

DESIGNS ACT 1906

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DESIGNS ACT 1906

An Act relating to designs

PART I—INTRODUCTORY

Short title

1. This Act may be cited as the *Designs Act 1906*.¹

Commencement

2. This Act shall commence on a day to be fixed by Proclamation.¹

Interpretation

4.—

(1) In this Act, unless the contrary intention appears:

“**article**” means any article of manufacture and includes a part of such an article if made separately, but does not include an integrated circuit, or part of an integrated circuit, within the meaning of the *Circuit Layouts Act 1989*, or a mask used to make such a circuit;

“**artistic work**” has the same meaning as in the *Copyright Act 1968*;

“**Australia**” includes each external Territory;

“**Australian continental shelf**” means the continental shelf, within the meaning of the *Seas and Submerged Lands Act 1973*, adjacent to the coast of Australia (including the coast of any island forming part of a State or Territory);

“**Convention country**” means a country in respect of which there is in force for the time being a Regulation under section 48 declaring that country to be a Convention country for the purposes of this Act;

“**corresponding design**” has the same meaning as in Division 8 of Part III of the *Copyright Act 1968*;

“**Deputy Registrar**” means a Deputy Registrar of Designs holding office under this Act;

“**design**” means features of shape, configuration, pattern or ornamentation applicable to an article, being features that, in the finished article, can be judged by the eye, but does not include a method or principle of construction;

“**Designs Office**” means the Designs Office established by this Act;

“**Federal Court**” means the Federal Court of Australia;

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

“**legal personal representative**”, in relation to a deceased person, means a person to whom probate of the will of the deceased person, letters of administration of the estate of the deceased person or other like grant has been granted, whether in Australia or elsewhere, but does not include such a person who, by reason of the terms of the grant, is not entitled to do an act in relation to which the expression is used;

“**monopoly**”, in relation to a registered design, means the exclusive right to apply the design to an article in respect of which the design is so registered;

“**Official Journal**” has the same meaning as in the *Patents Act 1990*;

“**owner**” means:

- (a) in relation to a design that is not a registered design—a person who is the owner of the design in accordance with section 19 or, if there are 2 or more persons who have an interest in the design in accordance with that section, each of those persons; or
- (b) in relation to a registered design—the person who is registered as the owner of the registered design or, if there are 2 or more such persons, each of those persons;

“**prescribed court**” means the Federal Court, the Supreme Court of a State, the Supreme Court of the Australian Capital Territory, the Supreme Court of the Northern Territory of Australia or the Supreme Court of Norfolk Island;

“**register**” means the Register of Designs under this Act;

“**registered**” means registered under this Act;

“**registered design**” means a design registered under this Act;

“**Registrar**” means the Registrar of Designs holding office under this Act;

“**representation**”, in relation to an article to which a design is applied, means a drawing, tracing or specimen of the article to which the design is applied or a photograph of such a drawing, tracing or specimen;

“**set of articles**” means a number of articles that are of the same general character and ordinarily on sale, or intended to be used, together, being articles to each of which there is applied a design that is the same as, or that differs only in immaterial details or in features commonly used in the relevant trade from, the design applied to the other articles or to any of them;

“**State**”, in Part VIA, includes the Australian Capital Territory, the Northern Territory and Norfolk Island;

“**State Designs Act**” means any State Act relating to the registration of designs;

“**statement of monopoly**”, in relation to a design, means a statement relating to the representations of an article to which the design is applied that indicates:

- (a) those features of the representations in respect of which the applicant for registration of the design wishes to claim a monopoly; and
- (b) those features of the representations that are to be disregarded in considering the extent of the monopoly protection;

“**statement of novelty**”, in relation to a design, means a statement relating to the representations of an article to which the design is applied that indicates those features of the representations in respect of which novelty or originality is claimed;

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

(2) A reference in this Act to an article shall be read as including a reference to:

- (a) a set of articles;
- (b) each article in a set of articles; or
- (c) both a set of articles and each article in that set;

as the case requires.

References to prescribed court

5. A reference in this Act to a prescribed court shall:

- (a) in relation to the institution of an appeal or other proceeding, be read as a reference to a prescribed court having jurisdiction with respect to matters arising under this Act in respect of which the appeal or other proceeding is instituted; and
- (b) in relation to the exercise of jurisdiction, be read as a reference to a prescribed court exercising jurisdiction in accordance with section 40G.

Crown to be bound

5A.—

(1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

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

Application of Act

5B.—

(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.

(2) An application for registration of a design is not receivable under a law (other than this Act) in force in Norfolk Island.

No new registrations under State Acts

6. After the commencement of this Act, an application for the registration of a design shall not be receivable under any State Designs Act.

Certain registrations not to be renewed

7. In spite of any other provision of this Act, where before the commencement of Part II of the *Circuit Layouts Act 1989* a design applicable to an integrated circuit, or part of an integrated circuit, within the meaning of that Act, or a design applicable to a mask used to make such a circuit, was registered under this Act, that registration shall not be renewed at any time on or after that commencement.

PART II—ADMINISTRATION

Registrar and other officers

8.—

(1) There is to be a Registrar of Designs

(1A) The Registrar has such powers and functions as are conferred on him or her under this Act or any other Act.

(2) Until the Governor-General otherwise determines, the Commissioner of Patents shall be the Registrar of Designs.

(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 or any other Act, except the Registrar's powers of delegation under section 8A.

(5) A power or function conferred or imposed on the Registrar by this Act or any other Act, when exercised or performed by a Deputy Registrar, shall, for all purposes, be deemed to have been exercised or performed by the Registrar.

(5A) The exercise of a power, or the performance of a function, of the Registrar under this Act or any other Act by a Deputy Registrar does not prevent the exercise of the power, or the performance of the function, by the Registrar.

(5B) Where, under this Act or any other Act, the exercise of a power or function by the Registrar, or the operation of a provision of this Act or any other 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.

Delegation by Registrar

8A.—

(1) The Registrar may, by writing, delegate all or any of the Registrar's powers under this Act or any other Act to:

- (a) a prescribed person, or a prescribed class of persons, holding or performing the duties of an Australian Public Service office in the Designs Office; or
- (b) a prescribed employee, or a prescribed class of employees, employed in the Designs Office.

(2) In this section:

“employee” has the same meaning as in the *Public Service Act 1922*.

Designs Office

9. For the purposes of this Act, an office shall be established which shall be called the Designs Office, and a sub-office shall be established in every State other than the State in which the Designs Office is established.

Seal of Designs Office

10. There shall be a seal of the Designs Office, and impressions thereof shall be judicially noticed.

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;

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

PART IV—REGISTRATION OF DESIGNS

New or original design may be registered

17.—

(1) Subject to this Act, a design shall not be registered unless it is a new or original design and, in particular, shall not be registered in respect of an article if the design:

- (a) differs only in immaterial details or in features commonly used in the relevant trade from a design that, before the priority date in respect of the application for registration, was registered, published or used in Australia in respect of the same article; or
- (b) is an obvious adaptation of a design that, before the priority date in respect of the application for registration, was registered, published or used in Australia in respect of any other article.

(1A) For the purposes of subsection (1), account shall not be taken of any secret use.

(2) The regulations may make provision for the exclusion from registration under this Act of designs for such articles, being articles that are primarily literary or artistic in character, as are specified in the regulations.

Certain designs not to be treated as other than new or original etc.

