



## **Olympic Insignia Protection Amendment Act 2001**

**No. 156, 2001**

**An Act to amend the *Olympic Insignia Protection Act 1987*, and for other purposes**

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**Schedule 1—Amendment of the Olympic Insignia Protection Act 1987**

**An Act to amend the *Olympic Insignia Protection Act 1987*, and for other purposes**

[Assented to 1 October 2001]

The Parliament of Australia enacts:

**1 Short title**

This Act may be cited as the *Olympic Insignia Protection Amendment Act 2001*.

**2 Commencement**

This Act commences on the 28th day after the day on which it receives the Royal Assent.

**3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendment of the Olympic Insignia Protection Act 1987**

### **1 Title**

After “**insignia,**”, insert “**for the regulation of the commercial use of certain Olympic expressions,**”.

### **2 Before the heading to Part I**

Insert:

#### **Chapter 1—Introduction**

### **3 Part I (heading)**

Repeal the heading, substitute:

#### **Part 1.1—Introduction**

### **4 After section 1**

Insert:

#### **1A Simplified outline**

The following is a simplified outline of this Act:

- Chapter 2 of this Act protects the olympic insignia by:
  - (a) making the AOC the owner of copyright in the olympic symbol; and
  - (b) making the AOC the owner of certain olympic designs; and
  - (c) providing that the olympic motto, the olympic symbol and certain other olympic images must not be registered as trade marks.
- Chapter 3 of this Act prohibits the commercial use of certain olympic expressions unless the user holds a licence granted by the AOC.

#### **Chapter 2—Copyright and design protection**

#### **Part 2.1—Introduction**

### **5 Subsection 2(1)**

Omit “this Act” (first occurring), substitute “this Chapter”.

**6 Subsection 2(1) (before the definition of Australia)**

Insert:

*AOC* or *Australian Olympic Committee* means the Australian Olympic Committee Incorporated, being an association incorporated on 24 April 1985 under the *Associations Incorporation Act 1981* of Victoria.

**7 Subsection 2(1) (definition of Committee)**

Repeal the definition.

**8 Subsections 2(2) and (3)**

Omit “this Act” (wherever occurring) , substitute “this Chapter”.

**9 Paragraph 2A(2)(b)**

Omit “Committee”, substitute “AOC”.

**10 Section 3**

Omit “this Act”, substitute “this Chapter”.

**11 Section 4**

Omit “This Act”, substitute “This Chapter”.

**12 Part II (heading)**

Repeal the heading, substitute:

**Part 2.2—Copyright protection****13 Section 5**

Omit “Committee” (wherever occurring), substitute “AOC”.

**14 Part III (heading)**

Repeal the heading, substitute:

**Part 2.3—Design protection****15 Section 6**

Omit “Committee”, substitute “AOC”.

**16 Section 7**

Omit “Committee” (wherever occurring), substitute “AOC”.

**17 Subsection 7(2)**

Omit “this Act”, substitute “this Chapter”.

**18 Section 8**

Omit “Committee” (wherever occurring), substitute “AOC”.

**19 Section 9A**

Omit “this Act” (wherever occurring), substitute “this Chapter”.

**20 Section 10**

Omit “Committee” (wherever occurring), substitute “AOC”.

**21 Section 11**

Omit “Committee” (wherever occurring), substitute “AOC”.

**22 Subsection 11A(1)**

Omit “Committee”, substitute “AOC”.

**23 Part IV (heading)**

Repeal the heading, substitute:

**Part 2.4—Miscellaneous****24 Section 15**

Omit “Committee” (wherever occurring), substitute “AOC”.

**25 Section 16**

Omit “Committee”, substitute “AOC”.

**26 After section 18**

Insert:

**18A AOC to maintain Register of licences**

- (1) The AOC is to maintain a Register in which the AOC includes prescribed particulars of:
  - (a) licences granted by the AOC in relation to copyright in the olympic symbol; and
  - (b) licences granted by the AOC in relation to the protected designs.
- (2) The Register may be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Internet.

**27 Section 19**

Omit “*Trade Marks Act 1955*”, substitute “*Trade Marks Act 1995*”.

Note: The heading to section 19 is amended by omitting “*Trade Marks Act 1955*” and substituting “*Trade Marks Act 1995*”.

**28 Paragraph 19(ba)**

Omit “under this Act”, substitute “for the purposes of section 2A”.

**29 Subsection 20(1)**

Omit “this Act”, substitute “this Chapter”.

**30 Paragraph 20(1)(a)**

Omit “*Trade Marks Act 1955*”, substitute “*Trade Marks Act 1995*”.

**31 Subsection 20(2)**

Omit “this Act”, substitute “this Chapter”.

**32 Subsection 20(3)**

Omit “Committee” (wherever occurring), substitute “AOC”.

**33 Paragraph 20(3)(c)**

Omit “*Trade Marks Act 1955*”, substitute “*Trade Marks Act 1995*”.

**34 Section 21**

Omit “this Act” (wherever occurring), substitute “this Chapter”.

**35 After section 21**

Insert:

**Chapter 3—Protected olympic expressions****Part 3.1—Introduction****Division 1—General provisions****22 Object of Chapter**

- (1) The object of this Chapter is to protect, and to further, the position of Australia as a participant in, and a supporter of, the world Olympic movement.
- (2) This object is to be achieved by facilitating the raising of licensing revenue through the regulation of the use for commercial purposes of certain expressions associated with the world Olympic movement.

