

About Design rights



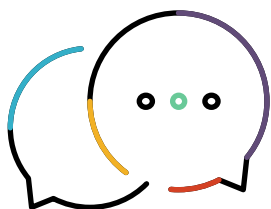
Australian Government

IP Australia



At a glance

- *protects your product's overall visual appearance*
- *takes 2 months to register and then approximately 4 months to certify*
- *lasts up to 10 years maximum (can renew at 5 years)*
- *tip — keep your idea a secret and do your research before you apply*



'For a lot of design businesses their asset is their products and their design, and their design registration.'

*Nicholas — DesignByThem
(Published 11 May 2021)*

What's a design right?

A design right is a registerable form of intellectual property (IP) that can protect the overall visual appearance of your new and distinctive product design. The overall visual appearance can be a combination of visual features including shape, colour, configuration, pattern, and ornamentation. A design right aims to protect the visual appearance of a whole product that has a physical and tangible form, is manufactured or handmade, is produced on a commercial scale.

Protection period

The initial period of protection for a registered design right is granted for 5 years from the date you apply in Australia. You have the option to renew your design right for a further 5 years. Protection is 10 years maximum, however, the registration may be revoked or ceased if certification is requested, and the design is then found not to be new or distinctive. Certification is essential to enforce your design right.

For more information about the protection period and when to renew your IP see our [website](#).

Our [short video](#) explains 'What are design rights?'.

Why should I register my design?

When you register and certify your design, it gives you:

- the exclusive right to use your design within Australia
- the exclusive right to authorise other people to use your design within Australia
- a right that can grow in value and can be sold or licensed within Australia
- the ability to apply for the same design right overseas (within 6 months of your Australian application)
- the right to take legal action against someone who uses your design without your permission.

What can be protected with a design right?

A design right protects the visual appearance of a whole product that has a physical form, is manufactured or handmade and is produced on a commercial scale.

An IP story:

DesignByThem and Design rights

In this IP story we share the experience from DesignByThem.

Established in 2007, DesignByThem was founded by industrial designers Sarah Gibson and Nicholas Karlovasitis. Based in Australia, the company is run by designers who are dedicated to creating and producing unique products for design professionals and enthusiasts alike.

Sarah shared an example of the importance in protecting your IP with a design right. She explains how they had a letterbox that they designed, and it was copied by another business that was supplying the same hardware store.

'A lot of our customers were really angered by this because it was almost like a brand perception issue as well, tarnishing our brand. There was a couple of letters back and forth, and we did manage to get them to change their design. But I do think in retrospect, had we had that design registration, it would have been a lot easier as a process to litigate. We're kind of fortunate that that lesson was learned at the start.'

From their experiences they identified that having IP right protection early on is 'actually not that expensive and it gives you the opportunity to have something to prove later should an issue arise. Furthermore, Nicholas explains 'Protecting our designs is critical. Intellectual property is an area that I think is often undervalued by designers.'

Nicholas and Sarah noted their designs and the design registrations are assets. They say if you have big plans for your business it's worth investing and protecting your IP.

To read more IP stories like this one by DesignByThem visit our [website](#).



What can't be protected with a design right?

Design rights don't protect:

- ideas, concepts, or processes
- ethereal or invisible objects which are not tangible such as computer graphics
- how your product works or is made
- non-visual features of a product
- items which are not manufactured, or handmade, such as a person, animal, or plant
- the brand name or logo you have developed for your product
- partial design features of a product or a part of a product that is not made separately
- the visual appearance of your product changing over time.

There are some designs that can't be legally protected with a design right. These include:

- scandalous designs which would shock or offend the community
- medals
- certain coats of arms, flags, and emblems
- bank notes or paper money
- integrated circuit layouts
- a design prohibited under the Olympic Insignia Protection Act 1987
- designs which use the word 'ANZAC' can't be legally protected without permission from the Department of Veterans' Affairs.



Things to consider before you apply for a design right:

Make sure it's the right IP for your needs

A design right protects how something looks, not how something works or a brand. Patent or trade mark protection may be more suitable if these are the things you are trying to protect.

Avoid disclosing your design publicly

To have the best chance of protecting your design, it should not be publicly disclosed until after you have applied for registration. Even posting a picture on social media can make it difficult to enforce a design right as it may no longer be considered new and distinctive.

If you need to talk to others about your idea, get them to sign a non-disclosure agreement (NDA).

What if my design has already been disclosed?

If you've disclosed your design, it may be possible to still obtain an enforceable design right by relying on a grace period exception. Please note that there are some instances where the grace period cannot apply.

Search for similar designs

Before applying, you may wish to search for existing designs that may be similar to yours.

We recommend searching for similar designs on:

- the internet, including social media
- dedicated intellectual property (IP) search databases in Australia and overseas.

Examples of registered design rights



Dress

Zimmerman dress



Handbag

State of Escape
Accessories



Chair

Jordan Australia

Know how a design right can impact other IP rights

Registering a design right means that for:

- Copyright: you may impair your ability to enforce your copyright
- Patents: patents and design rights can protect different features of the same product. For example, how a product works may be related the way it looks. In such cases, a design and patent may need to be filed at the same time to avoid public disclosures that may impact the protection or enforcement of either the patent or design.

The overlap between design rights and other IP can be complex. If you're concerned about this, we recommend consulting an IP professional.

What's is the two-step process?

Unlike other intellectual property (IP) rights, a registered design is not an enforceable right. To be able to enforce your design right your registered design right needs to be certified.

