

## DESIGNS.

## No. 4 of 1906.

## An Act relating to Copyright in Industrial Designs.

[ Assented to 28th August, 1906.]

**B**E it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

## PART I.—INTRODUCTORY.

Short title.  
Commence-  
ment.  
Parts.

1. This Act may be cited as the *Designs Act* 1906.
2. This Act shall commence on a day to be fixed by proclamation.\*
3. This Act is divided into Parts as follows :—

PART I.—Introductory.

PART II.—Administration.

Division 1.—The Minister, the Registrar, and the Designs Office.

Division 2.—The Transfer of the Administration of the State Designs Acts.

PART III.—Copyright in Designs.

PART IV.—Registration of Designs.

PART V.—Infringement of Copyright in Designs.

PART VI.—The Register of Designs.

PART VII.—Miscellaneous.

Definitions.

4. In this Act, unless the contrary intention appears—
  - “ Article ” means any article or substance ;
  - “ Design ” means an industrial design applicable, in any way or by any means, to the purpose of the ornamentation, or pattern, or shape, or configuration, of an article, or to any two or more of those purposes ;
  - “ The Law Officer ” means the Attorney-General or the Crown Solicitor of the Commonwealth ;
  - “ The Register ” means the Register of Designs under this Act ;
  - “ The Registrar ” means the Registrar of Designs or a Deputy Registrar of Designs under this Act ;
  - “ State Designs Act ” means any State Act relating to the registration of designs ;
  - “ The Supreme Court ” means the Supreme Court of a State ;
  - “ This Act ” includes all regulations made thereunder.

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\* Proclaimed to commence 1st January, 1907. See *Gazette*, 2nd January, 1907.

5. A design shall be deemed to be applied to an article when—

- (a) the article is made from or in accordance with the design ;  
or  
(b) the design is applied, in any way or by any means, to the purpose of the ornamentation, or pattern, or shape, or configuration, of the article, or to any two or more of those purposes.

When design deemed to be applied to articles.

6.—(1.) After the commencement of this Act, an application for the registration of a design shall not be receivable under any State Designs Act, unless it is made by virtue of a right acquired before the commencement of this Act in pursuance of an International Convention for the protection of industrial property.

No new registrations under State Acts.  
Cf. No. 20, 1905, s. 6 (c).

(2.) This Act shall not affect any proceedings pending under any State Designs Act, nor, subject to sub-section (1) of this section, any right or liability acquired or incurred before the commencement of this Act.

Saving of rights under State Designs Acts.  
Ib. s. 5.

## PART II.—ADMINISTRATION.

### DIVISION 1.—THE MINISTER, THE REGISTRAR, AND THE DESIGNS OFFICE.

7. The Minister for Trade and Customs, or the Minister for the time being administering the Department of Trade and Customs, shall be charged with the execution of this Act.

Administration of Act.  
Ib. s. 10.

8.—(1.) There shall be a Registrar of Designs.

Registrar.

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

Ib. s. 11.

(3.) The Governor-General may appoint one or more Deputy Registrars of Designs, who shall, subject to the control of the Registrar of Designs, have all the powers conferred by this Act on the Registrar.

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.

Designs Office.  
Ib. s. 12.

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

Seal of Designs Office.  
Ib. s. 13.

### DIVISION 2.—THE TRANSFER OF THE ADMINISTRATION OF THE STATE DESIGNS ACTS.

11. The Governor-General may by proclamation declare that, on a date specified in the proclamation, the administration of the State Designs Acts of all or any of the States shall be transferred to the Commonwealth, and thereupon—

Proclamation of transfer of administration.

- (a) the State Designs Acts of each State referred to in the proclamation shall, so far as they relate to the registration of designs, cease to be administered by the State, and be thereafter administered by the Commonwealth, and the Registrar shall collect for each State the fees which become payable thereunder ; and

Effect of transfer of administration.  
No. 20, 1905, s. 14.

- (b) all powers and functions under any State Designs Act vested in the Governor of the State, or in the Governor with the advice of the Executive Council of the State, or in any Minister officer or authority of the State shall, so far as is necessary for carrying out this section, vest in the Governor-General, or in the Governor-General in Council, or in the Minister officer or authority exercising similar powers under the Commonwealth, as the case requires or as is prescribed ; and
- (c) all records registers deeds and documents, relating to the registration of designs, which are lodged in or belong to the office in which designs are registered and which are vested in or subject to the control of the State, shall, by force of this Act, be vested in and made subject to the control of the Commonwealth.

### PART III.—COPYRIGHT IN DESIGNS.

Copyright in designs.  
Cf. No. 25, 1905, s. 13.

12.—(1.) Copyright in a design means the exclusive right to apply the design, or authorize another person to apply the design, to the articles in respect of which it is registered.

(2.) Copyright shall subsist in every design which is registered under this Act.

Term of copyright.  
Cf. 46-7 Vict., c. 57, s. 50.  
See s. 26.

13. The copyright in a design shall begin on the date on which the registration of the design takes effect, and shall continue so long as the registration of the design remains in force.

First owner of design.  
Cf. *ib.* s. 61.