## 23 Definitions

In this Chapter, unless the contrary intention appears:

**advertisement** means any writing, still or moving picture, sign, symbol or other visual image, or any audible message, or any combination of 2 or more of those things, that promotes:

- (a) goods or services; or
- (b) a person.

An advertisement may:

- (c) be in the form of a signboard; or
- (d) be in a newspaper or periodical; or
- (e) be broadcast on radio or television; or
- (f) be placed on an Internet site; or
- (g) be in any other form.

**AOC** or **Australian Olympic Committee** means the Australian Olympic Committee Incorporated, being an association incorporated on 24 April 1985 under the *Associations Incorporation Act 1981* of Victoria.

**Australia**, when used in a geographical sense, includes the following external Territories:

- (a) Christmas Island;
- (b) Cocos (Keeling) Islands;
- (c) Norfolk Island.

**broadcast** means a transmission by means of:

- (a) a broadcasting service within the meaning of the *Broadcasting Services Act 1992*; or
- (b) something that would be such a broadcasting service if the definition of **broadcasting service** in subsection 6(1) of that Act were amended by omitting all the words from and including “but does not include” to the end of the definition.

**continental shelf** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

**designated owner**, in relation to goods imported into Australia, means:

- (a) 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 1901*; or
- (b) if no such entry exists—the person determined to be the owner of the goods under section 50 of this Act.

**expression** includes a single word.

**Federal Court** means the Federal Court of Australia.

**IOC** or **International Olympic Committee** means the organisation created by the Congress of Paris on 23 June 1894, being the organisation entrusted with the control and development of the modern Olympic Games.

**licence** means a licence in force under section 38.

**licensed user** means a person in relation to whom a licence is in force.

**national sporting organisation** has the same meaning as in the *Australian Sports Drug Agency Act 1990*.

**Olympian** means a person who:

- (a) was accredited by the IOC as a competitor in a sports competition in a Summer or Winter Olympic Games; and
- (b) has competed in that sports competition.

**prescribed court** means a court that is a prescribed court under section 66.

**promote** includes give publicity to.

**protected olympic expression** has the meaning given by section 24.

**sponsorship-like support** has the meaning given by section 29.

**statement** includes a statement made orally, in writing or in any other way.

**use for commercial purposes**, in relation to a protected olympic expression, has the meaning given by section 30.

## 24 Protected olympic expressions

- (1) For the purposes of this Chapter, each of the following expressions is a **protected olympic expression**:
  - (a) Olympic;
  - (b) Olympics;
  - (c) Olympic Games;
  - (d) Olympiad;
  - (e) Olympiads.
- (2) For the purposes of this Chapter, an expression so closely resembling a protected olympic expression mentioned in subsection (1) as to be likely to be mistaken, by a reasonable person, for such a protected olympic expression is taken to be a protected olympic expression.



- (3) To avoid doubt, for the purposes of this Chapter, the expressions “Olympian” and “Olympians” are taken not to resemble a protected olympic expression mentioned in subsection (1).

## **25 Chapter binds the Crown**

This Chapter binds the Crown in all its capacities.

## **26 Application of Chapter**

This Chapter extends to:

- (a) Christmas Island; and
- (b) Cocos (Keeling) Island; and
- (c) Norfolk Island; and
- (d) the waters above the continental shelf of Australia; and
- (e) the airspace above Australia and the continental shelf of Australia.

## **27 Additional operation of Chapter**

- (1) Without prejudice to its effect apart from this section, this Chapter also has effect as provided by this section.
- (2) This Chapter has, by force of this subsection, the effect it would have if each reference to use for commercial purposes were a reference to:
  - (a) use for commercial purposes by a corporation to which paragraph 51(xx) of the Constitution applies; or
  - (b) use for commercial purposes by any person in the course of:
    - (i) trade or commerce with other countries; or
    - (ii) trade or commerce among the States; or
    - (iii) trade or commerce within a Territory, between a State and a Territory or between the Territories; or
    - (iv) the supply of goods or services to the Commonwealth, a Territory, or to an authority or instrumentality of the Commonwealth or of a Territory; or
    - (v) the use of postal, telegraphic, telephonic or other like services; or
    - (vi) the making of a broadcast; or
  - (c) use for commercial purposes by any person that detrimentally affects the rights conferred by or under this Chapter on a licensed user that is a corporation to which paragraph 51(xx) of the Constitution applies.

## Division 2—Use for commercial purposes etc.

### 28 Application of expressions or statements

- (1) For the purposes of this Chapter, an expression or a statement is taken to be *applied* to goods or services if:
- (a) in the case of goods, the expression or statement:
    - (i) is woven in, impressed on, worked into, or affixed or annexed to, the goods; or
    - (ii) is applied to any covering, document, label, reel or thing in or with which the goods are, or are intended to be, dealt with or provided; or
  - (b) in the case of goods or services, the expression or statement:
    - (i) is used in an advertisement that promotes the goods or services; or
    - (ii) is used in an invoice, price list, catalogue, brochure, business letter, business paper or other commercial document that relates to the goods or services.
- (2) For the purposes of this Chapter, if:
- (a) an advertisement promotes a particular person; and
  - (b) the person provides goods or services; and
  - (c) it would be concluded, by a reasonable person, that the advertisement was designed to enhance the commercial image of the person mentioned in paragraph (a);
- the advertisement is taken to promote those goods or services.
- (3) In this section:
- covering* includes packaging, frame, wrapper, container, stopper, lid or cap.
- label* includes a band or ticket.

