

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

**INDUSTRY, TECHNOLOGY AND COMMERCE LEGISLATION
AMENDMENT BILL (No. 2) 1989**

TABLE OF PROVISIONS

PART 1—INTRODUCTORY

Section

1. Short title
2. Commencement

**PART 2—AMENDMENTS OF THE AUSTRALIAN INDUSTRY
DEVELOPMENT CORPORATION ACT 1970**

3. Principal Act
4. Delegation by the Corporation
5. Delegation by the Chief Executive
6. Interpretation
7. Insertion of new section:
 - 29LA. Corporation to pay amounts received under special non-transferring assets to receiving subsidiary
8. Application of Income Tax Assessment Act to certain assets and liabilities
9. Payments in relation to certain non-transferring assets and liabilities
10. Treatment for capital gains tax purposes of shares issued to Corporation by receiving subsidiary
11. Guarantee by Commonwealth

PART 3—AMENDMENT OF THE BOUNTY (SHIPS) ACT 1989

12. Principal Act
13. Interpretation

PART 4—AMENDMENTS OF THE DESIGNS ACT 1906

14. Principal Act
15. Interpretation
16. Crown to be bound
17. Application of Act
18. Registrar and other officers
19. Insertion of new section in Part II:
 11. False representations about the Designs Office
20. Insertion of new section:
 - 20A. Withdrawal of application

TABLE OF PROVISIONS—*continued*

Section

21. Insertion of new section:
 20B. Persons claiming under assignment etc.
22. Repeal of sections 27B and 27C and substitution of new section:
 27B. Extensions of time
23. Insertion of new heading:

Division 1—Infringement

24. Insertion of new Division in Part V:

Division 2—Unjustified threats of infringement proceedings

- 32C. Application for relief from unjustified threats
- 32D. Court's power to grant relief
- 32E. Counter-claim for infringement
- 32F. Notification of registration not a threat
- 32G. Liability of legal practitioner or patent attorney
25. Register of designs
26. Inspection of register
27. Registration of assignments etc.
28. Interpretation
29. Repeal of section 40K and substitution of new section:
 40K. Review by Administrative Appeals Tribunal
30. Regulations
31. Fees
32. Repeal of section 45A and substitution of new section:
 45A. Conduct by directors, servants and agents
33. Convention countries
34. Further amendments

PART 5—AMENDMENT OF THE PATENTS ACT 1952

35. Principal Act
36. Appeals

PART 6—AMENDMENTS OF THE PATENTS, TRADE MARKS, DESIGNS
AND COPYRIGHT ACT 1939

37. Principal Act
38. Interpretation
39. Delegation

PART 7—AMENDMENTS OF THE TRADE MARKS ACT 1955

40. Principal Act
41. Interpretation
42. Registrar and other officers
43. Insertion of new section:
 14A. Register may be kept wholly or partly by computer
44. Inspection of Register
45. Register and certified copies to be evidence
46. Insertion of new section:
 40A. Withdrawal of application
47. Convention countries
48. Fees
49. Regulations

SCHEDULE

FURTHER AMENDMENTS OF THE DESIGNS ACT 1906

1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 4 October 1989

(Minister for Science, Customs and Small Business)

A BILL

FOR

**An Act to amend various Acts relating to matters dealt with
by the Department of Industry, Technology and Commerce,
and for related purposes**

BE IT ENACTED by the Queen, and the Senate and the House of
Representatives of the Commonwealth of Australia, as follows:

PART 1—INTRODUCTORY

Short title

5 1. This Act may be cited as the *Industry, Technology and Commerce
Legislation Amendment Act (No. 2) 1989*.

Commencement

2. (1) Sections 1 and 2 commence on the day on which this Act receives
the Royal Assent.

10 (2) Sections 3, 4, 5, 6, 7, 8, 9 and 10, and Part 3, are to be taken to
have commenced on 1 July 1989.

(3) Subsection 15 (1), sections 18, 41 and 42, and Part 6, commence on the same day as the *Patents Act 1989*.

(4) Part 5 commences, or is to be taken to have commenced, as the case requires, immediately after the commencement of the *Patents Amendment Act 1989*. 5

(5) Subject to subsection (6), sections 21, 22, 27 and 29 commence on a day or days to be fixed by Proclamation.

