PANORAMIC

DESIGNS

Australia

LEXOLOGY

Designs

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Contents

Designs

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LEGAL FRAMEWORK

Relevant legislation
What is the relevant legislation?

Industrial designs are protected in Australia under the Designs Act 2003. Australia is a party to the Paris Convention for the Protection of Industrial Property, but not to the Hague System for the International Registration of Industrial Designs.

An Australian design registration protects the visual appearance of a product arising from the features of shape, configuration, pattern and ornamentation of the product.

A design is registrable in Australia if it is new and distinctive when compared to the prior art base. A design is new unless it is identical to a design that forms part of the prior art base for the design. A design is distinctive unless it is substantially similar in overall impression to a design that forms part of the prior art base for the design.

Australian design registrations enjoy an initial five-year term, which may be extended for a further five years on payment of a renewal fee.

Substantive examination is not required for registration of a design in Australia, although a registered design cannot be legally enforced unless it is examined and certified (ie, the registered design passes examination and is considered new and distinctive).

Law stated - 1 September 2025

Nature of system
Are design rights considered to be distinct or treated as patent rights?

Australian design rights are distinct from patent rights.

Law stated - 1 September 2025

Agency
Which agency is responsible for registration and grant of design rights?

IP Australia is the government agency responsible for the registration and grant of design rights in Australia.

Law stated - 1 September 2025

Overlap with other rights
Is there any overlap between design rights and other rights?

Design rights that arise in Australia under the Designs Act 2003 overlap with provisions under the Copyright Act 1968 for artistic works. A design may be registerable under the Designs

Act or protectable as an artistic work under the Copyright Act, but it cannot be protected under both.

Copyright protection provisions no longer apply once a design has been registered or the artistic work has been applied industrially; a design is deemed to be industrially applied if it has been applied to 50 or more units (although it can be fewer, depending on the nature of the product). An exception exists to this where the design is a work of artistic craftsmanship.

In *Coogi Australia Pty Ltd v Hysport International Pty Ltd* (1998) 86 FCR 154 (*Coogi*), it was suggested that:

> Real artistic quality that is an essential feature of such works and the desirability of encouraging real artistic effort directed to industrial design is sufficient to warrant the greater protection and the accompanying stifling effect on manufacturing development that long copyright gives, in contrast to relatively short design-protection.

Law stated - 1 September 2025

UNREGISTERED DESIGNS

Protection
What protection and rights are there for unregistered designs?

Australia has no formal recognition of unregistered design rights. The only protection that applies to unregistered industrial designs arises under the Copyright Act 1968 for original works of artistic craftsmanship, as discussed above.

Law stated - 1 September 2025

Use requirements
How much use is generally required to establish unregistered design rights?

Not applicable.

Law stated - 1 September 2025

Exclusions
What exclusions apply to unregistered design rights?

Not applicable.

Law stated - 1 September 2025

REGISTERED DESIGNS

Ownership
Who can apply for and own a design?

The applicant or owner of an Australian design registration can be:

- the designer;
- a person who contracted the designer to create the design;
- the employer of the designer;
- an assignee of the designer or someone who derives title through devolution by will or operation of law; or
- the legal personal representative of a deceased person mentioned above.

The applicant of a design registration must be a legal person (ie, a body politic or corporate, as well as an individual).

Typically, proof of ownership is not required to file an application for design registration.

Law stated - 1 September 2025

Scope
What may and may not be protected?

An Australian design registration protects the visual appearance of a product arising from the features of shape, configuration, pattern and ornamentation of the product.

The following can be protected as an industrial design in Australia:

- a thing that is manufactured or handmade;
- a component part of a complex product (spare part) if it is made separately from the product;
- a thing with indefinite dimensions; and
- a kit that can be assembled into a product.

Currently, there are no provisions in Australia for the protection of partial designs or virtual designs such as screen displays or icons or graphical user interfaces, although this is expected to change in the future (see section regarding legislative developments in 'Update and trends').

Although there is no exclusion to the registration of spare parts, there is an infringement exemption under section 72 of the Designs Act 2003 that allows a person to use a product, which is a component part of a complex product, for the purposes of the repair of the complex product to restore its overall appearance in whole or in part.

The provisions of section 72 are intended to:

- provide to aftermarket parts suppliers a defence against infringement of registered designs that cover spare parts; and
- encourage greater competition in the spare parts market.

It is worthwhile registering designs of spare parts if they can be used to improve or enhance the appearance of a complex product since such products may fall outside the scope of the section 72 infringement exemption.