17A.—

(1) Where:

- (a) copyright under the *Copyright Act 1968* subsists in an artistic work; and
- (b) an application is made by, or with the consent of, the owner of that copyright for the registration of a corresponding design;

that design shall not be treated for the purposes of this Act as being other than new or original, or as having been published, by reason only of any use previously made of the artistic work unless:

- (c) the previous use consisted of or included the sale, letting for hire or offering or exposing for sale or hire of articles to which the design had been applied industrially, other than articles specified in regulations made for the purposes of subsection 17 (2); and
- (d) the previous use was made by, or with the consent of, the owner of the copyright in the artistic work.

(2) Any regulations in force under the *Copyright Act 1968* that make provision for determining the circumstances in which a design is, for the purposes of section 77 of that Act, to be deemed to be applied industrially have effect for the purposes of subsection (1).

Design may include functional features or be of indefinite dimension

18.–

(1) An application for registration of a design shall not be refused, and a registered design is not invalid, by reason only that the design consists of, or includes, features of shape or configuration that serve, or serve only, a functional purpose.

(2) An application for registration of a design must not be refused, and a registered design is not invalid, by reason only that an article or a part of an article is of indefinite extent in one or 2 dimensions.

(3) If, on or after 30 July 1991 but before this Act receives the Royal Assent, a person availed himself or herself (or took definite steps, by way of contract or otherwise, to avail himself or herself) of a registered design in the belief that because of a decision referred to in subsection (4) the registration of the design was invalid, such provisions as are prescribed have effect for the protection or compensation of that person.

(4) For the purposes of subsection (3), the decisions referred to in this subsection are:

- (a) the decision of the Full Court of the Federal Court in *Bondor Pty Ltd and Others v National Panels Pty Ltd* 102 ALR 65; and
- (b) the decision of the Federal Court in *Brisbane Aluminium Fabricators and Supplies Pty Ltd v Techni Interiors Pty Ltd* 23 IPR 107.

Owner of unregistered design

19.–

(1) Subject to this section, the author of a design is the owner of the design.

(2) Where, in accordance with an agreement for valuable consideration entered into by a person with another person, the other person or an employee of the other person acting in the course of his employment makes a design for the first-mentioned person, the first-mentioned person is the owner of the design.

(3) Subject to subsection (2), where a design is made by a person in the course of his employment with an employer, the employer is the owner of the design.

(4) The owner of a design or the assignee of any interest in a design may, by instrument in writing signed by him or on his behalf, assign to another person the whole or any part of his interest in the design.

(5) In this section, “**design**” does not include a registered design.

Application for registration

20.–

(1) The owner of a design is entitled to make application for the registration of the design.

(2) Where 2 or more persons own interests in a design, all of the persons owning such interests, acting jointly, are entitled to make application for the registration of the design.

(3) An application for registration of a design:

- (a) shall be in accordance with a prescribed form;

- (b) shall be accompanied, as prescribed, by the prescribed number of representations of an article to which the design is applied; and
- (c) shall be lodged by being left at, or delivered by post to, the Designs Office or a sub-office.
- (4) An application under subsection (3) may be accompanied by a statement of monopoly in respect of the design to which the application relates.
- (5) Upon lodgment of an application under subsection (3):
 - (a) the Registrar may request the applicant to furnish a statement of novelty in respect of the design to which the application relates; and
 - (b) if the application was not accompanied by a statement of monopoly in respect of the design to which the application relates and the Registrar considers it appropriate that such a statement be furnished—the Registrar may request the applicant to furnish such a statement.
- (6) Where the owner of a design wishes to register the design in respect of more than one article, the owner shall make a separate application for registration of the design in respect of each article.
- (7) For the purposes of subsection (6), a set of articles shall be deemed to be one article.

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.

Persons claiming under assignment etc.

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;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:
 - (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.

Priority date

21.—

- (1) There shall be a priority date in respect of an application for the registration of a design.
- (2) Subject to this Act, the priority date in respect of an application for registration of a design is the date on which the application was lodged under this Act.

Registered design not to be invalid by reason of certain circumstances

22. A registered design is not invalid by reason only of:

- (a) the publication or use of the design in Australia on or after the priority date in respect of the application for registration of the design; or

- (b) the registration of another design the application in respect of which has the same or a later priority date.

Death of applicant

22A.—

(1) If an applicant for the registration of a design dies before the design is registered, his legal personal representative may be registered as the owner of the design.

(2) Where, at any time after a design has been registered on an application, the Registrar is satisfied that the applicant had died or, in the case of a body corporate, had ceased to exist, before the design was registered, the Registrar may amend the relevant entry in the register by substituting for the name of the applicant the name of the person who ought to have been registered as the owner of the design.

(3) Where the Registrar has amended an entry in the register under subsection (2), the registration has effect, and shall be deemed always to have had effect, accordingly.

Amendment of application etc.

22B.—

(1) The Registrar may, on request made to him in the prescribed manner, amend an application for registration of a design lodged under this Act.

(1A) An amendment under subsection (1) shall not be made if, as a result of the amendment, the scope of the application for registration would be increased by the inclusion of matter that was not in substance disclosed in the application for registration as lodged.

(2) An appeal lies to the Federal Court from a refusal by the Registrar to amend an application under subsection (1).

(3) In this section:

“**amend**”, in relation to a representation of an article to which a design is applied, includes the substitution of one representation for another representation;

“**application for registration of a design**” includes the representations of the article to which the design concerned is applied and any statement of monopoly or statement of novelty in respect of the design.

Division of application after amendment

22C.—

(1) Where:

(a) an amendment of an application for registration of a design has been made under section 22B; and

(b) the amendment has the effect of excluding a design or designs from the application; the applicant may, at any time before the registration, or the refusal of the registration, on that application, of a design, make a further application (in this section referred to as a “**divisional application**”) for registration of the design, or each design, so excluded.

(2) For the purposes of this Act, a divisional application for registration of a design shall be deemed to have been lodged under this Act on the date on which the original application for registration of the design was so lodged and the priority date in respect of such a divisional application is the priority date in respect of the original application.

Registrar may register design

23.–

(1) The Registrar shall consider the application, and if he is satisfied that the design is a design which may be registered under this Act, and that the applicant is, or the applicants are, entitled to make the application, he may, subject to this Act, register the design.

(2) For the purpose of deciding whether the design is new or original, the Registrar may cause such searches to be made as he thinks fit.

(3) The registration of a design shall be a registration in respect of the article specified in the application.

Registrar may refuse to register design

24.–

(1) Subject to subsection (2), the Registrar may refuse to register a design, either generally or in respect of the article specified in the application for registration.

(2) The Registrar shall not refuse to register a design until the applicant, or each of the applicants, has been given an opportunity of being heard.

(3) An appeal lies to the Federal Court from a refusal by the Registrar to register a design.

Monopoly in design

25. Subject to section 25A, the owner of a registered design has a monopoly in that design.

Co-ownership of registered design

25A.–

(1) Where there are 2 or more owners of a registered design, of those owners is, unless an agreement to the contrary is in force, entitled to an equal undivided share in the monopoly in that design.

(2) Subject to this section and to section 25B, where there are 2 or more owners of a registered design, each of those owners is, unless an agreement to the contrary is in force, entitled, by himself or his agents, to make use of the design for his own benefit without accounting to the other or others.

