

2002-2003

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

As read a third time

**Designs (Consequential Amendments)
Bill 2003**

No. , 2003

**A Bill for an Act to amend certain Acts in
consequence of the repeal of the *Designs Act 1906*
and the enactment of the *Designs Act 2003*, and for
related purposes**

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1 THIS Bill originated in the House of
2 Representatives; and, having this day passed,
3 is now ready for presentation to the Senate
4 for its concurrence.

5 I.C. HARRIS
6 *Clerk of the House of Representatives*

7 House of Representatives
8 26 November 2003
9

10 **A Bill for an Act to amend certain Acts in**
11 **consequence of the repeal of the *Designs Act 1906***
12 **and the enactment of the *Designs Act 2003*, and for**
13 **related purposes**

14 The Parliament of Australia enacts:

15 **1 Short title**

16 This Act may be cited as the *Designs (Consequential Amendments)*
17 *Act 2003*.

18 **2 Commencement**

19 (1) Each provision of this Act specified in column 1 of the table
20 commences, or is taken to have commenced, on the day or at the
21 time specified in column 2 of the table.
22

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	
2. Schedules 1 and 2	Immediately after the commencement of section 4 of the <i>Designs Act 2003</i> .	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by the Parliament and assented to. It will not be expanded to
3 deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table is for additional information that is not part
5 of this Act. This information may be included in any published
6 version of this Act.

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule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

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Schedule 1—Copyright Act 1968

Part 1—Amendments

1 Subsection 10(1) (paragraph (c) of the definition of *artistic work*)

Omit “to which neither of the last two preceding paragraphs applies”, substitute “whether or not mentioned in paragraph (a) or (b)”.

2 Section 74 (definition of *corresponding design*)

Omit all the words after “means”, substitute “visual features of shape or configuration which, when embodied in a product, result in a reproduction of that work, whether or not the visual features constitute a design that is capable of being registered under the *Designs Act 2003*”.

3 At the end of section 74

Add:

(2) For the purposes of subsection (1):

embodied in, in relation to a product, includes woven into, impressed on or worked into the product.

4 Section 75

Omit all the words after “under”, substitute “the *Designs Act 1906* or the *Designs Act 2003* on or after that commencement, it is not an infringement of that copyright to reproduce the work by embodying that, or any other, corresponding design in a product”.

4A Section 76

Repeal the section, substitute:

76 False registration of industrial designs under the *Designs Act 2003*

(1) This section applies if:

- (a) proceedings (*copyright proceedings*) are brought under this Act in relation to an artistic work in which copyright subsists; and

- 1 (b) a corresponding design was registered under the *Designs Act*
2 *2003*; and
3 (c) the exclusive right in the design had not expired by effluxion
4 of time before the copyright proceedings began; and
5 (d) it is established in the copyright proceedings that:
6 (i) none of the persons who are registered owners of the
7 registered design are entitled persons in relation to the
8 design; and
9 (ii) none of those persons were registered with the
10 knowledge of the owner of the copyright in the artistic
11 work.
- 12 (2) Subject to subsection (3), for the purposes of the copyright
13 proceedings:
14 (a) the design is taken never to have been registered under the
15 *Designs Act 2003*; and
16 (b) section 75 does not apply in relation to anything done in
17 respect of the design; and
18 (c) nothing in the *Designs Act 2003* constitutes a defence.
- 19 (3) Ignore subsection (2) if it is established in the copyright
20 proceedings that the act to which the proceedings relate was done:
21 (a) by an assignee of, or under a licence granted by, the
22 registered owner of the registered design; and
23 (b) in good faith relying on the registration and without notice of
24 any proceedings (whether or not before a court) to revoke the
25 registration or to rectify the entry in the Register of Designs
26 in relation to the design.

27 **5 Paragraphs 77(1)(b) and (c)**

28 Repeal the paragraphs, substitute:

- 29 (b) a corresponding design is or has been applied industrially,
30 whether in Australia or elsewhere, and whether before or
31 after the commencement of this section, by or with the
32 licence of the owner of the copyright in the place of
33 industrial application; and
34 (c) at any time on or after the commencement of this section,
35 products to which the corresponding design has been so
36 applied (the *products made to the corresponding design*) are

1 sold, let for hire or offered or exposed for sale or hire,
2 whether in Australia or elsewhere; and

3 **6 Paragraph 77(1)(d)**

4 Omit “1906”, substitute “2003”.

5 **7 At the end of paragraph 77(1)(d)**

6 Add “or under the *Designs Act 1906*”.

7 **8 After subsection 77(1)**

8 Insert:

9 (1A) This section also applies if:

10 (a) a complete specification that discloses a product made to the
11 corresponding design; or

12 (b) a representation of a product made to the corresponding
13 design and included in a design application;

14 is published in Australia, whether or not paragraphs (1)(b) and (c)
15 are satisfied in relation to the corresponding design.

