



Industry, Technology and Commerce Legislation Amendment Act 1991

No. 66 of 1991

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Industry, Technology and Commerce Legislation Amendment Act 1991

No. 66 of 1991

**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 15 June 1991]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Industry, Technology and Commerce Legislation Amendment Act 1991*.

Commencement

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

(2) The amendments of the *Export Market Development Grants Act 1974* made by this Act are taken to have commenced immediately after

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the commencement of the *Export Market Development Grants Amendment Act (No. 2) 1990*.

(3) The amendment of the *Industry, Technology and Commerce Legislation Amendment Act 1989* made by this Act is taken to have commenced on 27 June 1989.

(4) The amendments of the *Patents Act 1990* are taken to commence, or to have commenced, immediately after the commencement of the *Patents Act 1990*.

**PART 2—AMENDMENT OF THE INDUSTRY RESEARCH AND
DEVELOPMENT ACT 1986**

Principal Act

3. In this Part, “**Principal Act**” means the *Industry Research and Development Act 1986*¹.

Interpretation

4. Section 4 of the Principal Act is amended:

- (a) by omitting “or” from the end of paragraph (b) of the definition of “agreement under this Act” in subsection (1);
- (b) by adding at the end of the definition of “agreement under this Act” in subsection (1) the following word and paragraph:
“or (d) a national procurement development program agreement;”;
- (c) by omitting “or” from the end of paragraph (b) of the definition of “application” in subsection (1);
- (d) by adding at the end of the definition of “application” in subsection (1) the following word and paragraph:
“or (d) an application for a national procurement development program agreement;”;
- (e) by omitting “or” from the end of paragraph (b) of the definition of “subsidy” in subsection (1);
- (f) by omitting “agreement.” from paragraph (c) of the definition of “subsidy” in subsection (1) and substituting “agreement; or”;
- (g) by adding at the end of the definition of “subsidy” in subsection (1) the following paragraph:
“(d) a payment by the Commonwealth under a national procurement development program agreement.”;
- (h) by inserting in subsection (1) the following definitions:
“**‘Australian government body’** means:
 - (a) the Commonwealth, a State or a Territory; or
 - (b) an authority of the Commonwealth, of a State or of a Territory; or

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- (c) an incorporated company in which an entity covered by paragraph (a) or (b) has a controlling interest;

'Australian government contractor' means a person who performs services, otherwise than as an employee, under contract for one or more Australian government bodies;

'corporate researcher' means a researcher other than an individual natural person;

'designated activity' means:

- (a) the manufacture of goods; or
- (b) the performance of services; or
- (c) mining operations or operations for the recovery of naturally occurring petroleum or of natural gas; or
- (d) construction operations relating to buildings or works; or
- (e) the production of software for computers or for similar equipment; or
- (f) an activity in respect of which a declaration under section 34B is in force; or
- (g) the development of systems and processes, in relation to an activity referred to in paragraph (a), (b), (c), (d), (e) or (f);

'national procurement development program agreement' means an agreement entered into by the Board under section 34A;”.

Functions of Board

5. Section 7 of the Principal Act is amended by omitting from paragraph (b) “and payments under national interest agreements” and substituting “, payments under national interest agreements and payments under national procurement development program agreements”.

Guidelines for policies and practices of Board

6. Section 20 of the Principal Act is amended:

- (a) by omitting from subsection (1) “or national interest agreements” and substituting “, national interest agreements or national procurement development program agreements”;
- (b) by omitting from subsection (2) “The Minister shall not” and substituting “Subject to subsection (2A), the Minister must not”;
- (c) by inserting after subsection (2) the following subsection:

“(2A) Subsection (2) does not apply if the directions are given in accordance with a request made by the Board.”.

Agreements for discretionary grants

7. Section 28 of the Principal Act is amended by omitting from paragraph (2) (a) “1991” and substituting “1994”.

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Agreements for generic technology grants

8. Section 31 of the Principal Act is amended by omitting from paragraph (2) (a) “1991” and substituting “1994”.

9. After section 34 of the Principal Act the following Division is inserted:

“Division 3A—National Procurement Development Program Agreements

National procurement development program agreements

“34A. (1) Subject to this Act and to any relevant directions under section 20, the Board may enter into an agreement, on behalf of the Commonwealth, with a corporate researcher and an Australian government body about a project directed towards meeting the demand, or likely demand, of one or more Australian government bodies or Australian government contractors for goods or services.

“(2) Except in special cases, the Board must not enter into a national procurement development program agreement unless it is satisfied that the project concerned:

- (a) is directed towards the development of internationally competitive goods or services; and
- (b) involves adequate trialling and demonstration activities.

