

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

Presented and read a first time

(Industry, Science and Technology)

**SYDNEY 2000 GAMES (INDICIA AND IMAGES) PROTECTION
BILL 1995**

CONTENTS

PART 1—PRELIMINARY

Section

1. Short title
2. Commencement
3. Objects of Act
4. Act binds the Crown
5. Application of Act
6. Additional operation of Act

PART 2—DEFINITIONS

7. General definitions
8. Sydney 2000 Games indicia
9. Sydney 2000 Games images
10. Application of Sydney 2000 Games indicia and images
11. Use for commercial purposes

CONTENTS—*continued*

Section

PART 3—PROTECTION

Division 1—Regulation of use

- 12. Regulation of use of Sydney 2000 Games indicia and images
- 13. Use of Olympic insignia not regulated by this Act

Division 2—Licensing and registration of users

- 14. Licensing by SOCOG and SPOC
- 15. Registration
- 16. The register
- 17. Entry in register
- 18. Certified copy of entry in register
- 19. Effect and evidence of entry in register
- 20. SPOC may authorise SOCOG to act on its behalf
- 21. Copy of register to be supplied by SOCOG to Secretary of Department
- 22. Secretary to make copy of register available
- 23. Public access to copy of register

Division 3—Act not intended to have certain effects

- 24. Trade mark and design rights
- 25. Provision of information

PART 4—IMPORTATION OF GOODS, REMEDIES AND GROUNDLESS THREATS

Division 1—Standing of licensed users to give notices and pursue remedies

- 26. Consent of SOCOG or SPOC to giving of notices etc.
- 27. Request for consent
- 28. Consent must not be unreasonably refused

Division 2—Importation of goods

- 29. Definitions
- 30. Copy of register to be supplied by SOCOG to CEO
- 31. Notice to CEO of imports by SOCOG and SPOC
- 32. Notice of objection to importation
- 33. CEO may seize goods
- 34. Notice of seizure
- 35. Forfeiture of goods—by consent
- 36. Release of goods—no application for injunction
- 37. Application for injunction—additional parties, relief etc.
- 38. Disposal of goods ordered to be forfeited
- 39. Power of CEO to retain control of goods
- 40. Insufficient security
- 41. Commonwealth not liable for loss etc. suffered because of seizure
- 42. Modification in relation to Christmas Island etc.

Division 3—Remedies

- 43. Injunctions
- 44. Interim injunctions
- 45. Corrective advertisements
- 46. Damages
- 47. Other remedies

Division 4—Groundless threats

- 48. Groundless threats of legal proceedings
- 49. Counterclaim in action on groundless threats

CONTENTS—*continued*

Section

PART 5—JURISDICTION AND PROCEEDINGS OF PRESCRIBED COURTS

- 50. Prescribed courts
- 51. Jurisdiction of Federal Court
- 52. Jurisdiction of other prescribed courts
- 53. Transfer of proceedings

PART 6—MISCELLANEOUS

- 54. Concurrent operation of State and Territory laws
- 55. Cessation of operation of Act
- 56. Regulations

LIST OF DEFINITIONS

This Table lists the definitions in the following Act and shows their location:

Expression	section
application period	29
applied	10
Australia	7
broadcast	7
CEO	29
common Sydney 2000 Games images	9
common Sydney 2000 Games indicia	8
continental shelf	7
designated owner	29
Federal Court	7
licensed user	7
objector	29
prescribed court	7
register	7
Secretary	7
seized goods	29
SOCOG	7
SPOC	7
Sydney 2000 Games	7
Sydney 2000 Games images	7
Sydney 2000 Games indicia	7
Sydney 2000 Olympic Games	7
Sydney 2000 Olympic Games images	9
Sydney 2000 Olympic Games indicia	8
Sydney 2000 Paralympic Games	7
Sydney 2000 Paralympic Games images	9
Sydney 2000 Paralympic Games indicia	8
this Act	7
working day	7

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

Presented and read a first time

(Industry, Science and Technology)

A BILL

FOR

An Act to make provision for the regulation of the use for commercial purposes of the indicia and images associated with the Sydney 2000 Olympic Games and the Sydney 2000 Paralympic Games, and for related purposes

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Sydney 2000 Games (Indicia and Images) Protection Act 1995*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Objects of Act

3.(1) The objects of this Act are:

- (a) to protect, and to further, the position of Australia as a participant in, and a supporter of, the world Olympic and Paralympic movements; 5
and
- (b) to the extent that it is within the power of the Parliament, to assist in protecting the relations, and in ensuring the performance of the obligations, of the Sydney 2000 Games bodies with and to the world 10
Olympic and Paralympic movements;

in relation to the holding of the Sydney 2000 Games.