### 29 Sponsorship-like support

- (1) For the purposes of this Chapter, a person provides *sponsorship-like support* for:
- (a) the AOC; or
  - (b) the IOC; or
  - (c) a Summer or Winter Olympic Games; or
  - (d) the organising committee for a Summer or Winter Olympic Games; or
  - (e) an Australian Olympic team; or

- (f) a section of an Australian Olympic team; or
- (g) an individual member of an Australian Olympic team;

if, and only if, the person provides support on the understanding (whether express or implied) that the support is provided in exchange for a right to associate:

- (h) the person; or
- (i) goods or services of the person;

with the committee, games, team, section or individual concerned.

- (2) A right mentioned in subsection (1) need not be legally enforceable.
- (3) An exchange mentioned in subsection (1) may be wholly or partly for the right mentioned in that subsection.

### 30 Use for commercial purposes

- (1) This section sets out the 2 situations in which a person is said to use a protected olympic expression for commercial purposes.

*Use for commercial purposes—situation (1)*

- (2) For the purposes of this Chapter, if:
    - (a) a person (the *first person*) causes a protected olympic expression to be applied to goods or services of the first person; and
    - (b) the application is for advertising or promotional purposes, or is likely to enhance the demand for the goods or services; and
    - (c) the application, to a reasonable person, would suggest that the first person is or was a sponsor of, or is or was the provider of sponsorship-like support for:
      - (i) the AOC; or
      - (ii) the IOC; or
      - (iii) a Summer or Winter Olympic Games; or
      - (iv) the organising committee for a Summer or Winter Olympic Games; or
      - (v) an Australian Olympic team; or
      - (vi) a section of an Australian Olympic team; or
      - (vii) an individual member of an Australian Olympic team;
- then:
- (d) if the expression is applied in Australia—the application is use by the first person of the expression for commercial purposes; or

- (e) if:
  - (i) the expression is applied to goods outside Australia; and
  - (ii) the goods are imported into Australia for the purpose of sale or distribution; and
  - (iii) there is a designated owner of the goods;

the importation is use by the designated owner of the expression for commercial purposes.

*Use for commercial purposes—situation (2)*

- (3) For the purposes of this Chapter, if:
  - (a) a person (the **first person**), other than the AOC or a licensed user, causes a protected olympic expression to be applied to goods or services of the first person; and
  - (b) the application is for advertising or promotional purposes, or is likely to enhance the demand for the goods or services; and
  - (c) the application, to a reasonable person, would suggest that the first person is or was a sponsor of, or is or was the provider of sponsorship-like support for:
    - (i) the AOC; or
    - (ii) the IOC; or
    - (iii) a Summer or Winter Olympic Games; or
    - (iv) the organising committee for a Summer or Winter Olympic Games; or
    - (v) an Australian Olympic team; or
    - (vi) a section of an Australian Olympic team; or
    - (vii) an individual member of an Australian Olympic team; and
  - (d) any of the following conditions are satisfied in relation to a person (the **second person**) other than the first person:
    - (i) in the case of goods or services—the second person supplies, or offers to supply, the goods or services;
    - (ii) in the case of goods—the second person exposes the goods for supply by the second person;
    - (iii) in the case of goods—the second person keeps the goods for supply by the second person or by another person;

the supply, offer, exposure or keeping, as the case may be, by the second person is use by the second person of the expression for commercial purposes.

*Definition*

- (4) In this section:

*supply* includes:

- (a) in the case of goods—supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and
- (b) in the case of services—provide, grant or confer.

### **31 Exemption—statements about past participation of Olympians**

For the purposes of this Chapter, if:

- (a) a person has been involved in a Summer or Winter Olympic Games as an Olympian; and
- (b) the Games have ended; and
- (c) the person makes, or authorises another person to make, a statement that consists of, or includes, a factual reference to that involvement; and
- (d) the statement includes a protected olympic expression; and
- (e) the statement is applied to goods or services; and
- (f) the application of the statement is for advertising or promotional purposes, or is likely to enhance the demand for the goods or services; and
- (g) the application of the statement would not suggest, to a reasonable person, that any person is or was a sponsor of, or is or was the provider of sponsorship-like support for:
  - (i) the AOC; or
  - (ii) the IOC; or
  - (iii) a Summer or Winter Olympic Games that has not ended; or
  - (iv) the organising committee for a Summer or Winter Olympic Games that has not ended; or
  - (v) an Australian Olympic team in relation to a Summer or Winter Olympic Games that has not ended; or
  - (vi) a section of an Australian Olympic team in relation to a Summer or Winter Olympic Games that has not ended; or
  - (vii) an individual member of an Australian Olympic team in relation to a Summer or Winter Olympic Games that has not ended;

the application of the statement is to be disregarded for the purposes of this Chapter.

