

31 January 2020

Our ref: HS-TIPS

Mr Brett Massey
IP Australia
PO Box 200
Woden ACT 2606

By email: consultation@ipaustralia.gov.au

Dear Mr Massey

Design System Review Submission

Thank you for granting the Queensland Law Society (**QLS**) an extension of time to provide submissions on the current Designs Consultation, which was responding to recommendations of the former Advisory Council on Intellectual Property (**ACIP**), in its Final Report of March 2015, titled "Review of the Designs System" (the **ACIP Review**).

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

Introduction

The Society has had, through its Technology and Intellectual Property Committee, an ongoing interest in the treatment of registered designs in Australia, having made submissions by its letter dated 15 November 2013 to the ACIP, responsive to the Review of the Design System Discussion Paper (the **2013 submission**).

To the extent that there are issues of overlap with the views expressed in the 2013 submission, the Society's position shall be repeated in this submission, making this submission a 'stand-alone' document.

QLS notes that IP Australia's consultation papers include:

- Scope of designs protection (**Paper 1**).
- Early flexibility for designers (**Paper 2**).
- Simplifying and clarifying the designs system (**Paper 3**).

Design System Review Submission

The Society responds to topics identified from the papers in this submission, which includes the responses to questions in the Schedule

Scope of designs protection

Under this topic, IP Australia seeks comment on Recommendations 10, 13 and 14 of the ACIP Review.

Recommendation 10 of the ACIP Review

Recommendation 10 of the ACIP Review stated:

ACIP recommends retaining the requirement of distinctiveness and section 19 of the Designs Act in its current form.

This raises three sub-issues in Paper 1, by reference to the submissions of the Intellectual Property Committee of the Law Council of Australia (**LCA**), namely:

- Clarification of how the factors in s.19(1), (2) and (3) of the *Designs Act* 2003 (Cth) (**Designs Act**) are weighed or assessed (the **Clarification issue**).
- The standard of the informed user referred to in s.19(4) (the **Informed User issue**).
- The use or otherwise of the Statement of Newness and Distinctiveness (**SoND**) referred to in s.19(3) (the **SoND issue**).

The Clarification issue

The Society supports the position in Option 1, that section 19 of the *Designs Act*, as it relates to clarification of how the various factors in s.19 are weighed or assessed, remain in its current form.

This position is arrived at by taking the following matters into consideration:

- a) The legislature has specifically provided two levels of guidance in relation to distinctiveness which applies to both validity and infringement.

The Society notes the submission by the LCA that "...section 16(2) requires that, to assess whether a design is distinctive, s.19 must be applied".¹ The Society agrees that s.19 is read with s.16(2), however, the Society considers that s.16(2) is not merely a conduit to the considerations set out in s.19, but rather provides its own preliminary level of refinement. Relevantly, the REM identifies s.16(2) as setting out the standards for newness *and distinctiveness*.² (our emphasis)

¹ LCA submission to the ACIP Review page 5.

² *Designs Bill* 2003 (Cth) Revised Explanatory Memorandum (REM): Item 22 page 31, referring to factors to be used by the Registrar and the Court to assess distinctiveness under s.16 and infringement under s.71.

Design System Review Submission

Firstly, the *Designs Act* s.16(2) itself provides the first layer of clarification by *engaging the presumption* that a design is distinctive “unless it is substantially similar in overall impression to a [design](#) that forms part of the [prior art base](#) for the [design](#)”.³

Secondly, the prescriptions in s.19 provide a further level of refinement and assistance.

- b) Returning to basics, design is what makes a product look the way it does.⁴ Designs are therefore inherently dictated by impression, relevantly the impression of the Court. In this regard, the Society considers there is a real danger in attempts to formulate comprehensive descriptions which unnecessarily complicate the flexibility of the Court to identify the impression gained of the relevant design.⁵ Such attempts are, in the Society’s view, reminiscent of the observations of Justice Gummow in *ConAgra*, that attempts to produce a definition of the tort of passing off which was both succinct and comprehensive and has had mixed success.⁶

The assessment of whether there is substantial similarity in overall impression involves an objective judgment by the Court standing in the shoes of the informed user, a notional person who is familiar with the product to which the design relates, or products similar to the product to which the design relates.⁷

In the *Roadvision appeal*,⁸ on appeal to the Full Court of the Federal Court, LED referred to the requirement in the *Designs Act*, s 19(1) that, in deciding whether a design is substantially similar in overall impression to another design, the Court gives more weight to similarities between designs than to differences between them. LED also submitted that s 19(2)(c) was relevant to the circumstances as there was a substantial similarity between the front of the registered designs and the Roadvision lights. It argued, that a person would have a very limited opportunity to view the back of the base of the lights. Besanko J (at [83]), with whom Mansfield and Flick JJ agreed, considered that there was merit in that submission, however it did not lead his Honour to conclude that the Roadvision lights embodied a design that was substantially similar in overall impression to the appellants’ registered designs.

