

Advance Australia Logo Protection Act 1984

No. 20 of 1984

An Act to make provision for the protection of the Advance
Australia logo, and for related purposes

[Assented to 26 April 1984]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

1. This Act may be cited as the *Advance Australia Logo Protection Act 1984*.

Commencement

2.—

(1) Sections 1, 2 and 3 and Schedule 1 shall come into operation on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act shall come into operation on a day to be fixed by Proclamation, being a day not earlier than the day on which the Company delivers to the Governor-General an instrument in writing under its common seal in the form set out in Schedule 1, but upon those provisions so coming into operation, those provisions and section 3 shall be deemed to have had effect on and from 13 October 1983.

Interpretation

3.—

(1) In this Act, unless the contrary intention appears—

“Australia”, when used in a geographical sense, includes the external Territories;

“Company” means Advance Australia, being a company incorporated on 29 June 1981 under the law in force in the Australian Capital Territory;

“charge” means a charge created in any way and includes a mortgage and an agreement to give or execute a charge or mortgage, whether upon demand or otherwise;

“logo” means the logo an outline of which is set out in Schedule 2;

“monopoly”, in relation to the design of the logo, means the exclusive right to apply the design to any article to which the design is capable of being applied;

“owner”, in relation to the design of the logo, means the person who, under this Act, or by virtue of a disposition not in contravention of this Act, is the owner of the design of the logo;

“prescribed period” means the period of 16 years that commenced on 13 October 1983.

(2) Where, by virtue of regulations in force for the purposes of sub-section 17 (2) of the *Designs Act 1906*, a design is not capable of being registered under that Act for an article specified in those regulations, a reference in this Act to an article does not include a reference to an article so specified.

(3) A reference in this Act to the design of the logo is a reference to the design that, when applied to an article, results in a reproduction of the logo.

(4) Unless the contrary intention appears, an expression used in this Act and the *Designs Act 1906* has the same meaning in this Act as in the *Designs Act 1906*.

Act to bind Crown

4. Subject to Part VII of the *Copyright Act 1968*, this Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

Extension of Act to external Territories

5. This Act extends to the external Territories.

Ownership, &c., of copyright in the logo

6. For the purposes of the *Copyright Act 1968*—

- (a) the logo shall be taken to be, and to have been from the time when it was created, an original artistic work;
- (b) the Commonwealth shall be taken to have been the owner of the copyright in the logo from the time it was created until and including 28 June 1981; and
- (c) subject to section 10, the Company shall be taken to be, and to have been, on and from 29 June 1981, the owner of the copyright in the logo.

Ownership of design of the logo

7. Subject to section 10, the Company shall be taken to be, and to have been, with effect from 13 October 1983, the owner of the design of the logo.

Monopoly of design in the logo, &c.

8.

(1) The owner of the design of the logo has, and shall be taken at all material times to have had, a monopoly in that design.

(2) The rights of an owner with respect to the design of the logo are personal property and, subject to this Act, the laws applicable to ownership of personal property apply in relation to the monopoly in the design of the logo as they apply in relation to other choses in action.

Certain purported dispositions or charges relating to copyright in, or design of, the logo to be void

9.

(1) A disposition, by assignment, declaration of trust or by any other means, purporting to be made by the Company of the whole or any part of its interest in the copyright in the logo or of its interest in the design of the logo to a person other than the Commonwealth is void.

(2) A charge purporting to be given by the Company with respect to an asset of the Company that consists of, or includes, the whole or any part of its interest in the copyright in the logo or the whole or any part of its interest in the design of the logo is void.

Ownership of copyright in, and design of, the logo to vest in Commonwealth in certain circumstances

10.

(1) If—

- (a) the Company passes a resolution for its winding up;
- (b) an order is made for the winding up of the Company; or

- (c) the Minister, by notice published in the *Gazette*, declares that he is satisfied that it is no longer in the public interest for the Company to own any interest in the copyright in the logo or any interest in the design of the logo by reason that—
- (i) the Company has refused or failed to comply with a direction under section 17;
 - (ii) the Company has done, or is doing, an act or thing that the Company was or is without the capacity or power to do; or
 - (iii) there has been a change in the objects, powers, constitution, management, membership, beneficial ownership or control of the Company,

then, by force of this sub-section—

- (d) the interest of the Company in—
- (i) the copyright in the logo; and
 - (ii) the design of the logo,
- is assigned to the Commonwealth; and
- (e) the interest, rights and benefits of the Company under any licence granted by the Company in respect of the copyright in, and the design of, the logo are assigned to the Commonwealth.

(2) Where, whether by force of sub-section (1) or otherwise, the Commonwealth acquires an interest in the copyright in the logo or an interest in the design of the logo, a purported assignment by the Commonwealth of the whole or any part of that interest to a person (in this section referred to as the “assignee”) is void unless—

- (a) the assignee is an incorporated company; and
- (b) the assignee agrees that, as a condition of the assignment, it is not entitled to compensation from the Commonwealth by reason of the operation of any provision of this Act.