16 **9 Subsection 77(2)**

17 Repeal the subsection, substitute:

18 (2) It is not an infringement of the copyright in the artistic work to
19 reproduce the work, on or after the day on which:

20 (a) products made to the corresponding design are first sold, let
21 for hire or offered or exposed for sale or hire; or

22 (b) a complete specification that discloses a product made to the
23 corresponding design is first published in Australia; or

24 (c) a representation of a product made to the corresponding
25 design and included in a design application is first published
26 in Australia;

27 by embodying that, or any other, corresponding design in a
28 product.

29 **10 Subsection 77(3)**

30 After “articles” (first occurring), insert “or products”.

31 **11 Subsection 77(3)**

1 After “1906”, insert “or the *Designs Act 2003*”.

2 **12 Paragraph 77(3)(a)**

3 Omit “under that Act in respect of those articles”, substitute “under the
4 *Designs Act 1906* in respect of those articles, or under the *Designs Act*
5 *2003* in respect of those products,”.

6 **13 At the end of section 77**

7 Add:

8 (5) In this section:

9 *building or model of a building* does not include a portable
10 building such as a shed, a pre-constructed swimming pool, a
11 demountable building or similar portable building.

12 *complete specification* has the same meaning as in the *Patents Act*
13 *1990*.

14 *design application* has the same meaning as in the *Designs Act*
15 *2003*.

16 *representation*, in relation to a design, has the same meaning as in
17 the *Designs Act 2003*.

18 **14 At the end of Division 8 of Part III**

19 Add:

20 **77A Certain reproductions of an artistic work do not infringe**
21 **copyright**

- 22 (1) It is not an infringement of copyright in an artistic work to
23 reproduce the artistic work, or communicate that reproduction, if:
24 (a) the reproduction is derived from a three-dimensional product
25 that embodies a corresponding design in relation to the
26 artistic work; and
27 (b) the reproduction is in the course of, or incidental to:
28 (i) making a product (the *non-infringing product*), if the
29 making of the product did not, or would not, infringe the
30 copyright in the artistic work because of the operation
31 of this Division; or

- 1 (ii) selling or letting for hire the non-infringing product, or
2 offering or exposing the non-infringing product for sale
3 or hire.
- 4 (2) It is not an infringement of copyright in an artistic work to make a
5 cast or mould embodying a corresponding design in relation to the
6 artistic work, if:
- 7 (a) the cast or mould is for the purpose of making products; and
8 (b) the making of the products would not infringe copyright
9 because of the operation of this Division.

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2 **Part 2—Application provisions**

3 **15 Application of amendments of section 74—definition of**
4 ***corresponding design***

5 The amendments of section 74 of the *Copyright Act 1968* made by
6 items 2 and 3 of this Schedule apply as follows:

- 7 (a) for the purposes of section 75 of the *Copyright Act 1968*—in
8 the same circumstances as the amendment made by item 4 of
9 this Schedule applies;
- 10 (b) for the purposes of section 76 of the *Copyright Act 1968*—in
11 the same circumstances as the amendment made by item 4A
12 of this Schedule applies;
- 13 (c) for the purposes of section 77 of the *Copyright Act 1968*—in
14 the same circumstances as the amendments of section 77
15 made by items 5 to 13 of this Schedule apply;
- 16 (d) for the purposes of section 77A of the *Copyright Act 1968*—
17 in the same circumstances as that section applies.

18 **16 Application of amendment of section 75**

19 The amendment made by item 4 of this Schedule applies to
20 reproductions that are made on or after the commencing day.

21 **17 Application of amendment of section 76**

- 22 (1) Section 76 of the *Copyright Act 1968* as amended by item 4A of this
23 Schedule applies in relation to proceedings brought under that Act on or
24 after the commencing day, where the corresponding design has been
25 registered under the *Designs Act 2003*.
- 26 (2) When determining whether a design has been registered under the
27 *Designs Act 2003* for the purposes of subitem (1), ignore section 151 of
28 that Act.

29 **18 Application of amendments of section 77**

30 *Amendments made by item 5*

- 31 (1) Paragraph 77(1)(b) of the *Copyright Act 1968* as amended by item 5 of
32 this Schedule applies to articles and products to which a corresponding

1 design has been applied industrially that are sold, let for hire or offered
2 or exposed for sale or hire on or after the commencing day. However,
3 this subitem does not affect the operation of paragraph 77(1)(b) of the
4 *Copyright Act 1968* as in force immediately before the commencing
5 day.

