



Designs Amendment Act 2010

Public Act 2010 No 15
Date of assent 19 April 2010
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Designs Amendment Act 2010.

2 Commencement

- (1) This Act (except section 7) comes into force on the earlier of the following:
 - (a) the day that is 12 months after the date on which this Act receives the Royal assent;
 - (b) a date to be appointed by the Governor-General by Order in Council.
- (2) Section 7 comes into force on the day after the date on which this Act receives the Royal assent.

3 Principal Act amended

This Act amends the Designs Act 1953.

4 Period of copyright

- (1) Section 12(2) is amended by omitting “prescribed form” and substituting “prescribed manner”.
- (2) Section 12 is amended by adding the following subsection:
- “(3) Subsection (2) is subject to sections 41A to 41F (which provide for the restoration of lapsed copyright in a registered design).”

5 Inspection of registered designs

Section 30 is amended by adding the following subsection:

- “(5) However, nothing in this section prevents the Commissioner from publishing any of the following:
 - “(a) the date of an application for the registration of a design:

- “(b) the number of an application for the registration of a design:
- “(c) any details of an application for the registration of a design that are required to be in the application form.”

6 New headings and sections 41A to 41J inserted

The following headings and sections are inserted after section 41:

“Restoration of lapsed copyright in registered design

“41A Restoration of lapsed copyright in registered design

- “(1) This section applies if the period of copyright in a registered design has ended by reason of a failure to make an application under section 12(2) or to pay the prescribed fee under section 12(2) (or both).
- “(2) The Commissioner may, on a request made in the prescribed manner and in accordance with sections 41B to 41F, by order extend the period of copyright in a registered design for a second or third period of 5 years as provided for in section 12(2) if the Commissioner is satisfied that the relevant failure to comply with section 12(2) was unintentional.
- “(3) A request for an order under this section must contain a statement that fully sets out the circumstances that led to the relevant failure to comply with section 12(2).
- “(4) The Commissioner may require the person who makes the request to provide any further evidence that the Commissioner thinks fit.
- “(5) An appeal to the Court may be made from any decision of the Commissioner under this section or sections 41B to 41F.

“41B Persons who may make request for restoration of copyright

- “(1) A request for an order under section 41A may be made by the person who was the registered proprietor or, if that person is deceased, by that person’s personal representative.
- “(2) If there were 2 or more registered proprietors, the request for an order under section 41A may, with the leave of the Com-

missioner, be made by 1 or more of them without joining the others.

“41C When request for restoration of copyright may be made

- “(1) A request for an order under section 41A may only be made within the prescribed period.
- “(2) However, the Commissioner may extend the period within which a request may be made if the Commissioner is satisfied that there was no undue delay in making the request.
- “(3) The person who makes the request must, for the purposes of subsection (2), provide the Commissioner with a statement that fully sets out the circumstances that caused the delay and the reasons why the delay is not undue.
- “(4) The Commissioner may require that person to provide any further evidence that the Commissioner thinks fit.

“41D Commissioner’s consideration of whether prima facie case has been made out for restoration

- “(1) The Commissioner must, after considering a request made in accordance with sections 41A to 41C, give the person who made the request a reasonable opportunity to be heard if the Commissioner is not satisfied that a prima facie case has been made out for an order under section 41A.
- “(2) The Commissioner must publish a request made in accordance with sections 41A to 41C in the *Journal* if the Commissioner is satisfied that a prima facie case has been made out for an order under section 41A.

“41E Notice of opposition and reasonable opportunity to be heard

- “(1) Any person may, within the prescribed period, give notice to the Commissioner of opposition to an order being made under section 41A on either or both of the following grounds:
- “(a) that the relevant failure to comply with section 12(2) was not unintentional:
- “(b) if the period within which a request for an order under section 41A may be made is extended under section 41C, that the delay in making the request was undue.

- “(2) The Commissioner must notify the person who made the request if a person has given notice under subsection (1) and provide the person who made the request with a copy of that notice.
- “(3) The Commissioner must give the person who made the request and the opponent a reasonable opportunity to be heard before the Commissioner decides the case.

“41F Order to be made on payment of unpaid fees

- “(1) If the Commissioner has published a request under section 41D, he or she must make an order under section 41A in accordance with the request after the prescribed period for giving notice of opposition if—
 - “(a) all unpaid prescribed fees are paid; and
 - “(b) all other prescribed additional penalties (if any) are paid; and
 - “(c) either—
 - “(i) no notice of opposition is given within the prescribed period; or
 - “(ii) the decision of the Commissioner is in favour of the person who made the request (in the case of a notice of opposition having been given within the prescribed period).
- “(2) An order for the extension of the period of copyright in a registered design—
 - “(a) may be made subject to a condition requiring the registration of any matter if the provisions of this Act concerning entries in the register of designs have not been complied with; and
 - “(b) must contain, or be subject to, the provisions that are prescribed for the protection or compensation of persons who availed themselves, or took definite steps by way of contract or otherwise to avail themselves, of the design between the date when the period of copyright ended and the date on which the request is published under section 41D; and
 - “(c) may be made subject to any other conditions that the Commissioner thinks fit.