“(3) The Board may refuse to enter into a national procurement development program agreement about a project if the carrying out of the agreement would be likely to give an undue competitive advantage to an Australian government body that carries on business.

“(4) A corporate researcher or an Australian government body, or both, may make an application to the Board for a national procurement development program agreement.

“(5) In this section:
‘goods or services’ includes the result of a designated activity.

Designated activities

“34B. The Minister may, by notice published in the *Gazette*, declare an activity to be a designated activity for the purposes of the definition of ‘designated activity’ in subsection 4 (1).”

Repayment of subsidies on breach of agreement

10. Section 38 of the Principal Act is amended by adding at the end the following subsection:

“(2) This Act does not prevent the inclusion in a national procurement development program agreement with an Australian government body of provision for the repayment by that body to the Commonwealth on breach by the body of the agreement, or in any

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other circumstances specified in the agreement, of the whole or a part of a subsidy paid to the body under the agreement.”.

Registration of research agencies

11. Section 39F of the Principal Act is amended by inserting in subsection (9) “by notice in writing given to the applicant,” before “require”.

Certificate as to research and development activities

12. Section 39L of the Principal Act is amended by adding at the end the following subsection:

“(2) If the Board issues a certificate to the effect that particular activities were not or are not research and development activities, the Board must give notice in writing to the person concerned stating the reasons for issuing the certificate.”.

Certificate as to core technology

13. Section 39LA of the Principal Act is amended by adding at the end the following subsection:

“(2) If the Board issues a certificate to the effect that particular technology was not core technology, the Board must give notice in writing to the eligible company concerned stating the reasons for issuing the certificate.”.

Joint registration

14. Section 39P of the Principal Act is amended by inserting after subsection (3) the following subsection:

“(3A) If the Board refuses to register the companies jointly, the Board must give notice in writing to the companies stating the reasons for the refusal.”.

Copies of certificate to be given to persons affected

15. Section 39Q of the Principal Act is amended by omitting “company” (wherever occurring) and substituting “person”.

Service of notices etc.

16. Section 39R of the Principal Act is amended by omitting “company” (wherever occurring) and substituting “person”.

17. After section 39R of the Principal Act the following sections are inserted:

Internal review of decisions

“39S. (1) This section applies to a decision of the Board under subsection 39F (4), (6), (7) or (9), section 39J, 39L or 39LA or subsection 39P (3).

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“(2) A person who is affected by a decision of the Board may, if dissatisfied with the decision, by notice given to the Board:

- (a) within the period of 21 days after receiving notice of the decision; or
 - (b) within such further period as the Board allows;
- request the Board to reconsider the decision.

“(3) The request must set out the reasons for making the request.

“(4) Upon receipt of the request, the Board must reconsider the decision and may, subject to subsection (5), confirm or revoke the decision or vary the decision in such manner as the Board thinks fit.

“(5) If the Board does not confirm, revoke or vary a decision before the end of the period of 60 days after the day on which the Board received the request under subsection (2) to reconsider the decision, the Board is taken, at the end of that period, to have confirmed the decision under subsection (4).

“(6) Where the Board confirms, revokes or varies a decision before the end of the period referred to in subsection (5), the Board must, by notice served on the applicant, inform the applicant of the result of the reconsideration of the decision, and the reasons for confirming, varying or revoking the decision, as the case may be.

“(7) Where the Board gives a notice to an applicant under subsection (6) informing the applicant that a decision has been revoked or varied, the Board must advise the Commissioner of particulars of the notice.

Review of decisions by Administrative Appeals Tribunal

“39T. (1) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Board:

- (a) that have been confirmed or varied under subsection 39S (4);
or
- (b) under subsection 39G (4), section 39M or subsection 39N (2) or 39P (4).

“(2) Where a decision is taken, under subsection 39S (5), to be confirmed, section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the decision were the period commencing on the day on which the decision is taken to be confirmed and ending on the 28th day after that day.

“(3) Where a request is made under subsection 39S (2) in respect of a decision, section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for review of that decision.

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“(4) The hearing of a proceeding relating to a decision covered by subsection (1) must take place in private and the Administrative Appeals Tribunal may, by order:

- (a) give directions as to the persons who may be present; and
- (b) give directions of a kind referred to in paragraph 35 (2) (b) or (c) of the *Administrative Appeals Tribunal Act 1975*.

Statements to accompany notification of decisions

“39U. (1) Where the Board makes a decision to which section 39S applies and gives to a person whose interests are affected by the decision notice in writing of the decision, that notice must include a statement to the effect that:

- (a) the person may, if dissatisfied with the decision, seek a reconsideration of the decision by the Board in accordance with subsection 39S (2); and
- (b) the person may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by the Board upon that reconsideration confirming or varying the first-mentioned decision, make application to the Administrative Appeals Tribunal for review of the decision so confirmed or varied.

