

SUPPLEMENTARY EXPLANATORY STATEMENT

Issued by the Minister for Industry and Science

Patents Act 1990
Trade Marks Act 1995

Intellectual Property Laws Amendment (Regulator Performance) Regulations 2024

Purpose of supplementary explanatory statement

This supplementary explanatory statement amends the initial explanatory statement to the *Intellectual Property Laws Amendment (Regulator Performance) Regulations 2024* (the Regulations), at the request of the Senate Standing Committee for the Scrutiny of Delegated Legislation. It details the source of the Amendment Regulations' sunseting exemption.

Supplementary material on sunseting exemption

After the paragraph starting 'An information paper outlining', insert the following:

Sunseting Exemption

The Regulations are exempt from sunseting by virtue of paragraph 54(2)(b) of the *Legislation Act 2003*, and table items 48A and 63A in regulation 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*:

- Table item 48A exempts from sunseting a regulation made under the Patents Act.
- Table item 63A exempts from sunseting a regulation made under the Trade Marks Act.

The Regulations are made made under the Patents and Trade Marks Acts, as are the Patents and Trade Marks Regulations which the Regulations amend.

The above table items were inserted, with effect from 29 August 2017, by items 12 and 15 in Schedule 1 to the *Legislation (Exemptions and Other Matters) Amendment (Sunsetting Exemptions) Regulations 2017* (2017 Amendment Regulations).

The Patents and Trade Marks Acts, and regulations made under these Acts, provide the legislative basis for Australia's patents and trade mark systems and are exempt from sunseting to provide a stable and predictable regulatory environment for intellectual property (IP) rights. This allows businesses to make commercial decisions with confidence and recoup their long-term investments in innovation.

IP rights often last much longer than the 10-year sunseting period. For example, patent rights can be maintained for up to 20-25 years while trade mark registrations can be held in perpetuity, with over a third of Australian trade marks held for 20 years or longer. The possibility that the regulations underpinning the IP rights system could sunset during this time exposes investors and businesses to significant uncertainty. More information on this can be found in the notes in the Explanatory Statement on items 12 and 15 in Schedule 1 to the 2017 Amendment Regulations.