

1999

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**INTELLECTUAL PROPERTY LAWS AMENDMENT
(BORDER INTERCEPTION) BILL**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Parliamentary Secretary to the Minister for Industry, Science and Resources, the Hon Warren Entsch MP)

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INTELLECTUAL PROPERTY LAWS AMENDMENT (BORDER INTERCEPTION) BILL

OUTLINE

This Bill amends the *Sydney 2000 Games (Indicia and Images) Protection Act 1996* (the Sydney 2000 Games Act) and the *Trade Marks Act 1995* to enable the CEO of Customs (CEO) to determine, under those Acts, the identity of the owner of imported goods that do not require entry under section 68 of the *Customs Act 1901*.

The Sydney 2000 Games Act is designed to protect the Sydney 2000 Olympic and Paralympic Games (the Games) against ambush marketing, which is the unauthorised association of businesses with the marketing of an event, such as the Sydney Olympics, without paying for the marketing rights. The Trade Marks Act provides for the registration of trade marks and sets out and protects the rights deriving from registration. A trade mark is a sign used to distinguish goods or services, provided in the course of trade, from all other goods or services.

In order to protect both the Games from ambush marketing and the rights of trade mark owners, the Sydney 2000 Games and Trade Marks Acts have border interception provisions. This protection is not automatic. For both Acts, before any action may be taken, the CEO must have received a notice objecting to the importation of goods seeking to ambush the Games marketing or goods infringing a registered trade mark. Furthermore, the CEO may decide not to seize goods if it has not received from the objector security sufficient to cover the costs of the seizure.

The amendments are to address a discrepancy between the seizure powers of the CEO and the CEO's obligation to notify the 'designated owner' of seized goods under the border interception provisions of the two Acts. Whereas the seizure power is in broad terms, applying to all infringing goods, the CEO is also obliged to notify the designated owner that the goods have been seized—that is, the person identified as the owner of the goods on the 'entry' made in relation to the goods under section 68 of the Customs Act. Therefore, goods that are not entered (for example, goods worth less than \$1000 consigned by post or less than \$250 consigned by other means) do not have a designated owner. As a result the CEO cannot seize the goods as there is no designated owner to notify. The discrepancy undermines the intent of the border interception provisions of the Sydney 2000 Games and Trade Marks Acts.

The amendments contained in the Bill will require the CEO to seize all imported goods that are subject to a notice of objection and seek to ambush the Games marketing, or bear infringing trade marks, whether or not the goods are required to be entered under section 68 of the Customs Act. These amendments will not apply to goods imported for personal use. Goods will only infringe the Sydney 2000 Games Act if the goods are used for commercial purposes. Similarly, goods will only infringe a registered trade mark if the goods are to be used in the course of trade.

FINANCIAL IMPACT STATEMENT

There will be no additional cost to the government of administering this legislation. The Bill will extend the scope of legislative protection for Games organisers against imported goods that seek to ambush the Games marketing so that the revenue relied on from these activities may be preserved.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 — Short title

1. This clause provides that the Act may be cited as the *Intellectual Property Laws Amendment (Border Interception) Act 1999*.

Clause 2 — Commencement

2. Clause 2 provides for commencement of the Act to be on receiving the Royal Assent.

Clause 3 — Schedule(s)

3. This clause amends the Sydney 2000 Games Act and the Trade Marks Act in accordance with the applicable items set out in the Schedules. It also inserts the other items in Schedule 1 into the Sydney 2000 Games Act and the other items in Schedule 2 into the Trade Marks Act.

Clause 4 — Application and saving

4. This clause provides that:
 - the amendments made by this Act to the Sydney 2000 Games and Trade Marks Acts apply in relation to goods imported into Australia on or after the date this Act commences;
 - despite the amendments made by this Act, those Acts continue to apply in relation to goods imported before the commencement of this Act as if those amendments had not been made; and
 - if something was done before this Act commences in relation to goods imported before the commencement of this Act, then that thing continues to have effect and those Acts continue to apply in relation to that thing, after this Act commences, as if those amendments had not been made.

Schedule 1 — Sydney 2000 Games (Indicia and Images) Protection Act 1996

Item 1 — Section 29 (definition of *designated owner*)

5. This item repeals the definition of designated owner and inserts a new definition. The new definition maintains the requirement that designated owner, in relation to goods imported into Australia, means the person identified as the owner of the goods on the entry made in relation to the goods under section 68 of the Customs Act. However, the new definition includes an additional requirement that if an entry under section 68 does not exist, the designated owner is the person determined to be the owner under section 29A of the Sydney 2000 Games Act.

Item 2 — After section 29

6. This item inserts new section 29A into the Sydney 2000 Games Act—Determinations about owners of goods. Section 29A provides, for the purposes of paragraph (b) of the definition of designated owner in section 29, that the CEO or an officer of Customs may determine a

person is the owner of goods if the person is an owner within the meaning of subsection 4(1) of the Customs Act.

Schedule 2 — Trade Marks Act 1995

Item 1 — Section 6 (definition of designated owner)

7. This item repeals the definition of designated owner and inserts a new definition. The new definition maintains the requirement that designated owner, in relation to goods imported into Australia, means the person identified as the owner of the goods on the entry made in relation to the goods under section 68 of the Customs Act. However the new definition includes an additional requirement that if an entry under section 68 does not exist, the designated owner is the person determined to be the owner under section 133A of the Trade Marks Act.

Item 2 — After section 133

8. This item inserts new section 133A into the Trade Marks Act—Determinations about owners of goods. Section 133A provides, for the purposes of paragraph (b) of the definition of designated owner in section 6, that the CEO or an officer of Customs may determine a person is the owner of goods if the person is an owner within the meaning of subsection 4(1) of the Customs Act.