

Major Sporting Events (Indicia and Images) Protection Bill 2014

Portfolio: Sport

Introduced: House of Representatives, 26 March 2014

Purpose

2.26 The Major Sporting Events (Indicia and Images) Protection Bill 2014 (the bill) seeks to prevent the unauthorised commercial use of certain indicia and images associated with the Asian Football Confederation Asian Cup 2015, the International Cricket Council Cricket World Cup 2015 and the Gold Coast 2018 Commonwealth Games, consistent with written undertakings provided as a condition of being awarded the right to host these events.

2.27 The bill seeks to achieve this by establishing a registration process to restrict the use of protected indicia and images for each event to official users only.

Background

2.28 The committee reported on the bill in its *Sixth Report of the 44th Parliament*.

2.29 The bill was subsequently passed by both Houses and received Royal Assent on 27 May 2014.

Committee view on compatibility

Right to freedom of opinion and expression

Exemptions for the use of certain indicia and images by third parties

2.30 The committee sought the Minister for Sport's advice as to the proportionality of the proposed restriction on the right to freedom of expression, particularly in relation to the exemptions provided for the purposes of criticism, review or the provision of information (in the terms drafted in the bill).

Minister's response

Criticism, review and provision of information

The legislation provides for the use the protected indicia or images for news reporting and criticism and review. It does this by balancing a commercial use test at section 12 with an exemption at section 14.

At section 12 three elements need to be established to satisfy the commercial use test:

1. protected indicia or images are applied to the user's goods or services (section 12(1)(a));
2. the application is for the primary purpose of advertising or promotion or enhancing the demand for the goods or services (section12(1)(b)); and

3. the application would suggest to a reasonable person that the user is or was a sponsor or provider of support for the event (section 12(1)(c)).

Section 14 modifies section 12(1)(c) so that where the purpose of the use of the protected indicia or images is, for example, only and genuinely to report the news or critically or satirically review the events, then such use would not suggest that a sponsorship arrangement exists between the writer/reviewer/broadcaster and the event (which is otherwise prohibited by section 12(1)(c) above).

For a breach to occur, it would need to be considered that the images and indicia were applied by the user for the primary purpose of advertising or promoting or enhancing demand for the user's goods or services. That is, the primary purpose would not be for the purposes of genuine criticism, review or the provision of information (which is a requirement of the exemption at section 14). Further, the reasonable person test at 12(1)(c) would still need to be satisfied and all three elements of the commercial use test successfully proven through action brought by someone claiming their rights had been breached. In such a circumstance the use of the indicia or images in question would, appropriately, be considered a breach of the legislation and would not be consistent with the use envisaged by section 14.

Therefore the proposed restriction is considered appropriate in the context of the purposes of this legislation.¹

Committee response

2.31 The committee thanks the Minister for Sport for his response and has concluded its examination of this bill.

Power to order a corrective advertisement

2.32 The committee requested the Minister for Sport's advice as to the compatibility of proposed section 47 with the right to freedom of expression.

Minister's response

The Bill provides that the court may make an order requiring a person to publish at their own expense a corrective advertisement, if the court is satisfied that the person has used a protected indicia or image without authorisation. Remedies are available to the authorising bodies under the legislation as a means of protecting their commercial interests. Without sponsorship the cost of staging major international sporting events would rely heavily on government support.

The objective of the corrective advertisement mechanism is to reverse the harm done by the false impression that may be created by the

1 See Appendix 2, Letter from The Hon Peter Dutton MP, Minister for Sport, to Senator Dean Smith, 2 June 2014, pp 1-2.

unauthorised use of the event indicia and images. Although this may involve a restriction on the unauthorised user's freedom of expression, this is considered justifiable; both to alert the community to the unauthorised use and to preserve the protection of the authorised user's rights that the Bill is intended to afford. This is proportionate to the harm created by the unauthorised use because the use of advertising is an equivalent means of correcting the false impression created by the unauthorised use. The power to order corrective advertising also serves to deter future contraventions and encourages compliance.

Accordingly the limitation of a person's right to freedom of expression, including the right not to be compelled to engage in particular forms of expression is reasonable, necessary and proportionate to the objective of promoting the right of the Australian public to access and benefit from the staging of major sporting events.²

Committee response

2.33 The committee thanks the Minister for Sport for his response and has concluded its examination of this bill.

2 See Appendix 2, Letter from The Hon Peter Dutton MP, Minister for Sport, to Senator Dean Smith, 2 June 2014, p. 2.