When we receive your registration request, we check your application against the legislative requirements. At this step we do not check if your design is similar to another design. After you have registered your design, you (or another person) can request examination. If your registered design passes this examination, it will be certified.

Certification gives you the legal right to enforce your design right and take legal action against others using it without authorisation. Certification is optional and is only possible after your design has been registered.

Registration gives you:

- the exclusive right to use your design within Australia
- the exclusive right to authorise other people to use your design within Australia
- a right that can grow in value and can be sold or licensed within Australia
- the ability to apply for the same design overseas (within 6 months of your Australian application)
- the ability to request the second step in the process: certification.

Certification gives you:

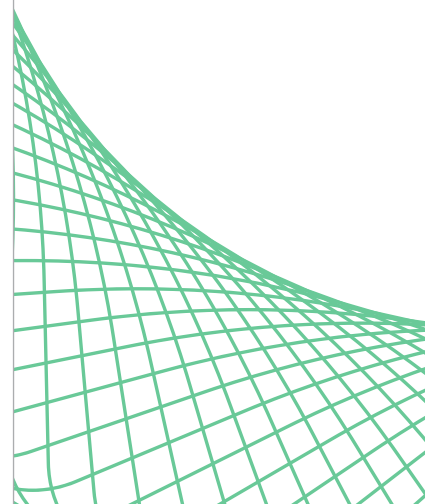
- a continuation of all the rights granted at registration
- the legal right to enforce your design and take legal action against others using it.

How do I apply for a design right?

You can apply for a design right through our online services. There is a two-step process for securing design right protection in Australia: firstly, applying for registration and secondly requesting the design be examined and certified.



Check your design is available before you apply. Access the Australian Design Search database to access design applications filed and granted in Australia.



What's the IP Australia fee?

Application filing fees for the first design start at \$250* if you are using our online services. If more than one design is applied for in one application each additional design will incur a \$200* fee per design on top of the \$250*. Further fees are payable for examination (required for certification). These fees start at \$420* per registered design.

Further information on timeframes and fees is available on our [website](#).

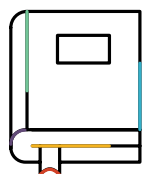
Do renewal fees apply?

Yes. Your design will initially be registered for 5 years. This can be extended once for a further 5 years by paying the \$400* renewal fee.



International protection

To register your design overseas you need to apply for a design right in each country directly. This can be a complex process. It may be in your best interests to consult an IP professional experienced in designs.



Publishing

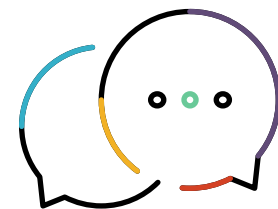
We're responsible for the administration of IP legislation in Australia. Our role includes publishing and maintaining the [official journals](#) for IP rights in Australia. Each journal contains information about significant events in relation to intellectual property (IP) rights, including registration, certification, lapsing and ceasing.



Professional assistance

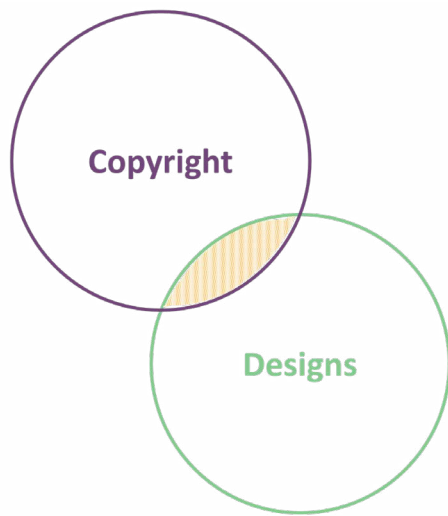
If you need some help or advice, [intellectual property \(IP\) professionals](#) can assist you along your IP journey. An IP professional is an expert in a professional field. They can help you during different stages of your IP journey by providing you with legal, financial, or business advice. Due diligence investigations are an important consideration before commencing use of IP, and professional advice early on can save significant expense and inconvenience later down the road.

Your time is important, and an expert's time can be expensive. It is useful to ask your IP professional if there is anything that you need to prepare ahead of your meeting.



'I think having good IP protection for small businesses and designers is essential in being able to commercialise a product and keep it sustainable, to stop the bigger companies and bigger corporations from taking that product, manufacturing it cheaply and undercutting those other small businesses, which often put them out of business.'

*Ryan from Gecko Tracks
(Published 11 May 2021)*



What's the overlap between design rights and copyright?

In many cases, the law may prevent protection of a design with both copyright and a design right.

Copyright protection can potentially be impaired if:

- you 'industrially apply' your design. Generally, if 50 or more products embodying the design are made, it is said to be industrially applied. However, this number can vary depending on the nature of your industry
- you register a design right.

If you plan on manufacturing and commercialising your design, it is important to consider applying for a design right early. A certified design right gives you the legal right to take actions against others using it. Remember, keep all sketches and prototypes confidential until you have applied for your design. This includes not posting on social media and not writing about it in trade journals.

The overlap between design rights and copyright is complex. It may be in your best interests to seek advice from:

- an [IP professional](#)
- the [Australian Copyright Council](#).



For further information on Design rights head to <https://www.ipaustralia.gov.au/design-rights>

Contact us: <https://www.ipaustralia.gov.au/about-us/contact-us>

Phone: 1300 651 010
(9am to 5pm, Monday to Friday)