Relevant to this finding was a ‘crowded’ prior art base. Besanko J at [84] said:

“[I]n terms of infringement, one of the most significant matters is that the registered designs appeared in a crowded field of prior art. As the trial judge noted, many of the features of similarity between the registered designs and the respondents’ lights were features that were common in the prior art. Even if less weight is placed on the difference in the underside of the base it is still a relevant

³ *Multisteps Pty Ltd v Specialty Packaging Aust Pty Ltd* [2018] FCA 587 per Jagot J at [82] (*Specialty Packaging*).

⁴ <https://www.ipaustralia.gov.au/designs/understanding-designs/design-basics>.

⁵ The Society notes the similar concern of the ACIP Review at [2.4.1] page 25.

⁶ *ConAgra Inc v McCain Foods (Aust) Pty Ltd* (1992) 23 IPR 193 at 246.

⁷ *LED Technologies Pty Ltd v Elecspress Pty Ltd* [2008] FCA 1941 per Gordon J at [56] (***Elecspress***); *Review 2 Pty Ltd v Redberry Enterprise Pty Ltd* [2008] FCA 1588 per Kenny J at [26]; *Multisteps Pty Ltd v Source and Sell Pty Ltd* [2013] FCA 743 per Yates J at [37].

⁸ *LED Technologies Pty Ltd v Roadvision Pty Ltd* [2012] FCAFC 3 (Mansfield, Besanko and Flick JJ) an appeal from *LED Technologies Pty Ltd v Roadvision Pty Ltd* [2011] FCA 146 (Finkelstein J) (the ***Roadvision appeal***).

Design System Review Submission

visual feature and, with the other features identified by the trial judge, leads me to conclude that the trial judge did not err in deciding that the design embodied in the respondents' lights was not substantially similar in overall impression to the registered designs."

The Society therefore considers that in a "crowded field" of prior art particularly, further prescriptions will impinge on the flexibility of the Court's impression, to the detriment of an objective assessment of whether a design is substantially similar in overall impression.

- c) Referring to the suggested amendment to s.19(2)⁹, there does not seem to be any question in practice that the factors in s.19(2) are not read with the presumption in s.16(2) for validity and s.71 for infringement.¹⁰ Therefore, the amendment referred to in Option 2 of the question on clarification of the s.19(2) factors, seems to the Society not to add any actual benefit.

The "Informed User" issue

Paper 1 relevantly notes:

"The LCA has proposed amending subsection 19(4) to resolve any perceived uncertainty caused by the simultaneous operation of the two approaches."¹¹

Specifically, the LCA submission notes:

"... parties are continuing to experience difficulties in applying this section and identifying who may be the appropriate 'informed user', including what level and nature of familiarity with the product or similar products is required, and whether this still requires evidence from a professional design expert. This is made more difficult as a result of differing approaches by the Federal Court (compare, for example, Kenny J in *Review 2 Pty Ltd v Redberry Enterprises Pty Ltd* (2008) 79 IPR 214 and Yates J in *Multisteps Pty Ltd v Source and Sell Pty Ltd* [2013] FCA 743)."

The Society supports the position in Option 1 that sub-section 19(4) of the *Designs Act*, as it relates to the standard of the informed user remain in its current form.

This position is arrived at by taking the following matters into consideration:

- a) The development of Australian jurisprudence on the issue of the "informed user" under the *Design Act*, required some time to develop. The decision of her Honour in *Review 2* was handed down in 2008. The *Designs Act* came into force in June 2004. It is a fact, for whatever reason or combination of reasons, that design infringement and/or design validity cases, do not have the frequency of consideration in the Federal Court (or any other prescribed court), which matters involving copyright, trade marks and even patents have before the Court.¹² As a result, Australian jurisprudence on the issue of the

⁹ Paper 1 page 26: "the phrase "The person must also" would be replaced with "In applying subsection (1), the person must have regard to the following matters".

