

Intellectual Property Laws Amendment (Regulator Performance) Act 2023

No. 91, 2023

An Act to amend legislation relating to intellectual property, and for related purposes

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An Act to amend legislation relating to intellectual property, and for related purposes

[*Assented to 17 November 2023*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Intellectual Property Laws Amendment (Regulator Performance) Act 2023*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 17 November 2023 |
| 2. Schedule 1, Part 1 | The day after this Act receives the Royal Assent. | 18 November 2023 |
| 3. Schedule 1, Part 2 | The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent. | 17 May 2024 |
| 4. Schedule 1, Part 3 | The day after this Act receives the Royal Assent. | 18 November 2023 |
| 5. Schedule 1, Parts 4 and 5 | A day or days to be fixed by Proclamation.  However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. | 17 May 2024 |
| 6. Schedule 1, Part 6 | The day after this Act receives the Royal Assent. | 18 November 2023 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Trade marks that contain, or consist of, olympic motto etc.

Olympic Insignia Protection Act 1987

1 Section 1A

Omit:

(c) providing that the olympic motto, the olympic symbol and certain other olympic images must not be registered as trade marks.

substitute:

(c) providing that the use of the olympic motto, the olympic symbol and certain other olympic images is to be taken to be contrary to law in certain circumstances.

2 Subsection 2(1)

Insert:

***IOC*** or ***International Olympic Committee*** means the organisation created by the Congress of Paris on 23 June 1894, being the organisation entrusted with the control and development of the modern Olympic Games.

***protected trade mark*** means a trade mark that contains, or consists of, any of the following signs or a sign so nearly resembling any of those signs as to be likely to be taken for that sign:

(a) the olympic motto;

(b) the olympic symbol;

(c) if an artistic work of an olympic torch and flame is prescribed for the purposes of section 2A—the artistic work;

(d) if the design in relation to an artistic work is registered under this Act—the artistic work.

***sign*** has the same meaning as in the *Trade Marks Act 1995*.

***trade mark*** has the same meaning as in the *Trade Marks Act 1995*.

3 Section 19

Repeal the section, substitute:

19 Use of protected trade mark contrary to law in certain circumstances

For the purposes of paragraph 42(b) of the *Trade Marks Act 1995*, it is to be taken that the use of a protected trade mark by a person or body other than the following would be contrary to law:

(a) the AOC;

(b) the IOC.

4 Application provision

(1) Section 19 of the *Olympic Insignia Protection Act 1987*, as amended by this Part, applies in relation to the following:

(a) an application made under section 27 of the *Trade Marks Act* *1995* if the filing date (within the meaning of that Act) of the application is after the commencement of this item;

(b) an IRDA if the date of international registration or the date of recording (as applicable) in respect of the IRDA is after the commencement of this item.

(2) The expressions ***date of international registration***, ***date of recording*** and ***IRDA*** in paragraph (1)(b) have the same meaning as in Part 17A of the *Trade Marks Regulations 1995*.

Part 2—Renewal of registration

Trade Marks Act 1995

5 Paragraph 80F(b)

Omit “10 months”, substitute “6 months”.

6 Section 80G (heading)

Omit “**10 months**”, substitute “**6 months**”.

7 Paragraph 80G(1)(b)

Omit “10 months”, substitute “6 months”.

8 Subsection 128(2)

Omit “10 months”, substitute “6 months”.

9 Application provision

(1) Despite the amendments of sections 80F, 80G and 128 of the *Trade Marks Act 1995* made by this Part, those provisions, as in force immediately before the commencement of this item, continue to apply in relation to a trade mark for which particulars were entered in the Register under section 69 of that Act before that commencement.

(2) Sections 80F, 80G and 128 of the *Trade Marks Act 1995*, as amended by this Part, apply in relation to a trade mark for which particulars are entered in the Register under section 69 of that Act after the commencement of this item.

Part 3—Revocation of registration

Trade Marks Act 1995

10 Subparagraphs 84B(a)(i) and (ii)

Before “a notice”, insert “a component of”.

11 Paragraph 84B(b)

Omit “opposition”, substitute “component”.

12 Application provision

Section 84B of the *Trade Marks Act 1995*, as amended by this Part, applies in relation to a trade mark for which particulars are entered in the Register under section 69 of that Act after the commencement of this item.

Part 4—Restoration of trade mark to the Register

Trade Marks Act 1995

13 Section 98 (heading)

Omit “**if notice of opposition filed within extended time**”, substitute “**in certain circumstances**”.

14 Section 98

Before “If:”, insert “(1)”.

15 At the end of section 98 (before the note)

Add:

(2) If:

(a) a person filed a notice of opposition under subsection 96(1) to an application for the removal of a trade mark from the Register; and

(b) the person failed to do a thing (the ***relevant thing***):

(i) that the person is required or permitted by the regulations to do in relation to the person’s opposition to the application; and

(ii) that is prescribed by the regulations for the purposes of this subparagraph; and

(c) as a result of the person’s failure to do the relevant thing, the application is taken under the regulations to be unopposed; and

(d) the Registrar removed the trade mark from the Register under paragraph 97(1)(a); and

(e) the Registrar subsequently extends the period under the regulations within which the person is required or permitted to do the relevant thing; and

(f) the person does the relevant thing within the extended period;

the Registrar must restore the trade mark to the Register. Also, the trade mark is taken not to have been removed from the Register.