(2) Those objects are to be achieved by facilitating the raising of licensing revenue in relation to the Sydney 2000 Games through the regulation of the use for commercial purposes of the indicia and images associated with the Games. 15

(3) The reference in paragraph (1)(b) to Sydney 2000 Games bodies is a reference to:

- (a) SOCOG; and
- (b) SPOC; and 20
- (c) the Australian Olympic Committee Inc.; and
- (d) the Australian Paralympic Federation; and
- (e) the City of Sydney; and
- (f) the Government of the State of New South Wales.

Act binds the Crown 25

4. This Act binds the Crown in all its capacities.

Application of Act

5. This Act extends to:

- (a) Christmas Island; and
- (b) Cocos (Keeling) Islands; and 30
- (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.

Additional operation of Act

6. In addition to its effect apart from this section, this Act also has the effect that it would have if each reference to use for commercial purposes were a reference to: 35

- 5
- 10
- 15
- 20
- 25
- (a) use for commercial purposes by:
 - (i) a foreign corporation within the meaning of paragraph 51(xx) of the Constitution; or
 - (ii) a trading corporation (within the meaning of that paragraph) formed within the limits of the Commonwealth; or
 - (iii) a financial corporation (within the meaning of that paragraph) so formed, including a body corporate that carries on as its sole or principal business the business of banking (other than State banking not extending beyond the limits of the State concerned) or insurance (other than State insurance not extending beyond the limits of the State concerned); or
 - (iv) a body corporate incorporated in a Territory; 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 or telephonic 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 Act on a licensed user that is a corporation within the meaning of subparagraphs (a)(i) to (a)(iii).

PART 2—DEFINITIONS

General definitions

7.(1) In this Act, unless the contrary intention appears:

Australia includes the following external Territories:

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

broadcast means a transmission by means of:

- 10 (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.

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

Federal Court means the Federal Court of Australia.

licensed user means a person in relation to whom a licence under section 14 is in force.

20 *prescribed court* means a court that is a prescribed court by virtue of section 50.

register means the register of licensed users established and maintained by SOCOG for the purposes of section 16.

Secretary means the Secretary of the Department.

25 *SOCOG* means the Sydney Organising Committee for the Olympic Games constituted by the Sydney Organising Committee for the Olympic Games Act 1993 of New South Wales.

SPOC means Sydney Paralympic Organising Committee Limited incorporated under the law of New South Wales.

30 *Sydney 2000 Games* means:

- (a) the Sydney 2000 Olympic Games; and
- (b) the Sydney 2000 Paralympic Games.

Sydney 2000 Games images means:

- 35 (a) common Sydney 2000 Games images; and
- (b) Sydney 2000 Olympic Games images; and
- (c) Sydney 2000 Paralympic Games images;

as defined in section 9.

Sydney 2000 Games indicia means:

- (a) common Sydney 2000 Games indicia; and

(b) Sydney 2000 Olympic Games indicia; and

(c) Sydney 2000 Paralympic Games indicia;

as defined in section 8.

Sydney 2000 Olympic Games means the Games of the XXVII Olympiad in Sydney in the year 2000. 5

Sydney 2000 Paralympic Games means the Games of the XIth Paralympiad in Sydney in the year 2000.

this Act includes the regulations.

working day, in relation to the period within which an act is to be, or may be, done, means a day that is not: 10

(a) a Saturday or a Sunday; or

(b) a public holiday or a bank holiday in any place in which the act is to be, or may be, done.

(2) The use in this Act of the words “indicia” and “images” is not intended to express a contrary intention for the purposes of section 23 of the *Acts Interpretation Act 1901*. 15

Note: Paragraph 23(b) of the *Acts Interpretation Act 1901* provides that words in the plural number include the singular.