¹⁰ Jagot J in *Specialty Packaging* at [82] and referring at [83] to *GM Holden Ltd v Paine* [2011] FCA 569; (2011) 281 ALR 406 at [38] per Gordon J.

¹¹ Paper 1 page 22.

¹² This fact appears consistent with the number of design applications lodged each year, which is also typically much lower than the number of patent and trade mark applications received: Productivity

Design System Review Submission

“informed user” under the *Design Act*, was not yet developed to the extent that her Honour could have the benefit of it in *Review 2*.

- b) The Hon. Justice Gordon in *Elecspress* (2008), referred to the “recent judicial consideration in Australia” by Justice Kenny in *Review 2* and to the U.K. decisions, particularly the reasoning that the “notional user” was “obviously a user of the articles.”¹³ (Judge Fysh QC’s emphasis).

Gordon J also noted the position of the Australian Designs Office (**ADO**), which had indicated that the informed user concept was an objective test where the user is an ordinary or typical member of a sample of users of the product who is reasonably informed, being neither barely informed nor fully expert:

Relevantly, her Honour observed:

“Although it would be dangerous to attempt some comprehensive statement of principles that might be applied to the concept, it is apparent that an *informed user*:

1. is reasonably informed; not an expert but more informed than an average consumer;
2. is an objective standard. However, expert evidence may still be adduced in court to assist the Court in applying the informed user concept;
3. focuses on visual features and is not concerned with internal features or features that are not visible to the naked eye.”¹⁴

Notably, notwithstanding these considered U.K. references and the ADO position, Gordon J did not include any requirement of the “informed user” actually being a user of the articles of the type, which were the subject of the registered design. Further, in her Honour’s list of observations, Gordon J did not shut out expert evidence, which might assist the Court “in applying the informed user standard”.¹⁵

- c) By 2013, as noted in Paper 1, Yates J in *Multisteps*,¹⁶ considered “the necessary and only qualification is that the person be familiar with [the product]”.¹⁷ His Honour also stated:

“The test in s 19(4) of the Designs Act reflects this more general approach. Apart from the tag “the informed user”, the standard prescribed by s 19(4) appears to be indifferent as to how and in what circumstances familiarity is acquired. In my

Commission Inquiry Report “Intellectual Property Arrangements” No.78, 23 September 2016, page 337 (**PC Report**).

¹³ *Woodhouse UK plc v Architectural Lighting Systems* [2006] RPC 1 per Judge Fysh QC at [59] and approved Lewison J in *Proctor & Gamble Company* 73 IPR 605 at [31], [32] and [41] and applied in *Application by Pauline Ann Walton to invalidate UK Registered Design in the name of Zap Ltd* [2007] ECDR 10.

¹⁴ *Elecspress* at [59].

¹⁵ *Ibid*.

¹⁶ *Multisteps Pty Ltd v Source and Sell Pty Ltd* [2013] FCA 743 (**Source and Sell**).

¹⁷ Paper 1 page 22.

respectful view, the standard does not proceed on the requirement that the notional person be a user of the products in question – although, obviously, familiarity can be gained through use.”¹⁸

- d) In 2018, the Hon. Justice Jagot in *Specialty Packaging* (a case involving clear plastic packaging of fruits such as berries), referred to Justice Nicholas’ decision in *Hunter Pacific International Pty Ltd v Martec Pty Ltd* [2016] FCA 796; (2016) 121 IPR 1, where his Honour, emphasised the requirement of familiarity of the product or similar products by the informed user.

Further and relevantly, Jagot J specifically dismissed a challenge by the respondents to one of the applicant’s expert witnesses (**Mr Rickards**), on the basis that the witness could not be an informed user because he did not design or make plastic containers. Her Honour, emphasising familiarity, determined:

“The respondents also submitted ... Mr Rickards did not design and make plastic containers. Rather, he dealt in the containers the applicant designed and his design input was confined to instructing the applicant about design changes that he considered should be made. As a result, the respondents said Mr Rickards was not able to assist the Court about how an informed user would regard the designs. I do not accept this submission. Mr Rickards dealt with plastic containers of the kind which this case concerns for more than a decade. He understood the design requirements of such containers and gave instructions about design requirements even he did not design and make containers.”¹⁹

- e) In *Specialty Packaging*,²⁰ each of the parties had two expert witnesses. The evidence of the respective “informed users” was given in a jointly prepared report and concurrently before the Court, a common approach in the Federal Court, to reduce the costs of experts in IP litigation. Accordingly, the Society considers that there was and is no additional costs of the litigation, attributable to the description of the “informed user” in the *Designs Act* s.19(4).

