

# **INNOVATION, INDUSTRY, SCIENCE AND RESEARCH PORTFOLIO**

## **ANNUAL REGULATORY PLAN 2008-2009**

The Innovation, Industry, Science and Research Portfolio Annual Regulatory Plan 2008-2009 provides information on changes to business regulations which occurred during 2007-2008 (Part 1), and activities planned for 2008-2009 which could lead to changes in business regulation (Part 2).

July 2008

# **PART 1: Changes to business regulation which occurred during 2007-2008**

## **NATIONAL MEASUREMENT AMENDMENT REGULATIONS 2008 (NO. 1)**

Type of entry: Past change

Title: *National Measurement Amendment Regulations 2008 (No.1)*

Description of issue: The Regulations amend the *National Measurement Regulations 1999* to vary the rates of the fees charged for the examination and certification of patterns of measuring instruments to meet cost recovery guidelines.

Date of effect: The Regulations were made on 19 June 2008 and tabled in Parliament on 25 June 2008 (FRLI ID F2008L02135).

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## **TRADEX SCHEME AMENDMENT BILL 2008**

Type of entry: Past change

Title: *Tradex Scheme Amendment Act 2008*

Description of issue: The Act clarifies the eligibility requirements for Tradex by de-linking it from the Drawback Regulations, reaffirms the policy intent of the scheme and codifies some administrative details not provided for in the initial legislation.

Date of effect: The *Tradex Scheme Amendment Bill 2008* was introduced to Parliament on 21 February 2008 and received royal assent on 8 April 2008. The commencement date is expected to be on, or before, 8 October 2008.

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**TEXTILE, CLOTHING AND FOOTWEAR POST-2005 STRATEGIC INVESTMENT PROGRAM SCHEME AMENDMENT 2007 (NO.2) UNDER S.37ZF OF THE TEXTILE, CLOTHING AND FOOTWEAR STRATEGIC INVESTMENT PROGRAM ACT 1999**

Type of entry: Past change

Title: *Textile, Clothing And Footwear Post-2005 Strategic Investment Program Scheme Amendment 2007 (No.2)* under s.37ZF of the Textile, Clothing And Footwear Strategic Investment Program Act 1999

Description of issue: This Scheme amends the *Textile, Clothing and Footwear Post-2005 Strategic Investment Program Scheme 2005* and makes it clear that eligibility to be paid an advance of a grant, does not of itself give rise to an entitlement to a grant; sets out the circumstances under which an entity may not make a request for an advance of a grant; expands the information required in support of requests for advances of grants; implements minor and technical amendments; and amends Schedule 2 consequential to the *Customs Tariff Amendment (2007 Harmonized System Changes) Act 2006*.

Date of effect: The *Textile, Clothing And Footwear Post-2005 Strategic Investment Program Scheme Amendment 2007 (No.2)* commenced on 5 July 2007 and was tabled in Parliament on 7 August 2007 (FRLI ID F2007L02059).

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**TRADE PRACTICES (INDUSTRY CODES – FRANCHISING) AMENDMENT REGULATIONS 2007 (NO.1)**

Type of entry: Past change

Title: *Trade Practices (Industry Codes – Franchising) Amendment Regulations 2007 (No.1)*

Description of issue: These Regulations amend the *Trade Practices (Industry Codes - Franchising) Regulations 1998* to increase the transparency, quality and timeliness of disclosure by franchisors to existing and prospective franchisees.

Date of effect: *The Trade Practices (Industry Codes – Franchising) Amendment Regulations 2007 (No.1)* commenced on 1 March 2008 (FRLI ID F2007L02475).

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**PATENTS AND TRADE MARKS LEGISLATION AMENDMENT  
REGULATIONS 2008 (NO. 1)**

Type of entry: Past change

Title: *Patents and Trade Marks Legislation Amendment Regulations 2008 (No. 1)*

Description of issue: In 2002 and 2004, the Professional Standards Board for Patent and Trade Marks Attorneys released the results of its reviews into the disciplinary and regulatory regimes respectively for the patent and trade marks attorney professions. In 2005, the Australian Government responded to these reviews. In 2007, IP Australia published two position papers on how the response to these reviews would be implemented.