**32 Exemption—statements about preparation or training of Olympians by sporting organisations and institutes**

(1) For the purposes of this Chapter, if:

(a) a body that is:

- (i) a national sporting organisation in relation to a sport; or
- (ii) the Australian Sports Commission; or
- (iii) a State/Territory institute or academy of sport;

has been involved in preparing or training Olympians in relation to a Summer or Winter Olympic Games; and

(b) the Games have ended; and

(c) the body makes, or authorises another person to make, a statement that consists of, or includes, a factual reference to that involvement; and

(d) the statement includes a protected olympic expression; and

(e) the statement is applied to goods or services; and

(f) the application of the statement is for advertising or promotional purposes, or is likely to enhance the demand for the goods or services; and

(g) the application of the statement would not suggest, to a reasonable person, that any person is or was a sponsor of, or is or was the provider of sponsorship-like support for:

(i) the AOC; or

(ii) the IOC; or

(iii) a Summer or Winter Olympic Games that has not ended; or

(iv) the organising committee for a Summer or Winter Olympic Games that has not ended; or

(v) an Australian Olympic team in relation to a Summer or Winter Olympic Games that has not ended; or

(vi) a section of an Australian Olympic team in relation to a Summer or Winter Olympic Games that has not ended; or

(vii) an individual member of an Australian Olympic team in relation to a Summer or Winter Olympic Games that has not ended;

the application of the statement is to be disregarded for the purposes of this Chapter.

- (2) For the purposes of this section, a State/Territory institute or academy of sport is a body that is recognised by the Government of a State or Territory as the principal organisation within the State or Territory that has responsibility for preparing elite sportsmen and sportswomen for sporting competition at the elite level.
- (3) For the purposes of this section:
- (a) an organisation that is a part of another body is taken to be a body in its own right; and
  - (b) anything done on behalf of, or in the name of, the organisation by the other body is taken to have been done by the organisation.

### **33 Exemption—statements about sports-related personal services**

- (1) For the purposes of this Chapter, if:
- (a) a person has provided sports-related personal services (the *athlete services*) to one or more Olympians in the person's capacity as a member of an Olympic team that participated in a Summer or Winter Olympic Games; and
  - (b) the Games have ended; and
  - (c) the person makes, or authorises another person to make, a factual statement about the provision of the athlete services; and
  - (d) the subject matter of the statement is limited to the provision of the athlete services; and
  - (e) the statement includes a protected olympic expression; and
  - (f) the statement is applied to sports-related personal services of the person (the *ordinary services*) that are the same as, or similar to, the athlete services; and
  - (g) the application of the statement is for advertising or promotional purposes in relation to the ordinary services, or is likely to enhance the demand for the ordinary services;

the application of the statement is to be disregarded for the purposes of this Chapter.

- (2) In this section:

*sports-related personal services* means any of the following:

- (a) coaching services;
- (b) medical or other health services;
- (c) dietary consultative services;
- (d) psychological or other counselling services;
- (e) any similar services designed to maintain or enhance a person's sporting performance.

### 34 Exemption—statements about supply of goods or services to past teams or Games

For the purposes of this Chapter, if:

- (a) a person supplied goods or services (other than services covered by paragraph 33(1)(a)) to:
  - (i) an Olympic team that participated in a Summer or Winter Olympic Games; or
  - (ii) the organising committee for a Summer or Winter Olympic Games; and
- (b) the Games have ended; and
- (c) the person makes, or authorises another person to make, a factual statement about that supply; and
- (d) the subject matter of the statement is limited to that supply; and
- (e) the statement identifies the Games in relation to which the supply was made; and
- (f) the statement includes a protected olympic expression; and
- (g) the statement is applied to goods or services of the person (the *ordinary goods or services*) that are the same as, or similar to, the goods or services mentioned in paragraph (a); and
- (h) the application of the statement is for advertising or promotional purposes in relation to the ordinary goods or services, or is likely to enhance the demand for the ordinary goods or services;

the application of the statement is to be disregarded for the purposes of this Chapter.

### 35 Certain uses not alone sufficient to suggest sponsorship or sponsorship-like support

- (1) To avoid doubt, for the purposes of this Chapter, the use of a protected olympic expression for the purposes of, or in connection with, the provision of information or for the purposes of criticism or review is not alone sufficient to suggest a sponsorship, or the provision of sponsorship-like support, for the purposes of paragraph 30(2)(c) or (3)(c).
- (2) In subsection (1):
  - (a) a reference to the provision of information includes a reference to the reporting of news and the presentation of current affairs; and
  - (b) a reference to criticism or review includes a reference to criticism or review:
    - (i) in a newspaper, magazine or similar periodical; or
    - (ii) in a broadcast; or
    - (iii) on the Internet; or
    - (iv) in a video recording or a film.



## **Part 3.2—Protection of protected olympic expressions**

### **36 Regulation of use of protected olympic expressions**

- (1) A person, other than the AOC, must not use a protected olympic expression for commercial purposes.
- (2) Subsection (1) does not apply to the use by a person of a protected olympic expression if:
  - (a) the person is a licensed user; and
  - (b) the protected olympic expression is an expression that the person is licensed to use; and
  - (c) that use is in accordance with the terms and conditions of the licence.

### **37 Persons involved in contraventions of section 36**

For the purposes of this Chapter, a person is taken to have contravened section 36 if the person:

- (a) has attempted to contravene section 36; or
- (b) has aided, abetted, counselled or procured a person to contravene section 36; or
- (c) has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene section 36; or
- (d) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of section 36; or
- (e) has conspired with others to contravene section 36.

## **Part 3.3—Licensing**

### **38 Licensing by the AOC**

- (1) For the purposes of this Chapter, the AOC may license a person to use all, or any one or more, of the protected olympic expressions mentioned in subsection 24(1) for commercial purposes:
  - (a) in all circumstances or in specified circumstances; or
  - (b) during a specified period or without any limitation as to time.
- (2) This section is not intended to affect the capacity of the AOC to determine the terms and conditions on which a person is licensed, including terms and conditions relating to the payment of money.

