



**Australian Government**

**Department of Education, Employment and Workplace Relations**

# **BSBIPR404A Protect and use innovative designs**

**Revision Number: 1**

## BSBIPR404A Protect and use innovative designs

### Modification History

Not applicable.

### Unit Descriptor

<b>Unit descriptor</b>	<p>This unit describes the performance outcomes, skills and knowledge required to protect the appearance or look of manufactured or hand made articles as registered designs. It covers identifying the need for protection, the process of design registration, monitoring and protecting registered designs, and using registered designs commercially.</p> <p>No licensing, legislative, regulatory or certification requirements apply to this unit at the time of endorsement.</p>
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### Application of the Unit

<b>Application of the unit</b>	<p>This unit applies to individuals and organisations who are involved in creating industrial or fashion designs across a variety of work environments.</p>
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### Licensing/Regulatory Information

Not applicable.

### Pre-Requisites

<b>Prerequisite units</b>		

## Employability Skills Information

<b>Employability skills</b>	This unit contains employability skills.
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## Elements and Performance Criteria Pre-Content

Elements describe the essential outcomes of a unit of competency.	Performance criteria describe the performance needed to demonstrate achievement of the element. Where bold italicised text is used, further information is detailed in the required skills and knowledge section and the range statement. Assessment of performance is to be consistent with the evidence guide.
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## Elements and Performance Criteria

ELEMENT	PERFORMANCE CRITERIA
1. Identify the need for protection of innovative designs	<p>1.1. Research what constitutes <i>a registrable design</i> and what <i>exclusive rights</i> are obtained through registration</p> <p>1.2. Identify <i>legislative requirements</i> governing design registration</p> <p>1.3. Research <i>prior art</i> to determine what has already been published or registered in the area of design</p> <p>1.4. Assess whether copyright provides protection and determine adequacy of <i>non-registrable protection</i></p> <p>1.5. Identify innovative designs within own organisation with commercial potential</p> <p>1.6. Evaluate and make recommendations for <i>commercialisation potential</i> of innovative designs</p>
2. Identify and initiate application for protection of innovative designs	<p>2.1. Identify <i>sources of information and advice</i> regarding protection of innovative designs</p> <p>2.2. Evaluate the role of intellectual property professionals in the registration process</p> <p>2.3. Identify <i>processes</i> required for the application for registration of a design</p> <p>2.4. Identify process for <i>international design registration</i></p> <p>2.5. Participate in a design registration process and, if applicable, provide relevant information to an intellectual property professional</p>
3. Monitor the market and protect and use registered design	<p>3.1. Identify and review organisation policies and procedures to protect and use the organisation's designs correctly</p> <p>3.2. Identify and establish processes to use own and others' registered designs for business growth</p> <p>3.3. Ensure that procedures are followed for the organisation to <i>maintain</i> innovative design protection</p> <p>3.4. Ensure all employees are aware of the importance to the organisation of the protection of designs, and implement training, if required</p> <p>3.5. <i>Monitor</i> the market for possible infringements of registered designs</p> <p>3.6. Pursue appropriate <i>legal measures</i> to protect designs against infringements, if required, using appropriate professional advice</p>

ELEMENT	PERFORMANCE CRITERIA
	3.7. Identify and review organisation policies and procedures to ensure all employees respect the work of other designers in fair and open competition

## Required Skills and Knowledge

### REQUIRED SKILLS AND KNOWLEDGE

This section describes the skills and knowledge required for this unit.

#### Required skills

- research skills to identify rules governing design registration and search databases
- analytical skills to identify commercial potential of innovative designs and their registration applicability
- literacy skills to interpret IP Australia's design registration procedures and contribute to an innovative design protection application
- problem solving skills to act on potential infringement issues

#### Required knowledge

- application guidelines, formats and procedures to protect innovative designs
- overview of relevant legislation concerning designs, including the overlap of intellectual property rights between design protection and copyright
- sources of information and advice about protection of designs

## Evidence Guide

<b>EVIDENCE GUIDE</b>	
The Evidence Guide provides advice on assessment and must be read in conjunction with the performance criteria, required skills and knowledge, range statement and the Assessment Guidelines for the Training Package.	
<b>Overview of assessment</b>	
<b>Critical aspects for assessment and evidence required to demonstrate competency in this unit</b>	<p>Evidence of the following is essential:</p> <ul style="list-style-type: none"> <li>• identification of issues for the use, management and protection of innovative designs</li> <li>• implementation of policies and procedures for the use, management and protection of innovative designs and legitimate use of others' designs</li> </ul>
<b>Context of and specific resources for assessment</b>	<p>Assessment must ensure:</p> <ul style="list-style-type: none"> <li>• access to relevant information on the individual or organisation's innovative design protection requirements and procedures</li> <li>• access to reliable and appropriate explanatory material and guidelines</li> <li>• access to appropriate computer resources for establishment and maintenance of policies and procedures</li> </ul>
<b>Method of assessment</b>	<p>A range of assessment methods should be used to assess practical skills and knowledge. The following examples are appropriate for this unit:</p> <ul style="list-style-type: none"> <li>• direct questioning combined with review of portfolio of evidence</li> <li>• oral or written questioning to assess knowledge of protection of innovative designs and its implications for the organisation</li> <li>• development of action plans for implementation of policies and procedures for the protection of innovative designs, and commercialisation of innovative designs</li> <li>• analysis of case studies of issues about protection of innovative designs, with recommendations for action</li> </ul>
<b>Guidance information for assessment</b>	<p>Holistic assessment with other units relevant to the industry sector, workplace and job role is recommended, for example:</p> <ul style="list-style-type: none"> <li>• other units from BSB07 including other units relating to intellectual property</li> </ul>



## Range Statement

### RANGE STATEMENT

The range statement relates to the unit of competency as a whole. It allows for different work environments and situations that may affect performance. Bold italicised wording, if used in the performance criteria, is detailed below. Essential operating conditions that may be present with training and assessment (depending on the work situation, needs of the candidate, accessibility of the item, and local industry and regional contexts) may also be included.