6 (2) Paragraph 77(1)(c) of the *Copyright Act 1968* as amended by item 5 of
7 this Schedule applies to products to which a corresponding design has
8 been applied industrially that are sold, let for hire or offered or exposed
9 for sale or hire on or after the commencing day.

10 *Amendments made by items 6 to 13*

11 (3) The amendments made by items 6 to 13 of this Schedule apply to:
12 (a) products to which a corresponding design has been applied
13 industrially that are sold, let for hire or offered or exposed for
14 sale or hire on or after the commencing day; and
15 (b) complete specifications or representations that are first
16 published in Australia on or after the commencing day.

17 **19 Application of section 77A**

18 Section 77A of the *Copyright Act 1968* applies to reproductions that are
19 made on or after the commencing day.

20 **20 Definition**

21 In this Part:

22 *commencing day* means the day on which this item commences.

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Schedule 2—Consequential amendments of other Acts

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A New Tax System (Wine Equalisation Tax) Act 1999

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1 Paragraph 9-70(2)(c)

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Omit “1906”, substitute “2003”.

8

ANL Act 1956

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2 Paragraph 53(1)(b)

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Omit “1906”, substitute “2003”.

11

3 Subsection 53(1)

12

After “so registered”, insert “, or was registered under the *Designs Act 1906*,”.

13

14

Australian Communications Authority Act 1997

15

4 Paragraph 55(4)(b)

16

Omit “1906”, substitute “2003”.

17

5 Subsection 55(4)

18

Omit “so registered”, substitute “registered under the *Trade Marks Act 1995* or the *Designs Act 1906*”.

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Australian Hearing Services Act 1991

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6 Paragraph 66(3)(b)

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Omit “1906”, substitute “2003”.

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7 Subsection 66(3)

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After “so registered”, insert “, or was registered under the *Designs Act 1906*,”.

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Commonwealth Banks Act 1959

1 **8 Paragraph 128(4)(b)**

2 Omit “*Designs Act 1906* and was so registered”, substitute “*Designs Act*
3 *2003* and was so registered, or was registered under the *Designs Act*
4 *1906*,”.

5 ***Commonwealth Services Delivery Agency Act 1997***

6 **9 Paragraph 38(2)(b)**

7 Omit “1906”, substitute “2003”.

8 **10 Subsection 38(2)**

9 After “so registered”, insert “, or was registered under the *Designs Act*
10 *1906*,”.

11 ***Customs Act 1901***

12 **11 Subsection 157(3) (definition of *design*)**

13 Omit “1906”, substitute “2003”.

14 ***Freedom of Information Act 1982***

15 **12 Schedule 3**

16 Omit “*Designs Act 1906*, subsection 40F(2)”, substitute “*Designs Act*
17 *2003*, paragraph 61(1)(a) and sections 108 and 109”.

18 ***Health Insurance Commission Act 1973***

19 **13 Paragraph 41C(7)(b)**

20 Omit “1906, being a design that was so registered”, substitute “2003,
21 being a design that was registered under the *Designs Act 1906*”.

22 ***Jurisdiction of Courts (Cross-vesting) Act 1987***

23 **14 Schedule**

24 Omit “*Designs Act 1906*”, substitute “*Designs Act 2003*”.

25 ***Radiocommunications Act 1992***

1 **15 Paragraph 188A(4)(b)**

2 Omit “1906”, substitute “2003”.

3 **16 Subsection 188A(4)**

4 Omit “so registered”, substitute “registered under the *Trade Marks Act*
5 *1995* or the *Designs Act 1906*”.

6 ***Scout Association Act 1924***

7 **16A Section 3**

8 Omit “*Designs Act 1906-1912*”, substitute “*Designs Act 2003*”.

9 ***Telecommunications Act 1997***

10 **17 Paragraph 417(4)(b)**

11 Omit “1906”, substitute “2003”.

12 **18 Subsection 417(4)**

13 Omit “so registered”, substitute “registered under the *Trade Marks Act*
14 *1995* or the *Designs Act 1906*”.

15 ***Telstra Corporation Act 1991***

16 **19 Paragraph 16(1)(b)**

17 Omit “1906”, substitute “2003”.

18 **20 Subsection 16(1)**

19 After “so registered”, insert “, or was registered under the *Designs Act*
20 *1906*,”.

21 ***Tobacco Advertising Prohibition Act 1992***

22 **21 Paragraph 9(1)(d)**

23 Omit “1906 in respect of articles”, substitute “2003 in relation to
24 products”.

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(277/02)
