



Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2021

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 11 November 2021

David Hurley
Governor-General

By His Excellency's Command

Angus Taylor
Minister for Industry, Energy and Emissions Reduction

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1 Name

This instrument is the *Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2021*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	13 November 2021
2. Schedule 1	At the same time as Schedule 1 to the <i>Designs Amendment (Advisory Council on Intellectual Property Response) Act 2021</i> commences.	10 March 2022
3. Schedule 2	At the same time as Schedule 3 to the <i>Designs Amendment (Advisory Council on Intellectual Property Response) Act 2021</i> commences.	10 March 2022
4. Schedule 3	The day after this instrument is registered.	13 November 2021
5. Schedule 4	At the same time as Schedule 6 to the <i>Designs Amendment (Advisory Council on Intellectual Property Response) Act 2021</i> commences.	10 March 2022
6. Schedule 5	The day after this instrument is registered.	13 November 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Designs Act 2003*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Grace period

Designs Regulations 2004

1 Chapter 2

Repeal the Chapter.

Schedule 2—Registration of designs—removal of publication option

Designs Regulations 2004

1 Subparagraph 3.02(b)(ii)

Omit “, or publication under section 57 of the Act,”.

2 Paragraphs 3.13(1)(b) and (2)(b)

Omit “or published”.

3 Regulation 3.14

Repeal the regulation, substitute:

3.14 Period within which application lapses

For the purposes of subsection 33(1) of the Act, the prescribed period is 2 months from the date of the first notification given by the Registrar under section 41 of the Act in relation to the design or designs in respect of which registration is requested.

4 Paragraph 3.15(b)

Omit “or published”.

5 Chapter 4 (heading)

Repeal the heading, substitute:

Chapter 4—Registration of designs

6 Part 4.2 of Chapter 4 (heading)

Repeal the heading, substitute:

Part 4.2—Requests for registration

7 Regulation 4.01 (heading)

Repeal the heading, substitute:

4.01 Requests for registration

8 Subregulation 4.01(1)

Repeal the subregulation.

9 Regulations 4.02 and 4.03

Repeal the regulations.

10 Part 4.4 of Chapter 4

Repeal the Part.

11 Regulation 8.02 (heading)

Repeal the heading, substitute:

8.02 Period within which designs must be registered after prohibition order revoked

12 Regulation 11.03

Repeal the regulation, substitute:

11.03 Failure to pay—fee for filing a request to amend a design application to identify further designs

- (1) This regulation applies if:
 - (a) the fee mentioned in item 2 in Schedule 4 is not paid on the day when it is payable; and
 - (b) within 1 month after the day the request is made, the Registrar invites the applicant to pay the fee within 7 days after the day of the invitation; and
 - (c) the fee is not paid within that 7-day period.
- (2) The request is taken not to have been filed.

13 At the end of regulation 11.13

Add:

- (5) For the purposes of the definition of *relevant act* in subsection 137(7) of the Act, a prescribed action is:
 - (a) withdrawing a design application under subsection 32(1) of the Act; or
 - (b) withdrawing a design under subsection 32(2) of the Act from a design application.

14 Clause 1 of Schedule 4 (table item 2)

Repeal the item, substitute:

- 2 Filing a request under section 28 of the Act to amend a design application to identify further designs disclosed in the application:
 - (a) if the application was filed by preferred means; or
\$250 for each further design covered by the request
 - (b) if the application was filed by another means
\$450 for each further design covered by the request

Schedule 3—Priority date where application for protection made in a Convention country

Designs Regulations 2004

1 Subregulation 3.06(2)

Repeal the subregulation, substitute:

- (2) For the purposes of paragraph 27(1)(b) of the Act, if the design application is filed within 6 months after the date on which the basic application was made, the prescribed date is the day when the basic application was made.

Schedule 4—Formal requirements

Designs Regulations 2004

1 Subregulation 1.04(1) (definition of *approved form*)

Repeal the definition, substitute:

approved form, in relation to a provision of these Regulations, means a form approved in an instrument under subregulation (1A) for the purposes of that provision.