(3) Subject to section 25B and to any agreement for the time being in force, where there are 2 or more owners of a registered design, one of those owners shall not grant a licence with respect to the use of the design, or assign an interest in the design, except with the consent of the other or others.

(4) Where an article to which a registered design has been applied is sold by one of 2 or more owners of the design, either by himself or his agents, the purchaser, and a person claiming through him, is entitled to deal with the article in the same manner as if it had been sold by both or all of the owners.

(5) Nothing in subsection (1) or (2) affects the rights or obligations of a trustee or of the legal personal representative of a deceased person, or rights or obligations arising out of either of those relationships.

Power of Registrar to give directions to co-owners

25B.–

(1) Where there are 2 or more owners of a registered design, one or more of those owners may make application to the Registrar to give such directions as to a dealing with the design or an interest in the design, the grant of licences with respect to the design or the exercise of a right under section 25A in relation to the design, as he thinks fit.

(2) Upon application made to the Registrar under subsection (1), the Registrar shall, if he is satisfied that a direction should be given in relation to the matter raised in the application, give such a direction as he thinks appropriate but, if he is not so satisfied, shall refuse to give a direction.

(3) If an owner, within 14 days after being requested in writing by one of the other owners to execute an instrument or to do some other thing required for the carrying out of a direction given under subsection (2), fails to execute that instrument or to do that thing, one of those other owners may make application to the Registrar to give directions empowering a person to execute that instrument or to do that thing in the name and on behalf of the owner in default.

(4) Upon application made to the Registrar under subsection (3), the Registrar shall, if he is satisfied that a direction should be given in relation to the matter raised in the application, give such a direction as he thinks appropriate but, if he is not so satisfied, shall refuse to give a direction.

(5) Before giving a direction under this section, the Registrar shall give an opportunity to be heard:

- (a) in the case of an application under subsection (1)—to the other owner or owners; or
- (b) in the case of an application under subsection (3)—to the owner in default.

(6) A direction shall not be given under this section if it:

- (a) would affect the rights or obligations of a trustee or of the legal personal representative of a deceased person, or rights or obligations arising out of either of those relationships; or
- (b) would be inconsistent with the terms of an agreement between the owners.

Rights of registered owner to be personal property etc.

25C.—

(1) The rights of an owner with respect to a registered design are personal property and are capable of assignment and transmission by operation of law.

(2) Subject to this Act, the laws applicable to ownership and devolution of personal property apply in relation to the monopoly in a registered design as they apply in relation to other choses in action.

(3) An assignment referred to in subsection (1) shall be in writing signed by or on behalf of the owner.

Subsequent registration of design in respect of other articles

25D.—

(1) Where:

- (a) a design (in this section referred to as the “**original design**”) has, whether before or after the commencement of this section, been registered in respect of an article; and
- (b) the person registered as the owner, or all persons registered as owners, of the design makes, or make jointly, an application:
 - (i) for registration of that design, or of another design that is an obvious adaptation of that design, in respect of another article; or
 - (ii) for registration, whether in respect of the same article or another article, of a design that differs from the registered design only in immaterial details or in features commonly used in the relevant trade;

the application shall not be refused, and the registration made on that application is not invalid, by reason only of the previous registration, or of any publication or use, after the priority date in respect of the application for the previous registration, of the design registered on that application.

(2) Where a design is registered by virtue of subsection (1), the design becomes a design to which this section applies.

(3) The registration of a design to which this section applies shall be deemed to have come into force on the date on which the application for registration of the design was lodged under this Act and shall remain in force so long as the registration of the original design remains in force, and no longer.

(4) If under section 28 a prescribed court cancels the registration of the original design in relation to a design to which this section applies, that cancellation does not, unless the prescribed court otherwise orders, affect the registration of the design to which this section applies but, on that cancellation, the design to which this section applies ceases to be a design to which this section applies.

(5) Where:

- (a) a person makes, or 2 or more persons acting jointly make, an application for the registration of a design in respect of an article;
- (b) that design:
 - (i) is a design that has previously been registered on the application of another person in respect of another article or is an obvious adaptation of such design; or
 - (ii) differs only in immaterial details or in features commonly used in the relevant trade from a design that has previously been registered, whether in respect of the same article or another article; and
- (c) while the application is pending, the applicant, or each of the applicants becomes registered as the owner of the previously registered design;

the preceding provisions of this section apply as if the applicant, or each of the applicants, had been registered as the owner of the previously registered design at the time of the making of the application.

Certificate of registration of design

26.–

(1) If the Registrar decides to register a design, he shall enter in the register the prescribed particulars relating to the design, and shall issue to the applicant a certificate of registration in the prescribed form.

(3) The certificate of registration shall be *prima facie* evidence of the facts stated therein, and of the validity of the registration.

Registered designs open to public inspection

27.–

(1) After a design has been registered, the application for registration of the design, the representations of the article to which the design is applied and any statement of monopoly or statement of novelty in respect of the design shall, subject to this Act, be open to public inspection.

(2) Where a document referred to in subsection (1) is a document that is open to public inspection and that document has been or is amended, that document as so amended is, subject to this Act, also open to public inspection.

Period during which registration is in force

27A.–

(1) The registration of a design shall be deemed to have come into force on the date on which the application for registration of the design was lodged under this Act and, subject to this Act, shall cease to be in force on the expiration of a period of 12 months commencing on the date on which the registration was made in the register.

(2) Application may be made to the Registrar for an extension of the period of registration of a design referred to in subsection (1).

(3) An application under subsection (2):

- (a) shall be made before the expiration of the period referred to in subsection (1); and
- (b) shall be made in the prescribed manner.

(4) A person may, at any time before the expiration of the period of 11 months commencing on the date on which the registration of a design was made in the register, lodge at the Designs Office a notice, in accordance with a prescribed form, setting out any matter:

- (a) that has been published in a document in Australia before the priority date in respect of the application for registration of the design; and
- (b) that the person considers to be relevant to the question whether the design was not, at the priority date referred to in paragraph (a), a design that was new or original.

(5) The regulations may provide that a person who lodges a notice under subsection (4) shall lodge with the notice such number of copies as is prescribed of the document to which the notice relates.

(6) The Registrar shall give to the owner of a design referred to in subsection (4) notice, in writing, of any matter to which a notice lodged under that subsection relates.

(7) A copy of a document lodged with a notice under subsection (4) shall, subject to the regulations, be open to public inspection.

(8) Upon receipt of an application under subsection (2) for extension of the period of registration of a design, the Registrar shall, subject to this Act, extend the period of registration of the design for a period that expires on a date 6 years after the date in which the application for registration of the design was lodged under this Act.

(9) The Registrar may, having regard to any matter (including a matter published in a document a copy of which has been lodged with a notice under subsection (4)) that has come to his notice in connection with a design referred to in subsection (4), refuse an application under subsection (2) for extension of the period of registration of a design on the ground that the design was not, at the priority date in respect of the application for registration of the design, a design that was new or original.

(10) Where the Registrar refuses an application under subsection (2) for extension of the period of registration of a design, he shall notify the owner of the design accordingly.

(11) An appeal lies to the Federal Court from a refusal by the Registrar of an application under subsection (2) for extension of the period of registration of a design.

(12) Where:

- (a) the period of registration of a design has been extended under subsection (8); and
- (b) application is made to the Registrar for a further extension of that period of registration; the Registrar shall, subject to this Act, extend that period of registration for a further period of 5 years.

