



Industry, Technology and Commerce Legislation Amendment Act 1992

No. 168 of 1992

**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 11 December 1992]

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 1992*.

Commencement

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

(2) Part 5 is taken to have commenced on 30 July 1975.

**PART 2—AMENDMENTS OF THE AUSTRALIAN INSTITUTE
OF MARINE SCIENCE ACT 1972**

Principal Act

3. In this Part, “**Principal Act**” means the *Australian Institute of Marine Science Act 1972*¹.

Interpretation

4. Section 5 of the Principal Act is amended by adding at the end the following subsection:

“(2) The question whether a company is a subsidiary of the Institute is to be determined in the same way as the question whether a corporation is a subsidiary of another corporation is determined for the purposes of the Corporations Law.”.

5. Section 9 of the Principal Act is repealed and the following section is substituted:

Functions of Institute

“9.(1) The functions of the Institute are:

- (a) to carry out research and development in relation to marine science and marine technology; and
- (b) to encourage and facilitate the application and use of the results of research and development of that kind; and
- (c) to arrange for carrying out research and development of that kind; and
- (d) to co-operate with other institutions and persons in carrying out research and development of that kind; and
- (e) to provide any other institution or person with facilities for carrying out research and development of that kind; and
- (f) to collect and disseminate information relating to marine science and marine technology and, in particular, to publish reports and other papers; and
- (g) to provide and sell goods (whether produced by the Institute or purchased or otherwise acquired by the Institute) and services in connection with matters related to its research and development activities in marine science and marine technology; and
- (h) to make available to other persons, on a commercial basis, the knowledge, expertise, equipment and facilities of the Institute; and
- (i) to do anything incidental or conducive to the performance of any of the functions in paragraphs (a) to (h).

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- “(2) The Institute may perform its functions only:
- (a) in so far as it is appropriate for its functions to be performed by the Institute on behalf of the Government of the Commonwealth as the national Government; or
 - (b) for the purposes for which it is appropriate for the Parliament as the national Parliament of Australia to authorise the Institute to perform functions; or
 - (c) by way of expenditure or money that is available for the purposes of the Institute in accordance with an appropriation made by the Parliament; or
 - (d) in the course of, and in relation to, trade and commerce with other countries, among the States, between Territories or between a Territory and a State; or
 - (e) for purposes related to external affairs; or
 - (f) for purposes in relation to a Territory.”.

Powers of Institute

6. Section 10 of the Principal Act is amended:

- (a) by omitting paragraphs (2)(a) and (b) and substituting the following paragraphs:
 - “(a) to enter into contracts;
 - (b) to acquire, hold and dispose of personal property;
 - (ba) to take on hire, or to accept on loan, equipment (including vessels) or other goods needed for the purposes of the Institute;
 - (bb) to lend or to hire out equipment (including vessels) or other goods that are the property of the Institute;”;
- (b) by omitting paragraphs (2)(f) and (g) and substituting the following paragraphs:
 - “(f) to participate in partnerships, trusts, unincorporated joint ventures and other arrangements for sharing profits;
 - (g) to subscribe for and to purchase shares in, and debentures and other securities of, companies;
 - (h) to form, and to participate in the formation of, companies;
 - (i) to appoint agents and attorneys, and to act as agents for other persons;
 - (j) to accept anything given or transmitted to the Institute whether on trust or otherwise, and to act as trustee of money or other property vested in the Institute on trust;
 - (k) to arrange for displaying material and giving lectures, to the public or otherwise, in respect of matters relating to marine science and marine technology.”.

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7. After section 10 insert the following section in Part II:

Limitation of formation of companies etc.

“10AA.(1) The Institute must not, without written approval by the Minister:

- (a) subscribe for, or purchase, shares in, or debentures or other securities of, a company; or
- (b) form or participate in the formation of a company that would, on its formation, be a subsidiary of the Institute.