(3) Where the Commonwealth assigns the whole or any part of its interest in the copyright in, or the design of, the logo to a company, section 9, sub-section (1) of this section and sections 17 and 18 have effect as if a reference in those provisions to the Company were a reference to the assignee.

(4) A person is not entitled to compensation from the Commonwealth by reason of the operation of sub-section (1) or (3).

Infringement of monopoly in the design of the logo

11.

(1) A person shall be deemed to infringe the monopoly in the design of the logo if, during the prescribed period, the person—

- (a) without the licence of the owner of the design, applies the design or any fraudulent or obvious imitation of it to any article;
- (b) without the licence of the owner of the design, sells, or offers or keeps for sale, or hires, or offers or keeps for hire, any article to which the design or any fraudulent or obvious imitation of it has been applied in infringement of the monopoly in the design;
- (c) imports into Australia for sale, or for use for the purposes of any trade or business, any article in respect of which the design or any fraudulent or obvious imitation of it has been applied outside Australia; or
- (d) sells, or offers or keeps for sale, or hires, or offers or keeps for hire, any article that has been imported into Australia and to which the design or any fraudulent or obvious imitation of it has been applied, whether in or outside Australia.

(2) Subject to sub-section (3), if a person infringes the monopoly in the design of the logo—

- (a) the owner of the design; or
- (b) a holder of a licence in relation to the design whose interests have been, are or would be affected by the infringement,

may bring an action or proceeding against the person in the Supreme Court of a State or a Territory for infringement of the monopoly in the design.

(3) An action or proceeding for infringement of the monopoly in the design of the logo shall not be instituted by the holder of a licence in relation to the design without the consent of the owner of the design.

(4) Where—

(a) a person, being the holder of a licence in relation to the design of the logo, applies, by notice in writing served on the owner of the design, for the consent of the owner under sub-section (3) to the institution by the person of an action or proceeding for infringement of the monopoly in the design of the logo; and

(b) the owner of the design does not grant or refuse that consent before the expiration of the period of 7 days after the day on which the notice was served,

the owner of the design shall, upon the expiration of that period, be deemed to have granted that consent under sub-section (3).

(5) Consent under sub-section (3) to the institution of an action or proceeding shall not be unreasonably refused.

(6) Sub-section (3) does not affect the granting of an interlocutory injunction on the application of a holder of a licence in relation to the design of the logo.

Remedies for infringement of monopoly in the design of the logo

12. The relief that a court may grant in an action or proceeding for the infringement of the monopoly in the design of the logo includes an injunction (subject to such terms, if any, as the court thinks fit) and, at the option of the plaintiff, either damages or an account of profits.

Jurisdiction of courts

13.

(1) The Supreme Court of each State is invested with federal jurisdiction, and to the extent that the Constitution permits, jurisdiction is conferred on the Supreme Court of each Territory, with respect to all matters arising under section 11 or 16.

(2) The jurisdiction of a Supreme Court of a State or Territory under this section shall be exercised by a single Judge.

(3) The inferior courts of each State are invested with federal jurisdiction, and jurisdiction is conferred on the inferior courts of each Territory, within the limits, other than limits as to subject-matter, of their several jurisdictions, with respect to matters arising under section 16.

(4) An appeal lies to the Federal Court of Australia from a judgment or order of a court of a State or Territory exercising jurisdiction under this Act.

(5) An appeal lies to the High Court, with special leave of the High Court, from a judgment or order referred to in sub-section (4).

(6) Except as provided in sub-section (4) or (5), no appeal lies from a judgment or order referred to in sub-section (4).

(7) A reference in sub-section (3) to an inferior court is a reference to—

(a) a County Court, District Court or Local Court; or

(b) a court of summary jurisdiction exercising civil jurisdiction,

being a court having jurisdiction in actions for the recovery of debts up to an amount not less than the amount of compensation claimed.

Validation of certain licences

14. Where, before 13 October 1983, the Company purported to grant a licence for a particular period expiring after that date in respect of the design of the logo, the licence is as valid and effectual as it would have been if it had been granted on that date for the part of that period that commenced on that date.

Immunity from suit

15.

(1) No action or proceeding, whether civil or criminal, lies against the Commonwealth or the Company for or in relation to any matter or thing arising out of or incidental to the grant before 13 October 1983 of any purported licence in respect of the design of the logo.

(2) No action or proceeding, whether civil or criminal, lies against the Commonwealth, the Company or a person acting in accordance with any purported licence in respect of the design of the logo for or in relation to the use of the logo before 13 October 1983.

(3) Nothing in this section shall be taken to affect a right to compensation conferred upon a person by section 16.

Compensation for acquisition of property

16.

(1) Where, but for this sub-section, the operation of a provision of this Act would result in the acquisition of property from a person by another person otherwise than on just terms, there is payable to the first-mentioned person by that other person such amount of compensation as is agreed upon between those persons, or, failing agreement, as is determined by a court of competent jurisdiction.