(13) Where:

- (a) the period of registration of a design has been extended under subsection (12); and
- (b) application is made to the Registrar for a further extension of that period of registration; the Registrar shall, subject to this Act, extend that period of registration for a further period of 5 years.

(14) An application under subsection (12) or (13):

- (a) shall be made before the expiration of the period of registration of the design as extended under subsection (8) or (12), as the case may be, or within such period after that expiration as is prescribed; and
- (b) shall be made in the manner prescribed for the purposes of subsection (12) or (13), as the case may be.

(15) The Registrar shall cause to be published in the *Official Journal* notice of:

- (a) an application under subsection (2) for extension of the period of registration of a design;
- (b) a refusal under subsection (9) of such an application; and
- (c) each extension under this section of the period of registration of a design.

(16) Where:

- (a) a registered design was, at the time when it was registered, a corresponding design in relation to an artistic work in which copyright subsisted under the *Copyright Act 1968*;

- (b) by reason of a previous use of that artistic work, the design would not have been registerable under this Act but for section 17A; and
- (c) the copyright in that artistic work under the *Copyright Act 1968* expires before the date on which the registration of the design ceases to be in force;

the registration of the design ceases to be in force at the same time as the copyright in the artistic work and shall not be extended after that time.

(17) Notwithstanding the preceding provisions of this section, where a design has ceased to be a design to which section 25D applies, the period of registration of the design shall not be extended beyond the last date to which the period of registration of the design that was the original design, within the meaning of section 25D, in relation to the design that has so ceased could have been extended under this section.

(18) In this section, “**design**” does not include a design to which section 25D applies.

Extensions of time

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:

- (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 for doing the act.

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

(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:

- (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.

(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.

(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

- (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:
- (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).

Applications to prescribed court

28. At any time after the registration of a design any person interested may apply to a prescribed court:

- (a) for the cancellation of the registration of the design on the ground that the design has been published in the Commonwealth prior to the priority date in respect of the application for registration of the design; or
- (b) for the grant of a compulsory licence on the ground that the design is applied by manufacture to any article in a country outside the Commonwealth and is not so applied in the Commonwealth to such an extent as is reasonable in the circumstances of the case;

and the court may make such order on the application as it considers just:

Provided that the court shall not make any order under this section which is at variance with any treaty, convention, arrangement or engagement with any country outside the Commonwealth.

PART V—INFRINGEMENT OF MONOPOLY IN DESIGNS

Division 1—Infringement

Infringement of monopoly in designs

30.—

(1) A person shall be deemed to infringe the monopoly in a registered design if he, without the licence or authority of the owner of the design:

- (a) applies the design or any fraudulent or obvious imitation of it to any article in respect of which the design is registered;
- (b) imports into Australia for sale, or for use for the purposes of any trade or business, any article in respect of which the design is registered and to which the design or any fraudulent or obvious imitation of it has been applied outside Australia without the licence or authority of the person who was the owner of the registered design at the time when the design or imitation was so applied; or
- (c) sells, or offers or keeps for sale, or hires, or offers or keeps for hire, any article:
 - (i) to which the design or any fraudulent or obvious imitation of it has been applied in infringement of the monopoly in the design; or
 - (ii) in respect of which the design is registered and to which the design or any fraudulent or obvious imitation of it has been applied outside Australia without the licence or authority of the person who was the owner of the registered design at the time when the design or imitation was so applied.

(2) If any person infringes the monopoly in a registered design, the owner of the design may bring an action or proceeding against him for infringement of the monopoly in the design.

Infringement actions

31. An action or proceeding for the infringement of the monopoly in a registered design may be instituted in a prescribed court, but nothing in this section prevents such an action or proceeding being instituted in a court that is not a prescribed court.

Defendant may counter-claim for rectification of register

32. A defendant in an action or proceeding for the infringement of the monopoly in a registered design may apply, by way of counter-claim in the action or proceeding, for the rectification of the register by the expunging of the entry of the registration of the design from the register.

Intervention by Registrar in infringement action

32A. A prescribed court may grant to the Registrar leave to intervene in an action or proceeding for the infringement of the monopoly in a registered design.

Remedies for infringement of monopoly in designs

32B.—

(1) The relief that a court may grant in an action or proceeding for the infringement of the monopoly in a registered design includes an injunction (subject to such terms, if any, as the court thinks fit) and, at the option of the plaintiff, either damages or an account of profits.

(2) A court may refuse to award damages, or to make an order for an account of profits, in respect of an infringement of the monopoly in a registered design if the defendant satisfies the court:

- (a) that, at the time of the infringement, he was not aware that the design was registered; and
- (b) that he had, prior to that time, taken all reasonable steps to ascertain whether a monopoly in the design existed.

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:

- (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.

(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:

- (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

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.

(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).

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

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.

PART VI—THE REGISTER OF DESIGNS

Register of Designs

33.—

(1) There shall be kept at the Designs Office a Register of Designs wherein shall be entered particulars of:

- (a) all registered designs, the names and addresses of their owners, and the date of registration and expiry thereof;
- (b) notifications of assignments and transmissions; and
- (c) any other prescribed matters.

(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
- (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
- (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.

Trusts not to be noticed

34. No notice of any trust, expressed implied or constructive, shall be received by the Registrar or entered in the register.

Inspection of register

35.–

(1) The register shall be open to the inspection of the public at all prescribed times, on payment of the prescribed fee.

(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.

False entries in register

36. No person shall wilfully:

- (a) make any false entry in the register; or
- (b) make any writing falsely purporting to be a copy of an entry in the register; or
- (c) produce or tender in evidence any writing falsely purporting to be a copy of an entry in the register.

Penalty: Imprisonment for 2 years.

Correction of register

37.–

(1) The Registrar may, on request made in the prescribed manner by the owner of a registered design, amend or alter the register by:

- (a) correcting any error in the name or address of the owner of a design; or
- (b) altering the name or address of the owner who has changed his name or address.

(1A) The Registrar may, in accordance with the regulations, amend or alter an entry in the register to correct a clerical error or an obvious mistake.

(1B) An amendment or alteration under subsection (1A) may be made:

- (a) on the request made in the prescribed manner by the owner of a registered design; or
- (b) on the Registrar's own initiative.

(2) Where the register has been amended or altered under this section, the Registrar may:

- (a) cancel the certificate of registration and issue a new certificate of registration; or
- (b) make such amendments or alterations in the certificate of registration as are rendered necessary by the amendment or alteration of the register.

Registration of assignments, transmissions etc.

38. Where a person becomes entitled to a registered design by assignment, agreement, transmission or other operation of law, he shall apply to the Registrar to register his title, and the Registrar shall, on receipt of the application, and on proof to the satisfaction of the Registrar of the title of the applicant, cause the name of the applicant to be entered in the register as the owner of the design.

Registration of legal personal representatives

38AA. Where an owner of a registered design has died, the Registrar shall, subject to section 38A, and notwithstanding section 34, on the application of the legal personal representative of the deceased owner, if he is satisfied that the legal personal representative is entitled to be registered as the owner of the design, register him accordingly.

Registration of mortgages licences etc.

38A. Where a person becomes entitled as mortgagee, licensee or otherwise to an interest in a registered design, he shall apply to the Registrar to register his title, and the Registrar shall, on receipt of the application, and on proof to the satisfaction of the Registrar of the title of the applicant, cause notice of the interest to be entered in the register, together with particulars of the instrument creating the interest.