“(2) An approval under subsection (1):

- (a) may be of general application or may relate to a particular company or proposed company; and
- (b) may be given subject to conditions or restrictions set out in the instrument of approval.

“(3) Subject to subsection (4), if the Institute subscribes for or purchases shares in, or debentures or other securities of, a company, the Minister must:

- (a) cause to be prepared a statement setting out particulars of, and the reasons for, the subscription or purchase; and
- (b) cause a copy of the statement to be laid before each House of the Parliament within 15 sitting days of that House:
 - (i) after the subscription or purchase took place; or
 - (ii) if the Minister is of the opinion that disclosure of the subscription or purchase would adversely affect the commercial interests of the Institute, after the Minister ceases to be of that opinion.

“(4) If the Institute holds a controlling interest in a company, the Institute must ensure that the company does not do anything that the Institute is not itself empowered to do.”.

**PART 3—AMENDMENT OF THE AUTOMOTIVE INDUSTRY
AUTHORITY ACT 1984**

Principal Act

8. In this Part, “Principal Act” means the *Automotive Industry Authority Act 1984*².

Termination of Act

9. Section 32 of the Principal Act is amended by omitting “1992” and substituting “2000”.

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**PART 4—AMENDMENTS OF THE COMMERCE (TRADE
DESCRIPTIONS) ACT 1905**

Principal Act

10. In this Part, “Principal Act” means the *Commerce (Trade Descriptions) Act 1905*³.

Notice of intention to import

11. Section 6 of the Principal Act is amended by omitting “Forty dollars” and substituting “\$1,000”.

Importation of falsely marked goods

12. Section 9 of the Principal Act is amended by omitting from subsection (1) “Two hundred dollars” and substituting “\$10,000”.

Penalty for applying false trade description to exports

13. Section 12 of the Principal Act is amended by omitting from subsection (2) “\$200” and substituting “\$10,000”.

PART 5—AMENDMENT OF THE DESIGNS ACT 1906

Principal Act

14. In this Part, “Principal Act” means the *Designs Act 1906*⁴.

Design may include functional features or be of indefinite dimension

15. Section 18 of the Principal Act is amended by adding at the end the following subsections:

“(2) An application for registration of a design must not be refused, and a registered design is not invalid, by reason only that an article or a part of an article is of indefinite extent in one or 2 dimensions.

“(3) If, on or after 30 July 1991 but before this Act receives the Royal Assent, a person availed himself or herself (or took definite steps, by way of contract or otherwise, to avail himself or herself) of a registered design in the belief that because of a decision referred to in subsection (4) the registration of the design was invalid, such provisions as are prescribed have effect for the protection or compensation of that person.

“(4) For the purposes of subsection (3), the decisions referred to in this subsection are:

- (a) the decision of the Full Court of the Federal Court in *Bondor Pty Ltd and Others v National Panels Pty Ltd* 102 ALR 65; and
- (b) the decision of the Federal Court in *Brisbane Aluminium Fabricators and Supplies Pty Ltd v Techni Interiors Pty Ltd* 23 IPR 107.”.

**PART 6—AMENDMENTS OF THE NATIONAL
MEASUREMENT ACT 1960**

Principal Act

16. In this Part, “**Principal Act**” means the *National Measurement Act 1960*⁵.

Interpretation

17. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“**‘certified measuring instrument’** means a measuring instrument that has been certified by a certifying body under the regulations;

‘certified reference material’ means a reference material that has been certified by a certifying body under the regulations;

‘certifying body’ means a certifying body established by the regulations;

‘measuring instrument with an approved pattern’ means a measuring instrument a pattern of which has been approved under this Act;

‘reference material’ means a material whose properties are used for the calibration of measuring instruments, the assessment of a measuring method or for assigning values to materials;”.

