



## Designs Regulations 2004

Statutory Rules 2004 No. <sup>1</sup>

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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 2004

Governor-General

By His Excellency's Command

**[DRAFT ONLY – NOT FOR SIGNATURE]**

Minister for Industry, Tourism and Resources

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**DRAFT ONLY**

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## Part 1                      **Introductory**

### 1.01      **Name of Regulations**

These Regulations are the *Designs Regulations 2004*.

### 1.02      **Commencement**

These Regulations commence on the commencement of sections 3 to 161 of the *Designs Act 2003*.

**Instructor**    Unless you instruct us otherwise, OLD will gazette regulations 5 working days after an Executive Council meeting. We will table them soon after, usually on the next sitting day after gazettal. Requests for earlier gazettal or urgent tabling must be received by the OLD Publication Officer at least 4 working days before the Executive Council meeting.

### 1.03      ***Designs Regulations 1982 — repeal***

The following Statutory Rules are repealed:

- 1982 No. 72
- 1984 No. 256
- 1986 No. 263
- 1988 No. 103
- 1989 Nos. 95 and 313
- 1990 Nos. 29, 239 and 240
- 1991 Nos. 65 and 455
- 1992 Nos. 149, 445 and 452
- 1993 Nos. 114 and 342
- 1994 Nos. 180 and 315
- 1995 Nos. 19 and 426
- 1996 No. 270
- 1997 No. 344
- 1998 Nos. 259, 344 and 347
- 1999 No. 348
- 2001 No. 97
- 2002 Nos. 173 and 316

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- 2004 No. 22.

#### 1.04 Interpretation

- (1) In these Regulations:

*Act* means the *Designs Act 2003*.

*approved form*, for a provision in which the expression appears, means a form approved by the Registrar for that provision.

*basic application* has the meaning given by subregulation 3.06 (1).

*designer* has the same meaning as in subsection 13 (1) of the Act.

*excluded design* has the same meaning as in section 23 of the Act.

*initial application* has the same meaning as in section 23 of the Act.

*Official Journal* means the *Official Journal of Designs* periodically published by the Registrar.

- (2) For these Regulations, a document is taken to be in the approved form if it contains all the information that the form requires.
- (3) A reference in these Regulations to:
- (a) the giving of a notice or other document to the Registrar;  
or
  - (b) the making of a request or an application to the Registrar;  
includes a reference to the filing of the notice, document, request or application.

#### 1.05 Convention countries

For the definition of *Convention country* in section 5 of the Act, each country mentioned in Schedule 1 is declared to be a Convention country for the purposes of the Act.

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## Part 2                      Design rights, ownership and registrable designs

### 2.01      Certain things to be disregarded in deciding whether design is new and distinctive

- (1) For paragraph 17 (1) (a) of the Act, a prescribed circumstance is the publication or use of the design at:
  - (a) an official or officially recognised international exhibition within the meaning of:
    - (i) Article 11 of the Paris Convention for the Protection of Industrial Property done at Paris on 20 March 1883, as in force for Australia on the commencement of this subregulation; or
    - (ii) Article 1 of the Convention relating to International Exhibitions done at Paris on 22 November 1928, as in force for Australia on the commencement of this subregulation; or
  - (b) an international exhibition recognised by the Registrar by notice published in the *Official Journal* before the exhibition begins.
- (2) The circumstance mentioned in subregulation (1) is a prescribed circumstance only if, at the time a design application is made in respect of the design:
  - (a) a notice, stating that the design has been exhibited, has been filed; and
  - (b) a document, issued by the authority responsible for the exhibition, that:
    - (i) identifies the design and the exhibition; and
    - (ii) states the date of opening of the exhibition; and
    - (iii) if the first publication or use of the design did not take place on that date — states the date when the first publication or use took place;has been filed.
- (3) For subsection 17 (1) of the Act, the prescribed period is 6 months from the date when the first publication or use of the design took place.

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## **Part 3                      Design applications**

### **Division 3.1              Applications**

#### **3.01              Minimum filing requirements**

For subsection 21 (2) of the Act, the following requirements are prescribed:

- (a) the application must include information that indicates that what is filed is intended to be a design application;
- (b) the application must include information that:
  - (i) allows the identity of the applicant to be established; and
  - (ii) allows the applicant to be contacted;
- (c) the application must include a representation, or information that appears to be a representation, of the design.

#### **3.02              Applications covering excluded designs**

For subsection 23 (2) of the Act, the prescribed period:

- (a) begins immediately after the amendment of the initial application under section 28 of the Act to exclude the excluded design or designs; and
- (b) ends immediately before the earlier of:
  - (i) the lapse or withdrawal of the initial application; and
  - (ii) the registration, or publication under section 57 of the Act, of a design disclosed in the initial application.

#### **3.03              Notice — minimum filing requirements**

- (1) For subsection 24 (3) of the Act, a notice under subsection 24 (1) or (2) of the Act must be sent to:
  - (a) if the applicant has given to the Registrar an address for service — that address; or
  - (b) in any other case — any other contact address given by, or obtained from, the applicant.

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- (2) A notice under subsection 24 (2) of the Act must:
    - (a) identify each minimum filing requirement that has not been met; and
    - (b) include a direction that the applicant file, within 2 months from the date of the notice, the additional information required.
  - (3) If the minimum filing requirements are not met within the period mentioned in paragraph (2) (b), the application is taken never to have been filed.

### **3.04 Publication of receipt of application**

- (1) For section 25 of the Act, the details prescribed in relation to each design application that meets the minimum filing requirements are the following details for each design disclosed in the application:
  - (a) the design number;
  - (b) the name of the applicant or the entitled person;
  - (c) the filing date of the application;
  - (d) the following details, if given in the application:
    - (i) details about any basic application made in respect of the design;
    - (ii) details about any initial application;
    - (iii) the product or products to which the design relates.
- (2) The Registrar must publish the details in the *Official Journal*.

### **3.05 Filing date**

For section 26 of the Act, the filing date of a design application is the day when the application meets the minimum filing requirements.

*Note* For the filing date of a converted application, see section 160 of the Act.

### **3.06 Priority date — designs disclosed in basic applications**

- (1) In this regulation:

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***basic application***, in respect of a design, means an application for protection of the design, being an application that is made in a Convention country in accordance with these Regulations.