Unregistered instruments not to be admitted in evidence

38B. Except in the case of an application under section 39, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of this Act is not, unless the court otherwise directs, admissible in evidence in a court in proof of title to a design or to an interest in a design.

Rectification of register

39.—

(1) Subject to this Act, a prescribed court, on the application of any person aggrieved, may order the rectification of the register by:

- (a) the making of any entry wrongly omitted to be made in the register; or
- (b) the expunging or amendment of any entry wrongly made in or remaining on the register; or
- (c) the correcting of any error or defect in the register.

(1A) The reference in subsection (1) to the expunging of an entry wrongly remaining on the register includes a reference to the expunging of an entry effecting the registration of a design where that design ceases to be in force by reason of subsection 27A (16).

(2) Notice of every application under this section shall be given to the Registrar, who may be heard thereon.

(3) An office copy of an order under this section shall be served on the Registrar, who shall, upon receipt of the order, take such steps as are necessary to give effect to the order.

PART VIA—THE CROWN

Interpretation

40.—

(2) In this Part, a reference to the Commonwealth shall be read as including a reference to an authority of the Commonwealth and a reference to a State shall be read as including a reference to an authority of a State.

Use of designs for services of the Commonwealth or a State

40A.—

(1) At any time after an application for registration of a design has been lodged or a design has been registered, the Commonwealth or a State, or a person authorized in writing by the Commonwealth or a State, may make use of the design for the services of the Commonwealth or State.

(2) An authority under subsection (1):

- (a) may be given either before or after the registration of the design;
- (b) may relate to, and authorize retrospectively the doing of, acts done after the lodging of the application for the registration of the design and before the giving of the authority; and

(c) may be given to a person notwithstanding that he is authorized directly or indirectly by the owner of the design to make use of the design.

(3) Where a design has been made use of under subsection (1), the Commonwealth or State, unless it appears to the Commonwealth or State that it would be contrary to the public interest to do so, shall inform the owner as soon as possible of the fact and furnish him with such information as to the use made of the design as he from time to time reasonably requires.

(4) Where a design is made use of under subsection (1), the terms for that use of the design are such terms as are, whether before or after that use, agreed upon between the Commonwealth or the State and the owner of the design or, in default of agreement, as are fixed by a prescribed court.

(5) The prescribed court may, in fixing those terms, take into consideration compensation that a person interested in the design has received, directly or indirectly, from the Commonwealth or State in respect of the design.

(6) An agreement or licence (whether made or given before or after the commencement of this Part) fixing the terms upon which a person other than the Commonwealth or a State may make use of a design is inoperative with respect to the making use of the design, after the commencement of this Part, under subsection (1), unless the agreement has been approved by the Minister or by the Attorney-General of the State.

(7) No action or proceeding for infringement lies in respect of the making use of a design under subsection (1).

(8) The right to make use of a design under subsection (1) includes the right to sell articles to which the design has been applied in exercise of that right and a purchaser of goods so sold, and a person claiming through him, is entitled to deal with the articles as if the Commonwealth or State were the owner of the design.

Declaration may be sought as to use of registered design

40B.—

(1) An owner of a design who considers that the design has been made use of under subsection 40A (1) may apply to a prescribed court for a declaration accordingly.

(2) In a proceeding under subsection (1):

(a) the Commonwealth or the State concerned, as the case may be, shall be the defendant; and

(b) where the design is a registered design, the Commonwealth or State may, by way of counter-claim in the proceeding, apply for the rectification of the register by the expunging of the entry of the registration of the design from the register.

Forfeited articles

40C. Nothing in this Part affects the rights of the Commonwealth or of a State, or of a person deriving title directly or indirectly from the Commonwealth or a State, to sell or use an article forfeited under a law of the Commonwealth or the State.

Acquisition of designs by the Commonwealth

40D.—

(1) The Governor-General may direct that a design the subject of an application for registration, or a registered design, shall be acquired by the Commonwealth from the owner, and, thereupon, the design or registered design, and all rights in respect of the design or registered design, are, by force of this section, transferred to and vested in the Commonwealth.

(2) Notice of the acquisition shall be given to the owner and be published in the *Official Journal* and the *Gazette* unless, in the case of the acquisition of a design the subject of an application for registration, an order is in force under section 40F in relation to the application.

(3) The Commonwealth shall pay to the owner of the design, and, in the case of the acquisition of a registered design, to all other persons appearing in the register as having an interest in the design, such compensation as is agreed upon between the Commonwealth and the owner or other persons, as the case may be, or as, in default of agreement, is determined by a prescribed court in an action for compensation against the Commonwealth.

Assignment of design to Commonwealth

40E.—

(1) The owner of a design may assign to the Commonwealth his interest in the design and in the monopoly obtained, or to be obtained, in the design.

(2) The assignment and all covenants and agreements contained in the assignment are valid and effectual notwithstanding any want of valuable consideration and may be enforced by action or other appropriate proceeding in the name of the Minister.

Prohibition of publication of information with respect to designs

40F.—

(1) Subject to any directions of the Minister, the Registrar may, if it appears to him to be necessary or expedient so to do in the interests of the defence of the Commonwealth, by order in writing under his hand, prohibit or restrict the publication of information with respect to the subject-matter of an application for registration of a design, whether generally or to a particular person or to persons included in a class of persons.

(2) A person shall not, except in accordance with the written consent of the Registrar, publish or communicate information in contravention of an order made under subsection (1).

Penalty: Imprisonment for 2 years.

(3) Where an order is in force under this section in relation to an application for registration of a design, the application may be dealt with under this Act but a design shall not be registered on that application.

(4) Where:

- (a) an order under this section in relation to an application for registration of a design has been revoked; and
- (b) at the date of the revocation of the order, the design would, but for the operation of subsection (3), have been registered;

the design shall be registered within one month after that date.

(5) Nothing in this Act prevents the disclosure of information concerning a design to a Department or authority of the Commonwealth for the purpose of obtaining advice as to whether an order under this section should be made, amended or revoked.

PART VIB—JURISDICTION AND POWERS OF COURTS

Jurisdiction of prescribed courts

40G.—

(1) The Federal Court has jurisdiction with respect to matters arising under this Act.

(1A) The jurisdiction of the Federal Court to hear and determine appeals from decisions of the Registrar is exclusive of the jurisdiction of any other court, other than the jurisdiction of the High Court under section 75 of the Constitution.

(1B) Subject to subsection (2), each prescribed court (other than the Federal Court) has jurisdiction with respect to matters arising under this Act in respect of which actions or proceedings may, under a provision of this Act, be instituted in a prescribed court.

- (1C) A prosecution for an offence against this Act shall not be instituted in the Federal Court.
- (2) The jurisdiction conferred by subsection (1B) on the Supreme Court of a Territory:
- (a) to the extent that it relates to an action or proceeding for the infringement of the monopoly in a registered design or to an application for the rectification of the register made by virtue of section 32—is conferred to the extent that the Constitution permits; and
 - (b) in any other case—is conferred only in relation to an action or proceeding instituted by a natural person who is resident in the Territory, or a corporation that has its principal place of business in the Territory, at the time of the institution of the action or proceeding.
- (3) The jurisdiction of a prescribed court under this section shall be exercised by a single Judge.
- (4) The regulations may make provision for and in relation to the practice and procedure of prescribed courts in actions or proceedings under this Act, including provision prescribing the time within which any action or proceeding may be instituted or any other act or thing may be done, and providing for the extension of any such time.

