



Intellectual Property Laws Amendment Act 2003

No.48, 2003

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

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Intellectual Property Laws Amendment Act 2003

No.48, 2003

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

[Assented to 26 June 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Intellectual Property Laws Amendment Act 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	26 June 2003
2. Schedule 1	The 28th day after the day on which this Act receives the Royal Assent	24 July 2003
3. Schedule 2, Part 1	A single day to be fixed by Proclamation, subject to subsection (3)	26 August 2003
4. Schedule 2, Part 2	The 28th day after the day on which this Act receives the Royal Assent	24 July 2003
5. Schedule 2, Part 3	Immediately after the time specified in the <i>Patents Amendment (Innovation Patents) Act 2000</i> for the commencement of item 3 of Schedule 1 to that Act	24 May 2001

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

- (3) If a provision covered by item 3 of the table does not commence within the period of 2 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Designs Act 1906

1 Subsection 27B(1)

Repeal the subsection, substitute:

- (1) The Registrar must extend the time for doing a relevant act that is required to be done within a certain time if the act is not, or cannot be, done within that time because of an error or omission by:
- (a) the Registrar or a Deputy Registrar; or
 - (b) a person employed in the Designs Office; or
 - (c) a person providing, or proposing to provide, services for the benefit of the Designs Office.

Patents Act 1990

2 Subsection 223(1)

Repeal the subsection, substitute:

- (1) The Commissioner must extend the time for doing a relevant act that is required to be done within a certain time if the act is not, or cannot be, done within that time because of an error or omission by:
- (a) the Commissioner or a Deputy Commissioner; or
 - (b) an employee; or
 - (c) a person providing, or proposing to provide, services for the benefit of the Patent Office.

Trade Marks Act 1995**3 Reader's Guide (list of terms defined in section 6)**

Omit "trade marks officer".

4 Section 6 (definition of trade marks officer)

Repeal the definition.

5 Subsection 224(1) (including the note)

Repeal the subsection, substitute:

- (1) The Registrar must extend the time for doing a relevant act that is required by this Act to be done within a certain time if the act is not, or cannot be, done within that time because of an error or omission by:
 - (a) the Registrar or a Deputy Registrar; or
 - (b) an employee; or
 - (c) a person providing, or proposing to provide, services for the benefit of the Trade Marks Office.

Schedule 2—Other amendments**Part 1—Disclosure of searches*****Patents Act 1990*****1 Section 3 (list of definitions)**

Insert "foreign patent office".

2 Subsection 45(3)

Repeal the subsection, substitute:

- (3) The applicant must inform the Commissioner, in accordance with the regulations, of the results of the following searches carried out for the purpose of assessing the patentability of an invention disclosed in the complete specification or a corresponding application filed outside Australia:
 - (a) any documentary searches by, or on behalf of, a foreign patent office, other than searches prescribed by the regulations;
 - (b) the documentary searches prescribed by the regulations.
- (4) Subsection (3) only applies to searches completed before the grant of the patent.
- (5) In subsection (4):

completed, in relation to a search, has the meaning prescribed by the regulations.

3 Section 101D

Repeal the section, substitute:

101D Commissioner to be given information on searches

- (1) The patentee must inform the Commissioner, in accordance with the regulations, of the results of the following searches carried out for the purpose of assessing the patentability of an invention disclosed in the complete specification or a corresponding application filed outside Australia:
 - (a) any documentary searches by, or on behalf of, a foreign patent office, other than searches prescribed by the regulations;
 - (b) the documentary searches prescribed by the regulations.
- (2) Subsection (1) only applies to searches completed before the issue of a certificate of examination in respect of the patent.
- (3) In subsection (2):

completed, in relation to a search, has the meaning prescribed by the regulations.

4 Schedule 1 (Dictionary)

Insert:

foreign patent office means an office, organisation or other body that may grant protection in respect of an invention in a foreign country.

5 Application

- (1) The amendment made by item 2 of this Schedule applies in relation to an application if the patent request and complete specification in relation to that application had not been accepted under subsection 49(1) of the *Patents Act 1990* before 1 April 2002.
- (2) The amendment made by item 3 of this Schedule applies in relation to an innovation patent unless the Commissioner had started examination of the patent under section 101B of the *Patents Act 1990* before 1 April 2002.
- (3) For the purposes of subitem (1), information given before commencement under old subsection 45(3) is taken to be information given under new subsection 45(3).
- (4) For the purposes of subitem (2), information given before commencement under old section 101D is taken to be information given under new section 101D.
- (5) In this item:

commencement means the time of commencement of Part 1 of this Schedule.

new section 101D means section 101D of the *Patents Act 1990* as in force immediately after commencement.

new subsection 45(3) means subsection 45(3) of the *Patents Act 1990* as in force immediately after commencement.

old section 101D means section 101D of the *Patents Act 1990* as in force immediately before commencement.

old subsection 45(3) means subsection 45(3) of the *Patents Act 1990* as in force immediately before commencement.

Part 2—Definition of employee

Trade Marks Act 1995

6 Section 6 (definition of employee)

Repeal the definition, substitute:

employee means a person, other than the Registrar or a Deputy Registrar, who:

- (a) is a person engaged under the *Public Service Act 1999* and is employed in the Trade Marks Office; or
- (b) is not such a person but performs services, in the Trade Marks Office, for or on behalf of the Commonwealth.

7 Subsection 206(1)

Omit “class, employed in the Trade Marks Office”, substitute “class”.

Part 3—Technical amendment

Patents Amendment (Innovation Patents) Act 2000

8 Item 3 of Schedule 1

After “section” insert, “(other than Tables 1 and 2)”.

[Minister’s second reading speech made in—
House of Representatives on 27 June 2002
Senate on 16 June 2003]

(147/02)