

# EXPOSURE DRAFT



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## Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2020

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2020

David Hurley  
Governor-General

By His Excellency's Command

Karen Andrews [**DRAFT ONLY—NOT FOR SIGNATURE**]  
Minister for Industry, Science and Technology

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## 1 Name

This instrument is the *Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2020*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	
2. Schedule 1	At the same time as Schedule 1 to the <i>Designs Amendment (Advisory Council on Intellectual Property Response) Act 2020</i> commences.	
3. Schedule 2	At the same time as Schedule 3 to the <i>Designs Amendment (Advisory Council on Intellectual Property Response) Act 2020</i> commences.	
4. Schedule 3	The day after this instrument is registered.	
5. Schedule 4	At the same time as Schedule 5 to the <i>Designs Amendment (Advisory Council on Intellectual Property Response) Act 2020</i> commences.	
6. Schedule 5	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Designs Act 2003*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1 Grace period

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## Schedule 1—Grace period

### *Designs Regulations 2004*

#### 1 Chapter 2

Repeal the Chapter.

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Registration of designs—removal of publication option **Schedule 2**

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## **Schedule 2—Registration of designs—removal of publication option**

### *Designs Regulations 2004*

#### **1 Subparagraph 3.02(b)(ii)**

Omit “, or publication under section 57 of the Act,”.

#### **2 Paragraphs 3.13(1)(b) and (2)(b)**

Omit “or published”.

#### **3 Regulation 3.14**

Repeal the regulation, substitute:

##### **3.14 Period within which application lapses**

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

#### **4 Paragraph 3.15(b)**

Omit “or published”.

#### **5 Chapter 4 (heading)**

Repeal the heading, substitute:

### **Chapter 4—Registration of designs**

#### **6 Part 4.2 of Chapter 4 (heading)**

Repeal the heading, substitute:

### **Part 4.2—Requests for registration**

#### **7 Regulation 4.01 (heading)**

Repeal the heading, substitute:

##### **4.01 Requests for registration**

#### **8 Subregulation 4.01(1)**

Repeal the subregulation.

#### **9 Regulations 4.02 and 4.03**

Repeal the regulations.

#### **10 Part 4.4 of Chapter 4**

Repeal the Part.

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Schedule 2 Registration of designs—removal of publication option

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## 11 Regulation 8.02 (heading)

Repeal the heading, substitute:

### 8.02 Period within which designs must be registered after prohibition order revoked

## 12 At the end of regulation 11.13

Add:

- (5) For the purposes of the definition of *relevant act* in subsection 137(7) of the Act, a prescribed action is:
- (a) withdrawing a design application under subsection 32(1) of the Act; or
  - (b) withdrawing a design under subsection 32(2) of the Act from a design application.



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Priority date where application for protection made in a Convention country **Schedule 3**

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## **Schedule 3—Priority date where application for protection made in a Convention country**

### *Designs Regulations 2004*

#### **1 Subregulation 3.06(2)**

Repeal the subregulation, substitute:

- (2) For the purposes of 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, the prescribed date is the day when the basic application was made.

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## Schedule 4 Formal requirements

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### Schedule 4—Formal requirements

#### *Designs Regulations 2004*

##### **1 Subregulation 1.04(1) (definition of *approved form*)**

Repeal the definition, substitute:

*approved form*, in relation to a provision of these Regulations, means a form approved in an instrument under subregulation (1A) for the purposes of that provision.

##### **2 After subregulation 1.04(1)**

Insert:

(1A) The Registrar may, in writing, approve a form for the purposes of a provision of these Regulations.

##### **3 After paragraph 4.04(1)(a)**

Insert:

(aa) the design application does not contain any scandalous matter or matter that might reasonably be taken to be scandalous; and

##### **4 Subparagraph 4.04(1)(e)(i)**

Omit “of the size required under paragraph 1(1)(e) of Schedule 2”, substitute “of international sheet size A4”.

##### **5 Paragraph 4.04(1)(f)**

Omit “design; and”, substitute “design.”.

##### **6 Paragraph 4.04(1)(g)**

Repeal the paragraph (not including the note).

##### **7 After paragraph 4.05(1)(a)**

Insert:

(aa) the design application does not contain any scandalous matter or matter that might reasonably be taken to be scandalous; and

##### **8 Subparagraph 4.05(1)(e)(i)**

Omit “of the size required under paragraph 1(1)(e) of Schedule 2”, substitute “of international sheet size A4”.

##### **9 Paragraph 4.05(1)(g)**

Omit “application; and”, substitute “application.”.

##### **10 Paragraph 4.05(1)(h)**

Repeal the paragraph (not including the note).

## **11 Regulation 11.18A (heading)**

Repeal the heading, substitute:

### **11.18A Publications of notices in the Official Journal**

## **12 Regulation 11.18A**

Omit “and 144C(5)”, substitute “, 144C(5) and 149A(2)”.

## **13 Subregulation 11.27(2)**

Omit “substantially comply with Schedule 2”, substitute “comply with the formal requirements determined in an instrument under section 149A of the Act”.

## **14 Subregulation 11.27(3)**

Omit “must”, substitute “may”.

## **15 Schedule 2**

Repeal the Schedule.

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Schedule 5 Application and transitional provisions

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## Schedule 5—Application and transitional provisions

### *Designs Regulations 2004*

#### 1 In the appropriate position in Chapter 12

Insert:

### **Part 4—Amendments made by the Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2020**

#### **12.09 Registration of designs—removal of publication option**

- (1) The amendment of subparagraph 3.02(b)(ii) made by Schedule 2 to the *Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2020* applies in relation to initial applications filed under section 21 of the Act on or after the commencement of that Schedule.
- (2) The amendment of regulation 3.13, the repeal and substitution of regulation 3.14, the amendments of regulations 3.15 and 4.01, the repeal of regulations 4.02 and 4.03 and of Part 4.4 of Chapter 4 and the amendment of regulation 11.13 made by Schedule 2 to the *Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2020* apply in relation to design applications filed under section 21 of the Act on or after the commencement of that Schedule.

#### **12.10 Priority date where application for protection made in a Convention country**

The amendment of regulation 3.06 made by Schedule 3 to the *Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2020* applies in relation to basic applications made on or after the commencement of this regulation.

#### **12.11 Formal requirements**

- (1) A form approved by the Registrar and in force immediately before the commencement of Schedule 4 to the *Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2020* for the purposes of a provision of these Regulations has effect on and after that commencement as if it were a form approved by the Registrar in an instrument under subregulation 1.04(1A) for the purposes of that provision.
- (2) The amendments of regulations 4.04 and 4.05 and the repeal of Schedule 2 (so far as it relates to those regulations) made by Schedule 4 to the *Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2020* apply in relation to design applications filed under section 21 of the Act on or after the commencement of Schedule 4 to the *Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2020*.

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Application and transitional provisions **Schedule 5**

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- (3) The amendments of regulation 11.27 and the repeal of Schedule 2 (so far as it relates to that regulation) made by Schedule 4 to the *Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2020* apply in relation to a document filed at the Designs Office on or after the commencement of Schedule 4 to the *Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2020*.

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