Certain designs cannot be protected, including:

- designs falling under the Olympic Insignia Protection Act 1987 or mentioned in the Crimes (Currency) Act 1981;
- designs relating to electronic circuit layouts;
- medals;
- Anzac-related designs;
- scandalous designs; and
- certain designs relating to government arms, emblems, flags or seals.

Law stated - 1 September 2025

Costs
What are the costs involved in registration?

The present official fee for filing a design application is AU$200. Attorney fees vary and can be between AU$700 and AU$1,500 for filing a design application with a single design.

Only a single design is allowed per application (unless the application is for a common design applied to different products) and this is enforced quite strictly. An application considered to include further designs (ie, more than one design) will trigger a deficiency notice. If an objection to further designs cannot be overcome, options for proceeding include:

- withdrawing the further designs;
- excluding the further designs from the application and filing them in one or more new applications; and
- combining the filings into a multiple application and paying additional fees.

Law stated - 1 September 2025

Grace period
Is there a grace period for filings?

A 12-month grace period for public disclosures of a design commenced on 10 March 2022. Publications of a design by foreign design offices are not covered.

When the grace period was introduced, a prior use infringement exemption was introduced for third-party use during the grace period.

Where an application is for a design corresponding to an artistic work, and where the prior publication is of the artistic work, provisions in the legislation may preclude the prior publication from being novelty destroying.

Law stated - 1 September 2025

PROCEDURES

Application
What is the application process?

The application process for an Australian design registration commences with the filing of an application that includes:

- details of the applicant;
- details of the designer;
- a title or product name;
- a set of representations; and
- convention details (if any).

A Statement of Newness and Distinctiveness may also be included.

Neither a power of attorney nor a certified copy of the basic application is required; however, these may be requested after filing (although it would be quite rare).

Within about two to six months from filing, the application is subjected to a relatively straightforward formalities check to ensure enough information has been provided. If no issues are raised during the formalities check (or all issues are overcome), the design proceeds to registration.

The design registration will enjoy an initial five-year term from the Australian filing date, which may be extended for a further five years upon payment of a renewal fee.

Before a design registration can be enforced, it must be examined and certified (ie, considered new and distinctive). Examination is optional and can be requested any time during the term of a design registration. Examination typically occurs within three months of it being requested, and any issues raised during examination generally must be overcome within six months.

Law stated - 1 September 2025

Examination and appeals
How are the examination and appeals procedures conducted?

During a formalities check, an application for design registration is classified according to the nature of the product. Consideration is also given to whether the application contains more than one design. The formal requirements for the application form are also reviewed for compliance. If the formalities check raises no issues (or all issues are overcome), the application will proceed to registration.

Substantive examination of a design registration is voluntary and can be requested by the registered owner or a third party at any time. If a third party requests examination, they

must pay half the examination fee and the registered owner must pay the other half. If the registered owner does not pay the other half, the design registration may cease.

A design registration must be examined and certified (ie, the design passes examination and is considered new and distinctive) before it can be enforced. Assertions of infringement of an uncertified design registration should be avoided; such assertions would likely constitute unjustified threats under the Designs Act 2003.

Following examination, an Intention to Certify issues from the delegate to the registered owner of the design, any person entered as having an interest in the design and, if a third-party request for examination was filed, the third party that filed the request. The third party will be given an opportunity to be heard by filing a request within a set period (typically one month) if they disagree with the delegate's decision.

Law stated - 1 September 2025

Opposition

What are the opposition rules?

The Designs Act 2003 contains provisions for an interested party to be heard concerning certain decisions and to oppose amendments or time-extension requests.

There is no formal opposition process defined in the relevant legislation, and the Registrar determines the practice and procedure to be followed. However, the typical process is that after filing a notice of opposition, the matter proceeds to a hearing, with both parties having opportunities to make submissions. The hearing may be based on written submissions or an oral hearing requested, or both.

Law stated - 1 September 2025

Registration time frame

What are the registration time frames?

Registration of an Australian design application may be requested on filing or at a later date. If a request for registration is not filed within six months of the priority date, and the application has not been withdrawn, the request is deemed to have been made and the application will proceed to registration.

Following a request for registration, an Australian application for design registration will typically proceed to registration within about two months.

If a formalities objection is raised prior to registration, a two-month response period is provided.

A registered design cannot be legally enforced unless it is examined and certified (ie, the registered design passes examination and is considered new and distinctive).

