

## Major Sporting Events (Indicia and Images) Protection Bill 2014

*Portfolio: Sport*

*Introduced: House of Representatives, 26 March 2014*

### Purpose

1.88 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.

1.89 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.

### Committee view on compatibility

#### *Right to freedom of opinion and expression*

1.90 The right to freedom of opinion and expression is guaranteed by article 19 of the International Covenant on Civil and Political Rights (ICCPR). The right to freedom of opinion is the right to hold opinions without interference and cannot be subject to any exception or restriction. The right to freedom of expression extends to the communication of information or ideas through any medium, including written and oral communications, the media, public protest, broadcasting, artistic works and commercial advertising.

1.91 Under article 19(3), freedom of expression may be subject to limitations that are necessary to protect the rights or reputations of others, national security, public order (*ordre public*),<sup>1</sup> or public health or morals. Limitations must be prescribed by law, pursue a legitimate objective, be rationally connected to the achievement of that objective and a proportionate means of doing so.<sup>2</sup>

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1 'The expression 'public order (*ordre public*)'...may be defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order (*ordre public*)': Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights U.N. Doc. E/CN.4/1985/4, Annex (1985), clause 22.

2 See, generally, Human Rights Committee, *General comment No 34 (Article 19: Freedoms of opinion and expression)*, CCPR/C/GC/34, paras 21-36 (2011).

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

1.92 The statement of compatibility for the bill notes that it would both engage and limit the right to freedom of expression through establishing the registration process to restrict the use of protected event indicia and images to official users only. However, this limitation is described as necessary to promote the rights of people to access culture by ensuring that sufficient revenue can be raised to stage the events in question, including through sponsorship and the commercial use of the indicia and images.<sup>3</sup> The statement of compatibility further notes that the bill provides for 'limited exemptions' for certain third parties from prohibitions against the use of event indicia and images where the use is for the purpose of the provision of information, or for criticism or review in certain cases. It concludes:

[These]...limitations associated with freedom of expression are reasonable, necessary and proportionate to achieving the objective of promoting the right of individuals to enjoy and benefit from participating in cultural life through participation in and access to sport.<sup>4</sup>

1.93 The committee accepts that the limitation on freedom of expression is proposed in pursuit of the legitimate objective of promoting or protecting the rights of others (being the right of people to participate in the events in question and the protection of the intellectual property of the event sponsors), and that the proposed restrictions are rationally connected to that objective in seeking to protect the financial interests of event sponsors and investors, and thereby the financial viability of such events.

1.94 In relation to the proportionality of the proposed restriction, the committee notes that the proposed restriction on unauthorised commercial use of protected event indicia and images appears generally to be proportionate to its stated objective, particularly insofar as exemptions are provided for the purposes of criticism, review or the provision of information.<sup>5</sup> This would appear to cover news reporting and critical or satirical review of the events, sponsorship arrangements and artistic or other aspects of protected indicia and images, including where such activities are undertaken for commercial purposes. For example, a show commenting on or satirising the events using protected images, logos and words could be

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3 Explanatory memorandum (EM), p. 24

4 EM, p. 24.

5 See proposed sections 12 and 14. The committee notes also that the bill would not apply to the extent that it would infringe any constitutional doctrine of implied freedom of political communication (proposed section 57). This may provide additional protection to the extent that expression otherwise prohibited by the bill would be protected (and would fall within the scope of the guarantee of the right to freedom of expression).

broadcast by a commercial television or radio network with no formal relationship with the event sponsors or organisers.

1.95 However, the committee notes that the bill as drafted does not provide an explicit or 'plain' exemption for the use of protected event indicia and images when used for the primary purpose of criticism, review or the provision of information. Instead, it provides that expressions for the primary purpose of such uses will be 'not alone sufficient to suggest the existence of a sponsorship arrangement' for the purposes of proposed paragraph 12(1)(c). This paragraph provides that a protected indicia or image is used for commercial purposes if that use would suggest, to a reasonable person, that the user is or was a sponsor of, or is or was the provider of other support for the event or a related event.

1.96 It is unclear to the committee what the scope of the exemption would be as drafted in this way and whether for example, it would adequately protect news reporting and critical or satirical review of the events, sponsorship arrangements and artistic or other aspects of protected indicia and images (as discussed above). Accordingly, it is unclear whether the measure may be regarded as proportionate in the extent to which it preserves the right to use protected indicia or images for the purposes of criticism, review or the provision of information.

**1.97 The committee therefore seeks 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 as the exemptions provided for the purposes of criticism, review or the provision of information (in the terms drafted in the bill).**

#### *Power to order corrective advertisement*

1.98 Proposed section 47 of the bill provides that a 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. A corrective advertisement order must specify the means and times of the corrective advertisement (proposed subsection 47(3)).

1.99 The committee notes that the proposed power to order a person to publish an advertisement would involve a limitation on that person's right to freedom of expression, which includes the right not to be compelled to engage in particular forms of expression. However, the statement of compatibility for the bill provides no assessment of the compatibility of this measure with the right in the context of the bill.

1.100 The committee's usual expectation where a right may be limited is that the statement of compatibility set out the legitimate objective being pursued, the rational connection between the measure and that objective, and the proportionality of the measure.

**1.101 The committee therefore requests the Minister for Sport's advice as to the compatibility of proposed section 47 with the right to freedom of expression.**