The Regulations implement this response by amending the *Patents Regulations 1991* and the *Trade Marks Regulations 1995* to update the existing schemes for registering patent attorneys and trade marks attorneys and for disciplining registered attorneys:

- Amendments have been made to the regulatory regime to provisions relating to the education, qualifications and employment experience of persons seeking registration and renewal as a patent attorney or as a trade marks attorney.
- Amendments have been made to the disciplinary regime to simplify the provisions, and to bring the key definitions of misconduct into line with definitions applying to legal practitioners.

Date of effect: The Regulations were made on 19 June 2008 and commenced on 1 July 2008 (FRLI ID F2008L02119).

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## **PATENTS AMENDMENT REGULATIONS 2007 (NO. 1)**

Type of entry: Past change

Title: *Patents Amendment Regulations 2007 (No. 1)*

Description of issue: Amends the *Patents Regulations 1991* to remove the obligation of applicants and patentees to inform the Commissioner of Patents of the results of certain foreign patent office searches and provisions relating to the filing of notices of matters affecting the validity of standard patents.

Date of effect: The Regulations were made on 17 October 2007 and commenced on 22 October 2007 (FRLI ID F2007L04114).

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## **PART 2: Changes to business regulation which are planned for 2008-2009**

### **AMENDMENTS TO THE NATIONAL MEASUREMENT ACT 1960**

Type of entry:	Planned regulatory activity – currently being undertaken
Title:	<i>National Measurement Amendment Bill 2008</i>
Description of issue:	The <i>National Measurement Amendment Bill 2008</i> will provide for a national trade measurement system to commence on 1 July 2010.
Consultation opportunities:	Consultation was carried out on the national trade measurement system from December 2007 and closed on 8 February 2008. Further consultation opportunities are listed below.
Expected Timetable:	Consultation on servicing licences and trade measurement aspects of public weighbridges will occur in August and September 2008.
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### **AMENDMENTS TO THE TRADE PRACTICES (INDUSTRY CODES – FRANCHISING) CODE 1998**

Type of entry	Planned activity – not yet undertaken
Title	<i>Review of the Trade Practices (Industry Codes – Franchising) Regulations 1998</i>
Description of issue	On 25 June 2008, the Parliamentary Joint Committee on Corporations and Financial Services announced a Federal Inquiry into the Franchising Code of Conduct and related matters.
Consultation opportunities	Public consultation is being carried out by the Parliamentary Joint Committee.  Information on the consultation process can be obtained from: <a href="http://www.apf.gov.au/senate/committee/corporations_ctte">www.apf.gov.au/senate/committee/corporations_ctte</a>

Expected timetable	The deadline for submissions is 12 September 2008.  The Committee is due to report on 1 December 2008.
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## **IMPLEMENTATION OF THE TRADEX SCHEME REGULATIONS 2008**

Type of entry	Future change
Title	<i>Tradex Scheme Regulations 2008</i>
Description of issue	<p>The <i>Tradex Scheme Regulations</i> will support the changes to the <i>Tradex Scheme Act 1999</i> that will be made by the <i>Tradex Scheme Amendment Act 2008</i>.</p> <p>The Regulations will:</p> <ul style="list-style-type: none"> <li>• ensure that the Tradex Scheme as amended operates consistent with the policy intent; and</li> <li>• clarify some administrative changes to the scheme.</li> </ul> <p>The <i>Tradex Scheme Regulations 2000</i> will also be repealed as they will be superseded by the amended Act and these regulations.</p>
Consultation opportunities	Consultation for the original Review of the Tradex and Manufacturing in Bond Schemes which gave rise to the <i>Tradex Scheme Regulations 2008</i> included relevant stakeholders such as government departments, industry and industry associations.
Expected timetable	The <i>Tradex Scheme Regulations 2008</i> are expected to commence on or before 8 October 2008. This would be consistent with the commencement of the <i>Tradex Scheme Amendment Act 2008</i> .
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## **DEVELOPMENT OF GOVERNMENT RESPONSE TO ACIP ENQUIRY 'REVIEW OF POST-GRANT PATENT ENFORCEMENT STRATEGIES'**

