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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**Schedule 1—Amendments**

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i Tradex Scheme Amendment Act 2010 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.
### Commencement information

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<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
<td>18 November 2010</td>
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<td>2. Schedule 1</td>
<td>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.</td>
<td>13 May 2011 (see F2011L00745)</td>
</tr>
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Note: This table relates only to the provisions of this Act as originally enacted.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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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)