(6) If a provision referred to in subsection (5) does not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of the period. 10

(7) The remaining provisions of this Act commence 28 days after this Act receives the Royal Assent.

PART 2—AMENDMENTS OF THE AUSTRALIAN INDUSTRY DEVELOPMENT CORPORATION ACT 1970

 15

Principal Act

3. In this Part, “**Principal Act**” means the *Australian Industry Development Corporation Act 1970*’.

Delegation by the Corporation

4. Section 23 of the Principal Act is amended by omitting “of the Corporation” and substituting “or employee of the Corporation or the receiving subsidiary”. 20

Delegation by the Chief Executive

5. Section 23A of the Principal Act is amended by omitting “of the Corporation” and substituting “or employee of the Corporation or the receiving subsidiary”. 25

Interpretation

6. Section 29A of the Principal Act is amended by inserting the following definition:

“‘**special non-transferring asset**’ means a non-transferring asset arising under an instrument that relates to or evidences a non-transferring liability (other than a non-reimbursable liability);” 30

7. After section 29L of the Principal Act the following section is inserted:

Corporation to pay amounts received under special non-transferring assets to receiving subsidiary

 35

“29LA. (1) The Corporation must, in relation to each special non-transferring asset, pay to the receiving subsidiary each amount paid to it under the asset on or after the re-organisation day.

“(2) Subsection (1) has effect subject to any agreement between the receiving subsidiary and the Corporation.”.

Application of Income Tax Assessment Act to certain assets and liabilities

5 **8.** Section 29Z of the Principal Act is amended:

(a) by omitting from paragraph (1) (b) “and”;

(b) by adding at the end of subsection (1) the following word and paragraph:

“; and (d) the special non-transferring assets.”;

10 (c) by adding at the end the following subsection:

“(4) Nothing in any other provision of this Part is to be taken by implication to limit the operation of this section.”.

Payments in relation to certain non-transferring assets and liabilities

9. Section 29ZB of the Principal Act is amended:

15 (a) by inserting in subsection (1) “, and at the time at which,” after “to the extent to which”;

(b) by omitting subsection (3) and substituting the following subsection:

“(3) The assessable income of the Corporation for the purposes of the *Income Tax Assessment Act 1936* is not to include:

20 (a) any payment made by the receiving subsidiary under section 29L of this Act (whether or not the payment is made, or required to be made, to the Corporation); or

(b) any payment made to the Corporation in relation to which section 29LA of this Act applies.”.

25 **Treatment for capital gains tax purposes of shares issued to Corporation by receiving subsidiary**

10. Section 29ZD of the Principal Act is amended by adding at the end the following subsection:

“(6) In this section:

30 ‘**transferred assets**’ includes the special non-transferring assets.”.

Guarantee by Commonwealth

11. Section 35 of the Principal Act is amended by adding at the end of subsection (1) “under an agreement or arrangement entered into by the Corporation before 1 July 1994”.

35 **PART 3—AMENDMENT OF THE BOUNTY (SHIPS) ACT 1989**

Principal Act

12. In this Part, “**Principal Act**” means the *Bounty (Ships) Act 1989*².

Interpretation

13. Section 4 of the Principal Act is amended by omitting “10,000” from paragraph (a) of the definition of “bountiable vessel” in subsection (1) and substituting “20,000”.

PART 4—AMENDMENTS OF THE DESIGNS ACT 1906

5

Principal Act

14. In this Part, “Principal Act” means the *Designs Act 1906*³.

Interpretation

15. (1) Section 4 of the Principal Act is amended by omitting “the” from the definition of “Deputy Registrar” in subsection (1) and substituting “a”. 10

(2) Section 4 of the Principal Act is amended:

(a) by omitting from subsection (1) the definition of “Australia” and substituting the following definition:

“‘Australia’ includes each external Territory;” 15

(b) by inserting in subsection (1) the following definitions:

“‘Australian continental shelf’ means the continental shelf, within the meaning of the Continental Shelf Convention, adjacent to the coast of Australia (including the coast of any island forming part of a State or Territory); 20

“‘Continental Shelf Convention’ means the Convention called ‘Convention on the Continental Shelf’ signed at Geneva on 29 April 1958, a copy of the English text of which is set out in Schedule 1 to the *Petroleum (Submerged Lands) Act 1967*; 25

“‘Designs Office’ means the Designs Office established by this Act;

“‘infringement proceedings’ means an action or proceedings for the infringement of the monopoly in a registered design;

“‘State’, in Part VIA, includes the Australian Capital Territory, the Northern Territory and Norfolk Island; 30

“‘Territory’ means a Territory in which this Act applies or to which this Act extends.”.