### **39 Limitation on licence**

A licence does not authorise the use of a protected olympic expression for commercial purposes if the use is covered by subsection 30(3).

#### **40 AOC to maintain Register of licences**

- (1) The AOC is to maintain a Register in which the AOC includes prescribed particulars of licences.
- (2) The Register may be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Internet.

### **Part 3.4—Enforcement**

#### **Division 1—Remedies**

#### **41 Injunctions**

- (1) If a person has engaged, is engaging, or is proposing to engage, in conduct in contravention of section 36, a prescribed court may grant an injunction:
  - (a) restraining the person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.
- (2) The power of the court to grant an injunction may be exercised:
  - (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind.
- (3) An injunction under this section may only be granted on the application of the AOC or a licensed user.
- (4) An injunction granted under this section on the application of a person who is a licensed user may only relate to:
  - (a) a protected olympic expression to which the person's licence relates; or
  - (b) an expression so closely resembling the protected olympic expression to which the person's licence relates as is likely to be mistaken, by a reasonable person, for that expression.
- (5) The court may discharge or vary an injunction granted under this section.
- (6) The powers conferred on the court by this section are in addition to, and not instead of, any other powers of the court, whether conferred by this Chapter or otherwise.

#### **42 Interim injunctions**

- (1) A prescribed court may grant an interim injunction pending the determination of an application under section 41.
- (2) For the purposes of subsection (1) of this section, a contravention of section 36 is taken to have caused immediate and irreparable damage to the applicant.

### **43 Corrective advertisements**

- (1) If, on the application of the AOC, a prescribed court is satisfied that a person has engaged in conduct constituting a contravention of section 36, the court may make an order requiring the person:
  - (a) by such means (including a broadcast or Internet publication) as the court thinks fit; and
  - (b) at the person's own expense; and
  - (c) at times specified in the order;

to publish advertisements the terms of which are specified in, or are to be determined in accordance with, the order.
- (2) Subsection (1) does not limit section 41.
- (3) A court may make an order under subsection (1) whether or not relief is granted under section 41.

### **44 Damages**

- (1) If the AOC or a licensed user suffers loss or damage as a result of anything done by a person in contravention of section 36, the amount of the loss or damage may be recovered by action in a prescribed court.
- (2) The action must be brought within 3 years after the day on which the contravention occurred.
- (3) The grant of an injunction under section 41 does not prevent the recovery of loss or damages under this section.
- (4) The AOC or a licensed user is not entitled to both:
  - (a) the recovery of loss or damages under this section; and
  - (b) an account of profits under section 45;

in respect of the same contravention of section 36.

### **45 Account of profits**

- (1) If, on the application of the AOC or a licensed user, a prescribed court is satisfied that a person has engaged in conduct in contravention of section 36, the court may make an order granting relief by way of an account of profits.
- (2) The application must be made within 3 years after the day on which the contravention occurred.
- (3) An order made under this section on the application of a person who is a licensed user may only relate to:
  - (a) a protected olympic expression to which the person's licence relates; or

- (b) an expression so closely resembling the protected olympic expression to which the person's licence relates as is likely to be mistaken, by a reasonable person, for that expression.
- (4) A court may make an order under this section whether or not an injunction is granted under section 41.
- (5) The AOC or a licensed user is not entitled to both:
- (a) an account of profits under this section; and
  - (b) the recovery of loss or damages under section 44;
- in respect of the same contravention of section 36.

#### **46 Destruction or delivery of goods**

- (1) If, on the application of the AOC or a licensed user, a prescribed court is satisfied that a person has engaged in conduct constituting a contravention of section 36 in relation to goods, the court may order that the goods be:
- (a) destroyed; or
  - (b) delivered up to the AOC or to the licensed user, as the case may be; or
  - (c) otherwise dealt with in such manner as the court thinks fit.
- (2) An order made under this section on the application of a person who is a licensed user may only relate to:
- (a) a protected olympic expression to which the person's licence relates; or
  - (b) an expression so closely resembling the protected olympic expression to which the person's licence relates as is likely to be mistaken, by a reasonable person, for that expression.
- (3) A court may make an order under this section whether or not an injunction is granted under section 41.

#### **47 Consent of the AOC to institute remedial proceedings**

- (1) A licensed user must not:
- (a) make an application for an injunction (other than an interim injunction) under section 41; or
  - (b) bring an action for damages under section 44; or
  - (c) make an application for an order under section 45; or
  - (d) make an application for an order under section 46;
- except with the written consent of the AOC.

- (2) If:
- (a) a licensed user gives the AOC a written request for consent under subsection (1); and
  - (b) the AOC neither gives nor refuses that consent before the end of the period of 8 days beginning on the day on which the request was given;
- the AOC is taken to have given the consent.
- (3) Consent under subsection (1) must not be unreasonably refused.

#### **48 Other remedies**

- (1) The remedies provided under this Division are in addition to remedies provided by any law (whether a law of the Commonwealth or a law of a State or Territory) that confers any rights or powers on the AOC or a licensed user in relation to conduct of a kind that constitutes a contravention of section 36.
- (2) The remedies provided under this Division are in addition to the remedies provided by the *Trade Practices Act 1974* in relation to engaging in conduct that is misleading or deceptive (see section 52 of that Act) and, in particular, in relation to representations:
  - (a) that goods or services have sponsorship or approval that they do not have (see paragraph 53(c) of that Act); or
  - (b) that a corporation (as defined in that Act) has a sponsorship, approval or affiliation that it does not have (see paragraph 53(d) of that Act).
- (3) Subsection (2) does not limit subsection (1).
- (4) The references in subsection (2) to particular provisions of the *Trade Practices Act 1974* do not imply that other provisions of that Act do not apply in relation to conduct of a kind that constitutes a contravention of section 36 of this Act.

