



Tradex Scheme Amendment Act 2010

No. 124, 2010

**An Act to amend the *Tradex Scheme Act 1999*, and
for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 124, 2010

An Act to amend the *Tradex Scheme Act 1999*, and for other purposes

[Assented to 18 November 2010]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tradex Scheme Amendment Act 2010*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
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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 this Act receives the Royal Assent.	18 November 2010
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	13 May 2011 (see F2011L00745)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in Column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Partnerships

Tradex Scheme Act 1999

1 Section 4 (definition of *ineligible*)

Repeal the definition, substitute:

ineligible: a person is ineligible to apply for, or to hold, a tradex order if:

- (a) where the person is an individual—the person is an insolvent under administration; or
- (b) where the person is a body corporate—the person is an externally-administered body corporate; or
- (c) where the person is a partnership—any of the partners is an insolvent under administration or an externally-administered body corporate.

2 Section 4

Insert:

person means:

- (a) an individual; or
- (b) a body corporate; or
- (c) a partnership.

Note: See also section 48A (partnerships).

3 Paragraph 6(b)

Repeal the paragraph, substitute:

- (b) the person gave information, or a document, to the Secretary or to an authorised officer in connection with an application for, or for a variation of, the order or an application for, or for a variation of, another tradex order, being information or a document that:
 - (i) if the person is an individual or body corporate—the person knew, or ought to have known, to be false or misleading in a material particular; or

- (ii) if the person is a partnership—any of the partners knew, or ought to have known, to be false or misleading in a material particular; or

4 After section 6

Insert:

6A Continuity of partnerships

For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

5 Paragraph 11(1)(c)

Repeal the paragraph, substitute:

- (c) the applicant has not given to the Secretary or to an authorised officer for the purposes of this Act any information or document that:
 - (i) if the applicant is an individual or body corporate—the applicant knew, or ought to have known, to be false or misleading in a material particular; or
 - (ii) if the applicant is a partnership—any of the partners knew, or ought to have known, to be false or misleading in a material particular; and

6 Section 20

After “body corporate” (wherever occurring), insert “or partnership”.

Note: The heading to section 20 is altered by omitting “**incorporated**” and substituting “**non-individual**”.

7 After section 48

Insert:

48A Treatment of partnerships

- (1) This Act applies to a partnership as if it were a person, but with the changes set out in this section.
- (2) An obligation that would otherwise be imposed on the partnership by this Act is imposed on each partner instead, but may be discharged by any of the partners.

- (3) If under this Act a notice or other document is given to a partner of the partnership in accordance with whichever of the following is applicable:
 - (a) section 28A of the *Acts Interpretation Act 1901*;
 - (b) regulations made for the purposes of paragraph 49(d);the notice or document is taken to have been given to the partnership.
- (4) The partners are jointly and severally liable to pay an amount that would otherwise be payable by the partnership under this Act.
- (5) An offence against this Act that would otherwise be committed by the partnership is taken to have been committed by each partner.
- (6) A partner does not commit an offence because of subsection (5) if the partner:
 - (a) does not know of the circumstances that constitute the contravention of the provision concerned; or
 - (b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the partner becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (6)—see subsection 13.3(3) of the *Criminal Code*.

8 Transitional

Despite the amendments made by this Part, the *Tradex Scheme Act 1999* continues to apply, after the commencement of this item, in relation to:

- (a) an application made under section 10 of the *Tradex Scheme Act 1999* before that commencement; or
- (b) a tradex order made in response to an application referred to in paragraph (a); or
- (c) any matter or thing connected with, or arising out of, a tradex order referred to in paragraph (b);

as if those amendments had not been made.

Part 2—Repeal of spent provisions

Tradex Scheme Act 1999

9 Part 12

Repeal the Part.

*[Minister's second reading speech made in—
House of Representatives on 29 September 2010
Senate on 25 October 2010]*

(160/10)