Examination is optional and can be requested any time during the term of a design registration. Examination typically occurs within three months of it being requested, and any issues raised during examination generally must be overcome within 12 months.

Law stated - 1 September 2025

Removal from register
What instances does removal from the register occur?

Apart from challenges to ownership of the design based on entitlement issues, removal from the register typically occurs following examination if the design is not considered to be new and distinctive.

Law stated - 1 September 2025

ENFORCEMENT

Grounds for a claim
What are the key causes of action?

During the term of a design registration, the registered owner has the exclusive right to:

1. make or offer to make a product, in relation to which the design is registered, which embodies the design;
2. import such a product into Australia for sale, or for use for the purposes of any trade or business;
3. sell, hire or otherwise dispose of, or offer to sell, hire or otherwise dispose of, such a product;
4. use such a product in any way for the purposes of any trade or business;
5. keep such a product for the purpose of doing any of the things mentioned in item (3) or (4); and
6. authorise another person to do any of the things mentioned in items (1) to (5).

Infringement proceedings can be based on a violation of any of the above rights, with the exception being where the product is a component part (spare part) of a complex product and the use is for the purposes of the repair of the complex product to restore its overall appearance in whole or part.

Law stated - 1 September 2025

Procedures
What enforcement procedures are available?

Enforcement of design rights in Australia is via an infringement action before the Federal Court of Australia.

Law stated - 1 September 2025

Remedies

What remedies are available?

In Australia, remedies for infringement of a registered design include injunctions, damages or an account of profits.

Additional damages may be awarded having regard to the flagrancy of the infringement.

Unjustified threat provisions also exist that allow a threatened party to obtain a declaration that the threats are unjustified, an injunction against the continuation of the threats, and recovery of damages.

Law stated - 1 September 2025

Enforcement time frame

What are the time frames for the resolution of enforcement actions for registered and unregistered rights?

An enforcement action for infringement of a design registration is commenced with the Federal Court of Australia. Timing can vary widely, often depending on the specifics of the case. For example, in *GME Pty Ltd v Uniden Australia Pty Ltd* [2022] FCA 520, an interlocutory was initial sought and instead of granting injunctive relief the proceedings were brought to a final hearing in around six weeks with a decision issuing within a month.

Recent examples are as follows:

- Federal Court of Australia: in *GME Pty Ltd v Uniden Australia Pty Ltd* [2022] FCA 520, proceedings commenced on 11 March 2022, with the hearing being held on 19 April 2022, and a decision issued on 9 May 2022;
- Full Federal Court of Australia: in *State of Escape Accessories Pty Limited v Schwartz* [2022] FCAFC 63, the appeal was filed on 1 February 2021, with the hearing held on 23 August 2021 and the decision issued on 20 April 2022; and
- Designs Office: in the Designs Office hearing of *GEA Westfalia Separator Group GmbH* [2025] ADO 1 (17 June 2025), a hearing request was filed on 19 April 2024 with the hearing conducted on 18 March 2025 and the decision issuing on 17 June 2025.

Law stated - 1 September 2025

Recent cases

What key cases from the past 18 months should rights holders be aware of?

There were four notable cases concerning designs in the past 18 months in Australia.

GUIs and icons (still not allowable in Australia)

The Designs Office's decisions in two recent cases *DRiV IP, LLC* [2024] ADO 3 (3 October 2024)) and *GEA Westfalia Separator Group GmbH* [2025] ADO 1 (17 June 2025) have confirmed IP Australia's well-known position that GUIs and icons are not allowable in Australia.

The issues considered were whether the GUI would fall under the definition of 'a product' as appearing in the Designs Act 2003 and whether icons displayed on a device are considered as a product 'at rest'. The products concerned were 'electronic device including a display screen', and 'display screen' and 'screen display'. The Hearing Officer re-affirmed the previous decisions that GUIs are not defined as a 'product', as the word 'product' does not refer to non-physical things, such as icons or GUIs. Moreover, in GEA, the Hearing Officer noted that 'the present design does not disclose a product bearing visual features. It only discloses visual features'.

When considering the product 'at rest', it was stated that a non-permanent icon displayed on a device would cease to be visible when the device is in an 'off' state, and therefore the icon cannot be protected.

The cost of not engaging in proceedings

On a different note, the dispute in ***Rock Solid Industries International (Pty) Ltd v Ozi 4x4 Pty Ltd*** [2025] FCA 334 showed that abstaining from participation in infringement proceedings at the Federal Court of Australia resulted in an award of additional damages along with the general damages. As Ozi did not provide evidence of financial benefit from an infringing product, general damages could only be assessed based on reputational claim, rather than lost profit. In the outcome, Ozi may have paid higher damages award than they would have to pay if they had complied with the orders and produced evidence.