Crown to be bound

16. Section 5A of the Principal Act is amended: 35

(a) by inserting “of the Australian Capital Territory,” after “States,”;

(b) by adding at the end the following subsection:

“(2) Nothing in this Act makes the Crown liable to be prosecuted for an offence.”.

Application of Act

17. Section 5B of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) This Act extends to each of the following:

- (a) each external Territory;
- (b) the Australian continental shelf;
- (c) the waters above the Australian continental shelf;
- (d) the airspace above Australia, each external Territory and the Australian continental shelf.”.

10 **Registrar and other officers**

18. (1) Section 8 of the Principal Act is amended:

(a) by omitting subsections (3) and (4) and substituting the following subsections:

“(3) There is to be at least one Deputy Registrar of Designs.

“(4) Subject to any direction by the Registrar, a Deputy Registrar has all the powers and functions of the Registrar under this Act, except the Registrar’s powers of delegation under section 8A.”;

(b) by omitting from subsections (5) and (5A) “the Deputy” and substituting “a Deputy”;

(c) by omitting subsection (5B) and substituting the following subsection:

“(5B) Where, under this Act, the exercise of a power or function by the Registrar, or the operation of a provision of this Act, depends on the opinion, belief or state of mind of the Registrar in relation to a matter:

- (a) that power or function may be exercised by a Deputy Registrar upon the opinion, belief or state of mind of the Deputy Registrar in relation to that matter; and
- (b) that provision may operate upon the opinion, belief or state of mind of a Deputy Registrar in relation to that matter.”.

(2) The person holding office immediately before the commencement of this section as the Deputy Registrar of Designs continues to hold office on and after that day as a Deputy Registrar of Designs under the Principal Act as amended by this Act.

19. After section 10 of the Principal Act the following section is inserted in Part II:

False representations about the Designs Office

“11. (1) A person must not use, in connection with his or her business, words that would reasonably lead to the belief that his or her office is, or is officially connected with, the Designs Office.

Penalty: \$3,000.

“(2) Without limiting subsection (1), a person who:

- (a) places, or allows to be placed, on the building in which his or her office is situated; or
- (b) uses when advertising his or her office or business; or
- (c) places on a document, as a description of his or her office or business; 5

the words ‘Designs Office’ or ‘Office for registering designs’, or words of similar import, whether alone or together with other words, is guilty of an offence against that subsection.”.

20. After section 20 of the Principal Act the following section is inserted: 10

Withdrawal of application

“20A. (1) An application for the registration of a design is to be treated as having been withdrawn if, and only if, the applicant lodges at the Designs Office a written notice of withdrawal signed by the applicant.

“(2) A written notice of withdrawal may be lodged at the Designs Office by leaving it at, or delivering it by post to, the Designs Office or a sub-office.”. 15

21. Before section 21 of the Principal Act the following section is inserted:

Persons claiming under assignment etc. 20

“20B. (1) Where, before a design is registered on an application for registration, a person would, if the design were then registered, be entitled under an assignment or agreement, or by operation of law, to:

- (a) the registered design or an interest in it; or
- (b) an undivided share in the registered design or in such an interest; 25

the Registrar may, on a request made by the person in accordance with the regulations, direct that the application proceed in the name of the person, or in the name of the person and the applicant or the other joint applicant or applicants, as the case requires.

“(2) Where the Registrar gives a direction: 30

- (a) the person is to be taken to be the applicant or a joint applicant, as the case requires; and
- (b) the application for registration is to be taken to have been amended so that the person becomes the applicant, or a joint applicant, as the case requires.”. 35

22. Sections 27B and 27C of the Principal Act are repealed and the following section is substituted:

Extensions of time

5 “27B. (1) Where, because of an error or omission by the Registrar, a Deputy Registrar, or a person employed in the Designs Office, a relevant act that is required to be done within a certain time is not, or cannot be, done within that time, the Registrar must extend the time for doing the act.

“(2) Where, because of:

10 (a) an error or omission by the person concerned, or by his or her agent; or

(b) circumstances beyond the control of the person concerned;
a relevant act that is required to be done within a certain time is not, or cannot be, done within that time, the Registrar may, on application made by the person concerned in accordance with the regulations, extend the time
15 for doing the act.

