

REPUBLIC OF VANUATU

BILL FOR THE
DESIGNS ACT
NO. OF 2000

Explanatory Note

This note does not form part of the Bill.

The purpose of this Bill is to provide for the registration of designs, and to set out and protect the rights deriving from registration.

The Bill reflects international trends towards greater uniformity in the field of intellectual property law. In particular, this Bill conforms with the minimum standards and principles prescribed for designs in the international Agreement on Trade-Related Aspects of Intellectual Property Rights.

Part 1 Preliminary

This Part contains definitions and terms that are used frequently throughout this Bill.

Part 2 Designs and Design Rights

This Part explains what is a design and sets out the rights given by this Act to the registered owner and any authorised user of a registered design, such as the right to exclusive use of the design.

Part 3 Application for Registration

This Part deals with the steps to take to have a design registered, such as who may apply and how to apply, and gives the Registrar the power to make the initial decision whether to accept the application. It also sets out the grounds on which the Registrar may reject an application for registration of a design,

such as a design that is identical with an existing design, or is otherwise likely to deceive or cause confusion.

Part 4 **Opposition to Registration**

This Part deals with opposition to registration of a design, such as how to oppose an application for registration. It sets out the grounds on which a person may object to the registration of a design. The grounds include the same grounds on which the application could be opposed under Part 3, as well as grounds that the design is similar to an existing registered design, or that the person applying for registration does not own or intend to use the design.

Part 5 **Amendment of documents**

This Part sets out how and in what circumstances an application for registration of a design may be amended, and deals with amendment before and after details of the application have been published.

Part 6 **Registration of designs**

This Part deals with the registration of designs by the Registrar, how they are registered, the term of registration, and when registration ceases. It sets out what must be done to renew the registration of a design, including when renewal may be applied for.

Part 7 **Amendment and cancellation of registration**

This Part sets out how and why particulars of registered designs may be amended, and registration cancelled. The grounds for cancellation include that registration was obtained by fraud or misrepresentation, and any of the grounds on which registration could have been opposed. The Part also deals with removal of a design from the Register for non-use of the design.

Part 8 **Assignment and transmission of designs**

This Part deals with the assignment of registered designs and of designs whose registration has been sought, and with the registration and other recording of assignments. This Part also deals with the recording of the rights and interests that persons (other than registered owners) may have in registered designs or designs whose registration is being sought.

Part 9 **Infringement of designs**

This Part sets out what constitutes an infringement of a design, such as using a design that is substantially similar to a registered design, or using a registered design without the consent of the registered owner of the design. It also deals with how to obtain redress and relief in cases of infringement.

Part 10 **Offences**

This Part makes certain types of conduct, such as falsely using a design and selling goods made from false designs, offences against the Act

Part 11 **Jurisdiction and powers of courts**

This Part deals with the jurisdiction of the Supreme Court to hear and determine matters arising under the Bill. It sets out the circumstances when a person aggrieved by a decision of the Registrar may appeal to the Supreme Court, and provides a right of appeal to the Court of Appeal.

Part 12 **Administration**

This Part deals with the Registrar and the keeping of the Register of Designs. It provides for the Registrar to be appointed by the Public Service Commission, for the Registrar to be responsible for keeping the Register, and allows for the Register to be kept by computer.

Part 13 **Miscellaneous**

This Part deals with miscellaneous matters such as an address for service, the fixing of fees for applications and other matters under the Bill, the service of documents and the making of regulations.

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Arrangement of sections

PART 1—PRELIMINARY

1. Interpretation
2. Definition of design
3. Definitions of “article” and “set of articles”
4. Definition of “priority date”

PART 2—DESIGNS AND DESIGN RIGHTS

5. Ownership of unregistered design
6. What designs may be registered
7. Rights given by registration of design
8. Registered owners may deal with design
9. Powers of authorised user of registered design

PART 3—APPLICATION FOR REGISTRATION OF DESIGNS

10. Application for registration
11. Convention country—priority of application
12. Particulars of application to be published
13. Registrar to examine application
14. Application accepted or rejected
15. Notice of decision
16. Lapsing of application
17. Revocation of acceptance
18. Design likely to deceive or cause confusion
19. Identical etc designs

PART 4—OPPOSITION TO REGISTRATION

20. Opposition
21. Opposition proceedings
22. Decision
23. Registration may be opposed on same grounds as for rejection
24. Applicant does not own or intend to use design
25. Design similar to design used in Vanuatu
26. Application defective

PART 5—AMENDMENT OF DOCUMENTS

27. Amendment of application for registration
28. Amendment before application published
29. Amendment after application published
30. Amendment of other documents

PART 6—REGISTRATION OF DESIGNS

31. Obligation to register
32. Registration
33. Notification of registration
34. Date and term of registration
35. Ceasing of registration
36. Request for renewal
37. Renewal before registration expires
38. Failure to renew
39. Renewal within 3 months after registration expires

PART 7—AMENEDMENT AND CANCELLATION OF REGISTRATION

40. Correction of Register
41. Cancellation of registration by Registrar
42. Amendment or cancellation by Court
43. No rectification if registered owner not at fault
44. Duties and powers of Registrar
45. Application for removal for non-use
46. Referral to Court
47. Notice of opposition
48. Removal of design if non-use application unopposed
49. Proceedings before Registrar
50. Decision on unopposed application
51. Certificate—use of design

PART 8—ASSIGNMENT AND TRANSMISSION OF DESIGNS

52. Assignment etc of design
53. Recording assignment if registration is sought
54. Recording assignment of registered design
55. Notice of application to record assignment
56. Recording claims to interests—registered designs
57. Record not proof of existence of right

PART 9—INFRINGEMENT OF DESIGNS

58. Infringement of registered designs
59. Prior use of identical design
60. Action for infringement
61. Special case—plaintiff not entitled to damages etc

PART 10—OFFENCES

62. Falsely using a registered design
63. Selling etc goods made from false designs
64. False representations about designs
65. False entries in Register

PART 11—JURISDICTION AND POWERS OF COURT

66. Jurisdiction of Supreme Court
67. Appeal
68. Appeal to Court on Appeal

PART 12—ADMINISTRATION

69. Registrar of designs
70. The Register
71. Inspection of Register
72. Evidence

PART 13—MISCELLANEOUS

73. Making and signing applications etc
74. Filing documents
75. Withdrawing application etc
76. Address for service
77. Change of name
78. Death of applicant
79. Fees
80. Extension of time
81. Convention countries
82. Use of design for export trade

83. Passing off actions

84. Regulations

85. Commencement