The SoND issue

The Society supports the position in Option 1, that section 19 of the *Designs Act*, as it relates to the lodgement of a SoND referred to in *Designs Act* s.19(2)(b), remain in its current form.

This position is necessarily taken, because the Society has expressed the view on the Clarification issue that, s.19 adequately informs the assessment of what is substantially similar in overall impression.

However, if, after consultation, the Government considers that further clarifications to s.19 are required, the Society supports the option for the mandatory filing of an SoND. As the Government has indicated that its preference is not to make changes to s.19 at this time (a position the Society supports), there is little utility to expand on the reasons the Society favours the filing of a SoND mandatorily.

¹⁸ *Source and Sell* at [66].

¹⁹ *Specialty Packaging* at [89].

²⁰ *Specialty Packaging* also involved patents over the container technology.

Design System Review Submission

The Society takes this alternate position, not because of perceived deficiencies in s.19, but because the Society's primary position is, that s.16 together with s.19 provide adequate assistance for the Court to consider the issues of validity and infringement. The Society's alternate position is, that requiring a SoND is consistent with maintaining the proper balance between the design owner's rights and those of the public.

Specifically, that the design owner's rights are more narrowly defined, which in terms means greater clarity for the public. Similar considerations have been applied to the "best method" requirement in patents²¹ – full description of the invention means the public knows the limitations and obtains full benefit of the disclosure. The Society in reaching this conclusion, has noted the ACIP comment that distinguishes patents on the basis that patents are "conclusive of the scope of rights".²² However, both are given exclusivity on the basis of proper identification of the inventive or innovative advance and in terms of the balance of interests with the public, have the same obligations.

Recommendation 13 of the ACIP Review

Recommendation 13 of the ACIP Review relevantly stated:

- a) *ACIP recommends retaining the current requirement that protection relate to the visual appearance of a (whole) product.*
- b) *ACIP recommends that in investigating opportunities for international cooperation in design application processes and requirements with other offices overseas, IP Australia continue to investigate whether allowing partial product registrations would enhance harmonisation of application requirements in a way that would substantially advantage Australian applicants. If significant advantages to Australian applicants can be shown and IP Australia can confirm that such protections do not give rise to substantial practical or legal issues overseas, then ACIP would support reform of Australian law.*

The Society agrees with the ACIP recommendation 13(a) retaining the current requirement that protection relate to the visual appearance of a (whole) product.²³ The Society therefore supports Option 1 of the options in relation to partial product registrations.²⁴

In relation to Recommendation 13(b), the Society notes the ACIP recommendation, accepted by the Government, that investigation consider whether partial product registrations would enhance harmonisation of application requirements, in a manner which would *substantially advantage Australian applicants*.²⁵ (Emphasis added)

As identified by the LCA in its submission, the Society considers that extending protection in this manner would represent a fundamental change in the concept of design and would render

²¹ *Les Laboratoires Servier v Apotex Pty Ltd* [2016] FCAFC 27; *Sandvik Intellectual Property AB v Quarry Mining & Construction Equipment Pty Ltd* [2017] FCAFC 138.

²² ACIP Review page 27.

²³ ACIP Review page 30 Recommendation 11.

²⁴ The options appear on page I of Paper 1.

²⁵ *Ibid* and noted in Paper 1 at page 5.

Design System Review Submission

SoNDs useless,²⁶ presumably as the design registration would be only in respect of that new and distinctive aspect.

The Society agrees with the Productivity Commission (**PC**) in its draft report, to which Paper 1 is linked on this topic,²⁷ which states that:

“... there appears to be little if any empirical evidence that partial design protection is needed to stimulate socially beneficial innovations in Australia.”

In the absence of any clear evidence of a benefit to Australians, the Society considers that a general policy of harmonisation is an insufficient basis to introduce a protection with somewhat untested and unpredictable limits. For example, the impact of protection of a part of a product will directly impact on the concept of the “informed user” in s.19(4) of the *Designs Act*. Having regard to the images reflecting the options in Paper 1, the Society identifies the following issues arising from registration of part only of a product:²⁸

- a) Is the informed user of mugs able to give evidence of the handle on cups, jars with lids and other household goods such as a water jug?
- b) Does the registered owner of a registration for the handle only, which the owner has applied only to mugs, have to obtain in an infringement action against a respondent applying the handle to bags, evidence from:
 - i. An informed user of mugs;
 - ii. An informed user of bags (or any other type of product to which the handle alone registration has been applied);
 - iii. Both of the above informed users; or
 - iv. An informed user of the new and distinct handle alone.
- c) In relation to an informed user of the handle alone, if such a registration were permitted, no informed user could give evidence for a respondent in such circumstances, because the respondent would presumably lack the familiarity with the handle itself, that is, the actual part that has registration. The applicant however, could provide such evidence because the design owner themselves and their staff, are familiar with the part only by reason of the applicant’s exploitation.