- (2) This regulation applies to a design in respect of which a basic application has been made before the design application first disclosing the design was filed.
- (3) For 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, by:
  - (a) the applicant in the basic application; or
  - (b) the applicant's assignee; or
  - (c) the legal personal representative of the applicant or of the applicant's assignee;the prescribed date is the day when the basic application was made.
- (4) If a copy of the basic application is not filed within 2 months after the Registrar has made a request (if any) for a copy, subregulation (3) is taken not to apply to the design.

*Note* Under regulation 10.16, a document that is not in English must be accompanied by a verified translation.

- (5) For paragraph 27 (1)(b) of the Act, if subregulation (3) does not apply to the design, the prescribed date is the filing date of the design application.
- (6) If 2 or more basic applications have been made in 1 or more Convention countries, a reference to the basic application in subregulation (3) is taken to be a reference to the earlier or earliest of those applications.

*Note* Certain applications are to be disregarded for the purpose of this regulation — see regulation 3.07.

- (7) For subregulation (1), an application for protection in respect of a design is made in a Convention country:
  - (a) if:
    - (i) an application for protection in respect of the design has been made under the Hague Agreement Concerning the International Deposit of Industrial

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- Designs, done at The Hague on 6 November 1925; and
- (ii) the application sought protection in the Convention country; or
- (b) if:
- (i) an application for protection in respect of the design has been made under the Benelux Designs Convention, done at Brussels on 25 October 1966 (the *Benelux Convention*); and
  - (ii) the Convention country is a State (however described) that has consented to be bound by the Benelux Convention and for which the Benelux Convention is in force; or
- (c) if:
- (i) an application for protection in respect of the design has been made under the Treaty Establishing the European Community, done at Rome on 25 March 1957; and
  - (ii) the Convention country is a State (however described) that has consented to be bound by the Treaty and for which the Treaty is in force.

*Note* For the priority date of a converted application, see section 160 of the Act.

### **3.07 Certain basic applications to be disregarded**

- (1) This regulation applies if:
  - (a) an application for protection in respect of a design has been made in a Convention country in accordance with these Regulations; and
  - (b) the application has been withdrawn, abandoned or refused without becoming open to public inspection; and
  - (c) the application has not been used as the basis for claiming a right of priority in a Convention country under the law of that country corresponding to regulation 3.06; and
  - (d) a later application for protection in respect of the design has been made by the same applicant in the Convention country in which the earlier application was made.

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- (2) The applicant may request the Registrar to disregard the earlier application for the purpose of identifying the basic application referred to in subregulation 3.06 (3).
  - (3) If the applicant makes a request under subregulation (2):
    - (a) the Registrar must disregard the earlier application for that purpose; and
    - (b) neither the applicant nor any other person is capable of making use of the earlier application for that purpose.

### **3.08 Priority date — excluded designs**

For paragraph 27 (1) (c) of the Act, the priority date of a design that is an excluded design is the same priority date as it had under the initial application.

## **Division 3.2 Amendment or withdrawal of applications**

### **3.09 Request for amendment of application**

- (1) For subsection 28 (2) of the Act, the request must:
  - (a) be in writing; and
  - (b) include a statement that an amendment of a design application is requested; and
  - (c) set out the nature and extent of the proposed amendments; and
  - (d) be accompanied by:
    - (i) a substitute document or representation incorporating the proposed amendments; or
    - (ii) a statement setting out the proposed amendments and the place at which each amendment is proposed to be made; and
  - (e) if the request is accompanied by any document — be accompanied by documents that comply substantially with the formal requirements set out in Schedule 2.
- (2) If the request is not accompanied by a substitute document or representation incorporating the proposed amendments, the

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applicant must, if directed by the Registrar, file a substitute document or representation within the time allowed by the Registrar.

### **3.10 Disputes between applicants — requests for determinations**

For subsection 29 (2) of the Act, a request must:

- (a) be made in the approved form; and
- (b) include a statement of the grounds on which the request is made.

### **3.11 Requests for direction specifying persons as applicants or entitled persons**

For subsection 30 (4) of the Act, a request must:

- (a) be made in the approved form; and
- (b) include a statement of the grounds on which the request is made.

### **3.12 Publication of certain details of amended applications**

- (1) This regulation applies in relation to a design application if, as a result of the design application having been amended under Part 3 of Chapter 3 of the Act, any of the details published under section 25 of the Act in relation to the application has changed.
- (2) For section 31 of the Act, the details prescribed are the following details for each design in relation to which the published details has changed:
  - (a) the design number;
  - (b) for each detail that has changed — the detail as amended.

### **3.13 Withdrawal of designs and design applications**

- (1) For subsection 32 (1) of the Act, the prescribed period:
  - (a) begins immediately after the design application is filed;
  - and

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- (b) ends immediately before a design disclosed in the design application is registered or published.
  - (2) For subsection 32 (2) of the Act, the prescribed period:
    - (a) begins immediately after the design application is filed; and
    - (b) ends immediately before the design to be withdrawn is registered or published.
  - (3) If a design is withdrawn, including a design disclosed in a design application that is withdrawn, the Registrar must publish the following details in the *Official Journal*:
    - (a) the design number;
    - (b) the date when the design was withdrawn.

### **Division 3.3          Lapsing of applications**

#### **3.14          Period within which applicants must respond to notice of deficiencies**

For paragraph 33 (1) (b) of the Act, the prescribed period is 2 months from the date of the first notice given by the Registrar under section 41 or 57 of the Act in relation to the design or designs in respect of which registration or publication is requested.

#### **3.15          Form of notice**

For subsection 33 (4) of the Act, the notice must:

- (a) be in the form of a notice published in the *Official Journal*; and
- (b) include the following details for each design disclosed in the application that has not been registered or published:
  - (i) the design number;
  - (ii) the date of lapsing.

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## **Part 4                      Registration or publication of designs**

### **Division 4.1              Requests for registration or publication**

#### **4.01              Requests for registration or publication**

- (1) This regulation does not apply to a request mentioned in section 37 or subsection 38 (2) of the Act.
- (2) For paragraph 35 (2) (b) of the Act, the prescribed period is:
  - (a) 6 months from the priority date of the design; or
  - (b) if the design is a design mentioned in section 55 of the Act, and the period of 6 months has expired when an application is filed as mentioned in that section — the day on which the application is filed.
- (3) For subsection 35 (3) of the Act, the request must be made in the approved form.