“(3) The time allowed for doing a relevant act may be extended, whether before or after that time has expired.

20 “(4) Where an application is made for an extension of time for more than 3 months, the Registrar must advertise the application in the *Official Journal*.

“(5) A person may, as prescribed, oppose the granting of the application.

“(6) Where:

25 (a) an application for registration of a design lapses, or the registration of a design ceases to be in force, because of a failure to do one or more relevant acts within the time allowed; and

(b) the time for doing that act or those acts is extended;
the application or registration must be treated as having been restored on the day on which the extension, or the last of the extensions, is granted.

30 “(7) Where an extension of time is granted for doing a relevant act, the prescribed provisions have effect for the protection or compensation of persons who availed themselves (or took definite steps by way of contract or otherwise to avail themselves) of the design concerned because of the failure to do the relevant act within the time allowed, the lapsing of the application or the ceasing of the registration, as the case may be.

35 “(8) Infringement proceedings cannot be brought in respect of an infringement committed between the day on which the registration of a design ceases to be in force and the day on which the registration is restored.

“(9) Where:

(a) the registration of a design is restored under this section; and

(b) the design was the original design, within the meaning of section 25D, in relation to another design (in this subsection called ‘the second design’) to which that section applied;

the registration of the second design is restored and:

(c) that section again applies to the second design; and 5

(d) the design mentioned in paragraph (a) again becomes the original design in relation to the second design.

“(10) In this section:

‘relevant act’ means an action (other than a prescribed action) in relation to: 10

(a) a registered design; or

(b) an application for registration of a design; or

(c) any proceedings under this Act (other than court proceedings);

and includes the making of an application for registration of a design within the period specified in subsection 49 (1).” 15

23. Before section 30 of the Principal Act the following heading is inserted:

“Division 1—Infringement”.

24. After section 32B of the Principal Act the following Division is inserted in Part V: 20

“Division 2—Unjustified threats of infringement proceedings

Application for relief from unjustified threats

“32C. (1) Where a person, by means of circulars, advertisements or otherwise, threatens a person with infringement proceedings, or other similar proceedings, the person aggrieved may apply to a prescribed court, or to another court having jurisdiction to hear and determine the application, for: 25

(a) a declaration that the threats are unjustifiable; and

(b) an injunction against the continuance of the threats; and

(c) the recovery of any damages sustained by the applicant as a result of the threats. 30

“(2) Subsection (1) applies whether or not the person who made the threats is entitled to, or interested in, the design.

Court’s power to grant relief

“32D. The court may grant an applicant under section 32C the relief applied for unless the respondent satisfies the court that: 35

(a) the relevant design is registered; and

(b) the acts about which the threats were made infringed, or would infringe, the monopoly in the design.

Counter-claim for infringement

5 “32E. (1) The respondent in proceedings under section 32C may apply, by way of counter-claim, for relief to which the respondent would be entitled in separate proceedings for an infringement by the applicant of the monopoly in the registered design to which the threats relate.

“ (2) Where the respondent applies by way of a counter-claim, the applicant may, without making a separate application under section 39, apply in the proceedings for the rectification of the register by expunging from the register the entry of the registration of the design.

10 “ (3) The provisions of this Act relating to infringement proceedings apply, with the necessary changes, to a counter-claim.

“ (4) The provisions of this Act relating to proceedings for the rectification of the register apply, with the necessary changes, to an application under subsection (2).

15 **Notification of registration not a threat**

“32F. The mere notification of the existence of a registered design does not constitute a threat of proceedings for the purposes of section 32C.

Liability of legal practitioner or patent attorney

20 “32G. A legal practitioner or a patent attorney is not liable to proceedings under section 32C in respect of an act done in his or her professional capacity on behalf of a client.”.

Register of designs

25 **25.** Section 33 of the Principal Act is amended by adding at the end the following subsections:

“ (2) The register may be kept wholly or partly by use of a computer.

“ (3) If the register is kept wholly or partly by use of a computer:

(a) references in this Act to an entry in the register include references to a record of particulars kept by use of the computer and comprising the register or part of the register; and

30 (b) references in this Act to particulars being registered, or entered in the register, include references to the keeping of a record of those particulars as part of the register by use of the computer; and

35 (c) references in this Act to the amendment, alteration or rectification of the register include references to the amendment, alteration or rectification of the record of particulars kept by use of the computer and comprising the register or part of the register.”.

