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Council for Trade-Related Aspects
of Intellectual Property Rights

Original: English

**NOTIFICATION OF LAWS AND REGULATIONS
UNDER ARTICLE 63.2 OF THE TRIPS AGREEMENT**

AUSTRALIA: THE INTELLECTUAL PROPERTY LAWS AMENDMENT ACT 2015

Notifying Member	AUSTRALIA
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Details of the notified legal text

Title	The Intellectual Property Laws Amendment Act 2015 ("Amendment Act") and its schedules
Subject matter	Patents Designs Trademarks Copyright (Schedule 5)
Nature of notification	<input checked="" type="checkbox"/> Main dedicated intellectual property law or regulation <input type="checkbox"/> Other law or regulation
Link to legal text	http://members.wto.org/crnattachments/2015/IP/AUS/15_3549_00_e.pdf
Notification status	<input type="checkbox"/> First notification <input checked="" type="checkbox"/> Amendment or revision to notified legal text <input type="checkbox"/> Replacement or consolidation of notified legal text(s)
Previous notification(s) referred to	<p>Patents Act 1990 (IP/N/1/AUS/P/1) "https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?DataSource=Cat&query=@SymbolMatch=IP/N/1/AUS/P/1&Language=English&Context=ScriptedSearches&languageUIChanged=true#"</p> <p>Plant Breeders' Act 1994 (IP/N/1/AUS/P/2) https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?DataSource=Cat&query=@SymbolMatch=IP/N/1/AUS/P/2&Language=English&Context=ScriptedSearches&languageUIChanged=true#"</p> <p>Designs Act 2003 (IP/N/1/AUS/D/5) https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?DataSource=Cat&query=@SymbolMatch=IP/N/1/AUS/D/5&Language=English&Context=ScriptedSearches&languageUIChanged=true#"</p> <p>Trademarks Act 1995 (IP/N/1/AUS/T/1 – consolidated in IP/N/1/AUS/T/3 and IP/N/1/AUS/T/3/Add.1) https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?DataSource=Cat&query=@SymbolMatch=IP/N/1/AUS/T/3*&Language=English&Context=ScriptedSearches&languageUIChanged=true#"</p>

	<p><u>IP Raising the Bar Act 2012</u> (IP/N/1/AUS/C/7) https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?DataSource=Cat&query=@SymbolMatch=IP/N/1/AUS/C/7&Language=English&Context=ScriptedSearches&languageUIChanged=true#"</p> <p><u>Patent Regulations 1991</u> (IP/N/1/AUS/P/6 and Addenda) "https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?DataSource=Cat&query=@SymbolMatch=IP/N/1/AUS/P/6*&Language=English&Context=ScriptedSearches&languageUIChanged=true#";</p> <p>IP/N/1/AUS/P/7 https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?DataSource=Cat&query=@SymbolMatch=IP/N/1/AUS/P/7&Language=English&Context=ScriptedSearches&languageUIChanged=true#"</p> <p>IP/N/1/AUS/P/8 https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?DataSource=Cat&query=@SymbolMatch=IP/N/1/AUS/P/8&Language=English&Context=ScriptedSearches&languageUIChanged=true#"</p> <p>IP/N/1/AUS/P/9 https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?DataSource=Cat&query=@SymbolMatch=IP/N/1/AUS/P/9&Language=English&Context=ScriptedSearches&languageUIChanged=true#"</p> <p>IP/N/1/AUS/P/10 https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?DataSource=Cat&query=@SymbolMatch=IP/N/1/AUS/P/10&Language=English&Context=ScriptedSearches&languageUIChanged=true#"</p> <p><u>Designs Regulations 2004</u> (IP/N/1/AUS/D/4 and Addenda) "https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?DataSource=Cat&query=@SymbolMatch=IP/N/1/AUS/D/4*&Language=English&Context=ScriptedSearches&languageUIChanged=true#"</p> <p><u>Trademark Regulation 1995</u> (IP/N/1/AUS/T/4 and Addenda) "https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?DataSource=Cat&query=@SymbolMatch=IP/N/1/AUS/T/4*&Language=English&Context=ScriptedSearches&languageUIChanged=true#";</p> <p>IP/N/1/AUS/T/8 https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?DataSource=Cat&query=@SymbolMatch=IP/N/1/AUS/T/8&Language=English&Context=ScriptedSearches&languageUIChanged=true#"</p> <p>IP/N/1/AUS/T/9 https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?DataSource=Cat&query=@SymbolMatch=IP/N/1/AUS/T/9&Language=English&Context=ScriptedSearches&languageUIChanged=true#"</p>
<p>Brief description of the notified legal text</p> <p>Implementation of the TRIPS Protocol and the 2003 General Council Decision (WT/L/540 and WT/L/540/Corr.1)</p> <p>Schedules 1 and 2 further implement the TRIPS Protocol, which Australia formally accepted on 12 September 2007.</p>	

Schedule 1 of the Amendment Act amends the *Patents Act 1990* to allow Australian pharmaceutical manufacturers to supply developing countries that meet specified criteria with the patented medicines they need.

