



Designs (Consequential Amendments) Act 2003

No. 148, 2003

**An Act to amend certain Acts in consequence of the
repeal of the *Designs Act 1906* and the enactment of
the *Designs Act 2003*, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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**An Act to amend certain Acts in consequence of the
repeal of the *Designs Act 1906* and the enactment of
the *Designs Act 2003*, and for related purposes**

[Assented to 17 December 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Designs (Consequential Amendments)
Act 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	17 December 2003
2. Schedules 1 and 2	Immediately after the commencement of section 4 of the <i>Designs Act 2003</i> .	17 June 2004

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Copyright Act 1968

Part 1—Amendments

1 Subsection 10(1) (paragraph (c) of the definition of *artistic work*)

Omit “to which neither of the last two preceding paragraphs applies”, substitute “whether or not mentioned in paragraph (a) or (b)”.

2 Section 74 (definition of *corresponding design*)

Omit all the words after “means”, substitute “visual features of shape or configuration which, when embodied in a product, result in a reproduction of that work, whether or not the visual features constitute a design that is capable of being registered under the *Designs Act 2003*”.

3 At the end of section 74

Add:

(2) For the purposes of subsection (1):

embodied in, in relation to a product, includes woven into, impressed on or worked into the product.

4 Section 75

Omit all the words after “under”, substitute “the *Designs Act 1906* or the *Designs Act 2003* on or after that commencement, it is not an infringement of that copyright to reproduce the work by embodying that, or any other, corresponding design in a product”.

4A Section 76

Repeal the section, substitute:

76 False registration of industrial designs under the *Designs Act 2003*

(1) This section applies if:

(a) proceedings (*copyright proceedings*) are brought under this Act in relation to an artistic work in which copyright subsists; and

- (b) a corresponding design was registered under the *Designs Act 2003*; and
 - (c) the exclusive right in the design had not expired by effluxion of time before the copyright proceedings began; and
 - (d) it is established in the copyright proceedings that:
 - (i) none of the persons who are registered owners of the registered design are entitled persons in relation to the design; and
 - (ii) none of those persons were registered with the knowledge of the owner of the copyright in the artistic work.
- (2) Subject to subsection (3), for the purposes of the copyright proceedings:
- (a) the design is taken never to have been registered under the *Designs Act 2003*; and
 - (b) section 75 does not apply in relation to anything done in respect of the design; and
 - (c) nothing in the *Designs Act 2003* constitutes a defence.
- (3) Ignore subsection (2) if it is established in the copyright proceedings that the act to which the proceedings relate was done:
- (a) by an assignee of, or under a licence granted by, the registered owner of the registered design; and
 - (b) in good faith relying on the registration and without notice of any proceedings (whether or not before a court) to revoke the registration or to rectify the entry in the Register of Designs in relation to the design.

5 Paragraphs 77(1)(b) and (c)

Repeal the paragraphs, substitute:

- (b) a corresponding design is or has been applied industrially, whether in Australia or elsewhere, and whether before or after the commencement of this section, by or with the licence of the owner of the copyright in the place of industrial application; and
- (c) at any time on or after the commencement of this section, products to which the corresponding design has been so applied (the *products made to the corresponding design*) are

sold, let for hire or offered or exposed for sale or hire,
whether in Australia or elsewhere; and

6 Paragraph 77(1)(d)

Omit “1906”, substitute “2003”.

7 At the end of paragraph 77(1)(d)

Add “or under the *Designs Act 1906*”.

8 After subsection 77(1)

Insert:

- (1A) This section also applies if:
- (a) a complete specification that discloses a product made to the corresponding design; or
 - (b) a representation of a product made to the corresponding design and included in a design application;
- is published in Australia, whether or not paragraphs (1)(b) and (c) are satisfied in relation to the corresponding design.