Inspection of register

26. Section 35 of the Principal Act is amended by adding at the end the following subsection:

“(2) If a record of particulars is kept by use of a computer, subsection (1) is to be taken to be complied with, to the extent that the register consists of those particulars, by giving members of the public access to a computer terminal which they can use to inspect the particulars, either on a screen or in the form of a computer printout.”. 5

Registration of assignments etc.

27. Section 38 of the Principal Act is amended by inserting “agreement,” after “assignment,”. 10

Interpretation

28. Section 40 of the Principal Act is amended by omitting subsections (1) and (3).

29. Section 40K of the Principal Act is repealed and the following section is substituted: 15

Review by Administrative Appeals Tribunal

“40K. (1) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Registrar under section 20B, 25B or 27B. 20

“(2) Where a decision of the kind mentioned in subsection (1) is made and a written notice of the decision is given to a person whose interests are affected by the decision, the notice must include:

(a) a statement to the effect that application may be made to the Administrative Appeals Tribunal under the *Administrative Appeals Tribunal Act 1975* for review of the decision; and 25

(b) a statement to the effect that a person who is entitled to apply to the Administrative Appeals Tribunal for review of a decision may, under section 28 of that Act, request a statement that includes reasons for the decision. 30

“(3) Paragraph (2) (b) does not apply to a case to which subsection 28 (4) of the *Administrative Appeals Tribunal Act 1975* applies.

“(4) A contravention of subsection (2) in relation to a decision does not affect the validity of the decision.

“(5) In this section: 35

‘decision’ has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.”.

Regulations

30. Section 41 of the Principal Act is amended:

- (a) by omitting all the words from and including “, and, in particular,”;
- (b) by adding at the end the following subsection:

5 “(2) Without limiting subsection (1), that subsection includes the power to make regulations:

- 10 (a) requiring persons to furnish statutory declarations in relation to applications under this Act or the regulations relating to designs, or in proceedings under this Act or the regulations (other than court proceedings); and
- (b) making provision for and in relation to the refund, in specified circumstances, of the whole or part of a fee paid in respect of the lodging of a document; and
- 15 (c) making provision for and in relation to the remission of, or the exemption of specified classes of persons from the payment of, the whole or part of a fee; and
- (d) empowering the Registrar to require an applicant for registration of a design to inform the Registrar, within the prescribed period, whether or not the applicant wishes to be heard for the purposes of subsection 24 (2); and
- 20 (e) empowering the Registrar to require an applicant for registration of a design who wishes to be heard for the purposes of subsection 24 (2) to appear for the purposes of being so heard on a day, and at a place and time, specified by the Registrar; and
- 25 (f) providing for the lapsing of an application for registration of a design if the applicant does not comply with the requirements of the Registrar under regulations made under paragraph (d).”.

30 **Fees**

31. Section 42 of the Principal Act is amended:

- 35 (a) by inserting in subsection (1) “or a person other than the Registrar,” after “Registrar,” (second occurring);
- (b) by omitting subsections (3) and (4) and substituting the following subsections:

40 “(3) Subject to subsection (4), where a fee is payable in respect of the doing of an act by a person other than the Registrar, or a fee is payable in respect of the lodging of a document, the act is to be regarded as done, or the document is to be regarded as lodged, even if the fee is not paid.

 “(4) Where the Registrar notifies the person concerned, or his or her agent, in accordance with the regulations, of failure to pay the

fee, the act is not to be regarded as done, or the document is not to be regarded as lodged, before the day on which the fee is paid.”.

32. Section 45A of the Principal Act is repealed and the following section is substituted:

Conduct by directors, servants and agents

5

“45A. (1) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

10

“(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

15

“(3) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

20

- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

25

“(4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

30

“(5) Where:

- (a) a person other than a body corporate is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted, the person is not liable to be punished by imprisonment for that offence.

35

“(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

40

- (a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

“ (7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

“ (8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

“ (9) A reference in this section to an offence against this Act includes a reference to an offence created by section 6, 7 or 7A, or subsection 86 (1), of the *Crimes Act 1914*, being an offence that relates to this Act.”.

