

# Protecting Designs in Australia.

What is a Design? Registered designs protect the aesthetic or visual appearance of manufactured or hand made products intended for commercial production, as distinct from artistic works that are generally protected by copyright, or functional features covered by patents.

Both 2D designs, such as a printed pattern applied to cloth or wallpaper, and the 3D shape of products, can be protected by way of design registration.

Products can be functional as well as aesthetic. Examples of products suitable for design registration are the shape of a car wing mirror, furniture, embossing on flatware, and patterns printed on fabric.

Registered design protection is also available for the cross sectional shape of a product that varies in one or more dimensions, such as the cross sectional profile of plastic or metal extrusions.

However, design registration is generally excluded for the tactile feel of a product, materials used for the product, any indefinite dimension (eg length of an extrusion), or more than one repeat of a repeating pattern (e.g. of a patterned fabric).

Registration of a design application will occur soon after application provided all of the formal registration requirements are met. There is no automatic examination.

#### Overlap with Copyright protection

Under certain circumstances, copyright in plans, drawings or artwork etc can become unenforceable where a product is commercially produced. Under such circumstances, design protection can provide a useful alternative form of protection.

#### Publication or use before application

Publication of the design anywhere in the world, or manufacture of the design in Australia, before the priority date will lead to invalid registration. No sale, offer for sale or publication of the product embodying the design should be made prior to first filing of the application for registration of the design. To do otherwise is likely to result in an invalid design registration.

#### Details required for design registration

1. Name and business (physical) address of applicant
2. Representations of the design (preferably drawings in electronic format)
3. Description of the product (article) to which the design is applied
4. Details of any features of the design considered to be particularly distinctive over known designs.
5. Name and address of each author of the design
6. Details of applicant's entitlement to the design (provide copy of assignment document if available)
7. Convention priority details (if any) Watermark can attend to all application documents. Power of attorney forms are not required in Australia.

A request for registration or publication of the design must be filed within 6 months of the earliest of the Australian application or convention priority date, otherwise the application will lapse.

#### Ownership

The following persons are entitled to be the owner of a design registration:

- a. the person(s) who created the design (the designer(s));
- b. if the designer(s) created the design in the course of employment, or under a contract, with another person—that other person eg employer, unless by agreement to the contrary;
- c. a person who derives title to the design eg by assignment.

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#### Victoria

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Designs

The diagram overleaf shows in a simplified form, a process for obtaining design protection.

For more information on Watermark's comprehensive range of intellectual property services contact [mail@watermark.com.au](mailto:mail@watermark.com.au)



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## Examination

Examination of a design registered under the Designs Act 2003 is not automatic, and does not occur unless requested by the owner, a third party, or the Registrar for Designs.

A registered design cannot be enforced until the Designs Registry has examined and certified the registration, after which the design registration can be enforced.

The examination process must ordinarily be completed within 6 months of issue of a first examination report. Third parties can file documentary evidence against the validity of the registration. It is not possible to file divisional applications.

## Test for Validity

The test is whether the design is new or distinctive. More weight is to be given to similarities between prior art designs and the registered design.

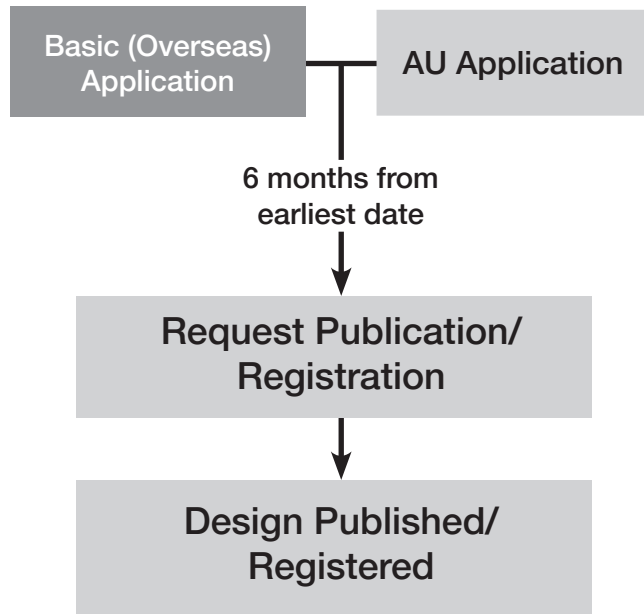
## Opposition

There are no provisions for formal opposition to registration/certification of a design. Third parties may however file objections in the form of documentary evidence during the examination process.

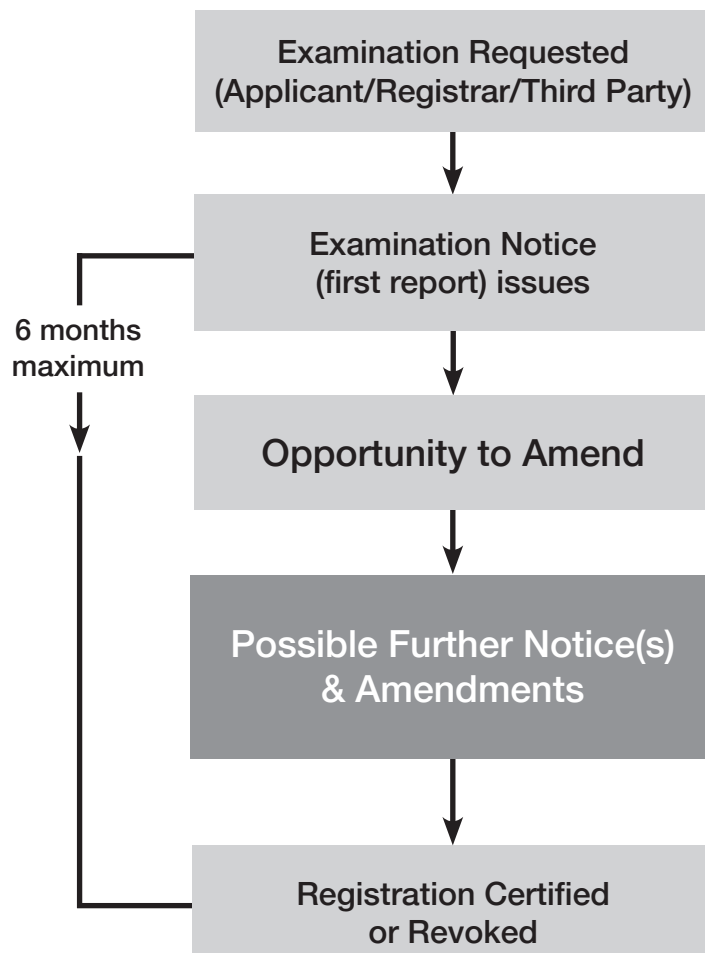
## Term

Designs are registered for an initial term of 5 years, renewable for a further 5 years, making a total maximum term of 10 years.

## Application & Registration



## Examination to Certification



Designs