<b><i>Registrable design</i></b> refers to:	<ul style="list-style-type: none"> <li>the appearance or look of a manufactured or hand made article that is:               <ul style="list-style-type: none"> <li>new and distinctive</li> <li>not substantially similar in overall impression to designs in the prior art</li> <li>distinctive in the view of the Informed User</li> <li>not used or shown in public before first application</li> </ul> </li> <li>design protection may not be appropriate to protect:               <ul style="list-style-type: none"> <li>how a product works or functions</li> <li>items that are primarily artistic or literary in nature</li> </ul> </li> </ul>
<b><i>Exclusive rights</i></b> are defined as:	<ul style="list-style-type: none"> <li>the right to prevent others from making, using and exploiting a design for a product, in relation to which the design is registered, for a specified period of time</li> <li>exclusive rights are limited in the following ways:               <ul style="list-style-type: none"> <li>infringement may not occur if the design is used on a product outside of the scope to that for which the design was registered</li> <li>certain repairs may not infringe the design where the product is a component part of a complex product</li> <li>protection does not cover the design features if only the idea of the general functional features are copied, as a product's function cannot be protected under design</li> <li>protection does not cover the underlying idea of the design, only the actual design</li> </ul> </li> </ul>



<b>RANGE STATEMENT</b>	
<b><i>Legislative requirements</i></b> refer to:	<ul style="list-style-type: none"> <li>• Designs Act 2003</li> <li>• Design Regulations</li> <li>• Copyright Act 1968</li> </ul>
<b><i>Prior art</i></b> is defined as:	<ul style="list-style-type: none"> <li>• all information in the public domain relating to previous designs that may impact on the design's originality</li> </ul>
<b><i>Non-registrable protection</i></b> may include:	<ul style="list-style-type: none"> <li>• trade secrets</li> <li>• confidentiality agreements and non-disclosure agreements</li> </ul>
<b><i>Commercialisation potential</i></b> may include:	<ul style="list-style-type: none"> <li>• licensing the design to third parties for a fee or under certain conditions</li> <li>• profiting from the manufacture and sale of a registered design</li> </ul>
<b><i>Sources of information and advice</i></b> include:	<ul style="list-style-type: none"> <li>• IP Australia</li> <li>• Attorney-General's Department</li> <li>• Australian Copyright Council</li> <li>• State and Commonwealth government agencies</li> <li>• lawyers specialising in intellectual property</li> <li>• trade mark attorneys and patent attorneys</li> <li>• accountants</li> <li>• business advisors</li> <li>• marketing consultants</li> <li>• branding consultants</li> <li>• copyright collecting societies, eg CAL, PPCA, MIPI, APRA, AMCOS</li> <li>• publications</li> <li>• websites, Internet</li> <li>• design databases</li> </ul>
<b><i>Processes</i></b> may include:	<ul style="list-style-type: none"> <li>• reviewing and proliferating confidentiality agreements within organisation or among people who may need to know about the design before application for registration is lodged so as to keep the design secret</li> <li>• carrying out searches on relevant databases including: <ul style="list-style-type: none"> <li>• bibliographic and pictorial searches on IP Australia's website</li> <li>• pictorial or representation searches in the public domain</li> <li>• drafting a completed application form</li> </ul> </li> </ul>

<b>RANGE STATEMENT</b>	
	<ul style="list-style-type: none"> <li>• preparing copies of representations of the design in relation to a product</li> <li>• the application process may also include, if desired or requested:               <ul style="list-style-type: none"> <li>• requesting an examination</li> <li>• considering the value of a Statement of Newness and Distinctiveness to identify particular visual features of the design as new and distinctive</li> <li>• responding to any adverse findings the Registrar of Designs may identify during the examination process</li> <li>• considering any material submitted by a third party to dispute the Newness and Distinctiveness of the design</li> </ul> </li> </ul>
<b>International design registration</b> may include:	<ul style="list-style-type: none"> <li>• filing for design registration with the relevant offices of a foreign country</li> </ul> <p>Signatory states to the international convention for design protection allow for the priority date assigned to the design in Australia to be obtained internationally if applied for within six months of lodgement in Australia</p>
<b>Maintain</b> protection may include:	<ul style="list-style-type: none"> <li>• keeping track of registration expiration dates</li> <li>• applying for renewal of registration</li> </ul>
<b>Monitoring</b> may include:	<ul style="list-style-type: none"> <li>• observing the activities of competitors</li> <li>• scanning the market for potential design infringements</li> <li>• regular or ad-hoc searching of design applications and/or registrations locally or internationally</li> </ul>
<b>Legal measures</b> may include:	<ul style="list-style-type: none"> <li>• seeking legal advice from an appropriate professional</li> <li>• requesting examination of suspected infringements</li> <li>• bringing infringement proceedings against a party</li> <li>• suing a party who has imported any infringing designs into Australia</li> <li>• suing a party who has sold, or offered for sale, any product infringing their rights in the design</li> <li>• implementing other business, regulatory or</li> </ul>

**RANGE STATEMENT**

	market strategies within legal means
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**Unit Sector(s)**

Unit sector	
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**Competency field**

Competency field	Regulation, Licensing and Risk - Intellectual Property
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**Co-requisite units**

Co-requisite units		