#### **4.02              Subsequent requests for registration — applications in respect of more than 1 design**

- (1) For paragraph 36 (2) (a) of the Act, the Registrar may determine that the applicant may make a request (a *subsequent request*) for registration of a design (an *additional design*) in respect of which no request for registration was made in the original request only if:
  - (a) the applicant can show that it was only because of an error or omission by the applicant or the applicant's agent that a request was not made for registration of the additional design; and
  - (b) the subsequent request is made before any design disclosed in the design application is registered or published.
- (2) In this regulation:

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*original request* means the first request made under section 35 of the Act in relation to the design application in which the additional design is disclosed.

#### **4.03 Period within which replacements of request may be made**

For subsection 38 (2) of the Act, the prescribed period:

- (a) begins immediately after the request for registration of the design is made; and
- (b) ends immediately before the design is registered.

### **Division 4.2 Registration**

#### **4.04 Formalities check — applications in respect of 1 design only**

- (1) For paragraph 39 (2) (a) of the Act, the formalities check is confirmation, by the Registrar, that:
  - (a) the application is in the approved form; and
  - (b) the application (including each document provided with the application) meets the requirements of regulation 10.16; and
  - (c) the application identifies the product or products in relation to which the design is sought to be registered sufficiently to enable each product to be classified in accordance with the Locarno Agreement; and
  - (d) for an application mentioned in subsection 23 (2) of the Act — the application identifies the initial application from which the design was excluded; and
  - (e) if a specimen is filed as a representation of the design — the specimen is of a kind that:
    - (i) can be readily mounted in a flat position by affixing it to a paper of the size required under paragraph 1 (1) (e) of Schedule 2; and
    - (ii) can be stored without damage to other documents; and
  - (f) the application includes 5 copies of each representation of the design; and

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(g) the application complies substantially with the formal requirements set out in Schedule 2.

(2) If the Registrar is not satisfied with the matter mentioned in paragraph (1) (e), the Registrar may, in giving a notice under section 41 of the Act, require the applicant to file another representation that meets the description in subregulation (1).

#### **4.05 Formalities check — applications in respect of more than 1 design**

(1) For paragraph 40 (2) (c) of the Act, the formalities check is confirmation, by the Registrar, that:

- (a) the application is in the approved form; and
- (b) the application (including each document provided with the application) meets the requirements of regulation 10.16; and
- (c) the application identifies, for each design, the product or products in relation to which the design is sought to be registered sufficiently to enable each product to be classified in accordance with the Locarno Agreement; and
- (d) for an application mentioned in subsection 23 (2) of the Act — the application identifies the initial application from which the designs were excluded; and
- (e) if a specimen is filed as a representation of a design — the specimen is of a kind that:
  - (i) can be readily mounted in a flat position by affixing it to a paper of the size required under paragraph 1 (1) (e) of Schedule 2; and
  - (ii) can be stored without damage to other documents; and
- (f) the application includes 5 copies of each representation of each design disclosed in the application; and
- (g) the number of designs disclosed in the application is the number of designs, identified by the applicant, as being disclosed in application; and
- (h) the application complies substantially with the formal requirements set out in Schedule 2.

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- (2) If the applicant has requested registration of some only of the designs disclosed in the design application, the formalities check is confirmation, by the Registrar, that the matters specified in subregulation (1) are satisfied in relation to the part or parts of the application relating to the design or designs covered by the request.
  - (3) If the Registrar is not satisfied with the matter mentioned in paragraph (1) (e), the Registrar may, in giving a notice under section 41 of the Act, require the applicant to file another representation that meets the description in subregulation (1) or (2).

#### **4.06 Registrar must refuse to register certain designs**

For paragraph 43 (1) (a) of the Act, the following classes of designs are prescribed:

- (a) medals;
- (b) designs of a kind that the Registrar must, under subregulation 2 (4) of the Protection of Word ‘Anzac’ Regulations, refuse to register;
- (c) designs of a kind prohibited under subsection 19 (1) of the *Crimes (Currency) Act 1981*;
- (d) designs that are scandalous.

#### **4.07 Period within which Registrar must register certain designs after refusal**

For section 44 of the Act, the prescribed period is 1 month from the date of revocation of the order.

#### **4.08 Certificate of registration and notice of registration**

- (1) For subsection 45 (3) of the Act, the certificate must include the following details in relation to the design:
  - (a) the registration number;
  - (b) the filing date of the design application first disclosing the design;
  - (c) the initial term of the registration;
  - (d) the name and address of the registered owner;

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- (e) the product or products to which the design relates;
  - (f) the name of the designer;
  - (g) if a statement describing the newness and distinctiveness has been provided to the Registrar — that statement;
  - (h) the following details, if given in the design application:
    - (i) details about any basic application made in respect of the design;
    - (ii) details about any initial application.
- (2) For subsection 45 (4) of the Act, the notice must:
- (a) be in the form of a notice published in the *Official Journal*; and
  - (b) include the following details in relation to the design:
    - (i) the design number;
    - (ii) the registration number;
    - (iii) the date when the design was registered;
    - (iv) the filing date of the design application first disclosing the design;
    - (v) the following details, if given in the design application:
      - (A) details about any basic application made in respect of the design;
      - (B) details about any initial application;
    - (vi) the product or products to which the design relates;
    - (vii) the Locarno Agreement classification of the product or each product;
    - (viii) if a statement describing the newness and distinctiveness has been provided to the Registrar — that statement;
    - (ix) if the applicant is represented by a registered patent attorney or registered trade marks attorney — the name of the attorney;
    - (x) the name and address of the registered owner;
    - (xi) the name of the designer.

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#### **4.09 Renewal of registration**

- (1) For subsection 47 (2) of the Act, the prescribed period is the period of 5 years and 6 months that begins at the start of the term of registration of the design.
- (2) For subsection 47 (3) of the Act, the application must include:
  - (a) a statement that renewal of the registration of the design is requested; and
  - (b) the registration number of the design.

#### **4.10 Surrender of registration**

For paragraph 49 (3) (c) of the Act, the offer must include:

- (a) a statement that an offer is made to surrender the registration of the design; and
- (b) the registration number of the design.

