

The Secretary
Senate Economics Legislation Committee
Room **SG : 64**
Parliament House
CANBERRA ACT 2600



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Dear Dr Dermody

Re: Inquiry into the Designs Bill 2002 and the Designs (Consequential Amendments) Bill 2002

Thank you for the opportunity to provide a submission regarding the Designs Bill 2002 and the Designs (Consequential Amendments) Bill 2002.



In making a submission Insurance Australia Group is conscious of the specific terms of reference of the inquiry to examine the provisions of the Bill with reference to the

- a. reasonableness in reducing the time limit from **16** years to 10 years;
- b. adequacy of 'new' and 'distinctive' definitions;
- c. cost and other implications of expanding the required prior art base to universal application;
- d. robustness of proposed registration process; and
- e. implications of spare parts provisions for consumers, insurers **and** car manufacturers.

In making our submission, Insurance Australia Group specifically addresses the findings of previous inquiries into the issue, the suggestion that protection of designs encourages innovations, design monopolies and employment consequences, quality parts production and the effectiveness of the Designs Act 1906.

Insurance Australia Group

Insurance Australia Group is the largest general insurance group in Australia and New Zealand (as measured by Gross Written Premiums in the respective countries) serving more than **3.8** million customers in Australia and over 700,000 customers in New Zealand.

Insurance Australia Group provides personal (motor and home), compulsory third party and commercial insurances as well as retirement solutions. It does so under some of the most respected and trusted brands – NRMA Insurance in New South Wales, ACT and Queensland; SGIO in Western Australia; SGIC in South Australia;

State Insurance and Circle in New Zealand; and through a strategic alliance with RACV in Victoria.

Insurance Australia Group is interested in elements of this inquiry which deal with the spare parts implications for consumers and insurers of the Designs Bill 2002 and Designs (Consequential Amendments) Bill 2002.

Insurance Australia Group acknowledges the strong interest of the Australian Consumer's Association in this issue and the view of the Australian Consumer's Association that the market's ability to provide for competitive parts empowers consumers by providing for the purchase of equal or better quality parts at lower prices.

Findings of Previous Inquiries

Insurance Australia Group, has been an active contributor to the many inquiries and economic studies that have reviewed the operation of the Design Act 1906.

Insurance Australia Group would like the Committee to be aware of the previous inquiries into Designs and their subsequent recommendations:-

1. The 1991 Lahore Inquiry into Designs which recommended a complete rewrite of the Designs Act 1906;
2. The Law Reform Commission's 1995 "Report No.74" on Designs which recognized the need for special treatment for replacement parts;
3. The Bureau of Industry Economics' 1995 "Occasional Paper 27" which demonstrated the economic inefficiency of parts monopolies; and
4. The Industry Commission 1995 "Report No.43" on the Vehicle and Marine Insurance Industry which concluded that "parts should not qualify for design protection" (p.139).

In a period spanning almost 12 years, these separate but far reaching inquiries have found that registered designs have been used to monopolise the supply of repair parts, despite this being contrary to the intention of the legislation and economically inefficient for consumers and businesses.

The Protection of Designs as Encouragement to Innovation

Insurance Australia Group argues that monopoly rights should not be available on replacement parts because no design innovation is possible on parts which must fit and match other parts in complex manufactured goods.

Insurance Australia Group does not seek special treatment for motor vehicles. Instead, Insurance Australia Group strongly believes the automotive industry should not be isolated from other industries affected by this issue. Car parts are simply the most visible manifestation of this unacceptable anomaly in Australian design law.

Design law in Australia currently enables car companies to register the designs of individual car parts, and obtain monopoly rights to parts markets, for up to 16 years. Some automobile manufacturers in Australia have used this law to obtain market monopolies on each of the parts which are frequently replaced in collision repairs. This is especially true of parts for late-model Commodores (Holden) and Falcons (Ford).

Both Holden and Ford have made submissions to the various inquiries into design law during the 1990's. It is interesting to note that no other car companies showed any interest in these inquiries. In understanding the interest of Holden and Ford in Design issues it is important to note both have registered parts in significant quantities – each has registered hundreds of parts designs. The Federal Chamber of Automotive Industries does not perceive the issue as important to the industry and no other car companies seek such monopolies.

Insurance Australia Group would like to address the arguments regularly presented by some in the automotive industry as a defence for the retention of existing laws:-

- **Design Protection as a Disincentive to Australian Innovation.**

This argument misrepresents the requirements of the Designs Act 1906. Under existing laws it is not necessary for a design to originate within Australia in order for it to be registered. In fact, IPAustralia estimates that two thirds of designs registered under the current law originate from foreign designers based overseas. There is nothing currently to stop automobile manufacturers like Holden and Ford from originating designs outside Australia and then enjoying the benefits of 16 year monopolies on the parts.

Insurance Australia Group understands that Design Law is revenue negative in Australia. As a consequence, overseas designers are the net beneficiaries of Australia's existing laws.

- **Design Monopolies and Employment Consequences.**

This argument also misrepresents the requirements of the current Designs Act 1906. Under existing laws it is not necessary for an Australian registered design to be subsequently manufactured in Australia. Insurance Australia Group understands that three quarters of all registered designs are subsequently manufactured overseas.

The existing laws do not prohibit automobile manufacturers from manufacturing designs overseas and continuing to benefit from 16 year monopolies on the parts.