Transfer of proceedings

40H.—

- (1) A prescribed court in which an action or proceeding has been instituted under this Act may, if the court thinks fit, upon application of a party made at any stage in the action or proceeding, by order, transfer the action or proceeding to another prescribed court having jurisdiction to hear and determine the action or proceeding.
- (2) Where an action or proceeding is transferred from a court in pursuance of this section:
- (a) all documents filed of record in that court shall be transmitted by the Registrar or other proper officer of that court to the Registrar or other proper officer of the court to which the action or proceeding is transferred; and
 - (b) the court to which the action or proceeding is transferred shall proceed as if the action or proceeding had been originally instituted in that court and as if the same proceedings had been taken in that court as had been taken in the court from which the action or proceeding was transferred.

Appeals

40I.—

- (1) An appeal lies to the Federal Court from a judgment or order of:
- (a) another prescribed court exercising jurisdiction under this Act; or
 - (b) any other court in an action or proceeding referred to in section 31.
- (2) Except with the leave of the Federal Court, an appeal does not lie to the Full Court of the Federal Court from a judgment or order of a single judge of the Federal Court in the exercise of its jurisdiction to hear and determine appeals from decisions of the Registrar.
- (3) An appeal lies to the High Court, with special leave of the High Court, from a judgment or order referred to in subsection (1).
- (4) Except as provided in the foregoing provisions of this section, no appeal lies from a judgment or order referred to in subsection (1).

Powers of prescribed courts

40J. Upon the hearing of an appeal from a decision of the Registrar, the Federal Court may:

- (a) admit further evidence, either orally or upon affidavit or otherwise;
- (b) permit the examination and cross-examination of witnesses, including witnesses who gave evidence orally or upon affidavit or otherwise at the hearing before the Registrar;
- (c) order an issue of fact to be tried in such manner as it directs;

- (d) affirm, reverse or modify the decision appealed from;
- (e) give such judgment, or make such order, as in all the circumstances it thinks fit, or refuse to make an order; and
- (f) order a party to pay costs to another party.

PART VIC—APPLICATIONS FOR REVIEW OF CERTAIN DECISIONS BY ADMINISTRATIVE APPEALS TRIBUNAL

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.

(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
- (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.

(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:

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

PART VII—MISCELLANEOUS

Regulations

41.—

(1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act or for the conduct of any business relating to the Designs Office.

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

- (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
- (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

- (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
- (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).

Fees

42.–

(1) There are payable to the Registrar such fees as are prescribed in respect of the doing of an act by the Registrar, or a person other than the Registrar, or the lodging of a document, under this Act.

(2) Where, in accordance with the regulations, a fee is payable in respect of the doing of an act by the Registrar under this Act, the Registrar shall not do that 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.

Powers of Registrar

42A. The Registrar may, for the purposes of this Act:

- (a) summon witnesses;
- (b) receive evidence on oath, whether orally or otherwise;
- (c) require the production of documents or articles; and
- (d) award costs against a party to proceedings before him.

Disobedience to summons an offence

42B.–

(1) A person who has been summoned to appear as a witness before the Registrar shall not, without lawful excuse, and after tender of reasonable expenses, fail to appear in obedience to the summons.

Penalty: Imprisonment for 6 months.

(2) A person who has been required by the Registrar to produce a document or article shall not, without lawful excuse, and after tender of reasonable expenses, fail to produce the document or article.

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

Refusal to give evidence an offence

42C. A person who appears before the Registrar as a witness shall not, without lawful excuse, refuse to be sworn or to make an affirmation, or to produce documents or articles, or to answer questions, that he is lawfully required to produce or answer.

Penalty: Imprisonment for 6 months.

Recovery of costs

42D. Costs awarded by the Registrar may, in default of payment, be recovered in a court of competent jurisdiction as a debt due by the person against whom the costs were awarded to the person in whose favour they were awarded.

Applications and documents by post

43. Any application or other document authorized or required under this Act to be left at the Designs Office, or served on or given to the Registrar, or any other person, may be sent by a prepaid letter through the post.

Registrar may recognize agents

44. Subject to the regulations the Registrar may permit any agent to do, on behalf of any other person, any act in connexion with the registration of designs or any procedure relating thereto.

False representation that a design is registered

45.–

(1) A person shall not knowingly falsely represent that any design applied to any article sold by him is registered.

Penalty: \$3,000.

(2) A person shall be deemed, for the purposes of this section, to represent that a design applied to any article is registered, if there are stamped, engraved, or impressed on or otherwise applied to the article the word “registered” or the words “design registered”, or any word or words expressing or implying that the design applied to the article has been registered.

Conduct by directors, servants and agents

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.

(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.

(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:

- (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.

(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.

(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.

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

- (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.

Exercise of discretionary power by Registrar

46. Where a discretionary power is by this Act given to the Registrar, he shall not exercise that power adversely to a person without giving to that person an opportunity of being heard.

Objection to validity of design not to be taken in certain circumstances

46A. Objection shall not be taken to an application for registration of a design, and a registered design is not invalid, by reason only of the design having been published or used before the priority date in respect of the application for registration of the design, if the Registrar or the prescribed court is satisfied that:

- (a) the publication was made or the user took place without the knowledge and consent of the applicant or owner, as the case may be;
- (b) the subject of the publication or user was derived or obtained from the applicant or owner; and
- (c) if, before the priority date in respect of the application for registration of the design, the applicant or owner became aware of the publication or user, he made application for registration of the design with all reasonable diligence after so becoming aware of the publication or user.

Notice of appeal to prescribed court to be given to Registrar etc.

46B.—

(1) Notice of an appeal under this Act to the Federal Court from a decision of the Registrar shall be given to the Registrar.

(2) The Registrar is entitled to appear and be heard upon the hearing of the appeal and shall appear if so directed by the Federal Court.

Exhibiting of designs at official or international exhibitions

47.—

(1) The fact that a design, or any article to which a design has been applied, has been exhibited at an official or officially recognized international exhibition, or that a description of a design has been published during the holding of such an exhibition, shall not prejudice or prevent the registration of the design or invalidate the monopoly therein, if the application for the registration of the design is made within six months after the opening of the exhibition.

(2) A certificate by the Minister that an exhibition is an official exhibition, or an officially recognized international exhibition, shall, for the purposes of this section, be conclusive evidence that the exhibition is an official exhibition, or an officially recognized international exhibition, as the case requires.

Convention countries

48.—

(1) The Governor-General may make regulations declaring that a country specified in the regulations is a Convention country for the purposes of this Act.

(2) The Governor-General may make regulations declaring a part of the Queen's dominions which has made satisfactory provision for the protection in that part of designs to be a Convention country for the purposes of this Act.

(3) Where the Governor-General makes regulations declaring that an application made in a foreign country for protection in respect of a design is, in accordance with the terms of a treaty subsisting between 2 or more Convention countries, equivalent to an application made in one of those Convention countries, the first-mentioned application shall, for the purposes of this Act, be deemed to have been made in that Convention country.

(4) Where the Governor-General makes regulations declaring that an application made in a foreign country for protection in respect of a design is, in accordance with the law of a Convention country, equivalent to an application made in that Convention country, the first-mentioned application shall, for the purposes of this Act, be deemed to have been made in that Convention country.