Under the new scheme, Australian laboratories will be able to apply to the Federal Court of Australia for a compulsory licence to manufacture generic versions of patented medicines under specific conditions, and export these medicines to developing countries. Adequate compensation for the patent holder will be negotiated, to ensure that they are not disadvantaged by the arrangements.

The scheme is designed to be as easy to use as possible and is open to all developing countries provided they meet specified criteria.

Schedule 2 of the Amendment Act will amend the *Patents Act 1990* to replace references to the interim waiver to the TRIPS Protocol as reflected in the WTO General Council Decision of 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration of the TRIPS Agreement and Public Health (WT/L/540 and WT/L/540/Corr.1) with references to the TRIPS Protocol once it enters into force.

Jurisdictional option in relation to plant breeder's rights

Schedule 3 of the Amendment Act amends the *Plant Breeder's Rights Act 1994* to extend the jurisdiction of the Federal Circuit Court of Australia to include plant breeder's rights matters.

The Federal Circuit Court is designed to deal with less complex matters more quickly and informally than the Federal Court of Australia. This amendment will give the owners of plant breeder's rights the option of taking action in the Federal Circuit Court against alleged infringers.

Australia New Zealand Single Economic Market – patent initiatives

Schedule 4 amends the *Designs Act 2003*, the *Patents Act 1990*, the *Plant Breeder's Rights Act 1994* and the *Trade Marks Act 1995* to implement single trans-Tasman patent application and examination processes as well as a bilateral arrangement between the Australian and New Zealand Governments for the trans-Tasman regulation of patent attorneys.

This arrangement will come into effect once both countries are able to give effect to it. Accordingly, sufficient time is required for each country to make the necessary amendments to legislation.

Other amendments

Part 1 (Items 1-7) of Schedule 5 of the Amendment Act makes minor administrative changes to the *Patents Act 1990*, *Trade Marks Act 1995* and *Designs Act 2003* to repeal unnecessary document retention provisions. These provisions currently require IP Australia to physically retain patent, trademarks and designs documents for an extended period of time. The retention and disposal of these documents is already comprehensively governed by the *Archives Act 1983* and the records disposal authorities issued by the National Archives of Australia.

Part 2 (Items 8-22) of Schedule 5 of the Amendment Act makes a number of technical amendments to the *Patents Act 1990* primarily to address minor oversights in the drafting of the *Intellectual Property Laws Amendment (Raising the Bar) Act 2012*. This Act introduced a wide range of intellectual property reforms designed to help Australian businesses and researchers. It entered into full effect on 15 April 2013.

Language(s) of notified text

English

<p>Date of adoption</p>	<p>Implementation of the TRIPS Protocol and the 2003 General Council Decision (WT/L/540 and WT/L/540/Corr.1)</p> <p>Schedule 2 of the Amendment Act will enter into force when two thirds of WTO Members accept the Protocol Amending the TRIPS Agreement ('TRIPS Protocol'). This Protocol was adopted in Geneva on 6 December 2005 and remains open to be accepted according to the WTO General Council decision of 27 November 2013 (WT/L/899).</p>
<p>Entry into force</p>	<p>Implementation of the TRIPS Protocol and the 2003 General Council Decision (WT/L/540 and WT/L/540/Corr.1)</p> <p>Schedule 1 of the Amendment Act will enter into force on 25 August 2015.</p> <p>Schedule 2 of the Amendment Act will enter into force when two thirds of WTO Members accept the Protocol Amending the TRIPS Agreement ('TRIPS Protocol'). This Protocol was adopted in Geneva on 6 December 2005 and remains open to be accepted according to the WTO General Council decision of 27 November 2013 (WT/L/899).</p> <p>Jurisdictional option in relation to plant breeder's rights</p> <p>Schedule 3 of the Amendment Act will enter into force on 25 August 2015.</p> <p>Australia New Zealand Single Economic Market – patent initiatives</p> <p>Schedule 4 of the Amendment Act has <u>not yet commenced</u>. It is intended to commence on a single date to be fixed by proclamation on or before 24 February 2017.</p> <p>Schedule 4 will be notified under Article 63.2 of the TRIPS Agreement, once it is proclaimed to be into effect.</p> <p>This arrangement will come into effect once both countries are able to give effect to it. Accordingly, sufficient time is required for each country to make the necessary amendments to legislation.</p> <p>Other amendments</p> <p>Parts of Schedule 5 of the Amendment Act will enter into force on different dates, as set out below.</p> <ul style="list-style-type: none"> • Part 1 commenced on 26 February 2015. • Schedule 5, item 8 commenced on 15 April 2013. • Schedule 5, items 9-17 will commence on a single day to be fixed by proclamation but will, in any case, commence no later than 25 August 2015. • Schedule 5, item 18 commenced on 15 April 2013. • Schedule 5, items 19-21 will commence on a single day to be fixed by proclamation but will, in any case, commence no later than 25 August 2015. • Schedule 5, item 22 commenced on 25 February 2015.

Notification details

Submission date of notification	3 September 2015
Other information	The <i>Intellectual Property Laws Amendment Act 2015</i> and its schedules are also available at: https://www.comlaw.gov.au/Details/C2015A00008
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