

Designs

No. 64 of 1968

An Act to amend the *Designs Act* 1906-1967.

[Assented to 27 June 1968]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title
and citation.

1.—(1.) This Act may be cited as the *Designs Act* 1968.

(2.) The *Designs Act* 1906-1967* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Designs Act* 1906-1968.

Commence-
ment.

2.—(1.) Sections 1, 2 and 3 of this Act shall come into operation on the day on which this Act receives the Royal Assent.

(2.) The remaining provisions of this Act shall come into operation on the day on which the *Copyright Act* 1968 comes into operation.

* Act No. 4, 1906, as amended by No. 19, 1910; No. 14, 1912; Nos. 53 and 70, 1932; No. 36, 1933; Nos. 42 and 45, 1934; No. 80, 1950; No. 93, 1966; and No. 108, 1967.

3. Section 3 of the Principal Act is repealed and the following section inserted in its stead:—

“ 3. This Act is divided into Parts, as follows:—

Parts.

Part I.—Introductory (Sections 1–6).

Part II.—Administration (Sections 7–10).

Part III.—Copyright in Designs (Sections 12–16).

Part IV.—Registration of Designs (Sections 17–29).

Part V.—Infringement of Copyright in Designs (Sections 30–32).

Part VI.—The Register of Designs (Sections 33–40).

Part VII.—Miscellaneous (Sections 41–49).”.

4. Section 4 of the Principal Act is amended by inserting after the definition of “ Article ” the following definitions:—

Definitions.

“ ‘ Artistic work ’ has the same meaning as in the *Copyright Act 1968*;

‘ Corresponding design ’ has the same meaning as in Division 8 of Part III. of the *Copyright Act 1968*;”.

5. Section 17 of the Principal Act is amended by adding at the end thereof the following sub-section:—

Classes in which designs may be registered.

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

6. After section 17 of the Principal Act the following section is inserted:—

“ 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, or articles included in a class of articles, specified in regulations made for the purposes of sub-section (2.) of the last preceding section; and

(d) the previous use was made by, or with the consent of, the owner of the copyright in the artistic work.

Certain designs not to be treated as other than new or original, &c.

“(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 the last preceding sub-section.”.

7. After section 24 of the Principal Act the following section is inserted:—

Subsequent registration of design in respect of other articles.

“ 24A.—(1.) Where—

- (a) a 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 of the design makes an application—
 - (i) for registration of the design in respect of another article; or
 - (ii) for registration, in respect of the same article or of another article, of a design consisting of the registered design with modifications or variations not sufficient to alter the nature, or substantially to affect the identity, of the registered design,

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, after the lodging of the application for the previous registration, of the design registered on that application.

“(2.) Where a design is registered by virtue of the last preceding sub-section, the registration of the design expires at the same time as the registration of the original registered design and shall not be extended after that time.

“(3.) Where—

- (a) a person makes an application for the registration of a design in respect of an article;
- (b) that design—
 - (i) has previously been registered on the application of another person in respect of another article; or
 - (ii) consists of a design previously registered on the application of another person, in respect of the same article or of another article, with modifications or variations not sufficient to alter the nature, or substantially to affect the identity, of the previously registered design; and
- (c) while the application is pending, the applicant becomes registered as the owner of the previously registered design,

the preceding sub-sections of this section apply as if the applicant had been registered as the owner of the previously registered design at the time of the making of the application.”.

8. Section 26 of the Principal Act is amended—

Certificate of
registration of
design.

(a) by omitting from sub-section (2b.) the word “ may ” and inserting in its stead the word “ shall ”; and

(b) by inserting after sub-section (2b.) the following sub-section:—

“ (2c.) Where, in the case of a registered design, it is established—

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

(b) that, by reason of a previous use of that artistic work, the design would not have been registrable under this Act but for section 17A of this Act; and

(c) that the copyright in that artistic work under the *Copyright Act 1968* expired before the date of expiration of the registration of the design,

the registration of the design shall, notwithstanding anything in the preceding sub-sections of this section, be deemed to have expired at the same time as the copyright in the artistic work and shall not be extended after that time.”.

9. Section 39 of the Principal Act is amended by inserting after sub-section (1.) the following sub-section:—

Rectification of
register by
Court.

“ (1A.) A reference in the last preceding sub-section 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 registration is to be deemed to have expired by reason of sub-section (2c.) of section 26 of this Act.”.