“(2) Where the Board confirms or varies a decision under subsection 39S (4) and gives to a person notice in writing of the confirmation or variation of the decision, that notice must include a statement to the effect that the person may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision so confirmed or varied, make application to the Administrative Appeals Tribunal for review of the decision.

“(3) Where the Board makes a decision under subsection 39G (4), section 39M or subsection 39N (2) or 39P (4) and gives to a person whose interests are affected by the decision notice in writing of the decision, that notice must:

- (a) in all cases—include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal, by or on behalf of any person whose interests are affected by the decision, for review of the decision; and
- (b) except where subsection 28 (4) of that Act applies—include a statement to the effect that a request may be made under section 28 of that Act by or on behalf of such a person for a statement setting out the findings on material questions of fact, referring to the evidence or the material on which those findings were based and giving the reasons for the decision.

“(4) A failure to comply with this section does not affect the validity of the decision.

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Tax consequences of variation or revocation of reviewable decisions

“39V. (1) For the purposes of the *Income Tax Assessment Act 1936*, where a decision of the Board under this Part is revoked or set aside in accordance with section 39S of this Act or section 43 of the *Administrative Appeals Tribunal Act 1975*, the decision is taken to have never been made.

“(2) Subject to subsection (1), for the purposes of the *Income Tax Assessment Act 1936*, where a decision of the Board under this Part is varied in accordance with section 39S of this Act or section 43 of the *Administrative Appeals Tribunal Act 1975*, the decision is taken to have been originally made as varied.

“(3) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment at any time for the purpose of giving effect to this section.”.

Advances in respect of subsidies

18. Section 42 of the Principal Act is amended:

- (a) by omitting “a researcher” (wherever occurring) and substituting “an eligible recipient”;
- (b) by omitting “the researcher” (wherever occurring) and substituting “the eligible recipient”;
- (c) by adding at the end the following subsection:

“(7) In this section:

‘eligible recipient’ means:

- (a) a researcher; or
- (b) an Australian government body.”.

Annual report

19. Section 46 of the Principal Act is amended:

- (a) by omitting from paragraph (2) (a) “and national interest grant agreements” and substituting “, national interest agreements and national procurement development program agreements”;
- (b) by omitting subparagraph (2) (b) (i) and substituting the following subparagraph:
 - “(i) the name of each party to the agreement (other than the Commonwealth);”;
- (c) by omitting from subparagraph (2) (b) (v) “or a national interest agreement” and substituting “, a national interest agreement or a national procurement development program agreement”;
- (d) by inserting in paragraph (2) (c) “or Australian government body” after “researcher” (wherever occurring).

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Application of amendments—review of decisions

20. Sections 39S, 39T, 39U and 39V of the Principal Act as amended by this Act apply in relation to decisions made on or after the date of commencement of this section.

**PART 3—AMENDMENT OF THE NATIONAL MEASUREMENT
ACT 1960**

Principal Act

21. In this Part, “Principal Act” means the *National Measurement Act 1960*².

Interpretation

22. Section 3 of the Principal Act is amended by omitting from subsection (1) the definition of “Australian legal unit of measurement” and substituting the following definition:

“‘Australian legal unit of measurement’ means:

- (a) a unit of measurement prescribed for the purposes of subsection 7A (1); or
- (b) a combination made in accordance with guidelines issued by the Commission of such prescribed units of measurement; or
- (c) a combination made in accordance with guidelines issued by the Commission of a prefix prescribed for the purposes of subsection 7A (3) and a unit of measurement referred to in paragraph (a); or
- (d) a combination made in accordance with guidelines issued by the Commission of a prefix prescribed for the purposes of subsection 7A (3) and a combination of units of measurement referred to in paragraph (b).”

23. (1) Section 7 of the Principal Act is repealed and the following sections are substituted:

Australian legal units of measurement

“7. Subject to subsection 7A (2), the Australian legal units of measurement of a physical quantity are the sole legal units of measurement of that physical quantity.

Regulations may prescribe Australian legal units of measurement etc.

“7A. (1) The regulations may prescribe the Australian legal units of measurement of any physical quantity.

“(2) The regulations may prescribe units of measurement of any physical quantity to be additional legal units of measurement for use for a particular purpose or for the purpose of a particular contract,

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dealing or other transaction or class of contracts, dealings or other transactions.

“(3) The regulations may prescribe prefixes specifying numerical value.

Guidelines

“7B. (1) The Commission may issue written guidelines governing:

(a) the way in which units of measurement prescribed for the purposes of subsection 7A (1) may be combined to produce an Australian legal unit of measurement; and

(b) the way in which:

(i) a unit of measurement referred to in paragraph (a) of the definition of ‘Australian legal unit of measurement’; or

(ii) a combination of units of measurement referred to in paragraph (b) of that definition;

may be combined with a prefix prescribed for the purposes of subsection 7A (3) to produce an Australian legal unit of measurement.