Applications under International Conventions

49.—

(1) Where:

- (a) an application for protection in respect of a design (in this section referred to as the “**basic application**”) has been made in a Convention country; and
- (b) an application for registration of the design is lodged under this Act, within a period of 6 months after the date on which the basic application was made, by a person who is:
 - (i) the applicant in the Convention country;
 - (ii) the assignee of the applicant in the Convention country; or
 - (iii) the legal personal representative of the applicant in the Convention country or of his assignee;

the priority date in respect of the application under this Act is the date of the making of the basic application.

(2) For the purposes of subsection (1), the date on which a basic application was made in a Convention country is such date as the Registrar is satisfied, by certificate of the official chief or head of the Designs Office of the Convention country or otherwise, is the date on which the basic application was made in the Convention country.

(3) Where 2 or more applications for protection in respect of a design have been made in one or more Convention countries, the period of 6 months referred to in paragraph (1) (b) shall be reckoned from the date on which the earlier or earliest of those applications was made.

(4) An application to which subsection (1) applies:

- (a) shall be supported by a copy of the basic application, and of any other related documents filed or deposited by the applicant in the Designs Office of the Convention country in which the basic application was made, certified by the official chief or head of that Office or otherwise verified to the satisfaction of the Registrar; and
- (b) in all other respects, shall be made, lodged and proceeded with in the same manner as an ordinary application under this Act for the registration of a design.

(5) A copy of a document referred to in paragraph (4) (a) shall be lodged:

- (a) at the same time as the application to which subsection (1) applies is lodged;
- (b) within 3 months after that time; or
- (c) within such further period after that time as the Registrar allows.

(6) If a copy of a document referred to in paragraph (4) (a) is in a foreign language, a translation of the document, verified by declaration or otherwise to the satisfaction of the Registrar, shall be annexed to the document.

Withdrawn application not to be used as basic application in certain circumstances

50. Notwithstanding anything contained in section 49, where:

- (a) an application for protection in respect of a design has been made in a Convention country;
- (b) the application has been withdrawn, abandoned or refused without becoming open to public inspection;
- (c) the application has not been used as the basis for claiming a right of priority in a Convention country under the law of that country corresponding to section 49; and
- (d) a later application has been made by the same applicant for protection in respect of that design in the Convention country in which the earlier application was made;

the applicant may request the Registrar to disregard the earlier application for the purposes of section 49 and, if he so requests:

- (e) the earlier application shall be so disregarded; and
- (f) neither the applicant nor any other person is capable of making use of the earlier application as a basic application for the purposes of section 49.

NOTE

1. The *Designs Act 1906* as shown in this reprint comprises Act No. 4, 1906 amended as indicated in the Tables below.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Designs Act 1906</i>	4, 1906	28 Aug 1906	1 Jan 1907 (<i>see Gazette</i> 1907)	
<i>Patents Trade Marks and Designs Act 1910</i>	19, 1910	14 Nov 1910	1 Apr 1911 (<i>see Gazette</i> 1911, p. 881)	—
<i>Designs Act 1912</i>	14, 1912	6 Nov 1912	6 Nov 1912	—
<i>Designs Act 1932</i>	53, 1932	28 Nov 1932	28 Nov 1932	—
<i>Patents, Trade Marks and Designs Act 1932</i>	70, 1932	5 Dec 1932	5 Dec 1932	—
<i>Designs Act 1933</i>	36, 1933	9 Dec 1933	S. 2: 1 Jan 1933 Remainder: Royal Assent	—
<i>Designs Act 1934</i>	42, 1934	4 Aug 1934	4 Aug 1934	—
<i>Statute Law Revision Act 1934</i>	45, 1934	6 Aug 1934	6 Aug 1934	—
<i>Statute Law Revision Act 1950</i>	80, 1950	16 Dec 1950	31 Dec 1950	Ss. 16 and 17
<i>Statute Law Revision (Decimal Currency) Act 1966</i>	93, 1966	29 Oct 1966	1 Dec 1966	—
<i>Designs Act 1967</i>	108, 1967	14 Nov 1967	14 Nov 1967	—
<i>Designs Act 1968</i>	64, 1968	27 June 1968	Ss. 1–3: Royal Assent Remainder: 1 May 1969 (<i>see s. 2 (2) and Gazette</i> 1969, p. 2543)	—
<i>Statute Law Revision Act 1973</i>	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9 (1) and 10
<i>Jurisdiction of Courts (Miscellaneous Amendments) Act 1979</i>	19, 1979	28 Mar 1979	Parts II–XVII (ss. 3–123): 15 May 1979 (<i>see Gazette</i> 1979, No. S86) Remainder: Royal Assent	S. 124



Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Designs Amendment Act 1981</i>	42, 1981	13 May 1981	Ss. 1 and 2: Royal Assent Remainder: 1 Apr 1982 (<i>see Gazette</i> 1982, No. G12, p. 4)	Ss. 36 and 37
<i>as amended by Statute Law (Miscellaneous Amendments) Act 1981</i>	176, 1981	2 Dec 1981	Part XI (ss. 38–43): 1 Apr 1982 (<i>see s. 2 (7) and Gazette</i> 1982, No. G12, p. 4) (a)	–
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: 3 July 1985 (b)	–
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1985</i>	193, 1985	16 Dec 1985	S. 3: Royal Assent (c)	Ss. 9 and 16
<i>Jurisdiction of Courts (Miscellaneous Amendments) Act 1987</i>	23, 1987	26 May 1987	S. 3: 1 Sept 1987 (<i>see Gazette</i> 1987, No. S217) (d)	S. 5
<i>Circuit Layouts Act 1989</i>	28, 1989	22 May 1989	Ss. 1 and 2: Royal Assent Remainder: 1 Oct 1990 (<i>see Gazette</i> 1990, No. S261)	–
<i>Industry, Technology and Commerce Legislation Amendment Act 1989</i>	91, 1989	27 June 1989	S. 15: 14 Dec 1988 Part 4 (ss. 20–25): 30 Nov 1989 (<i>see Gazette</i> 1989, No. S371) Part 5 (ss. 26, 27): 1 Aug 1989 (<i>see Gazette</i> 1989, No. S262) Remainder: Royal Assent	S. 27
<i>Industry, Technology and Commerce Legislation Amendment Act (No. 2) 1989</i>	10, 1990	17 Jan 1990	Ss. 1 and 2: Royal Assent Ss. 3–10 and Part 3 (ss. 12, 13): 1 July 1989 Ss. 15 (1), 18, Part 6 (ss. 37–39), ss. 41 and 42: 30 Apr 1991 (<i>see s. 2 (3)</i>) Part 5 (ss. 35, 36): 15 Dec 1989 (<i>see s. 2 (4)</i>) Ss. 21, 22, 27 and 29: 17 July 1990 (<i>see s. 2. (6)</i>) Remainder: 14 Feb 1990	S. 18 (2)
<i>as amended by Patents Act 1990</i>	83, 1990	30 Oct 1990	30 Apr 1991 (<i>see s. 2 (2)</i>)	–
<i>Patents Act 1990</i>	83, 1990	30 Oct 1990	30 Apr 1991 (<i>see s. 2 (2)</i>)	–
<i>Industry, Technology and Commerce Legislation Amendment Act 1992</i>	168, 1992	11 Dec 1992	Part 5 (ss. 14, 15): 30 July 1975 Remainder: Royal Assent	–
<i>Maritime Legislation Amendment Act 1994</i>	20, 1994	15 Feb 1994	1 Aug 1994 (<i>see Gazette</i> 1994, No. S289)	–
<i>Industry, Technology and Regional Development Legislation Amendment Act 1994</i>	58, 1994	9 Apr 1994	29 June 1994 (<i>see Gazette</i> 1994, No. S211)	S. 4 (1)

(a) The *Designs Amendment Act 1981* was amended by Part XI (sections 38–43) only of the *Statute Law (Miscellaneous Amendments) Act 1981*, subsection 2 (7) of which provides as follows:

“(7) Part XI shall come into operation on the date fixed under subsection 2 (3) of the *Designs Amendment Act 1981*.”