*Note* Under section 49 (2) of the Act, if there is more than 1 registered owner, the offer must be made by all the registered owners.

#### **4.11 Revocation of registration on surrender**

- (1) For paragraph 50 (2) (a) of the Act, each person who is entered on the Register as having an interest in the design is prescribed.
- (2) For paragraph 50 (2) (b) of the Act, a person mentioned in subregulation (1) may make a submission:
  - (a) in writing; and
  - (b) within 1 month after the date when the person was notified under paragraph 50 (2) (a) of the Act.
- (3) The Registrar must also publish, in the *Official Journal*, a notice of the offer received under section 49 of the Act.
- (4) If an interested person wishes to be heard in relation to the offer, he or she must, within 1 month after the date of publication of the notice mentioned in subregulation (3), give notice to the Registrar of his or her wish to be heard.
- (5) The Registrar may, as a preliminary issue, hear and determine the question whether a person is an interested person.

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- (6) If an interested person gives notice to the Registrar under subregulation (4), the Registrar must give the person an opportunity to be heard before exercising his or her powers under subsection 50 (3) of the Act.

#### **4.12 Revocation of registration on grounds relating to entitled persons**

For subsection 51 (2) of the Act, the application must:

- (a) be made in the approved form; and
- (a) include a statement of the grounds on which the application is made.

#### **4.13 Notice of revocation of registration**

For subsection 52 (4) of the Act, the notice must:

- (a) be in the form of a notice published in the *Official Journal*; and
- (b) include the registration number of the design.

### **Division 4.3 Publication**

#### **4.14 Publication of a design**

- (1) For subsection 57 (2) of the Act, the documents must:
  - (a) include the applicant's name and the designer's name; and
  - (b) meet the requirements of regulation 10.16; and
  - (c) comply substantially with the formal requirements set out in Schedule 2.
- (2) If the design application is in respect of more than 1 design, the requirements specified in subregulation (1) are to be satisfied in relation to the part or parts of the application relating to the design or designs covered by the request.

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## **Part 5 Examination of designs**

### **5.01 Requirements for request for examination of design**

For subsection 64 (1) of the Act, the following requirements are prescribed:

- (a) the request must be made in the approved form;
- (b) if the request is made by a person other than the registered owner, and contains any material in relation to the newness and distinctiveness of the design — the material must be provided in duplicate.

### **5.02 Grounds for revocation of registration of design**

For paragraph 65 (2) (b) of the Act, a prescribed ground is that, under section 43 of the Act, the design should not have been registered.

### **5.03 Examination of design — procedures**

- (1) For paragraph 65 (3) (a) of the Act, the procedures set out in this regulation are prescribed for the conduct of an examination of a design.
- (2) If, after considering under subsection 65 (1) of the Act whether a ground for revocation under subsection 65 (2) of the Act exists, the Registrar is satisfied that a ground for revocation has been made out, the Registrar must give notice to the registered owner as required under subsection 66 (2) of the Act.  
*Note* See section 67 of the Act for what is to happen if the Registrar is satisfied that a ground for revocation has not been made out.
- (3) A registered owner may respond to a notice given under subsection 66 (2) of the Act (including a further notice mentioned in subregulation (6)) by:
  - (a) contesting, in writing, the ground for revocation; or
  - (b) requesting amendment of the Register as provided under subsection 66 (3) of the Act.
- (4) If the registered owner responds by contesting the ground in writing, the Registrar must reconsider whether a ground for

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revocation under subsection 65 (2) of the Act exists, taking into account the written submissions made by the registered owner.

- (5) If the registered owner responds by requesting amendment of the Register, the Registrar must consider whether the ground for revocation would be removed if the Register were amended as proposed in the request.
- (6) If:
- (a) after the reconsideration mentioned in subregulation (4), the Registrar remains satisfied that a ground for revocation has been made out; or
  - (b) after the consideration mentioned in subregulation (5), the Registrar is satisfied that the ground would not be removed if the Register were amended as proposed;
- the Registrar must give a further notice to the registered owner under subsection 66 (2) of the Act.
- (7) A further notice mentioned in subregulation (6) must, in addition to stating that a ground for revocation has been made out, include a statement to the following effect:
- (a) if the registered owner has contested the ground in writing — that the Registrar has taken into account the written submissions made by the registered owner; or
  - (b) if the registered owner has requested amendment of the Register — that the ground would not be removed if the Register were amended as proposed.

*Note* See section 67 of the Act for what is to happen if the Registrar is satisfied that a ground for revocation has not been made out or that any such ground would be removed if the Register were amended as proposed.

- (8) If the request for examination was made by a person other than the registered owner, the Registrar must send a copy of the notice given under subsection 66 (2) of the Act (including a further notice mentioned in subregulation (6)) to the person who requested the examination.

*Note* See section 68 of the Act for what is to happen if the Registrar remains satisfied that a ground for revocation has been made out and the ground would not be removed if the Register were amended as proposed.

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#### **5.04 Period within which examinations of designs must be completed**

For paragraph 65 (3) (b) of the Act, the prescribed period is:

- (a) 6 months after the request to examine the design is received by the Registrar; or
- (b) if a notice is given under subsection 66 (2) of the Act in relation to the examination — 6 months after the date of the notice.

#### **5.05 Amendment of registration**

- (1) For subsection 66 (4) of the Act, the request must:
  - (a) be in writing; and
  - (b) include a statement that an amendment of the Register is requested; and
  - (c) set out the nature and extent of the proposed amendments; and
  - (d) be accompanied by:
    - (i) a substitute document or representation incorporating the proposed amendments; or
    - (ii) a statement setting out the proposed amendments and the place at which each amendment is proposed to be made; and
  - (e) if the request is accompanied by any document — be accompanied by documents that comply substantially with the formal requirements set out in Schedule 2.
- (2) If the request is not accompanied by a substitute document or representation incorporating the proposed amendments, the applicant must, if directed by the Registrar, file a substitute document or representation within the time allowed by the Registrar.
- (3) For subsection 66 (5) of the Act:
  - (a) the Registrar must notify the registered owner if:
    - (i) the request does not meet the requirements mentioned in subregulation (1); or
    - (ii) the proposed amendment is of a kind prohibited under subsection 66 (6) of the Act; and

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- (b) if the request is not accompanied by a substitute document or representation incorporating the proposed amendments, the Registrar may direct the registered owner to file a substitute document or representation within the time allowed by the Registrar.