- “(3) If any condition of an order under this section is not complied with by the registered proprietor, the Commissioner may revoke the order and give any directions that are consequential on the revocation that the Commissioner thinks fit.
- “(4) The Commissioner must, before the Commissioner makes a decision under subsection (3), give the registered proprietor a reasonable opportunity to be heard.

“Restoration of design applications

“41G Request for restoration of abandoned design application

- “(1) This section applies if an application for the registration of a design is abandoned under section 7(4).
- “(2) The applicant may make a request to the Commissioner in the prescribed manner for an order to restore the application and to extend the period for complying with the requirements imposed on the applicant by or under this Act to a date that is specified in the order.
- “(3) Every request for an order must contain a statement that fully sets out the circumstances that led to the abandonment under section 7(4).
- “(4) The Commissioner must, after considering a request, give the person who made the request a reasonable opportunity to be heard if the Commissioner is not satisfied that the default or neglect on the part of the applicant that resulted in the application being abandoned under section 7(4) was unintentional.
- “(5) The Commissioner must publish the request in the *Journal* if the Commissioner is satisfied that the default or neglect on the part of the applicant that resulted in the application being abandoned under section 7(4) was unintentional.
- “(6) An appeal to the Court may be made from any decision of the Commissioner under this section or sections 41H to 41J.

“41H When request for restoration of application may be made

- “(1) A request under section 41G may only be made within the prescribed period.
- “(2) However, the Commissioner may extend the period within which a request may be made if the Commissioner is satisfied that there was no undue delay in making the request.

- “(3) The applicant must, for the purposes of subsection (2), provide the Commissioner with a statement that fully sets out the circumstances that caused the delay and the reasons why the delay is not undue.
- “(4) The Commissioner may require the applicant to provide any further evidence that the Commissioner thinks fit.

“41I Notice of opposition

- “(1) Any person may, within the prescribed period, give notice to the Commissioner of opposition to an order being made under section 41J on either or both of the following grounds:
 - “(a) that the default or neglect on the part of the applicant that resulted in the application being abandoned under section 7(4) was not unintentional;
 - “(b) if the period within which a request under section 41G may be made is extended under section 41H, that the delay in making the request was undue.
- “(2) The Commissioner must notify the applicant if a person has given notice under subsection (1) and provide the applicant with a copy of that notice.
- “(3) The Commissioner must give the applicant and the opponent a reasonable opportunity to be heard before the Commissioner decides the case.

“41J Commissioner to determine matter

- “(1) The Commissioner must, after the expiry of the prescribed period for giving notice of opposition under section 41I,—
 - “(a) by order restore the application and extend the period for complying with the requirements imposed on the applicant by or under this Act to a period that is specified in the order if the Commissioner is satisfied that—
 - “(i) the default or neglect on the part of the applicant that resulted in the application being abandoned under section 7(4) was unintentional; and
 - “(ii) if the period within which a request under section 41G may be made was extended under section 41H, there was no undue delay in making the request; or
 - “(b) dismiss the request.

- “(2) An order under this section must contain, or be subject to, the provisions that are prescribed for the protection or compensation of persons who availed themselves, or took definite steps by way of contract or otherwise to avail themselves, of the design between the date when the application became abandoned and the date on which the request is published under section 41G.
- “(3) The Commissioner must publish in the *Journal* the making of an order under subsection (1) after that order is made.”

7 Regulations

Section 46(2) is amended by inserting the following paragraphs after paragraph (c):

- “(ca) for prescribing the manner in which applications may be made under section 12(2):
- “(cb) for regulating the procedure to be followed in connection with a request to the Commissioner under sections 41A to 41F (including providing for when and how requests must be made, the period for giving notice of opposition, penalties payable under section 41F, and the matters referred to in section 41F(2)(b)):
- “(cc) for regulating the procedure to be followed in connection with a request to the Commissioner under sections 41G to 41J (including providing for when and how requests must be made, the period for giving notice of opposition, and the matters referred to in section 41J(2))”.

8 Consequential amendment to Copyright Act 1994

- (1) This section amends the Copyright Act 1994.
- (2) Section 74 is amended by adding the following subsection:
- “(4) If the registered protection in New Zealand of a design that has ceased to have effect is restored by an order made under section 41A of the Designs Act 1953, nothing done under subsection (1) in the period beginning with the day on which the protection ceased to have effect and ending with the close of the day on which the order is made constitutes an infringement

of copyright in any literary or artistic work or copy of the work forming part of the design.”

Legislative history

30 March 2010	Divided from Regulatory Improvement Bill (Bill 298–2) by committee of the whole House, third reading
19 April 2010	Royal assent

This Act is administered by the Ministry of Economic Development.