Measurements to be ascertained in accordance with appropriate standards of measurement, certified reference materials or certified measuring instruments

18. Section 10 of the Principal Act is amended by omitting paragraphs (e) and (f), and substituting the following paragraphs:

“(e) an appropriate reference standard of measurement;

(f) 2 or more standards of measurement, each of which is a standard of measurement referred to in paragraph (a), (b), (c), (d) or (e);

(g) a certified reference material;

(h) a certified measuring instrument;

(i) one or more standards of measurement, each of which is a standard of measurement referred to in paragraph (a), (b), (c), (d) or (e) and a certified reference material;

(j) one or more standards of measurement, each of which is a standard of measurement referred to in paragraph (a), (b), (c), (d) or (e) and a certified measuring instrument; or

(k) one or more standards of measurement, each of which is a standard of measurement referred to in paragraph (a), (b), (c), (d) or (e), a certified reference material and a certified measuring instrument;”.

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Functions of the Commission

19. Section 18 of the Principal Act is amended by inserting after paragraph (1)(e) the following paragraph:

“(ea) to take appropriate steps to ascertain whether measuring instruments with an approved pattern are in accordance with the pattern;”.

Patterns of instruments

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

(a) by omitting paragraph (1)(b) and substituting the following paragraph:

“(b) the approval and verification of patterns of measuring instruments as patterns of measuring instruments suitable for:

(i) use for trade; and

(ii) any other legal purpose;”;

(b) by inserting in paragraph (1)(c) “and verification” after “approval”;

(c) by omitting subsection (5);

(d) by inserting after subsection (6) the following subsection:

“(6A) The Commission may not make under subsection (6) any recommendation that is inconsistent with a specification published by the International Organisation of Legal Metrology regarding the examination and approval of patterns of measuring instruments unless the Commission is of the opinion that:

(a) it is in the national interest to do so; or

(b) because of particular circumstances applying in Australia, it is not practicable to comply with that specification.”.

21. After section 19A of the Principal Act the following sections are inserted:

Tolerances

“19AAA.(1) The regulations may provide that a certificate issued under paragraph 19A(1)(c) in respect of a pattern of a measuring instrument (**‘original instrument’**) must specify:

(a) the limits of error that may be tolerated in a measuring instrument of the same kind as the original instrument:

(i) when the instrument is tested for the purposes of this Act; and

(ii) if a law of a State or Territory requires that, at verification or re-verification of the instrument, it must operate within the limits of error that may be tolerated under this Act

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- at verification or re-verification—when the instrument is verified or re-verified for the purposes of that law; and
- (b) the procedures to be followed to ascertain whether the instrument operates within those limits of error.

“(2) If a certificate issued under paragraph 19A(1)(c) and in force immediately before the commencement of this section specifies an amount as the amount of error that may be tolerated when an instrument of the same kind as the original instrument is verified for the purposes of a law referred to in subparagraph (1)(a)(ii), the certificate has effect after the commencement of this section as if the amount were specified as being the limits of error that may be tolerated when the instrument is:

- (a) verified for the purposes of that law; or
(b) tested for the purposes of this Act.

Measuring instrument—accordance with pattern

“19AAB.(1) The regulations may provide for:

- (a) the requirements that are to be satisfied before a measuring instrument with an approved pattern is taken, for the purposes of this Act, to be in accordance with the pattern; and
(b) the procedures to be followed to ascertain whether measuring instruments with an approved pattern are in accordance with the pattern.

“(2) The regulations may provide that the procedures referred to in paragraph (1)(b) may be carried out:

- (a) by the Commission; or
(b) by another person, or a Department of State of the Commonwealth, on behalf of the Commission.

“(3) The Commission may, after consulting with appropriate State authorities, make recommendations to the Minister with respect to any regulations to be made for the purposes of subsection (1).

“(4) Before making regulations for the purpose of subsection (1), the Governor-General must take into consideration any relevant recommendation made by the Commission under subsection (3).

“(5) Any regulations made under this section must provide adequate safeguards for the rights of persons affected.”.