#### **5.06 Certificate of examination and notice of examination**

- (1) For paragraph 67 (3) (a) of the Act, the certificate must include:
  - (a) the registration number of the design; and
  - (b) the date of certification.
- (2) For paragraph 67 (3) (c) of the Act, the notice must:
  - (a) be in the form of a notice published in the *Official Journal*; and
  - (b) include the following details in relation to the design:
    - (i) the registration number;
    - (ii) the date of certification.

- (3) In this regulation:

*date of certification* means the date when the Registrar is satisfied that a certificate of examination is to be issued under subsection 67 (3) of the Act in respect of the design.

#### **5.07 Revocation of registration after examination**

For subsection 68 (3) of the Act, the notice must:

- (a) be in the form of a notice published in the *Official Journal*; and
- (b) include the following details in relation to the design:
  - (i) the registration number;
  - (ii) the date when the design was revoked.

#### **5.08 Material provided to Registrar**

- (1) For subsection 69 (2) of the Act, the material must:
  - (a) be provided in duplicate; and
  - (b) be accompanied by the approved form; and

- 
- (c) if it includes a document — include evidence of the date, and place, of publication of the document.

*Note* Under regulation 10.16, a document that is not in English must be accompanied by a verified translation.

- (2) For paragraph 69 (3) (c) of the Act, the prescribed period:
  - (a) begins immediately after the material is provided to the Registrar; and
  - (b) ends at the end of 6 years after the term of registration of the design.

## **Part 6                      Jurisdiction and powers of courts**

### **6.01      Application to court for compulsory licence**

For subsection 90 (1) of the Act, the prescribed period is 3 years from the date of registration of the design.

### **6.02      Revocation of registration after grant of compulsory licence**

For subsection 92 (1) of the Act, the prescribed period is 2 years from the date when the licence, or the first licence (if more than 1), was granted under section 90 of the Act in relation to the design.

## **Part 7                      The Crown**

### **7.01      Acquisition of design by the Commonwealth**

For subsection 106 (3) of the Act, notice of the acquisition must be published:

- (a) in the *Official Journal*; and
- (b) in the Gazette.

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**7.02 Period within which designs must be registered or published after prohibition**

For subsection 108 (4) of the Act, the prescribed period is 1 month from the date of the revocation of the order.

**Part 8 The Register**

**8.01 Other particulars to be entered in the Register**

For paragraph 111 (2) (e) of the Act, the following particulars are prescribed:

- (a) the address for service of the registered owner or registered owners;
- (b) the name of each other person who has an interest in the design.

**8.02 Inspection of Register**

For subsection 113 (1) of the Act, the prescribed times, in relation to the Designs Office or a sub-office of the Designs office, are from 9 am to 5 pm on Monday to Friday other than a public holiday:

- (a) in the place where the Designs Office or the sub-office is located; or
- (b) for the purposes of the Australian Public Service in that place.

**8.03 Amendments of Register to record changes of ownership**

- (1) For subsection 114 (3) of the Act, the prescribed period is 1 month from the date when the registered owner was notified under paragraph 114 (3) (a) of the Act.
- (2) For subsection 114 (4) of the Act, the request must:
  - (a) be made in the approved form; and
  - (b) be accompanied by satisfactory evidence of:
    - (i) the assignment of the interest in the design; or

- 
- (ii) the person's interest in the design by devolution by will or by operation of law.

#### **8.04 Notice specifying amendments to Register**

For paragraph 116 (b) of the Act, the Registrar must publish a notice in the *Official Journal*.

#### **8.05 Correction of Register**

- (1) The Registrar may, on request made in the approved form, amend an entry in the Register:
  - (a) to correct a clerical error or an obvious mistake; or
  - (b) if a name or an address entered in the Register has been changed — to change the name or address.
- (2) If a proposed amendment of an entry would materially alter the meaning or scope of the entry, the Registrar must publish, in the *Official Journal*, a notice of the request to amend the entry.
- (3) If a notice is published under subregulation (2):
  - (a) a person may, by giving written notice to the Registrar, oppose the amendment; and
  - (b) the Registrar must amend the entry:
    - (i) if no person opposes the amendment — as requested; or
    - (ii) if notice of opposition is given — subject to the decision of the Registrar or, if applicable, of a tribunal or a prescribed court in respect of the opposition.
- (4) The Registrar may, of his or her own motion, amend an entry in the Register to correct a clerical error or an obvious mistake.
- (5) If the Registrar proposes to amend an entry in the Register, the Registrar may give notice of the proposed amendment to a person who is entered in the Register as having an interest in the design.

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## Part 9

## Administration

### 9.01 Delegation by Registrar

For subsection 124 (1) of the Act, the prescribed classes of employees are:

- (a) for any of the powers or functions of the Registrar under the Act (other than the powers or functions under paragraphs 127 (1) (a) and (c) of the Act) — an employee employed at, or performing duties at, any of the following classifications:
  - (i) Executive Level 2;
  - (ii) Executive Level 1;
  - (iii) APS level 6;
  - (iv) APS level 5;
  - (v) APS level 4;
  - (vi) APS level 3;
  - (vii) APS level 2;

*Note* Under paragraphs 127 (1) (a) and (c) of the Act, the Registrar may summon witnesses and require the production of documents or articles.

- (b) for all or any of the powers or functions of the Registrar under the *Olympic Insignia Protection Act 1987* — an employee employed at, or performing the duties at, any of the following classifications:
  - (i) Executive Level 2;
  - (ii) Executive Level 1;
  - (ii) APS level 6.

*Note* For the meaning of employee, see section 5 of the Act.

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**9.02 Costs (Act, s 127)**

**Part 10 Miscellaneous**

**Division 10.1 Fees**

**Division 10.2 Extensions of time**

**10.11 Extensions of time for doing a relevant act**

- (1) For subsection 137 (2) of the Act, an application must:
  - (a) be made in the approved form; and
  - (b) be accompanied by a declaration setting out the grounds on which the application is made.
- (2) For subsection 137 (4) of the Act, the Registrar must advertise an application in the *Official Journal*.
- (3) For subsection 137 (5) of the Act, the person must:
  - (a) file a notice of his or her opposition in the approved form within 1 month after the application was advertised; and
  - (b) serve a copy of the notice on the person applying for the extension.
- (4) If the Registrar grants an extension of time under section 137 of the Act, the Registrar must publish details of the extension in the *Official Journal*.