9 Subsection 77(2)

Repeal the subsection, substitute:

- (2) It is not an infringement of the copyright in the artistic work to reproduce the work, on or after the day on which:
- (a) products made to the corresponding design are first sold, let for hire or offered or exposed for sale or hire; or
 - (b) a complete specification that discloses a product made to the corresponding design is first published in Australia; or
 - (c) a representation of a product made to the corresponding design and included in a design application is first published in Australia;
- by embodying that, or any other, corresponding design in a product.

10 Subsection 77(3)

After “articles” (first occurring), insert “or products”.

11 Subsection 77(3)

After “1906”, insert “or the *Designs Act 2003*”.

12 Paragraph 77(3)(a)

Omit “under that Act in respect of those articles”, substitute “under the *Designs Act 1906* in respect of those articles, or under the *Designs Act 2003* in respect of those products,”.

13 At the end of section 77

Add:

(5) In this section:

building or model of a building does not include a portable building such as a shed, a pre-constructed swimming pool, a demountable building or similar portable building.

complete specification has the same meaning as in the *Patents Act 1990*.

design application has the same meaning as in the *Designs Act 2003*.

representation, in relation to a design, has the same meaning as in the *Designs Act 2003*.

14 At the end of Division 8 of Part III

Add:

77A Certain reproductions of an artistic work do not infringe copyright

- (1) It is not an infringement of copyright in an artistic work to reproduce the artistic work, or communicate that reproduction, if:
 - (a) the reproduction is derived from a three-dimensional product that embodies a corresponding design in relation to the artistic work; and
 - (b) the reproduction is in the course of, or incidental to:
 - (i) making a product (the *non-infringing product*), if the making of the product did not, or would not, infringe the copyright in the artistic work because of the operation of this Division; or

- (ii) selling or letting for hire the non-infringing product, or offering or exposing the non-infringing product for sale or hire.
- (2) It is not an infringement of copyright in an artistic work to make a cast or mould embodying a corresponding design in relation to the artistic work, if:
- (a) the cast or mould is for the purpose of making products; and
 - (b) the making of the products would not infringe copyright because of the operation of this Division.

Part 2—Application provisions

15 Application of amendments of section 74—definition of *corresponding design*

The amendments of section 74 of the *Copyright Act 1968* made by items 2 and 3 of this Schedule apply as follows:

- (a) for the purposes of section 75 of the *Copyright Act 1968*—in the same circumstances as the amendment made by item 4 of this Schedule applies;
- (b) for the purposes of section 76 of the *Copyright Act 1968*—in the same circumstances as the amendment made by item 4A of this Schedule applies;
- (c) for the purposes of section 77 of the *Copyright Act 1968*—in the same circumstances as the amendments of section 77 made by items 5 to 13 of this Schedule apply;
- (d) for the purposes of section 77A of the *Copyright Act 1968*—in the same circumstances as that section applies.

16 Application of amendment of section 75

The amendment made by item 4 of this Schedule applies to reproductions that are made on or after the commencing day.

17 Application of amendment of section 76

- (1) Section 76 of the *Copyright Act 1968* as amended by item 4A of this Schedule applies in relation to proceedings brought under that Act on or after the commencing day, where the corresponding design has been registered under the *Designs Act 2003*.
- (2) When determining whether a design has been registered under the *Designs Act 2003* for the purposes of subitem (1), ignore section 151 of that Act.

18 Application of amendments of section 77

Amendments made by item 5

- (1) Paragraph 77(1)(b) of the *Copyright Act 1968* as amended by item 5 of this Schedule applies to articles and products to which a corresponding design has been applied industrially that are sold, let for hire or offered

or exposed for sale or hire on or after the commencing day. However, this subitem does not affect the operation of paragraph 77(1)(b) of the *Copyright Act 1968* as in force immediately before the commencing day.

- (2) Paragraph 77(1)(c) of the *Copyright Act 1968* as amended by item 5 of this Schedule applies to products to which a corresponding design has been applied industrially that are sold, let for hire or offered or exposed for sale or hire on or after the commencing day.