Insurance Australia Group notes that automobile manufacturers have previously acknowledged cross-subsidies between vehicle sales and parts sales. Consumers, motorists and insurers argue that replacement parts must be given special treatment because it is possible under the present law for designers to “give away” complex manufactured products at loss leader prices on the basis that consumers and insurers will be locked into inflated pricing structures for the replacement parts that will

inevitably be required due to wear and tear and damage repair. This distorts market pricing, especially for products with long useful lives such as motor vehicles.

The suggestion that any change to existing design laws will force the Australian automotive industry offshore does not withstand scrutiny. Insurance Australia Group contends the availability of parts design monopolies will not and never has been an important nor strategic consideration in the automobile industry's decision to manufacture locally.

- **Guaranteeing Quality Parts Production.**

Some elements of the automobile industry regularly argue that design monopolies protect the quality and integrity of automobile parts.

Insurance Australia Group disagrees and contends that laws which prevent competition undermine opportunities for quality spare parts production in Australia. They prevent competition in the quality spare parts market by acting as a barrier to entry to potential competitors. They make it illegal for potential competitors of high quality parts to reproduce the registered design.

The Australian automotive industry comprises global brands such as Bosch, Munroe, Lear, VDO, Sumitomo, Hella, Air International, BTR, Pacific Dunlop and Dana Corporation. These manufacturers are known for being high quality spare parts manufacturers and are independent of automobile manufacturers.

When arguing for the maintenance of design monopolies on the basis that it guarantees quality parts production, some Australian automobile manufacturers conveniently ignore the level and frequency of their vehicle safety recalls in Australia.

Insurance Australia Group believes the provisions of the Trade Practices Act and other existing laws best provide adequate protection for consumers against the manufacture of poor quality parts and that awarding monopolies is a very inefficient and ineffective means of managing consumer protection.

Appropriateness of Existing Time Limits.

Insurance Australia Group believes the period of protection should be reduced from 16 years to 10 years as this more reasonably approximates the useful life of an automotive part or design.

The Effectiveness of the Designs Act 1906.

In the opinion of Insurance Australia Group, the Designs Act 1906 is fundamentally flawed and does not have any provision to ensure the existence of competitive replacement parts markets for the repair of complex manufactured goods.

In contrast, many nations including USA and the United Kingdom do not allow the registration of replacement parts, rather they only permit the registration of whole designs.

Similar to many other countries, Australia has laws recognising ownership rights for patents, copyrights, trademarks and designs. Australia is also a signatory to various international treaties which set minimum levels of protection for holders of these ownership rights.

Insurance Australia Group believes it is important for all countries which have domestic car design and manufacturing industries to expeditiously establish a common approach to design law. The automotive industry is a global industry and designs are easily transferable between markets.

Without global uniformity in design law, the risk faced by motorists around the world is that global automotive companies will choose to register their parts designs in those countries which guarantee the greatest protection. Automotive companies could then use higher parts prices in these countries to subsidize expansion of their automotive sales into other countries.

Research by the Industry Commission provides valuable insight into these facts.

Industry Commission inquiries (Report No.43, pp136-8) have revealed that investment in design innovation makes up only a small proportion of the overall cost of bringing a product to market, and innovation of this kind can be expected to continue regardless of the availability of design monopolies for parts. The result of Australia's current design laws is that manufacturers can register all their parts but either not commit to manufacturing in Australia, or commit and then withdraw at a time of their choosing. Additionally they can siphon off monopoly parts profits from Australia to prop up other areas of their international business operations.

Insurance Australia contends that changes in Australian design laws are necessary to remove the opportunity for manufacturers to use transfer pricing from the Australian market to subsidize losses on automotive manufacturing in other global markets.

It is a common argument that the originators of component part designs should not be prevented from reaping the rewards and benefits of the innovation and effort. Insurance Australia Group believes the granting of monopolies to individuals is acceptable to the community only where a community benefit can be justified. This benefit should be measured by the level of innovation occurring in patent, copyright, trademark and designs. However, it is not possible to innovate when producing spare parts, therefore protection can not be justified under this defence.

Reports by the Australian Law Reform Commission, the Industry Commission and Bureau of Industry Economics have previously agreed the component parts of complex designs should not be automatically eligible for individual registration. Further, these reports all conclude that design innovation is not possible in the manufacture of replacement parts produced for repairs because such parts must fit and look the same as the parts they are replacing.

On the basis of the conclusions of these previous reports, Insurance Australia Group strongly argues there is no net community benefit in the protection of these designs.

Conclusion

As one of Australia's leading general insurance groups, Insurance Australia Group has a strong interest in creating and maintaining a commercial environment which empowers consumers and businesses in exercising greater choice.

Insurance Australia Group believes the Designs Bill 2002 and the Designs (Consequential Amendments) Bill 2002 has effectively and fairly dealt with the complex issues of whether or not spare parts should be eligible for design protection.

Insurance Australia Group believes the legislative effect of guaranteeing the 'right of repair' will be to ensure effective competition in the spare parts market leading to lower prices for consumers, especially motorists in the example of automotive spare parts.

The 'right of repair' exemption will allow for the design registration of component parts of a complex product but the use of design registered parts for repair purposes will provide a defence against allegations of infringement of registered design rights. Insurance Australia Group believes this is a fair and reasonable outcome for all interested parties and gives effect to the conclusions of numerous inquiries over the last 12 years.

Representatives from Insurance Australia Group, including automotive experts from within our insurance group, are available to meet the Senate Economics Legislation Committee to discuss the contents of this submission and to respond to comments and arguments presented by other interested parties.

If you wish to make further inquiries please do not hesitate to contact me personally on 02 9292 9563.

Yours sincerely

Dean Smith

Manager, Government Relations and Policy

Insurance Australia Group