### **Division 2—Importation of goods**

#### **49 Definitions**

In this Division, unless the contrary intention appears:

*application period*, in relation to seized goods, means:

- (a) if there is only one objector to the importation of the goods—the period specified in the notice given to the objector under section 55 or, if that period is extended under subsection 55(5), that period as so extended; or
- (b) if there is more than one objector to the importation of the goods—the period beginning on the earliest day on which a period specified in a notice given to an objector under section 55 commences and ending:
  - (i) on the last day on which a period specified in such a notice ends; or
  - (ii) on the last day on which such a period as extended under subsection 55(5) ends;

whichever is the later.

*CEO* means the Chief Executive Officer of Customs.

*objector*, in relation to seized goods, means the person by whom a notice in force under section 52 in relation to the goods was given.

*officer of Customs* has the meaning given by subsection 4(1) of the *Customs Act 1901*.

*seized goods* means goods seized under section 54.

*working day* means a day that is not:

- (a) a Saturday; or
- (b) a Sunday; or
- (c) a public holiday in the Australian Capital Territory.

## 50 Determinations about owners of goods

The CEO or an officer of Customs may determine that a person is the owner of goods for the purposes of paragraph (b) of the definition of *designated owner* in section 23 if the person is an owner (within the meaning of subsection 4(1) of the *Customs Act 1901*) of the goods.

## 51 Importation of goods by the AOC

The AOC may import goods to which a protected olympic expression has been applied, so long as the importation does not contravene a law of the Commonwealth other than this Chapter.

## 52 Notice of objection to importation

- (1) Subject to this section, the AOC or a licensed user may give the CEO a written notice objecting to the importation, after the day on which the notice is given, of goods that have applied to them a protected olympic expression that the designated owner of the goods is not authorised by, or licensed under, this Chapter to use for commercial purposes in relation to the goods.
- (2) A notice:
  - (a) is to be given together with any prescribed document; and
  - (b) is to be accompanied by the prescribed fee (if any).
- (3) A licensed user may only give a notice in relation to a protected olympic expression that the person is licensed to use.
- (4) A notice given by the AOC or a licensed user may be revoked at any time by written notice given to the CEO by the person who gave the original notice.
- (5) Unless sooner revoked, a notice ceases to have effect at the end of the prescribed period. This subsection has effect subject to subsection (6).

- (6) If:
- (a) a notice given by a licensed user is not revoked under subsection (4); and
  - (b) the licence expires or is revoked;
- the notice ceases to have effect on the day on which the licence ceases to be in force.
- (7) A reference in this section to the use of protected olympic expressions for commercial purposes does not include a reference to use covered by subsection 30(3).

### **53 Consent of the AOC to giving of notices**

(1) A licensed user must not give a notice of objection to importation under section 52 except with the written consent of the AOC.

- (2) If:
- (a) a licensed user gives the AOC a written request for consent under subsection (1); and
  - (b) the AOC neither gives nor refuses that consent before the end of the period of 8 days beginning on the day on which the request was given;

the AOC is taken to have given the consent.

- (3) Consent under subsection (1) must not be unreasonably refused.

### **54 CEO may seize goods**

- (1) This section applies to goods manufactured outside Australia that:

- (a) are imported into Australia; and
- (b) are subject to the control of the Customs within the meaning of the *Customs Act 1901*.

- (2) If:
- (a) goods have had applied to them one or more protected olympic expressions; and
  - (b) a notice in force under section 52 relates to the goods; and
  - (c) it appears to the CEO that the designated owner is not authorised by, or licensed under, this Chapter, to use the expressions for commercial purposes in relation to the goods;

the CEO must seize the goods unless the CEO has no reasonable grounds for believing that section 36 would be contravened by the use of the expressions by the designated owner for commercial purposes.

- (3) The CEO may refuse to seize the goods unless the CEO has been given by the objector, or by one or more of the objectors, security in an amount that the CEO considers sufficient to reimburse the Commonwealth for the reasonable expenses that may be incurred by the Commonwealth if the goods were seized.

- (4) Goods seized under this section must be kept in a secure place as directed by the CEO.
- (5) A reference in this section to the use of protected olympic expressions for commercial purposes does not include a reference to use covered by subsection 30(3).

### **55 Notice of seizure**

- (1) As soon as practicable after goods are seized under section 54, the CEO must give the designated owner and each objector, either personally or by post, a written notice identifying the goods and stating that they have been seized under section 54.
- (2) A notice under subsection (1) that is given to each objector must also:
  - (a) specify:
    - (i) the full name and address of the designated owner of the goods; and
    - (ii) any information that the CEO has and that the CEO believes, on reasonable grounds, to be likely to help the objector, or objectors, to identify the designated owner; and
  - (b) state that the goods will be released to the designated owner unless:
    - (i) an application for an injunction under section 41 in relation to the goods is made by the objector, or by one of the objectors, within the period of 10 working days beginning on a specified day; and
    - (ii) written notice of the making of the application is given to the CEO within that period.
- (3) The day specified for the purpose of subparagraph (2)(b)(i) must not be earlier than the day on which the notice is given.
- (4) An objector may, by written notice given to the CEO before the end of the period specified in a notice for the purposes of subparagraph (2)(b)(i), request that the period be extended.
- (5) If:
  - (a) a request is made in accordance with subsection (4); and
  - (b) the CEO is satisfied that it is reasonable that the request be granted;
 the CEO may extend the period by not more than 10 working days.

