

## **SUPPLEMENTARY EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. , 2017**

#### ***Intellectual Property Legislation Amendment (Single Economic Market and Other Measures) Regulation 2016***

Issued by the Authority of the Minister for Industry, Innovation, and Science

#### **Incorporation of documents**

All New Zealand legislation incorporated in the *Intellectual Property Legislation Amendment (Single Economic Market and Other Measures) Regulation 2016* ('Regulation') are incorporated as in force at the commencement of this Regulation. This includes:

- Item 25 of Schedule 1 [Subregulation 20.12(1)]
  - Designs Act 1953 of New Zealand;
  - Patents Act 1953 of New Zealand;
  - Patents Act 2013 of New Zealand;
  - Plant Variety Rights Act 1987 of New Zealand;
  - Trade Marks Act 2002 of New Zealand.
- Item 115 of Schedule 1 [Subparagraph 20A.3(b)(ii)]
  - Companies Act 1993 of New Zealand
- Item 161 of Schedule 1 [Subparagraph 20A.22(2)(b)(ii) (first occurring)]
  - Companies Act 1993 of New Zealand
- Item 171 of Schedule 1 [Subregulation 23.41(4)]
  - Patents Regulations 1954 of New Zealand

#### **Sub-delegation of power**

*At item 4 of Schedule 6 in the Explanatory Statement to the Regulation, after '... as it may be impractical for the Comptroller-General to personally make all determinations.' insert new paragraphs below:*

The need to sub-delegate the Comptroller-General's power to determine the designated owner of goods under section 133A of the *Trade Marks Act 1995* (Trade Marks Act) to an 'officer of Customs' is justified below.

Chapter 13 of the Trade Marks Act sets out provisions empowering Customs to seize infringing goods at the border. Section 133A of the Trade Marks Act directly empowers an officer of Customs (within the meaning of subsection 4(1) of the *Customs Act 1901*) to determine who is the designated owner of imported goods, if this is otherwise unknown.

From its commencement in 1996, the Trade Marks Act has extended to the territory of Norfolk Island. However, at that time Norfolk Island had its own Customs administration under the *Customs Act 1913* (NI). To allow for this, Chapter 13 of the Trade Marks Act was modified in its application to Norfolk Island so that the local Customs administration on

Norfolk Island could exercise the powers and functions in that chapter (Trade Marks Act s 144(a); *Trade Marks Regulations 1995* Regulation 13.7 and Schedule 3).

With effect from 1 July 2016, the *Customs Act 1913* (NI) was repealed, and the Customs Act 1901 (Cth) was applied to Norfolk Island. Consequently, the Department of Immigration and Border Protection (DIBP) now administers customs arrangements for Norfolk Island. Due to these administrative changes, the amendment made by this item restores the ordinary scope of the power under section 133A of the Trade Marks Act in its application to Norfolk Island. That is, it mirrors the existing power exercised by Customs officers in Australia. Therefore, any DIBP staff on Norfolk Island who are officers of Customs should be able to exercise the power. It would be impracticable to limit the exercise of the power to the Comptroller-General in Canberra.