(b) The *Designs Act 1906* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2 (1) of which provides as follows:

“(1) Subject to this section, this Act shall come into operation on the twenty -eighth day after the day on which it receives the Royal Assent.”

(c) The *Designs Act 1906* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1985*, subsection 2 (1) of which provides as follows:

“(1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.”

(d) The *Designs Act 1906* was amended by section 3 only of the *Jurisdiction of Courts (Miscellaneous Amendments) Act 1987*, subsection 2 (2) of which provides as follows:

“(2) The amendments made by this Act to an Act specified in the Schedule shall come into operation on such day as is fixed by Proclamation in relation to those amendments.”

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Title	am. No. 42, 1981
S. 3	am. No. 45, 1934 rs. No. 64, 1968 rep. No. 216, 1973
S. 4	am. No. 64, 1968; No. 216, 1973; No. 19, 1979; rs. No. 42, 1981 (as am. by No. 176, 1981) am. No. 193, 1985; No. 23, 1987; No. 28, 1989; Nos. 10 and 83, 1990; No. 20, 1994
S. 4A	ad. No. 14, 1912 am. No. 216, 1973 rs. No. 19, 1979 rep. No. 42, 1981
S. 4B	ad. No. 53, 1932 am. No. 216, 1973 rep. No. 42, 1981
S. 5	rs. No. 42, 1981
Ss. 5A, 5B	ad. No. 42, 1981 am. No. 10, 1990
S. 6	am. No. 45, 1934
Heading to Div. 1 of Part II	rep. No. 45, 1934
S. 7	rs. No. 19, 1910 rep. No. 216, 1973 ad. No. 28, 1989
S. 8	am. No. 42, 1981; No. 91, 1989; No. 10, 1990; No. 58, 1994
S. 8A	ad. No. 42, 1981 rs. No. 91, 1989; No. 58, 1994
Div. 2 of Part II (s. 11)	rep. No. 45, 1934
S. 11	rep. No. 45, 1934 ad. No. 10, 1990
Part III (ss. 12–16)	rep. No. 42, 1981
Ss. 12–16	rep. No. 42, 1981
S. 17	am. No. 42, 1934; No. 64, 1968; No. 42, 1981
S. 17A	ad. No. 64, 1968



Provision affected	How affected
S. 18	am. No. 42, 1981 rs. No. 42, 1981 am. No. 168, 1992
S. 19	rs. No. 42, 1981
S. 20	rs. No. 42, 1981 (as am. by No. 176, 1981)
Ss. 20A, 20B	ad. No. 10, 1990
Ss. 21, 22	rs. No. 42, 1981
S. 22A	ad. No. 42, 1981
S. 22B	ad. No. 42, 1981 (as am. by No. 176, 1981) am. No. 23, 1987
S. 22C	ad. No. 42, 1981
S. 23	am. No. 42, 1981
S. 24	rs. No. 42, 1981
\	am. No. 23, 1987
S. 24A	ad. No. 64, 1968 rep. No. 42, 1981
S. 25	rs. No. 42, 1981
Ss. 25A–25D	ad. No. 42, 1981
S. 26	am. No. 14, 1912; No. 36, 1933; No. 64, 1968; No. 42, 1981
S. 27	rs. No. 42, 1981
S. 27A	ad. No. 42, 1981 (as am. by No. 176, 1981) am. No. 23, 1987
S. 27B	ad. No. 42, 1981 (as am. by No. 176, 1981) rs. No. 10, 1990
S. 27C	ad. No. 42, 1981 (as am. by No. 176, 1981) rep. No. 10, 1990
S. 28	rs. No. 70, 1932 am. No. 19, 1979; No. 42, 1981
S. 29	am. No. 42, 1934; No. 93, 1966 rep. No. 42, 1981
Heading to Part V	am. No. 42, 1981
Heading to Div. 1 of Part V	ad. No. 10, 1990
S. 30	rs. No. 108, 1967 am. No. 216, 1973; No. 42, 1981
S. 31	rs. No. 42, 1981
S. 32	am. No. 93, 1966 rs. No. 42, 1981
Ss. 32A, 32B	ad. No. 42, 1981
Div. 2 of Part V (ss. 32C–32G)	ad. No. 10, 1990
Ss. 32C–32G	ad. No. 10, 1990
S. 33	am. No. 10, 1990
S. 35	am. No. 10, 1990
S. 36	am. No. 65, 1985; No. 10, 1990
S. 37	am. No. 42, 1981; No. 58, 1994
S. 38	rs. No. 42, 1981 am. No. 10, 1990
S. 38AA	ad. No. 42, 1981 (as am. by No. 176, 1981)
Ss. 38A, 38B	ad. No. 42, 1981
S. 39	am. No. 64, 1968; No. 19, 1979; No. 42, 1981
S. 40	rep. No. 42, 1981
Part VIA (ss. 40A, 40B)	ad. No. 19, 1979 rep. No. 42, 1981



Provision affected	How affected
Part VIA (ss. 40, 40A–40F)	ad. No. 42, 1981
S. 40	rs. No. 42, 1981 am. No. 10, 1990
Ss. 40A, 40B	ad. No. 19, 1979 rs. No. 42, 1981
Ss. 40C–40D	ad. No. 42, 1981
S. 40F	ad. No. 42, 1981 am. No. 65, 1985; No. 10, 1990
Part VIB (ss. 40G–40J)	ad. No. 42, 1981
S. 40G	ad. No. 42, 1981 am. No. 23, 1987
S. 40H	ad. No. 42, 1981
Ss. 40I, 40J	ad. No. 42, 1981 am. No. 23, 1987
Part VIC (s. 40K)	ad. No. 42, 1981
S. 40K	ad. No. 42, 1981 rs. No. 10, 1990
S. 41	am. No. 42, 1981 rs. No. 42, 1981 (as am. by No. 176, 1981) am. No. 10, 1990
S. 42	rs. No. 42, 1981 am. No. 10, 1990
S. 42A	ad. No. 42, 1981
Ss. 42B–42C	ad. No. 42, 1981 am. No. 65, 1985; No. 10, 1990
S. 44	am. No. 42, 1981
S. 45	am. No. 93, 1966; No. 42, 1981; No. 65, 1985; No. 10, 1990
S. 45A	ad. No. 65, 1985 rs. No. 10, 1990
S. 46	rep. No. 80, 1950 ad. No. 42, 1981
S. 46A	ad. No. 42, 1981
S. 46B	ad. No. 42, 1981 am. No. 23, 1987
S. 47	am. No. 42, 1981
S. 48	am. No. 70, 1932 rs. No. 42, 1981 am. No. 193, 1985; No. 10, 1990; No. 58, 1994
S. 49	rs. No. 42, 1981
S. 50	ad. No. 42, 1981

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