



# **Intellectual Property Laws Amendment (Regulator Performance) Act 2023**

**No. 91, 2023**

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

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# Intellectual Property Laws Amendment (Regulator Performance) Act 2023

No. 91, 2023

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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*.

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No. 91, 2023      *Intellectual Property Laws Amendment (Regulator Performance) Act*      1  
2023

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
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.	
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Note: This table relates only to the provisions of this Act as originally enacted.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.

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### **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.

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*[Minister’s second reading speech made in—  
House of Representatives on 22 June 2023  
Senate on 2 August 2023]*

(73/23)

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