Date Introduced: 7 March 1984
House: House of Representatives
Presented by: Hon. J. Brown, M.P., Minister Assisting the Minister for Industry and Commerce

Short Digest of Bill

Purpose

To grant Advance Australia, a company incorporated in the Australian Capital Territory, the copyright in, and monopoly to use or license the use of, the "Advance Australia" logo.

Background

The "Advance Australia" logo is a design of an equilateral triangle, the Australian flag represented within the lower half of the triangle. In the Bill, colour is unspecified, although a red background is common for the predominantly blue Australian flag.

The Advance Australia campaign was launched in 1979, on the recommendation of the Australian Manufacturing Council. It was managed until 1981 by the Department of Industry and Commerce. A company incorporated in the A.C.T. and named Advance Australia was formed to conduct the campaign and has since mid-1983 operated as a self-funded, private sector project. A significant proportion of the project's revenue is derived from licensing use of the Advance Australia logo to manufacturers employing it in products. In 1982/83, $1.75 million was raised from the licences. The logo is estimated to appear in advertising and marketing activities worth more than $2 billion.

Some unauthorized use of the logo or a deceptively similar symbol has occurred, with both Australian and overseas companies involved.

The treatment of the logo may be compared with the provisions of registered designs and trade marks legislation.
The protection offered by the Bill for the design of the logo is broadly similar to that provided by the Designs Act 1906 for designs registered under it. Amendments to the Designs Act in 1981 added sections 40-40F relating specifically to designs used or acquired by the Crown. The present Bill grants the copyright in the design of the Advance Australia logo to a company independent of the Crown, with specific provision for a reversion to the Commonwealth if the company effectively ceases to exist.

Remedies for infringement of monopoly in a design registered under the Designs Act are widely stated, and include both damages and injunctive relief. The remedies provided by the present Bill are similar, but are available to licence holders as well as the owner of the design, with the latter's consent.

The Trade Marks Act 1955 provides for registration of trade marks and imposes a penalty of 3 years' imprisonment for forgery or false application of a registered trade mark. Sale, offer for sale, or importation of goods bearing such a mark carries a $200 penalty, although the goods may be forfeited. Amendments to the Trade Marks Act in 1978 permitted the extension of the trade mark system to cover services as well as goods, to which it was originally limited. Logos are commonly used for identification in service industries. Amendments in 1981 made more extensive provision against importation of goods infringing a trade mark.

Main Provisions

Subclause 2(2) provides for commencement on a date fixed by Proclamation, provided the Advance Australia company agrees in the terms of Schedule 1 that it will not be entitled to any compensation from the Commonwealth by reason of any provision of the Bill. Clause 5 provides that the Bill extends to external Territories, and clause 4 that the Bill binds the Crown, subject to part VII of the Copyright Act 1968, which regulates Crown copyright.

The Advance Australia company is made both owner of the copyright in the logo and owner of the design of the logo (clauses 6, 7). Disposition of the title to any other person is prevented in clause 9 while clause 10 provides for reversion of ownership to the Commonwealth in certain circumstances. A monopoly in the design of the logo is granted under clause 8. Where under clause 11 an infringement of this monopoly occurs, relief in the form of an injunction and damages or an account of profits may be sought (clause 12). State Supreme Courts have jurisdiction in such a matter (clause 13).
Section 51(XXXI) of the Constitution requires compensation on "just terms" for "acquisition of property", which may include intellectual property rights. Clause 16 grants a right to compensation in the terms of the Constitution. Subsections 10(4) and 17(4) proscribe any compensation in circumstances arising from a reversion to the Commonwealth or a Ministerial direction as to the manner of use of the logo. Clause 20 provides for the severance of these two subsections should they render any provision of the Bill unconstitutional or otherwise invalid.

Subsection 19(4) has the important effect of extinguishing any earlier registered design of the Advance Australia logo.

For further information, if required, contact:

Law & Government Group
LEGISLATIVE RESEARCH SERVICE

21 March 1984