“(2) A set of guidelines issued by the Commission under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

(2) Regulations in force under section 7 of the Principal Act immediately before the commencement of subsection (1) of this section continue in force and are taken to have been made under section 7A of the Principal Act as amended by subsection (1).

**PART 4—AMENDMENT OF THE SCIENCE AND INDUSTRY
RESEARCH ACT 1949**

Principal Act

24. In this Part, “Principal Act” means the *Science and Industry Research Act 1949*³.

Organisation may accept gifts etc. and act as trustee

25. Section 9A of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

“(1) Subject to the approval of the Minister and subject to any regulations that are applicable, the Organisation may, in or in connection with the performance of its functions and the exercise of its powers:

(a) accept money or other property given, devised, bequeathed, assigned or otherwise made available to the Organisation (whether on trust or otherwise); and

(b) agree to any conditions subject to which money or other property

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is given, devised, bequeathed, assigned or otherwise made available to the Organisation; and

- (c) act as trustee of money or other property vested in the Organisation upon trust.

“(1A) The Organisation need not obtain the Minister’s approval if the value of the money or other property given, devised, bequeathed, assigned or otherwise made available to the Organisation is not more than \$1 million or such other amount as is prescribed for the purpose of this subsection.”.

PART 5—AMENDMENT OF OTHER ACTS

Amendment of other Acts

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

SCHEDULE

Section 26

AMENDMENT OF OTHER ACTS

Export Market Development Grants Act 1974

Subparagraph 11F (1) (b) (iv):

Omit “any other”, substitute “a”.

Subparagraph 11H (1) (b) (iv):

Omit “any other”, substitute “a”.

Paragraph 11V (e):

Insert “that is a claimant for a grant” after “authority or association”.

Paragraphs 11X (3) (e), (f) and (g):

Omit the paragraphs, substitute the following paragraphs:

“(e) if less than 20% but not less than 10% of the consideration for those services is consideration that the Commission is satisfied has accrued or will accrue, or, if those services were supplied, would accrue, to a person resident and carrying on business in Australia—treat that expenditure as being reduced by an amount equal to 25% of that expenditure; or

(f) if less than 10% but not less than 5% of the consideration for those services is consideration that the Commission is satisfied has accrued or will accrue, or, if those services were supplied, would accrue, to a person resident and carrying on business in

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Australia—treat that expenditure as being reduced by an amount equal to 50% of that expenditure; or

- (g) if less than 5% of the consideration for those services is consideration that the Commission is satisfied has accrued or will accrue, or, if those services were supplied, would accrue, to a person resident and carrying on business in Australia—disregard that expenditure.”.

Subsection 16 (4):

Omit “income”, substitute “amount”.

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Subsection 16 (2):

Omit “paragraph (1) (a)”, substitute “subsection (1)”.

Patents Act 1990

Subsection 56 (2):

Omit “prescribed for the purposes of subsection (1)”, substitute “of the kind mentioned in section 55”.

Subsection 97 (4):

Omit “subsection (1)”, substitute “subsection (2)”.

Subsection 97 (5):

Omit “subsection (1) or (2)”, substitute “subsection (2)”.

Section 100:

Omit “subsection 97 (2)”, substitute “subsection 97 (3)”.

Subsection 101 (1):

Omit “subsection 97 (1)”, substitute “subsection 97 (2)”.

Subsection 223 (10):

Omit the subsection, substitute the following subsection:

“(10) Infringement proceedings cannot be brought in respect of an infringement committed:

- (a) between the day on which the patent application lapses and the day on which it is restored; or
(b) between the day on which the patent ceases and the day on which it is restored.”.

Subsection 233 (1):

After “Chapter” insert “and the regulations”.

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Schedule 1 (definition of “compulsory licence”):

Omit “section 131”, substitute “section 133”.

Schedule 1 (definition of “non-infringement declaration”):

Omit “subsection 123 (1)”, substitute “subsection 125 (1)”.

NOTES

1. No. 89, 1986, as amended. For previous amendments, see No. 59, 1988; No. 167, 1989; and No. 35, 1990.
2. 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; No. 141, 1987; and No. 91, 1989.
3. No. 13, 1949, as amended. For previous amendments, see No. 78, 1959; No. 93, 1966; Nos 7 and 52, 1968; No. 216, 1973; No. 91, 1976; Nos 36 and 143, 1978; No. 80, 1982; No. 65, 1985; and No. 121, 1986.

*[Minister’s second reading speech made in—
Senate on 13 February 1991
House of Representatives on 7 March 1991]*