Type of entry	Planned regulatory activity – proposed to commence in 2009
Title	Government response to the ACIP review of post-grant patent enforcement strategies
Description of issue	<p>The Advisory Council on Intellectual Property (ACIP) is conducting a review of post-grant patent enforcement strategies.</p> <p>In recent years there have been increasing concerns expressed regarding the difficulties involved in enforcing patent rights, particularly by individuals and small to medium enterprises (SMEs). Difficulties with patent enforcement could lead to sub-optimal innovation growth which may also affect the Australian economy. In response, the previous Government requested that ACIP inquire into and report on issues relating to post-grant patent enforcement strategies to benefit the Australian economy by assisting patentees to effectively enforce their patent rights. This review focuses on strategies that may assist individuals and SME's to enforce their patents in a cost effective way.</p> <p>ACIP expects to submit a final Report with recommendations to the Government in late 2008. The Government will then develop a response to any recommendations ACIP may make.</p>
Consultation opportunities	<p>ACIP will conduct further consultation as part of its review – see <a href="http://www.acip.gov.au/reviews.html#post_grant">http://www.acip.gov.au/reviews.html#post_grant</a> for details.</p> <p>There will be an opportunity for further consultation during the development of the Government's response to ACIP's final report. Details will be made available after ACIP has delivered its report to Government.</p>
Expected timetable	<p>ACIP anticipates completing its review in late 2008.</p> <p>Development of the Government response would commence in early 2009. Any consequential regulatory change would be unlikely to commence during the 2008-2009 financial year.</p>

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**DEVELOPMENT OF GOVERNMENT RESPONSE TO ACIP ENQUIRY  
'REVIEW OF ENFORCEMENT OF PLANT BREEDER'S RIGHTS (PBR)'**

Type of entry Planned regulatory activity – proposed to commence in 2009

Title Government response to the ACIP Review of enforcement of Plant Breeder's Rights (PBR)

Description of issue The Advisory Council on Intellectual Property (ACIP) is conducting a review of enforcement of Plant Breeder's Rights (PBR).

In response to concerns raised about the enforcement of plant breeder's rights, the Government requested that ACIP inquire into and report on issues relating to the enforcement of plant breeder's rights in Australia and to consider possible strategies to assist Australian plant breeder's rights holders effectively enforce valid rights. The Review includes a consideration of whether there may be benefits from extending the jurisdiction of the Federal Magistrates Court to include PBR matters.

ACIP expects to submit a final Report with recommendations to the Government in late 2008.

The Government will then develop a response to any recommendations ACIP may make.

Consultation opportunities

ACIP will conduct further consultation as part of its review – see [http://www.acip.gov.au/reviews.html#post\\_grant](http://www.acip.gov.au/reviews.html#post_grant) for details.

There will be an opportunity for further consultation during the development of the Government's response to ACIP's

final report. Details will be made available after ACIP has delivered its report to Government.

Expected timetable ACIP anticipates completing its review in late 2008. Development of the Government response would commence in early 2009. Any consequential regulatory change would be unlikely to commence during the 2008-2009 financial year.

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## **INCORPORATION OF PATENT AND TRADE MARK ATTORNEY PRACTICES**

Type of entry Planned activity

Title Incorporation of patent and trade mark attorney practices – amendments to the *Patents Act 1990*, the *Trade Marks Act 1995* and the *Designs Act 2003*

Description of issue Various pieces of legislation have been passed in recent times permitting many professions, including the legal profession, to practice through incorporated entities:

- Under the Patents Act, patent attorneys currently may only practice as sole traders or in partnerships. Proposed amendments would provide a scheme permitting patent attorney practices to incorporate.
- Under the Trade Marks Act, although trade marks attorneys may practice through incorporated entities, companies are not permitted to describe themselves as trade marks attorneys. Proposed amendments would provide that, in some circumstances, this would be permissible.

The incorporation provisions would be aligned closely with the incorporation provisions that apply to the legal profession, which have been or are to be enacted in States and Territories.