Recommendation 14 of the ACIP Review

Recommendation 14 of the ACIP Review relevantly stated:

Recommendation 14 ACIP recommends that the treatment of virtual or non-physical designs be reconsidered, for example by allowing consideration of the product in its active, and not just its resting state when considering validity.

²⁶ LCA submission [25].

²⁷ Paper 1 page 5 footnote 15 referring to a draft PC Report at: <https://www.pc.gov.au/inquiries/completed/intellectual-property/draft/intellectual-property-draft.pdf> (the **Draft PC Report**)

²⁸ Paper 1 page 8.

Design System Review Submission

The Society does not support the extension of registration under the *Designs Act* to virtual or non-physical designs. It says that, like registration of parts only, there is little if any evidence that registration of such virtual forms, stimulates beneficial innovation of designs in Australia.²⁹

In support of this position, the Society considers that objections to protecting these virtual forms include, the ease with which they may be created and erased.

In relation to the relative ease with which they could be *created*, the Society considers that there is a real risk that such virtual designs may be prematurely published, rendering them open to challenge as not being “new” within the meaning of the *Designs Act* s.15(1).

In relation to the ease at which they could be *removed*, the Society considers that there is a real risk that such virtual designs may be removed by a potential infringer, before evidence of infringement is secured. Such a matter was a relevant consideration in an application for search and seizure orders (known previously as Anton Piller orders).³⁰

Among the issues to also be considered, the Society says that the question of design/copyright overlap should also be considered.³¹ Specifically, these issues include:

- a) Is a virtual design a two-dimensional representation of an artistic work, so that copyright in the artistic work is protected by the *Copyright Act*?
- b) Is a three-dimensional representation of a product appearing in a virtual state, sufficient to ground a defence under s.77A?
- c) Does this possibility of a literary work producing a virtual design, not make an already complex area of copyright and design law more complex?

Other comments supplemental to these responses, appear in the responses to specific questions for each paper appearing in the Schedule hereto.

Early flexibility for designers

Under this topic, IP Australia seeks comment on Recommendations 5, 9 and 12 of the ACIP Review.

The Society responds in relation to Recommendation 12 only, of the ACIP Review. Recommendation 12 of the ACIP Review states relevantly:

ACIP recommends introducing a grace period of six months before the filing date, together with a prior user defence. Applicants who rely on the grace period to protect the validity of their design rights should be required to file a declaration to that effect.

The Society supports the introduction of a 12-month grace period from the date of filing. The filing date is the date when the application meets the minimum filing requirements.³²

²⁹ These comments are noted in the Draft PC Report page 321.

³⁰ For example, *Sky Channel Pty Ltd v Yahmoc Pty Ltd* [2003] FCA 401 at [8] per Allsop J (as his Honour then was).

³¹ *Copyright Act* 1968 (Cth) ss.74-77A.

³² *Designs Act* 2003 (Cth), ss. 26 and 27(a); and *Designs Regulations* 2004, reg 3.05 and 3.06.

Design System Review Submission

The Society accepts that reliance on a grace period may instill some uncertainty in prospective competitors who may be unaware of the ability to rely upon the “grace” period. However, the Society considers that the grace period is predominantly for the protection of inadvertent disclosures before the priority date and for the opportunity to trial and test designs to ascertain their commercial viability.

One would think that those most likely to make those mistakes are not experienced users of the design system. Such a person is not expected to be familiar with the implications of a prior disclosure or be able to afford expertise to identify those pitfalls.

As the firm Gilbert & Tobin submitted to the PC:

“... It is Gilbert + Tobin’s experience that both Australian and international designers (particularly international designers from jurisdictions with a grace period or unregistered design protection) are not familiar with the absolute requirements for secrecy of a design before filing a design application in Australia.”

Members of the Society’s Technology and Intellectual Property Committee have had similar experiences.

