Date Introduced: 7 April 1981
House: House of Representatives
Presented by: Hon. D.S. Thomson, M.C., Minister for Science and Technology

Short Digest of Bill

Purpose

To amend the law relating to industrial designs.

Background

This Bill amends the Designs Act 1906. That Act introduced a registration system for industrial designs which fell into any of the classes of articles set out in the regulations to the Act. Registration resulted in the granting of copyright over the design. A committee chaired by Franki J. was appointed in October 1970 to examine the Australian law relating to designs and to recommend any alterations of the law that may be thought desirable and reported, in February 1973 (The Designs Report). The Committee's second term of reference – whether it is appropriate to have a system of registration for utility models or petty patents – was covered in a second report in August 1973.

This Bill implements some of the recommendations in the Designs Report, makes provision for use of designs by the Crown and confers jurisdiction on State and Territory Supreme Courts.

Main Provisions

The main changes to the Designs Act 1906 are centred around a more specific description of "design" in new section 4 of the Bill (clause 5) which acts in conjunction with the new section 18 inserted by clause 11. The effect of the new section 18 is that designs which can be judged by the eye because of their features of shape, configuration, pattern or ornamentation will not be excluded from being registered as designs merely because shape or configuration features serve a functional purpose.
Another major feature of the amending Bill is the abolition of the class system established by the 1906 Act. Clause 9 of the Bill makes amendments to section 17 of the Act which deals with the requirements for registration. The concept of new or original design is retained but it is no longer necessary for the article to belong to one of the classes of articles prescribed pursuant to the Act. Therefore, registration can be applied for in respect of any article at all.

Another major change is the abolition of the concept of copyright as applying to registered designs. This is done by clause 8 of the Bill which abolishes Part III of the Principal Act. Instead clause 13 introduces a new section 25 which provides that the owner of a registered design has a monopoly in that design. Monopoly is defined in clause 4. In conjunction with these changes there are new provisions establishing a period during which registration is in force. Initially this period is one year but it can be extended for up to a further fifteen years (new section 27A).

Clause 18 amends the heading to Part V of the Principal Act so that it now deals with "Infringement of monopoly in designs". Clauses 19 and 20 make alterations to the infringement provisions including changing the word "copyright" to "monopoly".

Some changes to the administration sections of the 1906 Act are made by clauses 6 and 7. A new section 8A provides for delegation by the Registrar. Clause 11 inserts new provisions in relation to the making of an application for registration (new sections 19-22C).

Three major new Parts are added to the 1906 Act (clause 24). New Part VIA enables the Commonwealth to make use of a design subject to compensation (new section 40A). The Commonwealth may also acquire a design subject to compensation (new section 40D) and designs can be assigned to the Commonwealth (new section 40E).

New Part VIB makes provision for jurisdiction under the Principal Act to be exercised by prescribed Courts (new section 40G). Section 40I provides for appeal from a prescribed court to the Federal Court and a further appeal to the High Court.

New Part VIC provides for appeals to the Administrative Appeals Tribunal from certain administrative decisions. Decisions which are reviewable are directions given or refused by the Registrar under new section 25B (relating to directions to co-owners of a design), dismissal
of applications for restoration of registration rights where registration lapsed due to failure to reapply or pay a fee within the appropriate time (new section 27B), decisions by the Registrar in relation to the restoration of registration rights (new section 27C).

For further information, if required, contact:

5 May 1981

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