At the same time, it is proposed to introduce a compulsory requirement for registered patents and trade marks attorneys to be covered by a professional indemnity insurance policy.

Consultation opportunities	A public <a href="#">consultation paper</a> was released on the IP Australia web site in October 2007 for these proposals, and a <a href="#">position paper</a> was released on the IP Australia web site in January 2008.
Expected timetable	Policy approval will be sought in the third and fourth quarters of 2008. Further timing details will be made available as they become known.
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## **REVIEW OF PENALTIES AND OFFENCES AND ADDITIONAL DAMAGES – TRADE MARKS ACT 1995**

Type of entry	Planned activity
Title	Review of penalties and offences, and additional damages, in the <i>Trade Marks Act 1995</i>
Description of issue	<p>A number of factors have prompted a review of the penalties and offences in the Trade Marks Act, as well as a consideration of the need to introduce additional damages for trade mark infringement. These are:</p> <ul style="list-style-type: none"><li>• A recommendation in the 2004 Advisory Council on Intellectual Property ‘Review of Trade Mark Enforcement’</li><li>• Recent changes made to offences in the <i>Copyright Act 1968 (Cth)</i> in 2006.</li><li>• Submissions received by stakeholders about concerns they have with current penalties in the Trade Marks Act.</li></ul> <p>The review will assess the current penalties and offences, and assess <i>inter alia</i> whether they are set at a suitable level as to deter and/or punish trade marks infringements.</p>

Consultation opportunities	It is proposed that a public consultation paper be released in the second half of 2008.
Expected timetable	Details will be publicised as they become known.
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## **PATENT SYSTEM REFORMS**

Type of entry	Planned activity
Title	Patent system reforms
Description of issue	This initiative aims to develop and implement reforms to the Australian patent system. The reforms will: <ul style="list-style-type: none"> <li>• better align Australia’s patent laws with those of our major technology trading partners;</li> <li>• streamline application processes to increase transparency and opportunities for third parties to interact with the patent application process; and</li> <li>• maximise the use of search and examination results produced by IP Australia and by other recognised patent offices on the same patent application filed in multiple jurisdictions.</li> </ul>
Consultation opportunities	Limited consultation has occurred already with some peak stakeholder groups. Further stakeholder group consultation is to be conducted throughout the remainder of 2008, with a public consultation period in early 2009. More details will be made available as they become known.
Expected timetable	Details will be publicised as they become known.
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## REVIEW OF PATENTABLE SUBJECT MATTER

Type of entry	Planned activity
Title	Review of patentable subject matter
Description of issue	<p>In recent years a variety of concerns have been raised about the sorts of things that can be patented. In Australia the main legal test of whether an invention is patentable subject matter is whether it is a 'manner of manufacture'. In its broad ranging 2004 review of gene patenting and human health Report 99 Genes and ingenuity, the Australian Law Reform Commission (ALRC) recognised the value of a flexible test for patentable subject matter, but found that the manner of manufacture test was ambiguous and obscure. In particular, the meaning of the criterion that an invention not be 'generally inconvenient' and the test for the usefulness of an invention were not clear. The ALRC recommended that the manner of manufacture test be reviewed.</p> <p>Due to the high degree of overlap between 'manner of manufacture' and other criteria for patentability, in order to be effective the scope of the review will encompass 'patentable subject matter'. Consequently, the Minister for Innovation, Industry, Science and Research has requested that the Advisory Council on Intellectual Property (ACIP) conduct a review of patentable subject matter, including the appropriateness and adequacy of the 'manner of manufacture' test as the threshold requirement for patentable subject matter under Australian law, and the historical requirement that an invention must not be 'generally inconvenient'.</p>
Consultation opportunities	ACIP released an Issues Paper on 21 July 2008.
Expected timetable	<p>The proposed timetable is:</p> <ul style="list-style-type: none"><li>- submissions on issues paper by 19 Sept 2008;</li><li>- consultations in October/November 2008;</li><li>- release of Options Paper March 2009</li><li>- Final Report by end of 2009.</li></ul> <p>-</p>
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