Sydney 2000 Games indicia

8.(1) For the purposes of this Act: 20

common Sydney 2000 Games indicia means:

(a) any of the following phrases:

(i) “Games City”;

(ii) “Millennium Games”;

(iii) “Sydney Games”;

(iv) “Sydney 2000”; or 25

(b) any combination of the word “Games” and the number “2000” or the words “Two Thousand”.

Sydney 2000 Olympic Games indicia means:

(a) either of the following words: 30

(i) “Olympiad”;

(ii) “Olympic”; or

(b) either of the following:

(i) “Share the Spirit”;

(ii) “Summer Games”; or 35

(c) any combination of “24th”, “Twenty-Fourth” or “XXIVth” and the word “Olympics” or “Games”; or

(d) any combination of a word in List A with a word, words, phrase or number in List B:

List A

Olympian
Olympics

List B

Bronze
Games
Gold
Green and Gold
Medals
Millennium
Silver
Spirit
Sponsor
Summer
Sydney
Two Thousand
2000.

Sydney 2000 Paralympic Games indicia means:

- (a) either of the following words:
 (i) "Paralympiad";
 (ii) "Paralympic"; or
5 (b) any combination of "11th", "Eleventh" or "XIth" and the word
 "Paralympics" or "Games"; or
(c) any combination of a word in List A with a word, words, phrase or
 number in List B:

List A

Paralympian
Paralympics

List B

Bronze
Games
Gold
Green and Gold
Medals
Millennium
Silver
Spirit
Sponsor
Summer
Sydney
Two Thousand
2000.

- 10 (2) For the purposes of this Act, any Sydney 2000 Games indicia that are
represented in a language other than English are to be taken to be Sydney
2000 Games indicia.

Sydney 2000 Games images

9 For the purposes of this Act:

common Sydney 2000 Games images means any visual or aural representations that, to a reasonable person, in the circumstances of the presentation, would suggest a connection with the Sydney 2000 Olympic Games and the Sydney 2000 Paralympic Games.

Sydney 2000 Olympic Games images means any visual or aural representations that, to a reasonable person, in the circumstances of the presentation, would suggest a connection with the Sydney 2000 Olympic Games. 5

Sydney 2000 Paralympic Games images means any visual or aural representations that, to a reasonable person, in the circumstances of the presentation, would suggest a connection with the Sydney 2000 Paralympic Games. 10

Application of Sydney 2000 Games indicia and images

10.(1) For the purposes of this Act and without limiting the generality of the meaning of the expression, Sydney 2000 Games indicia and images are to be taken to be ***applied*** to goods or services if: 15

- (a) in the case of goods, the indicia or images:
 - (i) are woven in, impressed on, worked into, or affixed or annexed to, the goods; or
 - (ii) are 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 in the course of trade; or 20
- (b) in the case of goods or services, the indicia or images:
 - (i) are used on a signboard or in an advertisement (including a television or radio advertisement) that promotes the goods or services; or 25
 - (ii) are used in an invoice, price list, catalogue, brochure, business letter, business paper or other commercial document that relates to the goods or services.

(2) If: 30

- (a) goods are imported into Australia for the purpose of sale or distribution by a person; and
- (b) when imported, the goods have already had applied to them Sydney 2000 Games indicia or images;

for the purposes of Divisions 2 and 3 of Part 4, the person is to be taken to have applied the indicia or images to the goods. 35

(3) In subparagraph (1)(a)(ii):

covering includes packaging, frame, wrapper, container, stopper, lid or cap.
label includes a band or ticket.

Use for commercial purposes

11. For the purposes of this Act, a person uses Sydney 2000 Games indicia and images for commercial purposes if:

- 5 (a) the person applies the indicia or images to goods or services of the person; and
- (b) the application is for advertising or promotional purposes, or is likely to enhance the demand for the goods or services; and
- 10 (c) the application, to a reasonable person, would suggest that the first-mentioned person is a sponsor of, or has an association with:
 - (i) the Sydney 2000 Olympic Games, the Sydney 2000 Paralympic Games, or both Games; or
 - (ii) any event arranged:
 - 15 (A) by SOCOG, the Australian Olympic Committee Inc., or the International Olympic Committee in connection with the Sydney 2000 Olympic Games; or
 - (B) by SPOC, the Australian Paralympic Federation, or the International Paralympic Committee in connection with the Sydney 2000 Paralympic Games.