The grace period was introduced into the *Patents Act* on 1 April 2002 and applies in respect of prescribed circumstances which are identified as recognised exhibitions, presented or published by a learned society, for the purpose of reasonable trial of the invention. In addition, there is general catchall circumstance.³³

The Society particularly considers a relevant issue in the design industry is that designers have a practical opportunity to test their designs. For the purpose of reasonable trial of the design, it would be appropriate to allow designers a grace period of 12 months. The Society accepts that following the initial design phase, there would be expected to be a period of trials while the commercial viability of the design is determined.

Questions in the Schedule

Scope of designs protection

Questions for consultation on the Clarification issue

C1. Given the concerns raised by the LCA IP Committee, and the preceding discussion, do you see a need to further clarify certain elements of section 19?

No. The Society refers to responses in paragraphs [5] to [18] of the Society’s submission.

C2. How do you see the suggested changes to the use of the SoND (Options 2 and 3) impacting on the administrative burden of applicants?

The Society refers to responses in paragraphs [14] to [18] of the Society’s submission. The Society has indicated that there is no need at this time to consider further clarifications of the test derived from ss.16 and 19. If however, the Government were to consider any changes, for the reasons in the paragraphs referred to, that would be to make SoND mandatory. The new and distinctive aspect of the design is a fact that is known. The Society accepts that not all the

³³ *Patents Act* 1990 (Cth) s.24 and *Patent Regulations* 1991 (Cth) 2.2, 2.2A, 2.2B, 2.2C.

Design System Review Submission

new and distinctive features may be known, however the applicant is in a position to identify an aspect that is new and distinctive.

C3. If protection for partial designs was introduced, how do you see this impacting on the operation of subsection 19(2)? Would the introduction of partial designs cause the SoND to be redundant?

The Society refers to responses in paragraphs [14] to [18] of the Society's submission. In relation to the utility of a SoND if partial registrations were permitted, the Society considers that there would be little utility in SoNDs as they target new and distinctive aspects of a design, whereas a partial registration would, if permitted, be in relation to the new part only. See [22] herein.

C4. If protection for partial designs was introduced, do you see any problems in retaining the expression 'design as a whole' as it appears in subparagraph 19(2)(b)(ii), paragraph 19(2)(c), and subsection 19(3)?

It would seem clear that terminology relevant to the visual aspect of a product as a whole, is inconsistent with a part of a product only. A substantial revision would be required in the Society's view.

C5. If protection for virtual designs was introduced, how would you see this impacting on the definition of 'product' as it currently appears in subsection 19(4)?

QLS specifically responds to this issue at [24] herein. The Society considers that the identification of the informed user would be complicated and for the reasons given, weighted in favour of the design owner against an alleged infringer.

Questions for consultation on partial design registration

P1. Do you consider that Australia's approach to partial designs should be reformed? Why or why not?

No. QLS refers to its responses at paragraphs [19] to [24] herein.

P2. What is your preferred option, and do you see any additional options for addressing the problem?

QLS refers to its responses at paragraphs [19] to [24] herein. The Society considers that the problem at this point in time, involves harmonisation with other jurisdictions, which is not of itself a basis for introducing a substantial change in this area.

P3. Has someone ever copied a part of your design and if so, can you describe your experiences?

Not applicable to QLS.

P4. In relation to partial designs, have you found claiming priority from an overseas application problematic in Australia and if so, can you describe your experiences?

No. QLS has no comment.

P5. Have you found claiming priority from an Australian application problematic when seeking partial protection overseas and if so, can you share your experiences?

Design System Review Submission

No. QLS has no comment.

P6. Are you aware of additional costs and benefits that have not been identified in this paper? If so, please provide further detail.

No. QLS has no comment.

Questions for consultation

V1. What is your preferred option, and do you see any additional options for addressing the problem?

QLS has no comment.

V2. Should protection for virtual designs be linked to a physical product? Why or why not?

QLS has no comment.

V3. What types of virtual designs should or shouldn't be protected? e.g. (computer programs and/or other types virtual designs such as fonts, holograms, animations etc.)?

QLS has no comment.

V4. Do you consider other existing forms of IP protection (such as copyright or trade mark protection) are sufficient for protection of virtual designs in Australia? Why or why not?

QLS has no comment.

V5. Would partial design protection need to be provided as well to protect virtual designs effectively? Why or why not?

QLS has no comment.

V6. Are you aware of additional costs and benefits that have not been identified in this paper? If so, please provide further detail.

QLS has no comment.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Luke Murphy
President