**10.12 Consequence of extension — notice of restoration**

For paragraph 138 (2) (b) of the Act, the Registrar must publish a notice in the *Official Journal*.

**Division 10.3 Other**

**10.13 Agents (Act, s 141)**

- (1) This regulation applies if a person (an *agent*) acts on behalf of another person (the *principal*).

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- (2) If the agent signs a document on behalf of the principal, the agent must note that fact (including the principal's name) on the document.
  - (3) If the agent is not a legal practitioner, he or she must not do the following on behalf of the principal:
    - (a) prepare any document that is to be filed in, or issued from, a court;
    - (b) transact business, or conduct proceedings, in a court.

#### **10.14 Right of lien of registered patent attorneys and registered trade marks attorneys (Act, s 142)**

A registered patent attorney and a registered trade marks attorney each has, in relation to documents and property of a client in a matter relating to designs, the same right of lien that a solicitor has in relation to the documents and property of a client.

#### **10.15 Filing of documents**

For paragraph 144 (b) of the Act, a document may be filed by facsimile transmission.

#### **10.16 Documents to be in English**

- (1) An approved form being filed must be in English.
- (2) Any other document being filed must:
  - (a) be in English; or
  - (b) if it is not in English — be accompanied by a translation of the document into English that has with it a certificate of verification.

- (3) In this regulation:

*certificate of verification*, in relation to a translation, means a statement, dated and signed by a person, to the effect that the translation is, to the best of the knowledge of the person, a true and complete translation of the accompanying document.

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### **10.17 Service of documents**

- (1) If provision is made in an approved form to state an address for service, the person completing the form must state an address for service in Australia at which a document under the Act or these Regulations may be given to him or her personally or to the person specified in the form as his or her representative.
- (2) A person may file a notice of change of his or her address for service.
- (3) If a notice of opposition is filed, a party to the opposition proceedings who has filed a notice under subregulation (2) must serve a copy of the notice on each other party to the proceedings.
- (4) If a person serves a document on a person other than the Registrar, he or she must, as soon as practicable after serving the document on the other person, file:
  - (a) a notice of the service in the approved form; and
  - (b) a copy of the document served.

### **10.18 Address for correspondence**

- (1) If provision is made in an approved form to state an address for correspondence, the person completing the form may state an address to which all correspondence from the Registrar can be sent.
- (2) A person may file a notice of change of his or her address for correspondence.
- (3) The address for correspondence need not be in Australia.

### **10.19 Death of applicant or registered owner (Act s 146, s 147)**

- (1) This regulation applies to:
  - (a) a legal representative who wishes to proceed with the application in accordance with section 146 of the Act; or
  - (b) a person who wishes to have the Register amended in accordance with section 147 of the Act.

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- (2) The legal representative or the person must file:
    - (a) a request in the approved form; and
    - (b) any other document that the Registrar reasonably considers to be necessary to support the request.

#### **10.20 Exercise of discretionary powers by Registrar (Act, s 148)**

- (1) The Registrar must not exercise a discretionary power under these Regulations adversely to a person without giving that person an opportunity to be heard.

*Note* Section 148 provides similarly for the exercise of discretionary power under the Act.

- (2) For section 148 of the Act and subregulation (1), the Registrar must give notice of the date, time and place of the hearing to the person as required under subregulation 10.21 (1).
- (3) The Registrar may exercise the discretionary power if the person:
  - (a) gives notice to the Registrar that he or she does not wish to be heard; or
  - (b) does not attend the hearing; or
  - (c) being an applicant or a registered owner — requests the Registrar to exercise the power without the applicant or registered owner appearing at a hearing.
- (4) A request under paragraph (3) (c):
  - (a) must be in the approved form; and
  - (b) may be accompanied by written submissions.
- (5) The Registrar must, in exercising the discretionary power, have regard to any written submission given to him or her under paragraph (4) (b).
- (6) The Registrar must notify a person who has given notice under paragraph (3) (a) of his or her decision in relation to the exercise of the discretionary power.

*Note* A person who wishes to be heard will be notified under regulation 10.21.

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## **10.21 Hearings**

- (1) The Registrar must give notice of the date, time and place of the hearing to each party to the hearing at least 10 days before the day when the hearing is to begin.
- (2) The Registrar may adjourn the hearing from time to time and from place to place by notifying the parties to the hearing accordingly.
- (3) The Registrar may hold a hearing:
  - (a) at which the parties appear before him or her in person; or
  - (b) in which a party participates by telephone or other means of telecommunications that the Registrar reasonably allows.
- (4) If a party to a hearing does not intend to appear at the hearing, the party may give a written submission to the Registrar before the hearing begins.
- (5) The Registrar must, in deciding the matter being heard, have regard to any written submission given to him or her under subregulation (4) as if:
  - (a) the party were present or otherwise participating in the hearing; and
  - (b) the matter of the submission were presented by the party in the Registrar's presence.
- (6) The Registrar must notify each party to the hearing of his or her decision on the matter heard.

## **10.22 Practice and procedure in relation to applications and other matters**

- (1) This regulation applies in relation to:
  - (a) applications and matters that the Registrar is authorised, under the Act or these Regulations, to hear and decide; and
  - (b) matters being decided on the motion of the Registrar.

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- (2) Subject to these Regulations, the practice and procedure to be followed for the purposes of enabling the application or matter to be decided is to be determined by the Registrar.
  - (3) A person to be heard at a hearing may apply to the Registrar in respect of the practice and procedure relating to the hearing to be determined by the Registrar.

### **10.23 Evidence**

- (1) If evidence is given in writing to the Registrar for the purposes of the Act or these Regulations, the evidence must be in the form of a declaration.
- (2) The Registrar may:
  - (a) require a person who has made a declaration to appear before him or her to give evidence orally on oath or affirmation in substitution for, or addition to, the evidence contained in the declaration; and
  - (b) allow the person to be cross-examined on the declaration.