Convention countries

33. Section 48 of the Principal Act is amended:

(a) by inserting in subsection (3) “made in a foreign country” after “application” (first occurring);

(b) by inserting in subsection (4) “made in a foreign country” after “application” (first occurring).

Further amendments

34. The Principal Act is further amended as set out in the Schedule.

PART 5—AMENDMENT OF THE PATENTS ACT 1952

Principal Act

35. In this Part, “Principal Act” means the *Patents Act 1952*.

Appeals

36. Section 96B of the Principal Act is amended by omitting from paragraph (a) “extension eligibility” and substituting “marketing approval”.

PART 6—AMENDMENTS OF THE PATENTS, TRADE MARKS, DESIGNS AND COPYRIGHT ACT 1939

Principal Act

37. In this Part, “Principal Act” means the *Patents, Trade Marks, Designs and Copyright Act 1939*.

Interpretation

38. Section 3 of the Principal Act is amended by omitting from subsection (2) “the Deputy” and substituting “a Deputy”.

Delegation

39. Section 14 of the Principal Act is amended by omitting from subsection (1) “the Deputy” and substituting “a Deputy”.

PART 7—AMENDMENTS OF THE TRADE MARKS ACT 1955

Principal Act

40. In this Part, “Principal Act” means the *Trade Marks Act 1955*⁶.

Interpretation

41. Section 6 of the Principal Act is amended by omitting from subsection (1) the definition of “the Deputy Registrar” and substituting the following definition: 5

“‘Deputy Registrar’ means a Deputy Registrar of Trade Marks;”.

Registrar and other officers

42. (1) Section 10 of the Principal Act is amended: 10

(a) by omitting subsections (3) and (3A) and substituting the following subsections:

“(3) There is to be at least one Deputy Registrar of Trade Marks.

“(3A) Subject to any direction by the Registrar, a Deputy Registrar has all the powers and functions of the Registrar under this Act, except the Registrar’s powers of delegation under section 11.”; 15

(b) by omitting from subsection (3B) “the Deputy Registrar of Trade Marks” and substituting “a Deputy Registrar”;

(c) by omitting from subsection (3C) “the Deputy Registrar of Trade Marks” and substituting “a Deputy Registrar”; 20

(d) by omitting subsection (4) and substituting the following subsection:

“(4) Where, under this Act, the exercise of a power or function by the Registrar, or the operation of a provision of this Act, depends on the opinion, belief or state of mind of the Registrar in relation to a matter: 25

(a) that power or function may be exercised by a Deputy Registrar on the opinion, belief or state of mind of the Deputy Registrar in relation to that matter; and

(b) that provision may operate on the opinion, belief or state of mind of a Deputy Registrar in relation to that matter.”. 30

(2) The person holding office immediately before the commencement of this section as the Deputy Registrar of Trade Marks, continues to hold office on and after that day as a Deputy Registrar of Trade Marks under the Principal Act as amended by this Act. 35

43. After section 14 of the Principal Act the following section is inserted:

Register may be kept wholly or partly by computer

“14A. (1) The Register may be kept wholly or partly by use of a computer.

“(2) If the Register is kept wholly or partly by use of a computer: 40

- (a) references in this Act to an entry in the Register include references to a record of particulars kept by use of the computer and comprising the Register or part of the Register; and
- 5 (b) references in this Act to particulars being registered, or entered in the Register, include references to the keeping of a record of those particulars as part of the Register by use of the computer; and
- 10 (c) references in this Act to the amendment, alteration or rectification of the Register include references to the amendment, alteration or rectification of the record of particulars kept by use of the computer and comprising the Register or part of the Register.”.

Inspection of Register

44. Section 16 of the Principal Act is amended by adding at the end the following subsection:

- 15 “(2) If a record of particulars is kept by use of a computer, subsection (1) is to be taken to be complied with, to the extent that the Register consists of those particulars, by giving members of the public access to a computer terminal which they can use to inspect the particulars, either on a screen or in the form of a computer printout.”.

Register and certified copies to be evidence

20 45. Section 17 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- 25 “(1A) If the Register is wholly or partly kept by use of a computer, a document signed by the Registrar and reproducing in writing all or any of the particulars comprising the Register, or that part of it, is admissible in any proceedings as *prima facie* evidence of those particulars so reproduced.”.