2 After subregulation 1.04(1)

Insert:

(1A) The Registrar may, in writing, approve a form for the purposes of a provision of these Regulations.

3 After paragraph 4.04(1)(a)

Insert:

(aa) the design application does not contain any scandalous matter or matter that might reasonably be taken to be scandalous; and

4 Subparagraph 4.04(1)(e)(i)

Omit “of the size required under paragraph 1(1)(e) of Schedule 2”, substitute “of international sheet size A4”.

5 Paragraph 4.04(1)(f)

Omit “design; and”, substitute “design.”.

6 Paragraph 4.04(1)(g)

Repeal the paragraph (not including the note).

7 After paragraph 4.05(1)(a)

Insert:

(aa) the design application does not contain any scandalous matter or matter that might reasonably be taken to be scandalous; and

8 Subparagraph 4.05(1)(e)(i)

Omit “of the size required under paragraph 1(1)(e) of Schedule 2”, substitute “of international sheet size A4”.

9 Paragraph 4.05(1)(g)

Omit “application; and”, substitute “the application.”.

10 Paragraph 4.05(1)(h)

Repeal the paragraph (not including the note).

11 Regulation 11.18A (heading)

Repeal the heading, substitute:

11.18A Publication of notices in the Official Journal

12 Regulation 11.18A

Omit “and 144C(5)”, substitute “, 144C(5) and 149A(2)”.

13 Subregulation 11.27(2)

Omit “substantially comply with Schedule 2”, substitute “comply with the formal requirements determined in an instrument under section 149A of the Act”.

14 Paragraph 11.27(3)(a)

Omit “comply, or is not in accordance”, substitute “comply with subregulation (2) or is not in accordance with the approved form”.

15 Paragraph 11.27(3)(b)

Omit “comply, or will be in accordance”, substitute “comply with subregulation (2) or will be in accordance with the approved form”.

16 At the end of subregulation 11.27(3)

Add:

; or (c) treat the document as complying with subregulation (2) or as being in accordance with the approved form.

17 Schedule 2

Repeal the Schedule.

Schedule 5—Application and transitional provisions

Designs Regulations 2004

1 In the appropriate position in Chapter 12

Insert:

Part 4—Amendments made by the Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2021

12.09 Registration of designs—removal of publication option

- (1) The amendment of subparagraph 3.02(b)(ii) made by Schedule 2 to the *Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2021* applies in relation to initial applications filed under section 21 of the Act on or after the commencement of that Schedule.
- (2) The amendment of regulation 3.13, the repeal and substitution of regulation 3.14, the amendments of regulations 3.15 and 4.01, the repeal of regulations 4.02 and 4.03 and of Part 4.4 of Chapter 4, the repeal and substitution of regulation 11.03, the amendment of regulation 11.13 and the repeal and substitution of item 2 of the table in clause 1 of Schedule 4 made by Schedule 2 to the *Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2021* apply in relation to design applications filed under section 21 of the Act on or after the commencement of that Schedule.

12.10 Priority date where application for protection made in a Convention country

The amendment of regulation 3.06 made by Schedule 3 to the *Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2021* applies in relation to basic applications made on or after the commencement of this regulation.

12.11 Formal requirements

- (1) A form approved by the Registrar and in force immediately before the commencement of Schedule 4 to the *Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2021* for the purposes of a provision of these Regulations has effect on and after that commencement as if it were a form approved by the Registrar in an instrument under subregulation 1.04(1A) for the purposes of that provision.
- (2) The amendments of regulations 4.04 and 4.05 and the repeal of Schedule 2 (so far as it relates to those regulations) made by Schedule 4 to the *Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2021* apply in relation to design applications filed under section 21 of the Act on or after the commencement of Schedule 4 to the *Designs*

*Amendment (Advisory Council on Intellectual Property Response)
Regulations 2021.*

- (3) The amendments of regulation 11.27 and the repeal of Schedule 2 (so far as it relates to that regulation) made by Schedule 4 to the *Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2021* apply in relation to a document filed at the Designs Office on or after the commencement of Schedule 4 to the *Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2021*.