(2) Any compensation recovered in proceedings that are instituted under this section shall be taken into account in assessing damages or compensation or giving any other remedy in proceedings that are instituted otherwise than by virtue of this Act and that arise out of the same event or transaction.

(3) Any damages or compensation recovered or other remedy given in proceedings that are instituted otherwise than by virtue of this Act shall be taken into account in assessing compensation payable in proceedings that are instituted under this section and that arise out of the same event or transaction.

(4) In this section, “acquisition of property” and “just terms” have the same respective meanings as in paragraph 51 (xxxi) of the Constitution.

Directions by Minister

17.

(1) The Minister may, by instrument in writing served on the Company, give directions to the Company in connection with the exercise of its powers in relation to the copyright in, and the design of, the logo and the Company shall comply with any directions so given.

(2) The Minister shall cause a copy of a direction given under sub-section (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the direction is given.

(3) Without limiting the generality of sub-section (1), a direction under that sub-section may require the Company—

- (a) to furnish to the Minister, by writing signed by a competent officer of the Company, within the time and in the manner specified in the direction, such information relating to—
 - (i) licences granted by the Company in respect of copyright in, or the design of, the logo;
 - (ii) amounts received by the Company by way of consideration for any such licences; or
 - (iii) the application by the Company of any such amounts,as is specified in the direction;
- (b) to produce to the Minister or a person specified in the direction acting on his behalf, in accordance with the direction, such documents relating to a matter referred to in sub-paragraph (a) (i), (ii) or (iii) as are specified in the direction;
- (c) to keep a separate account of the receipt and application of amounts referred to in sub-paragraph (a) (ii); or
- (d) to permit a person specified in the direction to audit any such account.

(4) A person is not entitled to compensation from the Commonwealth by reason of the operation of sub-section (1).

Annual report by Company

18.

(1) The Company shall, as soon as practicable after each 30 June, prepare and furnish to the Minister a report relating to the exercise of its powers during the year that ended on that 30 June with respect to the copyright in, and the design of, the logo.

(2) The Minister shall cause a copy of a report furnished to him under sub-section (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which he receives the report.

(3) A report under sub-section (1) in respect of a year shall set out details of—

- (a) licences granted by the Company during that year in respect of copyright in, or the design of, the logo;
- (b) any amounts received by the Company during that year by way of consideration for any licences in respect of copyright in, or the design of, the logo;
- (c) the application by the Company during that year of any such amounts; and
- (d) such other matters (if any) as are prescribed.

(4) A report under sub-section (1) in respect of a year ending on a 30 June before the expiration of the prescribed period shall include a statement—

(a) setting out the views of the Company—

(i) with respect to the question whether or not this Act should be amended so as to shorten the duration of the prescribed period; and

(ii) if—

(A) the views of the Company with respect to the question referred to in sub-paragraph (i) are that the Act should not be amended as mentioned in that sub-paragraph; and

(B) that 30 June is within the period commencing 5 years before the expiration of the prescribed period,

with respect to the question whether or not this Act should be amended so as to lengthen the duration of the prescribed period; and

(b) giving reasons for those views.

(5) The first report under sub-section (1) shall relate to the period commencing on 13 October 1983 and ending on 30 June 1984.

Application of Copyright Act and Designs Act

19.

(1) Division 8 of Part III of the *Copyright Act 1968* does not apply in relation to the copyright in the logo.

(2) During the prescribed period, it is not an infringement of the copyright in the logo to do any act or thing that, at the time when it is done, is an act or thing that; by virtue of this Act, the owner of the design of the logo has the exclusive right to do.

(3) After the expiration of the prescribed period, it is not an infringement of the copyright in the logo to do any act or thing that, had it been done immediately before the expiration of the prescribed period, would have been an act or thing that, by virtue of this Act, the owner of the design of the logo would have had the exclusive right to do if a reference in this Act to the design of the logo had, immediately before the expiration of the prescribed period, included a reference to another design that when applied to an article differs from the design of the logo only in immaterial details or in features commonly used in a relevant trade.



(4) Any registration of the design of the logo that was purported to be made under the *Designs Act 1906*, whether before or after this sub-section commenced to have effect, is void and shall be deemed never to have been made.

Severability of certain provisions

20. If, but for this section, the enactment of sub-section 10 (4) or of sub-section 17 (4) would result in the invalidity, in whole or in part, of any other provision of this Act, this Act has effect as if that sub-section had not been enacted.

Regulations

21. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Sub-section 2 (2)

SCHEDULE 1

ADVANCE AUSTRALIA LOGO PROTECTION ACT 1984

Sub-section 2 (2)

The Company agrees that, as a condition of the conferral on it of benefits by or under the *Advance Australia Logo Protection Act 1984*, it will not be entitled to any compensation from the Commonwealth by reason of the operation of any provision of that Act.

Sub-section 3 (1)

SCHEDULE 2

OUTLINE OF THE ADVANCE AUSTRALIA LOGO