14.—(1.) The author of a design shall be the first owner of the design, and shall be the person entitled to make application for the registration of the design.

(2.) If a design is made on behalf of any person for valuable consideration, the person on whose behalf the design is made shall be deemed to be the author of the design.

(3.) The author of an unregistered design may, by instrument in writing, assign the design and the right to make application for the registration of the design.

Owner of copyright.

15. The person who is registered as the owner of a registered design shall be the owner of the copyright in the design.

Copyright to be personal property.  
Cf. No. 25, 1905, s. 25.

16. A registered design shall be personal property, and shall be capable of assignment and of transmission by operation of law, but no assignment of the design shall be valid unless it is in writing, and signed by the registered owner of the design.

### PART IV.—REGISTRATION OF DESIGNS.

Classes in which designs may be registered.  
Cf. No. 20, 1905, s. 23.

17. Any new and original design, which has not been published in Australia before the lodging of an application for its registration, may be registered under this Act in respect of all or any of the articles included in one or more of the classes in the prescribed classification.

18.—(1.) Any person, claiming to be the owner of a design which may be registered under this Act, may make application, in accordance with the prescribed form, for the registration of the design.

Application for registration of a design.

Cf. 46-7 Vict., c. 57 s. 47.

(2.) The application must be lodged by being left at or sent by post to the Designs Office or a sub-office.

(3.) The application must be accompanied by the prescribed fee.

(4.) A separate application must be made in respect of each class in which the applicant desires the design to be registered.

19. After an application for the registration of a design has been lodged, the design may be published and used without prejudice to the validity of the registration of the design.

Use or publication of design after application.

Cf. No. 21, 1903, s. 53.

Copies of design to be furnished.

20. The applicant shall as prescribed furnish to the Registrar the prescribed number of drawings, photographs, tracings, exact representations, or specimens of the design.

21. If the applicant for the registration of a design dies while the application is pending, the proceedings on the application may be continued by his legal representative.

Death of applicant.

Cf. No. 20, 1905, s. 109.

22. The Registrar may permit the amendment of the application in any particular on such terms as he thinks fit.

Amendment of application.

23. 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 the owner thereof, he may, subject to this Act, register the design.

Registrar may register design.

24. The Registrar may refuse to register any design, either generally or as regards any particular article or class or classes of articles in respect of which registration is applied for.

Registrar may refuse to register designs.

Provided that the Registrar shall not refuse to register any design until the applicant has been given an opportunity of being heard.

Cf. 46-7 Vict., s. 47 (6).

25.—(1.) The applicant may, within the time and in the manner prescribed, appeal to the Law Officer against any decision of the Registrar refusing any application for the registration of a design.

Appeal to Law Officer.

Cf. ib. s. 47 (6) (7).

(2.) The Law Officer shall hear the appeal, and shall decide whether the application ought to be granted or refused.

(3.) The applicant may, within the time and in the manner prescribed, appeal to the Supreme Court against any decision of the law officer refusing any application for the registration of a 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.

Certificate of registration of design.

Cf. 46-7 Vict., c. 57 s. 49.

(2.) The registration shall take effect as from the date of the lodging of the application for registration, and shall, subject to this Act, remain in force for a period of five years from that date.

(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.

Cf. S.A. No. 95, 1878, s. 8.

27. After a design has been registered, the application for registration of the design and the drawings, photographs, tracings, representations, or specimens of it furnished to the Registrar shall, subject to the regulations, be open to public inspection.

Design to be used in manufacture in Australia.

Cf. 46-7 Vict., c. 57 s. 54.  
Cf. No. 21, 1903, s. 87.

28. The owner of a registered design shall, within two years after registration, substantially use the design or cause it to be substantially used in Australia in the manufacture of articles, and if he fails to do so the copyright in the design shall cease.

Provided that if such design is used in any manufacture abroad the period aforesaid shall be limited to six months.

Duty of owner of registered design.

Cf. 46-7 Vict., c. 57 ss. 50, 51.

29.—(1.) The owner of a registered design shall cause each article to which the design is applied to be marked, before delivery for sale, with the prescribed mark to denote that the design is registered.

Penalty : Twenty pounds.

(2.) It shall be a defence to a prosecution under this section if the defendant proves to the satisfaction of the Court that he took all proper steps to insure the marking of the article in accordance with sub-section (1) of this section.

#### PART V.—INFRINGEMENT OF COPYRIGHT IN DESIGNS.

Infringement of copyright in designs.

Cf. ib. s. 58.

30. A person shall be deemed to infringe the copyright in a registered design if, whilst the copyright continues, he, without the licence or authority of the owner of the copyright—

- (a) applies the design or any fraudulent or obvious imitation of it to any article in respect of which the design is registered; or
- (b) sells, or offers or keeps for sale, any article to which the design or any fraudulent or obvious imitation of it has been applied in infringement of the copyright in the design.

Remedies for infringement of designs.

Cf. ib. s. 59.

31. If any person infringes the copyright in a registered design, the owner of the design may maintain against him an action for damages or penalties or for an injunction or for any of those remedies.

Damages not to be awarded unless infringement knowingly committed.