### **56 Forfeiture of goods—by consent**

- (1) The designated owner of any seized goods may, at any time before an objector makes an application for an injunction under section 41 in relation to the goods, consent to the goods being forfeited to the Commonwealth by giving a written notice to that effect to the CEO.
- (2) If the designated owner gives such a notice, the goods are forfeited to the Commonwealth and must be disposed of as the CEO directs.



### **57 Release of goods—no application for injunction**

- (1) The CEO must release seized goods (other than goods forfeited to the Commonwealth under section 56) to their designated owner at the end of the application period unless, within that period, the objector, or one of the objectors, has:
  - (a) made an application for an injunction under section 41 in relation to the goods; and
  - (b) given to the CEO written notice of the application.
- (2) The CEO must also release the seized goods to their designated owner if, before the end of the application period, the objector, or each of the objectors, has, by written notice given to the CEO, consented to the release of the goods.
- (3) The CEO may release the seized goods to their designated owner at any time before the end of the application period if:
  - (a) the CEO, having regard to information that has come to his or her knowledge after the goods were seized, does not have reasonable grounds for believing that section 36 would be contravened by the importation of the goods; and
  - (b) the objector has not, or none of the objectors has, made an application for an injunction under section 41 in relation to the goods.

Note: In obtaining information for the purposes of this section, the CEO must comply with Principles 1, 2 and 3 in section 14 of the *Privacy Act 1988*.

### **58 Application for injunction—additional parties, relief etc.**

- (1) In this section, a reference to an application for an injunction under section 41 is a reference to such an application made, in relation to seized goods, by a person who is an objector in relation to the goods.
- (2) A prescribed court in which an application for an injunction under section 41 is pending:
  - (a) may, on the application of a person having a sufficient interest in the subject matter of the application, allow the person to be joined as a respondent to the application; and
  - (b) must allow the CEO to appear and be heard.
- (3) In addition to any relief that the court may grant apart from this section, the court may:
  - (a) at any time, if it thinks it just, order that the seized goods be released to their designated owner subject to such conditions (if any) as the court thinks fit; or
  - (b) order that the seized goods be forfeited to the Commonwealth.
- (4) If:
  - (a) the court decides that an injunction should not be granted under section 41; and
  - (b) the designated owner of the goods, or any other respondent, satisfies the court that he or she has suffered loss or damage because the goods were seized;

the court may order the objector to pay to the designated owner or other respondent compensation, in the amount determined by the court, for any part of that loss or damage that is attributable to any period beginning on or after the day on which the application under section 41 was made.

- (5) If, at the end of 20 working days beginning on the day on which the application for an injunction under section 41 was made, there is not in force an order of the court directed at the CEO preventing the goods from being released, the CEO must release the goods to their designated owner.
- (6) If the court orders that the goods be released, the CEO must, subject to section 60, comply with the order.

### **59 Disposal of goods ordered to be forfeited**

If the court orders under section 58 that goods be forfeited to the Commonwealth, the goods are to be disposed of as the CEO directs.

### **60 Power of CEO to retain control of goods**

Despite anything in this Part, the CEO must not:

- (a) release, or dispose of, any seized goods; or
- (b) take any action in relation to the goods to give effect to any order of a court under section 58;

if the CEO is required or allowed to retain control of the goods under any other law of the Commonwealth.

### **61 Insufficient security**

If security given under subsection 54(3) by the objector or objectors who gave notice under section 52 is not sufficient to meet the expenses incurred by the Commonwealth as a result of the action taken by the CEO under this Division because of the notice, the amount of the difference between those expenses and the amount of security:

- (a) is a debt due by the objector, or by the objectors jointly and severally, to the Commonwealth; and
- (b) may be recovered by action in any court of competent jurisdiction.

### **62 Commonwealth not liable for loss etc. suffered because of seizure**

The Commonwealth is not liable for any loss or damage suffered by a person:

- (a) because the CEO seized, or failed to seize, goods under this Division; or
- (b) because of the release of any seized goods.

### **63 Modification in relation to Christmas Island etc.**

The regulations may provide for the modification or adaptation of this Division in its application to:

- (a) Christmas Island; or
- (b) Cocos (Keeling) Islands; or
- (c) Norfolk Island.

### **Division 3—Groundless threats**

#### **64 Groundless threats of legal proceedings**

- (1) If the AOC or a licensed user threatens to make an application, or bring an action, against a person (the *threatened person*) on the ground that the threatened person has engaged, is engaging, or is proposing to engage in conduct in contravention of section 36, any person aggrieved by the threat may bring an action in a prescribed court against the AOC or the licensed user, as the case may be.
- (2) In an action under subsection (1), the court may:
  - (a) make a declaration that the AOC or the licensed user had no grounds for making the threat; and
  - (b) grant an injunction restraining the AOC or the licensed user from continuing to make the threat.

The court may also award damages for loss that the person aggrieved has suffered as a result of the making of the threat.

