B Types of intellectual property

This appendix provides supporting detail to chapter 4.

* Table B.1 lists types of intellectual property, the subject matter and features protected, the maximum life of the IP rights, the relevant acts of the Australian Parliament, major relevant international agreements applying and current government responsibility for the administration of each measure.
* Table B.2 lists some IP-related arrangements.

Table B.1 Types of intellectual property

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| --- | --- | --- | --- | --- | --- |
| Types of protection | Subject matter and features protected | Maximum life of IP right | Australian Acts | Major international agreements | Government responsibility |
| Standard patents  *- By application and examination* | Device, substance, composition, method or process that are new, inventive and useful. Excluded: human beings and methods for their generation. | 20 years 25 years (pharmaceuticals). | *Patents Act 1990* | Paris Convention; Patent Cooperation Treaty; Budapest Treaty; Strasbourg Agreement; TRIPS (articles 27-34); Patent Law Treaty, AUSFTA, ACI-FTA | IP Australia |
| Innovation patents  *- By application, and certification (if requested)* | As above, except inventions only need to be different from what is known before and the difference makes a substantial contribution to the working of the invention | 8 years. | *Patents Act 1990* | Paris Convention; Budapest Treaty; Strasbourg Agreement | IP Australia |
| Industrial designs  *- Registered by examination* | New and distinctive features of shape, configuration, pattern, or ornamentation. | 10 years. (Initial 5 years plus renewable for 5 years). | *Designs Act 2003* | Paris Convention; Hague Agreement a; Locarno Agreement a TRIPS (articles 25 & 26); AUSFTA | IP Australia |
| Trade marks  *- Registered by examination - Unregistered have Common Law standing* | Distinguish the goods and/or services of the trader: letter, number, word, phrase, sound, smell, shape, logo, picture and/or aspect of packaging. | Indefinite. (Initial 10 years plus further renewals 10 years at a time). | *Trade Marks Act 1995* | Madrid Protocol a; Paris Convention; Nice Agreement; Trademark Law Treaty; TRIPS (articles 15-21); Singapore Treaty, AUSFTA, AANZFTA, ACI-FTA | IP Australia |
|  | Certification trademarks showing goods or services certified as meeting particular standards. |  |  | AUSFTA, ACI-FTA |  |

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| --- | --- | --- | --- | --- | --- |
| Geographical Indications  - as a Certification trade mark | Goods originating from a specific territory, region or locality with a particular quality, reputation or characteristic. | Indefinite. (Initial 10 years plus further renewals 10 years at a time, as per trademarks). | *Trade Marks Act 1995* | Paris Convention; Lisbon Agreementa;TRIPS (articles 22-24); AUSFTA, AANZFTA, ACI-FTA | IP Australia |
| - on the wine GI register | Wine regions, foreign and domestic | Indefinite | *Wine Australia Corporation Act 1980* | EU-Australia Wine Agreement | Agriculture, Fisheries and Forestry |
| Plant Breeder’s Rights  - Registered by examination | New plant varieties that are distinguishable, uniform and stable. Also protects registered name and synonym. | 20 years 25 years (trees or grape vines). | *Plant Breeder’s Rights Act 1994* | UPOV;  TRIPS (article 27) | IP Australia |
| Copyrights  - Gratis and automatic | Original works of authorship: literary, musical, artistic, dramatic works, films, recording, broadcasting, performances. | Generally, 70 years from death of author if published, or from publication of films and sound recordings. For broadcasts, 50 years from date of broadcast. | *Copyright Act 1968* | Berne Convention; Rome Convention; WIPO Copyright Treaty; WIPO Performances and Phonograms Treaty; TRIPS (articles 9-14); AUSFTA; Beijing Treaty on Audiovisual Performance a | Attorney-General’s |
| Moral Rights  - Gratis and automatic | Right of attribution; right against false attribution and right of integrity. | Generally the same as copyright term of protection. (Except for film creators where the right of integrity is only for the creator’s lifetime). | *Copyright Act 1968 (Part IX)* | Berne Convention; WIPO Performances and Phonograms Treaty; Beijing Treaty on Audiovisual Performancea | Attorney-General’s |
| Resale Royalty Right for Visual Artists | Artists eligible to 5 per cent of the sale price when their original works are resold through the art market for $1000 or more. | Life of artist plus 70 years after death. | *Resale Royalty Right for Visual Artists Act 2009.* | - | Office for the Arts |

Table B.1 (continued)

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| --- | --- | --- | --- | --- | --- |
| Types of protection | Subject matter and features protected | Maximum life of IP right | Australian Acts | Major international agreements | Government responsibility |
| Circuit layout rights | Layout design of semiconductor chips. | 20 years. (10 years from first commercial exploitation; must first use within 10 years creation). | *Circuit Layouts Act 1989* | Washington Treatya; TRIPS (articles 35-38) | Attorney-General’s |
| Confidential information and trade secrets | Secret business information. | Indefinite. | *Competition and Consumer Act 2010* | TRIPS ( articles 39 & 40) | Australian Competition and Consumer Commission |
| Test data submitted for regulatory approval | Medicines and pharmaceuticals. | 5 years. | *Therapeutic Goods Act 1998 (section 25A)* | TRIPS (article 39.3) | Therapeutic Goods Administration |
|  | Agricultural and veterinary chemicals. | 3 to 10 years (depending on type of application). | *Agricultural and Veterinary Chemicals Code Act 1994* | TRIPS; AUSFTA | Australian Pesticides and Veterinary Medicines Authority |

a Australia is not a party: it has either not been signed, or signed but not ratified.

Table B.2 Some IP-related arrangements

| Area | Subject matter and features protected | Maximum life of protection | Australian legislation | Responsibility |
| --- | --- | --- | --- | --- |
| Olympics | Artistic works incorporating the Olympic symbol, or Olympic torch and flame. | Indefinite. (Initial 12 years plus further renewals 12 years at a time); 4 years (Olympic torch and flame designs). | *Olympic Insignia Protection Act 1987* | IP Australia |
| Scout Association | Name, uniforms, badges etc.. | Indefinite | Scout Association Act 1924 | Education, Employment and Workplace Relations |
| ANZAC | The word ‘ANZAC’ and prohibited importation of ANZAC goods. | Indefinite | Protection of Word ‘ANZAC’ Regulations 1921; Customs (Prohibited Imports) Regulations 1956. | Veterans’ Affairs |
| Sir Donald Bradman | Unauthorised use of the name. (This is separate from the BRADMAN trademarks). | Indefinite | Corporations Amendment Regulations 2000 (No 8) No. 282 |  |
| Mary MacKillop | Unauthorised use of the name. | Indefinite | Corporations Amendment Regulations 2010 (No.8) No. 272 |  |
| Internet domain names in .au space | Administration of the .au domain space. | Licensed for a two-year period | Telecommunications Act 1997 | .au Domain Administration Ltd |
| Business names registration | A registered Business name is compulsory. It is the trading name. It can be different from the registered company name. | No legal right over the Business name. (May be able to be registered as a trademark, if it qualifies). Businesses with identical names can operate across Australia. But Company names are unique. | Business Names Registration Act 2011 | Australian Securities and Investments Commission |