### **10.24 Declarations**

- (1) A declaration required by the Act or these Regulations to be given to the Registrar must:
  - (a) be headed with the title of the matter in respect of which the declaration is made; and
  - (b) be expressed in the first person; and
  - (c) state the name of the person making the declaration and, if applicable, the name of the person on whose behalf it is made; and
  - (d) state the nature and place of business, or the residential address and occupation, of the person making the declaration; and
  - (e) be divided into paragraphs, each of which must be numbered consecutively and, as far as practicable, be confined to 1 subject; and
  - (f) show the name and title of the person before whom the declaration is made; and

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(g) the date when, and the place where, the declaration is made.

(2) A declaration must be made before:

- (a) a magistrate; or
- (b) a justice of the peace; or
- (c) a commissioner for affidavits; or
- (d) a commissioner for declarations; or
- (e) a notary public; or
- (f) an Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the *Consular Fees Act 1955*); or
- (g) a person before whom a statutory declaration may be made under the law of the State, Territory or foreign country where the declaration is made.

#### **10.25 Non compliance in relation to documents other than design applications**

- (1) This regulation applies in relation to a document other than a design application.
- (2) A document received at the Designs Office must substantially comply with Schedule 2.
- (3) If a document does not substantially comply with Schedule 2, or is not in accordance with any applicable approved form, the Registrar must, depending on the nature and deficiency of the document:
  - (a) return the document to the person from whom the document is received, with a statement indicating in what way the document does not comply; or
  - (b) direct that person to do the things specified in the direction to ensure that the document will comply.
- (4) If the Registrar returns a document under paragraph (3) (a), the document is taken not to have been filed.
- (5) If the Registrar gives a direction under paragraph (3) (b), the document is taken to have been filed unless the person to

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whom the direction was given does not comply with the direction within 2 months from the day when it was given.

#### **10.26 Directions for actions not otherwise prescribed**

If:

- (a) the Registrar reasonably believes that it is necessary, for the proper prosecution or completion of proceedings before the Registrar, for a person to perform an act, file a document or produce evidence; and
- (b) that action is not specified elsewhere in the Act or these Regulations;

the Registrar may give notice to the person directing the person to perform the act, file the document or produce the evidence.

#### **10.27 Acting for persons unable to act**

- (1) If a person is incapable of doing anything required or permitted by the Act or these Regulations to be done because of infancy, mental disability, physical disability or disease, a court may, on the application by a person acting for the incapable person or by any other person interested in the doing of the thing:
  - (a) do that thing in the name of, and on behalf of, the incapable person; or
  - (b) appoint a person to do the thing in the name of, and on behalf of, the incapable person.
- (2) A thing done in the name of, and on behalf of, an incapable person is taken to have been done by that person as if he or she had not been incapable when the thing was done.
- (3) In this regulation:  
*mental disability* means a disturbance or defect, to a severely disabling degree, of perceptual interpretation, comprehension, reasoning, learning, judgment, memory, motivation or emotion.

#### **10.28 Requirements that cannot be compiled with for reasonable causes**

If:

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- (a) a person is required, under these Regulations, to sign a document, make a declaration, file or give to the Registrar a document or evidence, or to do any other act or thing; and
  - (b) the Registrar is satisfied that the person cannot reasonably comply with the requirement;
- the Registrar may, subject to any condition that he or she reasonably directs, dispense with the requirement.

## **10.29 Review of decisions**

- (1) In this regulation:
  - decision* has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.
  - Tribunal* means the Administrative Appeals Tribunal.
- (2) Application may be made to the Tribunal for review of a decision of the Registrar under paragraph 8.05 (4) (b).
- (3) If the Registrar gives a person affected by a decision mentioned in subregulation (2) written notice of the making of the decision, the notice must include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Tribunal for review of that decision by or on behalf of the person whose interests are affected.
- (4) Failure to comply with subregulation (3) in relation to a decision does not affect the validity of the decision.

## **Part 11 Repeal, transitional and saving provisions**

### **11.01 Conversion of transitional applications**

- (1) For paragraph 159 (2) (a) of the Act, the prescribed period:
  - (a) begins on the commencement of this subregulation; and
  - (b) ends immediately before:
    - (i) the design is registered; or

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- (ii) the application lapses or is withdrawn or refused.
- (2) For paragraph 159 (2) (c) of the Act, the request must be made in the approved form.

### **11.02 Former Designs Regulations — transitional**

Despite the repeal of the *Designs Regulations 1982*, those Regulations continue to have effect to the extent necessary to give effect to Part 2 of Chapter 12 of the Act.

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## Schedule 1

## Convention countries

(regulation 1.05)

Albania	Croatia
Algeria	Cuba
Angola	Cyprus
Antigua and Barbuda	Czech Republic
Argentina	Democratic Republic of the Congo
Armenia	Denmark (including Faroe Islands)
Austria	Djibouti
Azerbaijan	Dominica
Bahamas	Dominican Republic
Bahrain	Ecuador
Bangladesh	Egypt
Barbados	El Salvador
Belarus	Equatorial Guinea
Belgium	Estonia
Belize	Fiji
Benin	Finland
Bolivia	France (including all Overseas Departments and Territories)
Bosnia and Herzogovina	Gabon
Botswana	Gambia
Brazil	Georgia
Brunei Darussalam	Germany
Bulgaria	Ghana
Burkina Faso	Greece
Burundi	Grenada
Cambodia	Guatemala
Cameroon	Guinea
Canada	Guinea-Bissau
Central African Republic	Guyana
Chad	Haiti
Chile	Holy See
China	Honduras
Colombia	Hong Kong, China
Congo	
Costa Rica	
Côte d'Ivoire	