Regulations

22. Section 20 of the Principal Act is amended:

- (a) by inserting at the end of paragraph (aa) “and”;
(b) by adding at the end the following word and paragraphs:
“; and (c) providing for the certification of reference materials;
and

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- (d) providing for the certification of measuring instruments; and
- (e) providing for or in relation to the issuing of certificates in respect of the certification of reference materials or measuring instruments, for the reception in evidence of a document purporting to be such a certificate and for such a certificate to be evidence of the matters stated in it; and
- (f) providing for the establishment of certifying bodies”.

**PART 7—AMENDMENT OF THE SCIENCE AND INDUSTRY
RESEARCH ACT 1949**

Principal Act

23. In this Part, “Principal Act” means the *Science and Industry Research Act 1949*⁶.

Appointment of Chief Executive etc.

24. Section 10B of the Principal Act is amended by omitting from subsection (4) “Governor-General” and substituting “Minister”.

PART 8—AMENDMENTS OF THE TRADE MARKS ACT 1955

Principal Act

25. In this Part, “Principal Act” means the *Trade Marks Act 1955*⁷.

Forgery etc. of trade marks

26. Section 98 of the Principal Act is amended:

- (a) by omitting from subsection (1) paragraphs (a) and (b) of the statement of the Penalty and substituting “Imprisonment for 2 years”;
- (b) by omitting subsection (2).

27. Sections 99, 100 and 101 of the Principal Act are repealed and the following sections are substituted:

Selling etc. goods with false marks

“99.(1) A person must not:

- (a) sell; or
- (b) expose for sale; or
- (c) have in his or her possession for sale or for the purpose of trade or manufacture;

goods, if the person knows that the goods are goods to which a forgery of a registered trade mark is applied, or to which a registered trade mark is falsely applied.

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“(2) A contravention by a person of subsection (1) is an offence punishable on conviction by a fine not exceeding \$500 for each item of goods to which the offence relates or imprisonment for a period not exceeding 2 years, or both.

“(3) If a fine is imposed on a person because of subsection (2) in relation to an offence committed by the person and there are 2 or more items of goods to which the offence relates, the fine imposed in respect of that offence must not exceed \$50,000.

“(4) For the purposes of establishing a contravention of subsection (1), if, having regard to:

- (a) a person’s abilities, experience, qualifications and other attributes; and
- (b) all the circumstances surrounding the alleged contravention of that subsection;

the person ought reasonably to have known that the goods are goods of a kind referred to in that subsection, the person is taken to have known that the goods are goods of that kind.

Importing goods with false marks

“100.(1) A person must not import into Australia goods for the purpose of trade or manufacture if the person knows that the goods are goods to which:

- (a) a forged registered trade mark is applied; or
- (b) a registered trade mark is falsely applied.

“(2) A contravention by a person of subsection (1) is an offence punishable on conviction by a fine not exceeding \$500 for each item of goods to which the offence relates or imprisonment for a period not exceeding 2 years, or both.

“(3) If a fine is imposed on a person because of subsection (2) in relation to an offence committed by the person and there are 2 or more items of goods to which the offence relates, the fine imposed in respect of that offence must not exceed \$50,000.

“(4) For the purposes of establishing a contravention of subsection (1), if, having regard to:

- (a) a person’s abilities, experience, qualifications and other attributes; and
- (b) all the circumstances surrounding the alleged contravention of that subsection;

the person ought reasonably to have known that the goods are goods of a kind referred to in that subsection, the person is taken to have known that the goods are goods of that kind.”.