Amendments made by items 6 to 13

- (3) The amendments made by items 6 to 13 of this Schedule apply to:
- (a) products to which a corresponding design has been applied industrially that are sold, let for hire or offered or exposed for sale or hire on or after the commencing day; and
 - (b) complete specifications or representations that are first published in Australia on or after the commencing day.

19 Application of section 77A

Section 77A of the *Copyright Act 1968* applies to reproductions that are made on or after the commencing day.

20 Definition

In this Part:

commencing day means the day on which this item commences.

Schedule 2—Consequential amendments of other Acts

A New Tax System (Wine Equalisation Tax) Act 1999

1 Paragraph 9-70(2)(c)

Omit “1906”, substitute “2003”.

ANL Act 1956

2 Paragraph 53(1)(b)

Omit “1906”, substitute “2003”.

3 Subsection 53(1)

After “so registered”, insert “, or was registered under the *Designs Act 1906*,”.

Australian Communications Authority Act 1997

4 Paragraph 55(4)(b)

Omit “1906”, substitute “2003”.

5 Subsection 55(4)

Omit “so registered”, substitute “registered under the *Trade Marks Act 1995* or the *Designs Act 1906*”.

Australian Hearing Services Act 1991

6 Paragraph 66(3)(b)

Omit “1906”, substitute “2003”.

7 Subsection 66(3)

After “so registered”, insert “, or was registered under the *Designs Act 1906*,”.

Commonwealth Banks Act 1959

8 Paragraph 128(4)(b)

Omit “*Designs Act 1906* and was so registered”, substitute “*Designs Act 2003* and was so registered, or was registered under the *Designs Act 1906*,”.

Commonwealth Services Delivery Agency Act 1997

9 Paragraph 38(2)(b)

Omit “1906”, substitute “2003”.

10 Subsection 38(2)

After “so registered”, insert “, or was registered under the *Designs Act 1906*,”.

Customs Act 1901

11 Subsection 157(3) (definition of *design*)

Omit “1906”, substitute “2003”.

Freedom of Information Act 1982

12 Schedule 3

Omit “*Designs Act 1906*, subsection 40F(2)”, substitute “*Designs Act 2003*, paragraph 61(1)(a) and sections 108 and 109”.

Health Insurance Commission Act 1973

13 Paragraph 41C(7)(b)

Omit “1906, being a design that was so registered”, substitute “2003, being a design that was registered under the *Designs Act 1906*”.

Jurisdiction of Courts (Cross-vesting) Act 1987

14 Schedule

Omit “*Designs Act 1906*”, substitute “*Designs Act 2003*”.

Radiocommunications Act 1992

15 Paragraph 188A(4)(b)

Omit “1906”, substitute “2003”.

16 Subsection 188A(4)

Omit “so registered”, substitute “registered under the *Trade Marks Act 1995* or the *Designs Act 1906*”.

Scout Association Act 1924

16A Section 3

Omit “*Designs Act 1906-1912*”, substitute “*Designs Act 2003*”.

Telecommunications Act 1997

17 Paragraph 417(4)(b)

Omit “1906”, substitute “2003”.

18 Subsection 417(4)

Omit “so registered”, substitute “registered under the *Trade Marks Act 1995* or the *Designs Act 1906*”.

Telstra Corporation Act 1991

19 Paragraph 16(1)(b)

Omit “1906”, substitute “2003”.

20 Subsection 16(1)

After “so registered”, insert “, or was registered under the *Designs Act 1906*,”.

Tobacco Advertising Prohibition Act 1992

21 Paragraph 9(1)(d)

Omit “1906 in respect of articles”, substitute “2003 in relation to products”.

*[Minister's second reading speech made in—
House of Representatives on 11 December 2002
Senate on 4 December 2003]*

(277/03)
