDULE 1

Section 26

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

Designs Act 1906

Subsection 8 (1):

Add at the end “, who shall, under the Minister, have the chief control of the Designs Office”.

After subsection 8 (5):

Insert the following subsections:

“(5A) The exercise of a power, or the performance of a function, of the Registrar under this Act by the Deputy Registrar does not prevent the exercise of the power, or the performance of the function, by the Registrar.

“(5B) Where, under this Act, the exercise of a power or function by the Registrar, or the operation of a provision of this Act, is dependent upon the opinion, belief or state of mind of the Registrar in relation to a matter, that power or function may be exercised by the Deputy Registrar, or that provision may operate, as the case may be, upon the opinion, belief or state of mind of the Deputy Registrar in relation to that matter.”.

Section 8A:

Repeal the section, substitute the following section:

Delegation by Registrar

“8A. The Registrar may, by writing, delegate all or any of the Registrar’s powers under this Act to:

- (a) a person holding or performing the duties of a specified Australian Public Service office under the control of the Registrar; or
- (b) an employee (within the meaning of the *Public Service Act 1922*) who is employed under the control of the Registrar.”.

Patents Act 1952

Section 6 (definition of “Examiner”):

Omit the definition, substitute the following definition:

“‘Examiner’ means an Examiner of Patents holding office under this Act;”.

Section 6 (definition of “the Commissioner”):

Omit the definition.

SCHEDULE 1—continued

Section 6:

Insert the following definition:

“‘Commissioner’ means the Commissioner of Patents holding office under this Act;”.

After subsection 10 (2):

Insert the following subsections:

“(2A) A power or function of the Commissioner under this Act, when exercised or performed by the Deputy Commissioner of Patents, shall, for the purposes of this Act, be taken to have been exercised or performed by the Commissioner.

“(2B) The exercise of a power, or the performance of a function, of the Commissioner under this Act by the Deputy Commissioner of Patents does not prevent the exercise of the power, or the performance of the function, by the Commissioner.”.

Subsection 10 (5):

Omit “Supervising Examiners of Patents and”.

Subsection 10 (6):

Omit the subsection, substitute the following subsection:

“(6) The offices of Examiners of Patents may be divided into classes and, if such a division occurs, all of the offices with a particular title (being a title that consists of, or that includes, the words ‘Examiner of Patents’) shall be taken to form such a class.”.

Section 11:

Repeal the section, substitute the following section:

Delegation by Commissioner

“11. The Commissioner may, by writing, delegate all or any of the Commissioner’s powers under this Act to:

- (a) a person holding or performing the duties of a specified Australian Public Service office under the control of the Commissioner; or
- (b) an employee (within the meaning of the *Public Service Act 1922*) who is employed under the control of the Commissioner.”.

Trade Marks Act 1955

After subsection 10 (3A):

Insert the following subsections:

“(3B) A power or function of the Registrar under this Act, when exercised or performed by the Deputy Registrar of Trade Marks, shall, for

SCHEDULE 1—continued

the purposes of this Act, be taken to have been exercised or performed by the Registrar.

“(3C) The exercise of a power, or the performance of a function, of the Registrar under this Act by the Deputy Registrar of Trade Marks does not prevent the exercise of the power, or the performance of the function, by the Registrar.”.

Section 11:

Repeal the section, substitute the following section:

Delegation by Registrar

“11. The Registrar may, by writing, delegate all or any of the Registrar’s powers under this Act to:

- (a) a person holding or performing the duties of a specified Australian Public Service office under the control of the Registrar; or
- (b) an employee (within the meaning of the *Public Service Act 1922*) who is employed under the control of the Registrar.”.

SCHEDULE 2

Section 28

**REPEAL OF UNPROCLAIMED AMENDMENTS OF THE PATENTS
ACT 1952**

Statute Law (Miscellaneous Provisions) Act (No. 2) 1983

Schedule 1 (amendments of sections 35 and 58E of the *Patents Act 1952*):
Omit the amendments.

Statute Law (Miscellaneous Provisions) Act (No. 2) 1984

Schedule 1 (amendments of sections 41 and 58C of the *Patents Act 1952*):
Omit the amendments.

Statute Law (Miscellaneous Provisions) Act (No. 1) 1985

Schedule 1 (amendments of sections 54B and 55 of the *Patents Act 1952*):
Omit the amendments.

Statute Law (Miscellaneous Provisions) Act (No. 2) 1985

Schedule 1 (amendments of sections 35, 41 and 177, and the amendment inserting subsection (1B) in section 54A, of the *Patents Act 1952*):
Omit the amendments.

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NOTES

1. No. 15, 1970, as amended. For previous amendments, see No. 216, 1973; No. 4, 1975; No. 91, 1976; No. 36, 1978; No. 121, 1980; Nos. 61 and 92, 1981; Nos. 115 and 122, 1983; No. 65, 1985; No. 11, 1987; and No. 125, 1988.
2. No. 186, 1985, as amended. For previous amendments, see No. 168, 1986; and No. 141, 1987.
3. No. 64, 1960, as amended. For previous amendments, see No. 6, 1964; No. 93, 1966; No. 216, 1973 (as amended by No. 20, 1974); No. 158, 1978; No. 77, 1984; No. 65, 1985; No. 76, 1986; and No. 141, 1987.

[*Minister's second reading speech made in—
House of Representatives on 11 May 1989
Senate on 25 May 1989*]