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What taken to be forgery of trade mark

28. Section 106 of the Principal Act is amended:

(a) by omitting subsection (1) and substituting the following subsection:

“(1) A person is taken to forge a registered trade mark:

(a) if the person knows that the trade mark is a registered trade mark; and

(b) the person:

(i) without the agreement of the registered proprietor of the trade mark or of a registered user of the trade mark, or the authority of this Act, makes the trade mark, the trade mark with additions or alterations not substantially affecting its identity or a mark substantially identical with it; or

(ii) falsifies the registered trade mark, whether by alteration, addition, effacement or otherwise.”;

(b) by adding at the end the following subsection:

“(3) For the purposes of establishing a contravention of subsection (1), if, having regard to:

(a) a person’s abilities, experience, qualifications and other attributes; and

(b) all of the circumstances surrounding the alleged contravention of that subsection;

the person ought reasonably to have known that the trade mark is a registered trade mark, the person is taken to have known that the trade mark is a registered trade mark.”.

29. After section 107 of the Principal Act the following section is inserted:

Forfeiture orders under the *Proceeds of Crime Act 1987*

“107A. If a person other than the Director of Public Prosecutions has instituted proceedings for trial of another person in respect of an indictable offence against this Part, Division 2 of Part 2 of the *Proceeds of Crime Act 1987* applies as if a reference in that Division to the Director of Public Prosecutions includes a reference to the first-mentioned person.”.

30. Section 118A of the Principal Act is repealed and the following section is substituted:

Subsections 99(1) and 100(1) may be dealt with summarily in certain circumstances

“118A.(1) Despite an offence against subsection 99(1) or 100(1) being an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is

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satisfied that it is proper to do so and the defendant and the prosecutor consent.

“(2) If, in accordance with subsection (1), a court of summary jurisdiction convicts a person of an offence against subsection 99(1) or 100(1), the penalty that the court may impose is a fine not exceeding \$500 for each item of goods to which the offence relates or imprisonment for a period not exceeding 12 months, or both.

“(3) If a fine is imposed on a person because of subsection (2) in relation to an offence committed by the person and there are 2 or more items of goods to which the offence relates, the fine imposed in respect of that offence must not exceed \$10,000.”.

NOTES

1. No. 55, 1972, as amended. For previous amendments, see Nos. 61 and 216, 1973; No. 36, 1978; No. 65, 1985; Nos. 76 and 168, 1986; No. 141, 1987; and Nos. 122 and 199, 1991.
2. No. 106, 1984, as amended. For previous amendments, see Nos. 33 and 166, 1985; No. 76, 1986; No. 141, 1987; and Nos. 122 and 199, 1991.
3. No. 16, 1905, as amended. For previous amendments, see No. 37, 1926; No. 15, 1930; No. 13, 1933; No. 80, 1950; No. 93, 1966; No. 216, 1973; No. 61, 1981; No. 151, 1981; No. 48, 1982; No. 39, 1985; and No. 10, 1986.
4. No. 4, 1906, as amended. For previous amendments, see No. 19, 1910; No. 14, 1912; Nos. 53 and 70, 1932; No. 36, 1933; Nos. 42 and 45, 1934; No. 80, 1950; No. 93, 1966; No. 108, 1967; No. 64, 1968; No. 216, 1973; No. 37, 1976; No. 19, 1979; No. 42, 1981 (as amended by No. 176, 1981); Nos. 65 and 193, 1985; No. 23, 1987; Nos. 28 and 91, 1989; and Nos. 10 and 83, 1990.
5. 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; No. 91, 1989; and Nos. 66 and 199, 1991.
6. 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; No. 121, 1986; and Nos. 66, 122 and 199, 1991.
7. No. 20, 1955, as amended. For previous amendments, see No. 42, 1958; No. 93, 1966; No. 216, 1973; Nos. 37, 91 and 163, 1976; No. 130, 1978; No. 19, 1979; Nos. 43 and 61, 1981; No. 80, 1982; No. 72, 1984; Nos. 65 and 193, 1985; No. 23, 1987; Nos. 91 and 96, 1989; and No. 10, 1990.

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*[Minister's second reading speech made in—
Senate on 25 June 1992
House of Representatives on 13 October 1992]*