46. After section 40 of the Principal Act the following section is inserted:

Withdrawal of application

30 “40A. (1) An application is to be treated as having been withdrawn if, and only if, the applicant lodges at the Trade Marks Office a written notice of withdrawal signed by the applicant.

“(2) A written notice of withdrawal may be lodged by leaving it at, or delivering it by post to, the Trade Marks Office.”.

Convention countries

35 47. Section 108 of the Principal Act is amended by inserting in subsection (3) “made in a foreign country” after “application” (first occurring).

Fees

48. Section 129 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

- 40 “(2) Where a fee is payable in respect of the doing of an act by the Registrar, the Registrar must not do the act until the fee has been paid.

“(3) Subject to subsection (4), where a fee is payable in respect of the doing of an act by a person other than the Registrar, or a fee is payable in respect of the lodging of a document, the act is to be regarded as done, or the document is to be regarded as lodged, even if the fee is not paid.

“(4) Where the Registrar notifies the person concerned, or his or her agent, in accordance with the regulations, of failure to pay the fee, the act is not to be regarded as done, or the document is not to be regarded as lodged, before the day on which the fee is paid.” 5

Regulations

49. Section 147 of the Principal Act is amended by adding at the end the following word and paragraphs: 10

“; and (c) making provision for and in relation to the refund, in specified circumstances, of the whole or part of a fee paid in respect of the lodging of a document; and

(d) making provision for and in relation to the remission of, or the exemption of specified classes of persons from the payment of, the whole or part of a fee.” 15

SCHEDULE

Section 34

FURTHER AMENDMENTS OF THE DESIGNS ACT 1906

Section 36:

Omit the penalty, substitute:

“Penalty: Imprisonment for 2 years.”.

Subsection 40F (2):

Omit the penalty, substitute:

“Penalty: Imprisonment for 2 years.”.

Subsection 42B (1):

Omit the penalty, substitute:

“Penalty: Imprisonment for 6 months.”.

Subsection 42B (2):

Omit the penalty, substitute:

“Penalty for contravention of this subsection:
Imprisonment for 6 months.”.

Subsection 42C:

Omit the penalty, substitute:

“Penalty: Imprisonment for 6 months.”.

Subsection 45 (1):

Omit the penalty, substitute:

“Penalty: \$3,000.”.

NOTES

1. No. 15, 1970, as amended. For previous amendments, see No. 216, 1973; No. 4, 1975; Nos. 37 and 91, 1976; No. 36, 1978; No. 121, 1980; Nos. 61 and 92, 1981; Nos. 115 and 122, 1983; No. 65, 1985; No. 11, 1987; No. 125, 1988; and No. 91, 1989.
2. No. 69, 1989.
3. No. 4, 1906, as amended. For previous amendments, see No. 19, 1910; No. 14, 1912; Nos. 53 and 70, 1932; No. 36, 1933; Nos. 42 and 45, 1934; No. 80, 1950; No. 93, 1966; No. 108, 1967; No. 64, 1968; No. 216, 1973; No. 37, 1976; No. 19, 1979; Nos. 42 and 176, 1981; Nos. 65 and 193, 1985; No. 23, 1987; and Nos. 91 and 96, 1989.
4. No. 42, 1952, as amended. For previous amendments, see No. 14, 1954; No. 3, 1955; No. 107, 1960; No. 84, 1962; No. 93, 1966; No. 34, 1969; No. 216, 1973 (as amended by No. 20, 1974); No. 162, 1976; No. 131, 1978; Nos. 9, 19 and 188, 1979; No. 176, 1981; No. 26, 1982; No. 91, 1983; Nos. 92 and 165, 1984; Nos. 65 and 193, 1985; No. 23, 1987; No. 10, 1988; and No. 91, 1989.

Industry, Technology and Commerce Legislation
Amendment (No. 2) No. , 1989

5. No. 66, 1939, as amended. For previous amendments, see No. 32, 1940; No. 77, 1946; No. 11, 1953; No. 216, 1973; Nos. 37 and 91, 1976; and No. 42, 1981.
6. No. 20, 1955, as amended. For previous amendments, see No. 42, 1958; No. 93, 1966; No. 216, 1973; Nos. 37, 91 and 163, 1976; No. 130, 1978; No. 19, 1979; Nos. 43 and 61, 1981; No. 80, 1982; No. 72, 1984; Nos. 65 and 193, 1985; No. 23, 1987; and Nos. 91 and 96, 1989.



4

•

.