



# **Intellectual Property Laws Amendment (Productivity Commission Response Part 2 and Other Measures) Regulations 2020**

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 02 April 2020

David Hurley  
Governor-General

By His Excellency's Command

Karen Andrews  
Minister for Industry, Science and Technology

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## 1 Name

This instrument is the *Intellectual Property Laws Amendment (Productivity Commission Response Part 2 and Other Measures) Regulations 2020*.

## 2 Commencement

- (1) Each provision of this instrument 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 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	4 April 2020
2. Schedule 1, Part 1	Immediately after the commencement of Part 2 of Schedule 1 to the <i>Intellectual Property Laws Amendment (Productivity Commission Response Part 2 and Other Measures) Act 2020</i> .	26 August 2021
3. Schedule 1, Parts 2 and 3	The day after this instrument is registered.	4 April 2020
4. Schedule 1, Part 4	Immediately after the commencement of Schedule 8 to the <i>Intellectual Property Laws Amendment (Productivity Commission Response Part 2 and Other Measures) Act 2020</i> .	26 August 2020
5. Schedule 1, Part 5	The day after this instrument is registered.	4 April 2020

Note: This table relates only to the provisions of this instrument as originally made.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

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

## 3 Authority

This instrument is made under the *Patents Act 1990*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### Part 1—Innovation patents

#### *Patents Regulations 1991*

##### **1 At the end of subregulation 3.2B(1)**

Add:

- ; (i) if the application was converted from an application for a standard patent to an application for an innovation patent—the request to amend the patent request to convert the application was filed on a day that is before the day the term of the innovation patent, if granted, would have expired;
- (j) if the application is a divisional application under section 79B of the Act—the divisional application was filed on a day that is before the day the term of the innovation patent, if granted, would have expired;
- (k) the requirement specified in subsection 52(3) of the Act.

Note 1: Subsection 52(3) of the Act provides that it is a requirement of the formalities check that the date of the patent (if granted) would be a date before the day that subsection commences. Subsection 52(3) was inserted by the *Intellectual Property Laws Amendment (Productivity Commission Response Part 2 and Other Measures) Act 2020*.

Note 2: For the date of the patent, see section 65 of the Act and regulation 6.3.

##### **2 Subregulation 3.2B(2)**

Omit “or (h)”, substitute “, (h) or (k)”.

##### **3 At the end of regulation 10.2B**

Add:

- (8) An amendment of a patent request is not allowable if:
  - (a) the amendment would convert the patent application from an application for a standard patent to an application for an innovation patent; and
  - (b) the date of the patent (if granted) would be a date on or after the day this subregulation commences.

Note 1: This subregulation was inserted by the *Intellectual Property Laws Amendment (Productivity Commission Response Part 2 and Other Measures) Regulations 2020*.

Note 2: For the date of the patent, see section 65 of the Act and regulation 6.3.

##### **4 Before paragraph 22.11(4)(a)**

Insert:

- (aa) filing of a request for an amendment to convert an application from an application for a standard patent to an application for an innovation patent on a day that is on or after the day the term of the innovation patent, if granted, would have expired;
- (ab) filing of a divisional application under section 79B of the Act for an innovation patent on a day that is on or after the day the term of the innovation patent, if granted, would have expired;

## **Part 2—Crown use**

### ***Patents Regulations 1991***

#### **5 Regulation 3.25E (heading)**

Repeal the heading, substitute:

#### **3.25E Grant of certification—exploitation for Crown purposes**

#### **6 Paragraph 3.25E(a)**

Repeal the paragraph, substitute:

- (a) the person making the request is authorised by a relevant authority, under subparagraph 160A(1)(b)(ii) of the Act, to exploit the invention for the services of the relevant authority; and

#### **7 Regulation 17.1**

Repeal the regulation.

## **Part 3—Compulsory licences**

### *Patents Regulations 1991*

#### **8 Paragraph 3.25D(a)**

Omit “to work”, substitute “to exploit”.

#### **9 Subparagraph 12.1(2)(a)(iv)**

Repeal the subparagraph, substitute:

- (iv) if the applicant relies on the ground mentioned in paragraph 133(2)(a) of the Act—facts supporting the making of the order, having regard to the matters mentioned in paragraphs 133(3)(a), (b) and (e) of the Act; and



## **Part 4—Translations**

### *Patents Regulations 1991*

#### **10 Regulation 1.7**

Repeal the regulation.

## **Part 5—Application, saving and transitional provisions**

### *Patents Regulations 1991*

#### **11 In the appropriate position in Chapter 23**

Insert:

## **Part 6—Amendments made by the Intellectual Property Laws Amendment (Productivity Commission Response Part 2 and Other Measures) Regulations 2020**

### **23.51 Application of amendments**

- (1) The amendments of regulation 3.25E made by Part 2 of Schedule 1 to the *Intellectual Property Laws Amendment (Productivity Commission Response Part 2 and Other Measures) Regulations 2020* apply in relation to requests made after the commencement of that Part.
- (2) The repeal of regulation 17.1 made by Part 2 of Schedule 1 to the *Intellectual Property Laws Amendment (Productivity Commission Response Part 2 and Other Measures) Regulations 2020* does not apply in relation to applications made before the commencement of that Part.
- (3) The amendment of regulation 3.25D made by Part 3 of Schedule 1 to the *Intellectual Property Laws Amendment (Productivity Commission Response Part 2 and Other Measures) Regulations 2020* applies in relation to orders made after the commencement of that Part.
- (4) The amendment of regulation 12.1 made by Part 3 of Schedule 1 to the *Intellectual Property Laws Amendment (Productivity Commission Response Part 2 and Other Measures) Regulations 2020* applies in relation to applications made after the commencement of that Part.
- (5) The amendment of these Regulations made by Part 4 of Schedule 1 to the *Intellectual Property Laws Amendment (Productivity Commission Response Part 2 and Other Measures) Regulations 2020* apply in relation to translations filed after the commencement of that Part.