**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’ sunsetting exemption.

**Supplementary material on sunsetting exemption**

*After the paragraph starting ‘An information paper outlining’, insert the following:*

**Sunsetting Exemption**

The Regulations are exempt from sunsetting 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 sunsetting a regulation made under the Patents Act.
* Table item 63A exempts from sunsetting 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 sunsetting 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 sunsetting 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.