16 Application provision

Subsection 98(2) of the *Trade Marks Act 1995*, as added by this Part, applies in relation to a trade mark removed from the Register under paragraph 97(1)(a) of that Act after the commencement of this item.

Part 5—Official Journal etc.

Trade Marks Act 1995

17 Readers guide (list of terms defined in section 6)

Omit “Official Journal”.

18 Subsection 6(1) (definition of *Official Journal*)

Repeal the definition.

19 Paragraph 34(b)

Repeal the paragraph, substitute:

(b) publish the decision in accordance with the regulations.

20 Sections 65 and 65A (heading)

Omit “**advertised**”, substitute “**published**”.

21 Subsection 65A(3)

Omit “advertise the request for the amendment in the *Official Journal*”, substitute “publish the request for the amendment in accordance with the regulations”.

22 Paragraph 65A(5)(a)

Omit “advertise”, substitute “publish”.

23 Paragraph 71(a)

Repeal the paragraph, substitute:

(a) publish the registration in accordance with the regulations; and

24 Subsection 83A(3)

Repeal the subsection, substitute:

(3) The Registrar must publish the request for the amendment in accordance with the regulations.

Note: In certain circumstances the Registrar need not publish a request under this subsection (see subsection (7)).

25 Paragraph 83A(7)(a)

Omit “advertise”, substitute “publish”.

26 Subsections 95(2) and (3)

Omit “advertise the application in the *Official Journal*”, substitute “publish the application in accordance with the regulations”.

27 Subsection 110(3)

Omit “advertise in the *Official Journal*”, substitute “publish in accordance with the regulations”.

28 Paragraph 175(4)(b)

Omit “advertise the matter in the *Official Journal*”, substitute “publish the matter”.

29 Paragraph 176(3)(b)

Repeal the paragraph, substitute:

(b) publish the decision in accordance with the regulations.

30 Subsection 213A(3)

Omit “advertise the determination in the Official Journal”, substitute “publish the determination in accordance with the regulations”.

31 Subsection 213B(3)

Omit “advertise the direction in the Official Journal”, substitute “publish the direction in accordance with the regulations”.

32 Subsection 213C(4)

Omit “advertise a direction under subsection (1) in the Official Journal”, substitute “publish a direction under subsection (1) in accordance with the regulations”.

33 Subsection 223AA(3)

Omit “advertise the determination in the Official Journal”, substitute “publish the determination in accordance with the regulations”.

34 Subsection 224(5)

Omit “advertise the application in the *Official Journal*”, substitute “publish the application in accordance with the regulations”.

35 Section 226

Repeal the section, substitute:

226 Preparation etc. of documents relating to trade marks

The Registrar may prepare, publish (electronically or otherwise) and sell documents relating to trade marks as the Registrar thinks fit.

36 Subsection 242(4)

Omit “in the *Official Journal*”.

37 Paragraph 243(4)(b)

Omit “in the *Official Journal*”.

38 Subsection 244(5)

Omit “in the *Official Journal*”.

39 Subparagraph 247(2)(a)(ii)

Omit “in the *Official Journal*”.

40 Application provisions

(1) Sections 34, 175 and 176 of the *Trade Marks Act 1995*, as amended by this Part, apply in relation to a decision:

(a) that is made after the commencement of this item (whether the application was made before, on or after that commencement); or

(b) that was made before the commencement of this item, but has not been advertised as at that commencement.

(2) Sections 65A and 83A of the *Trade Marks Act 1995*, as amended by this Part, apply in relation to a request made after the commencement of this item.

(3) Section 71 of the *Trade Marks Act 1995*, as amended by this Part, applies in relation to a trade mark registered after the commencement of this item.

(4) Sections 95 and 224 of the *Trade Marks Act 1995*, as amended by this Part, apply in relation to an application made after the commencement of this item.

(5) Section 110 of the *Trade Marks Act 1995*, as amended by this Part, applies in relation to a recording made after the commencement of this item (whether the application was made before, on or after that commencement).

(6) Sections 213A and 223AA of the *Trade Marks Act 1995*, as amended by this Part, apply in relation to a determination made after the commencement of this item.

(7) Sections 213B and 213C of the *Trade Marks Act 1995*, as amended by this Part, apply in relation to a direction given after the commencement of this item.

Part 6—Spent provisions

Patents Act 1990

41 Section 3 (list of definitions)

Omit “1989 Amending Act”.

42 Sections 231 to 236 and 238

Repeal the sections.

43 Schedule 1 (definition of *1989 Amending Act*)

Repeal the definition.

[*Minister’s second reading speech made in—*

*House of Representatives on 22 June 2023*

*Senate on 2 August 2023*]

(73/23)