PART 3—PROTECTION

Division 1—Regulation of use

Regulation of use of Sydney 2000 Games indicia and images

12.(1) A person, other than:

- 5 (a) SOCOG; or
(b) SPOC; or
(c) a licensed user;

must not use Sydney 2000 Games indicia and images for commercial purposes.

10 (2) SOCOG may only use the following Sydney 2000 Games indicia and images for commercial purposes:

- (a) common Sydney 2000 Games indicia;
(b) Sydney 2000 Olympic Games indicia;
(c) common Sydney 2000 Games images;
15 (d) Sydney 2000 Olympic Games images.

(3) SPOC may only use the following Sydney 2000 Games indicia and images for commercial purposes:

- (a) common Sydney 2000 Games indicia;
(b) Sydney 2000 Paralympic Games indicia;
20 (c) common Sydney 2000 Games images;
(d) Sydney 2000 Paralympic Games images.

(4) A licensed user may only use for commercial purposes the Sydney 2000 Games indicia and images that the person is licensed to use, and may only use those indicia and images in accordance with the licence.

25 (5) For the purposes of subsection (1), the use of indicia so closely resembling Sydney 2000 Games indicia as to be likely to be mistaken, by a reasonable person, for Sydney 2000 Games indicia is to be taken to be use of those Sydney 2000 Games indicia.

Use of Olympic insignia not regulated by this Act

30 **13.** The use of the Olympic insignia protected by the *Olympic Insignia Protection Act 1987* is not regulated by this Act, and this Act is not intended to affect the operation of the *Olympic Insignia Protection Act 1987*.

Division 2—Licensing and registration of users

Licensing by SOCOG and SPOC

14.(1) For the purposes of this Act, SOCOG may license a person to use all, or any one or more, of the following Sydney 2000 Games indicia and images for commercial purposes: 5

- (a) common Sydney 2000 Games indicia;
- (b) Sydney 2000 Olympic Games indicia;
- (c) common Sydney 2000 Games images;
- (d) Sydney 2000 Olympic Games images;

in all circumstances or in specified circumstances, for a specified time or until this Act ceases to have effect. 10

Note: For when this Act ceases to have effect see section 55.

(2) For the purposes of this Act, SPOC may license a person to use all, or any one or more, of the following Sydney 2000 Games indicia and images for commercial purposes: 15

- (a) common Sydney 2000 Games indicia;
- (b) Sydney 2000 Paralympic Games indicia;
- (c) common Sydney 2000 Games images;
- (d) Sydney 2000 Paralympic Games images;

in all circumstances or in specified circumstances, for a specified time or until this Act ceases to have effect. 20

Note: For when this Act ceases to have effect see section 55.

(3) Nothing in this section is intended to affect the capacity of SOCOG or SPOC to determine the terms and conditions on which a person is licensed, including terms and conditions relating to the payment of money. 25

Registration

15.(1) Where SOCOG or SPOC licenses a person to use Sydney 2000 Games indicia or images, SOCOG or SPOC (as the case may be) must make an entry in the register of licensed users.

(2) Licensing takes effect when the entry is made in the register, and ceases on the day on which the licence ceases to be in force. 30

The register

16.(1) SOCOG must establish and maintain a register of licensed users.

(2) The register must:

- (a) be kept by SOCOG at the principal place of business of SOCOG; and 35
- (b) be open for inspection without charge by any person during the normal business hours of SOCOG.

(3) If the register is kept by the use of a computer, paragraph (2)(b) is satisfied:

(a) by arranging for inspection of a written copy of the particulars in the register; or

5 (b) by providing for access to a computer terminal from which the particulars in the register can be read.

(4) SOCOG must give a person a copy of the register (or part of the register) within 5 working days if the person:

(a) asks SOCOG for a copy; and

10 (b) pays any fee (up to the prescribed amount) required by SOCOG.

If the register is kept by the use of a computer and the person asks for the copy on a floppy disk, SOCOG must give the copy to the person on a floppy disk. The person is not, however, entitled to have the floppy disk formatted for an operating system preferred by the person.