Cf. ib. ss. 58, 59.

Provided that no damages or penalty shall be awarded against any person for the infringement, unless the Court before which the action is tried is satisfied that the defendant committed the infringement knowingly, or after notice that the copyright in the design subsisted.

Penalty for knowingly infringing design.

Cf. ib. s. 58.

32.—(1.) A person shall not knowingly infringe the copyright in a registered design.

Penalty : Fifty pounds.

(2.) Any penalty under this section may be sued for and recovered for his own use by the registered owner of the design.

#### PART VI.—THE REGISTER OF DESIGNS.

Register of Designs.

Cf. ib. s. 55.

33. 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.

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

Trusts not to be noticed.  
Cf. 46-47 Vict.,  
c. 57 s. 85.

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

Inspection of register.  
Ib. s. 88.

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.

False entries in register.  
Ib. s. 93.

Penalty : Three years' imprisonment.

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

Correction of register.  
Ib. s. 91.

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

(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.

38. Subject to the provisions of this Act, where a person becomes entitled by assignment or transmission to a registered design, the Registrar shall on request made in the prescribed manner, and on proof of title to his satisfaction, cause the name of the person to be entered on the register as owner of the design.

Registration assignments &c.  
Cf. 46-7 Vict.,  
c. 57 s. 87.

39.—(1.) Subject to this Act, the Supreme Court, on the application of any person aggrieved, may order the rectification of the register by—

Rectification of register by Court.  
Cf. 46-7 Vict.,  
s. 90.  
51-2 Vict.,  
c. 50 s. 23.

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

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

(3.) An appeal shall lie to the High Court from any order made by a Supreme Court under this section.

Registrar to carry out orders for rectification.

40. The Registrar, upon being served with any order of the Court for the rectification of the register by the party seeking to enforce it, shall cause the rectification to be made accordingly.

#### PART VII.—MISCELLANEOUS.

Governor-General may make regulations.  
No 21, 1903, s. 103.

41. The Governor-General may make regulations, not inconsistent with this Act, prescribing the fees to be paid under this Act and all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to the Designs Office.

False representation to Registrar or officer.  
*Patents Act* 1903, s. 112.

42. A person shall not wilfully make any false statement or representation to deceive the Registrar or any officer in the execution of this Act, or to procure or influence the doing or omission of anything in relation to this Act or any matter thereunder.

Penalty : Three years' imprisonment.

Applications and documents by post.  
46-7 Vict., c. 57 s. 97.

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 recognise agents.  
No. 20, 1905, s. 110.

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 industrial 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 : Twenty pounds.

(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.

Aiders and abettors.

46. Whoever aids, abets, counsels, or procures, or by act or omission is in any way knowingly directly or indirectly concerned in, the commission of any offence against this Act, shall be deemed to have committed such offence, and shall be punishable accordingly.

Exhibiting of designs at official or international exhibitions.  
Cf. 46-7 Vict., c. 57 s. 57.

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 recognised 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 copyright 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 recognised international exhibition, shall, for the purposes of this section, be conclusive evidence that the exhibition is an official exhibition, or an officially recognised international exhibition, as the case requires.

48.—(1.) If the King is pleased to apply to the Commonwealth any law of the United Kingdom for carrying into effect any arrangement made with the Government of any foreign State for the mutual protection of designs, then any person who has applied for protection for any design in the United Kingdom or the Isle of Man, or in any foreign State with which the arrangement has been made, shall be entitled to registration of his design under this Act in priority to other applicants, and such registration shall have the same date as the date of the original application in the United Kingdom or the Isle of Man or such foreign State, as the case may be :

International arrangements for protection of designs.  
Cf. 46-7 Vict., c. 57 s. 103.  
Cf. *Patents Act* 1903, s. 121.

Provided that the application shall be made within six months from such person applying for protection in the United Kingdom or the Isle of Man or the foreign State with which the arrangement is in force :

Provided also that nothing in this section contained shall entitle the owner of a design to recover damages for infringements happening prior to the date of the actual registration of the design in the Commonwealth.

(2.) The use of the design or the publication of a description or representation of it in the Commonwealth during the period aforesaid shall not invalidate its registration.

(3.) The application for the registration of a design under this section must be made in the same manner as an ordinary application under this Act.

(4.) The provisions of this section shall, in the case of foreign States, apply only to those foreign States with respect to which His Majesty, by Order in Council, has before or after the commencement of this Act declared the provisions of the aforesaid law to be applicable, and so long only in the case of each such State as the order continues in force with respect to that State.

49.—(1.) Where it is made to appear to the Governor-General that any British possession has made satisfactory provision for the protection in that possession of designs registered in the Commonwealth, the Governor-General may by order apply all or any of the provisions of the last preceding section, with such variations or additions (if any) as to him seem fit, to designs registered in that British possession.

Provision for intercolonial, &c., arrangements.  
Cf. 46-7 Vict., c. 57 s. 104.  
Cf. *Patents Act* 1903, s. 122.

(2.) An order under this section shall, from a date to be mentioned therein, take effect as if its provisions were contained in this Act, but it shall be lawful for the Governor-General to revoke any such order.