Entitlement, confidentiality, substantial similarity and unjustified threats

Watson Webb Pty Ltd v Comino [2025] FCA 871 (30 July 2025) deals with the above issues, among others.

In the 'Entitlement'section, the court considered which person created the designs (ie, who conceived the relevant shape, configuration, pattern or ornamentation of the integrated lockable handle visual feature), who reduced it to visible form, and the weight to be given to the internal threads as a design feature.

Factors considered included:

- whether work undertaken by one party travelled well beyond the work undertaken in the authorities presented;
- previous collaboration of two parties;
- whether there was evidence of 'a good deal of conversation' or 'a good deal of verbal instruction' between the parties; and
- specific evidence presented in progressing the design.

Confidentiality or whether disclosure of the design renders it a prior art

Specifically, the court considered whether a design disclosed through email communications and possibly to a third party placed the design into the prior art base.

It was concluded that a design drawing provided in email communications between the parties was not part of the prior art, as it was provided on confidential basis. Furthermore, disclosure of some views (one of a total of six) does not equal to the disclosure of the whole design due to the fact that to determine, inter alia, three-dimensional shape, configuration and features, one would need to have other views of the product.

Substantially similarity in overall impression when compared to prior art

Design features were given different weight. Specifically, features that were almost exclusively functional, and left little in terms of freedom to innovate (internal threads), were given comparatively reduced weight.

Another factor in determining substantial similarity was the preference of one experts' affidavits over another. The experts' evidence that addressed material visual differences between the overall appearance was preferred over the evidence that placed too much weight on the function of the visual features.

Unjustified threats

Interestingly, the judgement addresses an issue of unjustified threats for design infringement. A letter from legal representatives of the party alleging infringement included a request for specific undertakings by specified dates, an express reservation of the right to commence proceedings for design infringement and identified remedies that the court could order for design infringement, including additional damages. The court decided that a subsequent decision not to proceed with design infringement proceedings does not carry with it any necessary implication that threats made were unjustified.

Law stated - 1 September 2025

OWNERSHIP CHANGES AND RIGHTS TRANSFERS

Assignment and licensing

What are the rules surrounding assignment and licensing of design rights?

An assignment can be recorded by filing a request with supporting 'satisfactory evidence' of the assignment. The assignment must be in writing and signed by both the assignor and assignee.

An owner can grant licences to any number of people. Licences can be a sole licence (allowing the owner to also 'use' the design in addition to the licensee) or an exclusive licence (where the licensee has the exclusive right to 'use' the design). The Designs Act 2003 does not distinguish between these types of licences. When recording an interest, the design register will record the existence of a licence (and any limitations such as term or region) but not the type of licence.

Law stated - 1 September 2025

Licences of right

Are licences of right available?

A compulsory licence may be sought if, for a period of three years from the date of registration of the design:

- products embodying the design have not been made in Australia, to the extent that is reasonable in the circumstances of the case;
- the registered owner of the design has given no satisfactory reason for failing to exercise the exclusive rights in the design; and
- the applicant of the compulsory licence has tried for a reasonable period, but without success, to obtain authorisation from the registered owner to exploit the design.

Revocation of the licence may be sought after two years from the date of the licence.

Law stated - 1 September 2025

UPDATE AND TRENDS

Key developments and future prospects

What were the key judicial, legislative, regulatory and policy developments of the past year in relation to the protection and enforcement of designs? What are the prospects for future developments?

Legislative developments

In 2023, IP Australia sought views on proposals to expand the design registration system to include virtual, partial and incremental designs. The protection of virtual and partial designs was broadly supported by the stakeholders. Stakeholder support for preliminary designs was mixed. However, post-registration linking was broadly supported (ie, after registering the main design, the owner of a registered main design can link it to a subsequent design that has incremental changes to the main design). This ensures that publishing or using the main design does not make the subsequent design unprotectable. IP Australia has provided the stakeholder responses to the Australian government.

The government is considering legislation to implement the proposals. If legislation proceeds, further public consultation may take place, consistent with the government's legislation priorities.

After 20 years of negotiations, in November 2024 the Riyadh Design Law Treaty was agreed.

Australia's participation in this Treaty will be subject to further government consideration and the standard treaty-making process, including scrutiny by the Australian parliament.

Law stated - 1 September 2025