- (3) An action may not be brought under this section if the person who made the threat has made an application, or brought an action, under Division 1 against the threatened person in relation to the act, or proposed act, to which the threat related.
- (4) An action under this section may not be continued if the person who made the threat makes an application, or brings an action, under Division 1 against the threatened person in relation to the act, or proposed act, to which the threat related.
- (5) It is a defence to an action under subsection (1) that the conduct of the threatened person, in relation to which the threat was made, constitutes a contravention of section 36.

#### **65 Counterclaim in action on groundless threats**

- (1) If the AOC or a licensed user would be entitled to make an application, or bring an action, against a person for a contravention of section 36, the AOC, or the licensed user may, in an action under section 64, make a counterclaim for any relief to which the AOC or the licensed user would be entitled under Division 1.
- (2) The provisions of Divisions 1 and 2 apply as if a counterclaim were an application or action made or brought by the AOC or a licensed user under Division 1.

### **Part 3.5—Jurisdiction of prescribed courts etc.**

#### **66 Prescribed courts**

Each of the following courts is a *prescribed court* for the purposes of this Chapter:

- (a) the Federal Court;
- (b) the Supreme Court of a State;
- (c) the Supreme Court of the Australian Capital Territory;
- (d) the Supreme Court of the Northern Territory;
- (e) the Supreme Court of Norfolk Island.

### **67 Jurisdiction of Federal Court**

The Federal Court has jurisdiction in relation to all matters arising under this Chapter.

### **68 Jurisdiction of other prescribed courts**

- (1) Each prescribed court (other than the Federal Court) has federal jurisdiction in relation to all matters arising under this Chapter.
- (2) The jurisdiction conferred by subsection (1) on the Supreme Court of a Territory is conferred to the extent that the Constitution permits.

### **69 Transfer of proceedings**

- (1) A prescribed court in which an application has been made, or an action brought, under this Chapter may, on the application of a party made at any stage, by order, transfer the application or action to another prescribed court having jurisdiction to hear and determine the application or action.
- (2) When a court transfers an application or action to another court:
  - (a) all relevant documents of record filed in the transferring court must be sent to the other court by the Registrar or other appropriate officer of the transferring court; and
  - (b) the application or action continues in the other court as if:
    - (i) it had been started there; and
    - (ii) all steps taken in the transferring court had been taken in the other court.

## **Part 3.6—Miscellaneous**

### **70 Concurrent operation of State and Territory laws**

It is the intention of the Parliament that this Chapter is not to apply to the exclusion of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Chapter.

### **71 Preservation of existing rights**

*Trade marks and designs*

- (1) This Chapter, so far as it applies in relation to a protected olympic expression, does not affect rights conferred by law on a person in relation to:
- (a) a trade mark that is registered under the *Trade Marks Act 1995*; or
  - (b) a design that is registered under the *Designs Act 1906*;
- and was so registered immediately before 20 September 2001 in relation to the expression.
- (2) For the purposes of subsection (1), a trade mark is taken to have been registered under the *Trade Marks Act 1995* on the date of registration (within the meaning of that Act) of the trade mark.
- (3) For the purposes of subsection (1), a design is taken to have been registered under the *Designs Act 1906* at the time when the registration of the design came into force as mentioned in subsection 27A(1) of that Act.

*Passing off*

- (4) This Chapter, so far as it applies to a protected olympic expression, does not affect the use of the expression by a person (the *first person*) if, immediately before 20 September 2001, the first person would have been entitled to prevent another person from passing off, by means of the use of the expression or a similar expression, goods or services as the goods or services of the first person.

*Business names*

- (5) This Chapter does not apply to the use of a business name in connection with a business if:
- (a) the name is registered in relation to the business under a law of a State or Territory relating to business names; and
  - (b) the name was so registered immediately before 20 September 2001 in relation to the business.

*Company names*

- (6) This Chapter does not apply in relation to the use of the name of an incorporated company if:
- (a) the company was in existence immediately before 20 September 2001; and
  - (b) the company uses the name in connection with a business carried on by the company; and
  - (c) the company used the name in connection with the business immediately before 20 September 2001.

## **72 Acquisition of property**

- (1) This Chapter has no effect to the extent (if any) to which:
- (a) the operation of this Chapter would result in the acquisition of property from a person otherwise than on just terms; and

(b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution.

(2) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

### **73 Implied freedom of political communication**

This Chapter does not apply to the extent (if any) that it would infringe any doctrine of implied freedom of political communication.

### **74 Chapter has effect in addition to contracts**

This Chapter has effect in addition to any contract:

- (a) that relates to the use of a protected Olympic expression for commercial purposes; and
- (b) to which any of the following is a party:
  - (i) the IOC;
  - (ii) the AOC;
  - (iii) the organising committee for a Summer or Winter Olympic Games.

### **75 Validation of certain licences**

- (1) This section applies if, before the commencement of this section, the AOC purported to grant a licence for a particular period ending after that commencement authorising a person to use all, or any one or more, of the protected Olympic expressions for commercial purposes.
- (2) This Chapter has effect as if the licence had been granted under section 38 for the part of that period that began after the commencement of this section.

### **36 Before section 22**

Insert:

#### **Chapter 4—Regulations**

##### **Part 4.1—Regulations**

**37 Section 22**

Renumber as section 76.

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*[Minister's second reading speech made in—  
House of Representatives on 20 September 2001  
Senate on 26 September 2001]*

(188/01)

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