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Hungary	Moldova
Iceland	Monaco
India	Mongolia
Indonesia	Morocco
Iran, Islamic Republic of	Mozambique
Iraq	Myanmar
Ireland	Namibia
Israel	Nepal
Italy	Netherlands (including the
Jamaica	Netherlands Antilles and
Japan	Aruba)
Jordan	New Zealand (excluding the
Kazakhstan	Cook Islands, Niue and
Kenya	Tokelau)
Korea, Democratic People's	Nicaragua
Republic of	Niger
Korea, Republic of	Nigeria
Kuwait	Norway
Kyrgyzstan	Oman
Lao People's Democratic	Pakistan
Republic	Panama
Latvia	Papua New Guinea
Lebanon	Paraguay
Lesotho	Peru
Liberia	Philippines
Libyan Arab Jamahiriya	Poland
Liechtenstein	Portugal
Lithuania	Qatar
Luxembourg	Romania
Macau, China	Russian Federation
Madagascar	Rwanda
Malawi	Saint Kitts and Nevis
Malaysia	Saint Lucia
Maldives	Saint Vincent and the
Mali	Grenadines
Malta	San Marino
Mauritania	Sao Tome and Principe
Mauritius	Saudi Arabia
Mexico	Senegal

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Serbia and Montenegro	Togo
Seychelles	Tonga
Sierra Leone	Trinidad and Tobago
Singapore	Tunisia
Slovak Republic	Turkey
Slovenia	Turkmenistan
Solomon Islands	Uganda
South Africa	Ukraine
Spain	United Arab Emirates
Sri Lanka	United Kingdom (including the Isle of Man)
Sudan	United States of America (including all territories and possessions, including the Commonwealth of Puerto Rico)
Surinam	Uruguay
Swaziland	Uzbekistan
Sweden	Venezuela
Switzerland	Viet Nam
Syrian Arab Republic	Zambia
Taiwan	Zimbabwe
Tajikistan	
Tanzania	
Thailand	
The former Yugoslav Republic of Macedonia	

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## **Schedule 2      Formal requirements**

(regulations 3.09, 4.04, 4.05, 4.14 and 5.05)

### **1      Fitness for reproduction**

- (1) Each sheet included in a document must:
  - (a) be presented in a way that allows any number of copies of the sheet to be reproduced directly by photocopying, digital scanning, microfilming and photography; and
  - (b) not be folded, creased or cracked; and
  - (c) subject to subclause 5 (4), have its content presented in a vertical format; and
  - (d) be durable, flexible, smooth, strong, white and have a matt finish; and
  - (e) be of international sheet size A4; and
  - (f) be printed on one side only.
- (2) A document must be free from any erasures, alterations, overwriting and interlineations that, in the reasonable opinion of the Registrar, would:
  - (a) compromise the authenticity of the document; or
  - (b) reduce the likelihood of clear reproduction of the document.

### **2      Separate sheets**

- (1) The sheets included in an application must be connected so that they may:
  - (a) be readily turned to be read; and
  - (b) be readily separated for the purposes of reproduction and be readily rejoined.
- (2) Representations must be on a separate sheet or separate sheets to any other documents filed in relation to the application.

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### **3 Margins**

- (1) Each sheet must have a margin of at least 2.5 cm on each side.
- (2) A sheet of representations must not contain a frame surrounding the representations.

### **4 Textual matter**

- (1) All text not forming part of the design must be in English.
- (2) All textual matter must:
  - (a) be typewritten; or
  - (b) if it cannot be typewritten — be in large and legible handwriting.
- (3) The lines of any typewritten text must be 1½ spaced or double spaced
- (4) The text must:
  - (a) be presented in letters the capitals of which are at least 0.21 cm high; and
  - (b) be presented in a dark colour; and
  - (c) be indelible.

### **5 Additional requirements for representations**

- (1) A single representation must not exceed a single sheet.
- (2) A single sheet may include more than 1 representation.
- (3) Subject to subclause (4), if there are 2 or more representations on a sheet, each representation must be presented in a vertical format and be separated from each other.
- (4) If the representations on a sheet cannot be presented in a vertical format, each representation must be presented in a horizontal format with the top of the representation towards the left of the sheet (when viewed in a vertical format).
- (5) Each sheet of representations must be numbered using a pair of numbers (written in Arabic numerals) separated by '/', the 1st number being the sheet number (beginning with '1') and the

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2nd number being the total number of sheets of representations (eg 1/10, 2/10 and 3/10).

- (6) If the application is for more than 1 design:
  - (a) each design must be separately and clearly indicated; and
  - (b) a single sheet cannot be used to show more than 1 design.
- (7) Originals and copies of drawings must be executed in durable, black, dense, dark, uniformly thick and well-defined lines and strokes without colouring.
- (8) A line in a drawing must generally be drawn with the aid of drafting instruments.
- (9) A cross-section must be indicated by oblique hatching that does not impede the clear reading of reference letters, numbers or signs and leading lines.
- (10) The scale of a representation and the distinctness of its execution must enable all details to be distinguished without difficulty on a photographic reproduction of the representation with a  $2/3$  linear reduction in size.
- (11) Each representation must be shown in proper proportion to each other representation, except when the use of a different proportion is necessary for clarity of the representation.
- (12) A letter, number or reference line shown on a representation must be presented simply and be clear.
- (13) Brackets, braces, circles or inverted commas must not be used in association with letters or numbers.
- (14) A representation must not include descriptive text, other than any word or words necessary for the understanding of the representation.
- (15) The height of a letter or a number in a representation must be at least 0.32 cm.

## **6 Photographs and digital images**

- (1) Photographs must be original and clear.

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- (2) Photographs of specimen must be taken against a neutral and contrasting background.
  - (3) Photographs must be mounted on paper as follows:
    - (a) the paper and mounting adhesive must be of a nature that will not cause deterioration of the photograph;
    - (b) the paper and mounting must allow any number of copies of the photograph to be reproduced directly by photocopying, digital scanning, microfilming and photography;
    - (c) the photograph and paper must not be folded, creased or cracked;
    - (d) subject to subclause 5 (4), the photograph must be mounted in a vertical format;
    - (e) the photograph must be mounted:
      - (i) on paper that is durable, flexible, smooth, strong, white and have a matt finish; and
      - (ii) on paper that is of international sheet size A4; and
      - (iii) on one side of the paper only.
  - (4) Representations printed from a digital images must be clear and of high definition.

## **7 Electronic documents**

A document that is filed in electronic form must be in the approved form.

## **8 Scandalous matter**

An application must not contain any scandalous matter.

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## Schedule 3

## Fees

(regulation 10.01)

**DRAFT ONLY**

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## Schedule 4      **Costs, expenses and allowances**

(regulation 9.02)

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### Note

1. Notified in the *Commonwealth of Australia Gazette* on 2004.