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Designs Amendment Regulations 2004 (No. 2)¹

Statutory Rules 2004 No. ²

325

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Designs Act 2003*.

Dated 18 NOV 2004 2004

PM Jeffery

Governor-General

By His Excellency's Command

IAN MACFARLANE

Minister for Industry, Tourism and Resources

1 Name of Regulations

These Regulations are the *Designs Amendment Regulations 2004 (No. 2)*.

2 Commencement

These Regulations commence on the date of their notification in the *Gazette*.

3 Amendment of *Designs Regulations 2004*

Schedule 1 amends the *Designs Regulations 2004*.

Schedule 1 Amendments

(regulation 3)

[1] Subregulation 1.04 (1), after definition of *Official Journal*

insert

old Act means the *Designs Act 1906*.

old Regulations means the *Designs Regulations 1982*.

transitional application has the meaning given by subregulation 12.03 (6).

[2] Subregulation 3.04 (1), at the foot

insert

Note For a design application in respect of a design excluded from certain transitional applications, see also regulation 12.03.

[3] Regulation 3.08, at the foot

insert

Note This regulation also applies to a design excluded from certain transitional applications, see regulation 12.03.

[4] Paragraphs 3.14 (1) (a) and (b)

substitute

- (a) if the design is an excluded design — the period:
- (i) starting on the day when the request to exclude the design is filed; and
 - (ii) ending on the day when the application is filed; or
- (b) if the design is a design mentioned in section 55 of the Act, and the period of 6 months from the priority date of the design has expired when an application is filed as mentioned in that section — the day when the application is filed; or

[5] Subregulation 3.14 (1), at the foot

insert

Note Paragraph 3.14 (1) (a) also applies to a design excluded from certain transitional applications, see regulation 12.03.

[6] Subregulation 4.01 (1)

omit

Act.

insert

Act or in subregulation 12.03 (2).

[7] Subregulation 4.04 (1), at the foot

insert

Note For a design application in respect of a design excluded from certain transitional applications, see also regulation 12.03.

[8] Subregulation 4.05 (1), at the foot

insert

Note For a design application in respect of a design excluded from certain transitional applications, see also regulation 12.03.

[9] Subregulation 4.08 (1), note

substitute

Note 1 A *statement of newness and distinctiveness* is described in paragraph 19 (2) (b) of the Act.

Note 2 For a design application in respect of a design excluded from certain transitional applications, see also regulation 12.03.

[10] Subregulation 4.08 (2), note

substitute

Note 1 A *statement of newness and distinctiveness* is described in paragraph 19 (2) (b) of the Act.

Note 2 For a design application in respect of a design excluded from certain transitional applications, see also regulation 12.03.

[11] Subregulation 11.09 (1)

omit

14 or 15

insert

14, 15 or 16

[12] After regulation 12.02

insert

12.03 Designs excluded from transitional applications that are not converted applications

- (1) This regulation applies if:
 - (a) 1 or more designs are disclosed in a transitional application; and

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- (b) the transitional application is amended under section 22B of the old Act to exclude 1 or more of those designs; and
 - (c) the transitional application is not a converted application; and
 - (d) before the registration, or the refusal of the registration, of the design or designs in the transitional application, the applicant files a design application under section 21 of the Act in respect of 1 or more of the designs excluded from the transitional application (the *excluded transitional designs*).

Note For a transitional application that is a converted application, see section 160 of the Act.

- (2) A design application in respect of excluded transitional designs must include a request for registration or publication of all the designs disclosed in the application.
- (3) In applying these Regulations (other than regulations 1.04 and 3.02) in relation to an excluded transitional design:
 - (a) a reference to an excluded design is taken to be a reference to the excluded transitional design; and
 - (b) a reference to an initial application is taken to be a reference to the transitional application; and
 - (c) a reference to ‘the design number that was allocated to the excluded design in the initial application’ is taken to be a reference to ‘the application number of the transitional application in which the excluded transitional design was disclosed’; and
 - (d) a reference to ‘a design application mentioned in subsection 23 (2) of the Act’ is taken to be a reference to ‘a design application mentioned in paragraph 12.03 (1) (d)’.
- (4) Subregulation (5) applies in relation to a design application mentioned in paragraph (1) (d) that was filed before this regulation commences.

- (5) If a request for registration or publication of each design disclosed in the design application is filed within the period prescribed under these Regulations, as in force immediately before this regulation commences:
- (a) the request is taken to have been filed on the day when the design application was filed; and
 - (b) the design application is taken to have complied with subregulation (2).
- (6) In this regulation:
transitional application means an application for registration of a design that was made under the old Act before 17 June 2004.

12.04 Protection and compensation provisions — transitional

- (1) Subsections 18 (3) and 18 (4) of the old Act, and regulations 29AA, 29A and 29B of, and Schedule 1 to, the old Regulations, are taken to have effect, in relation to an application for a licence under subregulation 29AA (2) of the old Regulations, as if those provisions had not been repealed.
- (2) Subsection 27B (7) of the old Act, and regulations 29, 29A and 29B of, and Schedule 1 to, the old Regulations, are taken to have effect, in relation to an application for a licence under subregulation 29 (2) of the old Regulations, as if those provisions had not been repealed.

[13] Schedule 4, item 12, column 3, paragraph (a)

omit

9 or 10

insert

10 or 11

[14] Schedule 4, after item 15*insert*

- 16 Filing a request for certification of a document \$25

Notes

1. These Regulations amend Statutory Rules 2004 No. 117.

2. Notified in the *Commonwealth of Australia Gazette* on / 2004.

25 November