15 **Entry in register**

17.(1) An entry in the register must contain the following particulars in relation to a licensed user:

(a) the name and principal place of business of the person;

20 (b) the Sydney 2000 Games indicia and images the person may use for commercial purposes, and the circumstances in which the person may use those indicia and images;

(c) if the licence is for a specified time—the date on which the licence ceases to be in force;

(d) the date on which the entry is made;

25 (e) any prescribed matters.

(2) If a licence is revoked, SOCOG or SPOC (as the case may be) must include in the entry in the register relating to the licence a note of the revocation of the licence and of the date of effect of the revocation.

Certified copy of entry in register

30 **18.(1)** If a person asks SOCOG to give the person a certified copy of the particulars contained in an entry in the register, SOCOG must, within 5 working days, give the person:

(a) if the register is kept by the use of a computer—a document certified to be a reproduction in writing of the particulars contained in the entry in the register; or

35 (b) in any other case—a document certified to be a copy of the particulars contained in the entry in the register.

(2) If the person referred to in subsection (1) is not the licensed user to whom the entry relates, the person must pay any fee (up to the prescribed amount) required by SOCOG.

40

(3) The reference in subsection (1) to a document certified to be a reproduction in writing or a copy of the particulars contained in an entry in the register is a reference to a document so certified by the Chief Executive Officer of SOCOG or by a person authorised in writing by the Chief Executive Officer for the purposes of subsection (1).

5

Effect and evidence of entry in register

19.(1) Subject to subsections (2) and (3), a person whose name appears in an entry in the register is to be taken to be a licensed user, for the purposes of this Act, of the Sydney 2000 Games indicia and images specified in the entry.

10

(2) If the entry includes a date specified for the purpose of paragraph 17(1)(c), the person is to be taken to be, or to have been, a licensed user until that date.

(3) If the entry includes a note for the purpose of subsection 17(2), the person is to be taken to be, or to have been, a licensed user until the date specified in the note as the date of effect of the revocation.

15

(4) A document certified in accordance with section 18 to be a reproduction in writing or a copy of the particulars contained in an entry in the register is evidence that the particulars set out in the document are contained in an entry in the register.

20

SPOC may authorise SOCOG to act on its behalf

20.(1) If SPOC asks SOCOG to make an entry, or include a note in an entry, in the register on SPOC's behalf, SOCOG must make the entry or include the note in an entry, as the case may be.

(2) For the purposes of sections 15 and 17, an entry made, or note included in an entry, in the register by SOCOG under subsection (1) is to be taken to have been made, or included, by SPOC.

25

Copy of register to be supplied by SOCOG to Secretary of Department

21.(1) SOCOG must give the Secretary a copy of the register as soon as practicable after the commencement of this Act. SOCOG must also give the Secretary a copy of any entry, or note in an entry, subsequently made in the register as soon as practicable after the entry is made or the note is included, as the case may be.

30

(2) If the register is kept by the use of a computer, SOCOG may, if the Secretary agrees, give the copy, and a copy of any subsequent entry or note, on a floppy disk.

35

Secretary to make copy of register available

5 **22.(1)** The Secretary must, as soon as practicable after the Secretary is given a copy of the register, make arrangements for a copy of the register to be available for inspection in an office located in each of the capital cities of the States and in Canberra.

(2) The Secretary must, as soon as practicable after the Secretary is given a copy of any subsequent entry, or note in an entry, make arrangements for the copy of the register to be updated to include the subsequent entry or note.

10 **Public access to copy of register**

23.(1) A copy of the register made available for inspection in accordance with section 22 must be open for inspection without charge by any person during the normal business hours of the office in which it is available for inspection.

15 **(2)** Any person who inspects the copy of the register, or who asks the Secretary for a copy of it (or part of it), must be informed that the copy of the register that they are inspecting, or that they are to receive a copy of, may not necessarily be an up-to-date copy of the register.

20 **(3)** If the copy of the register is kept by the use of a computer, subsection (1) is satisfied:

- (a) by arranging for inspection of a written copy of the particulars in the copy of the register; or
- (b) by providing for access to a computer terminal from which the particulars in the copy of the register can be read.

25 **(4)** The Secretary must give a person a copy of the copy of the register (or part of the register) within 5 working days if the person:

- (a) asks the Secretary for a copy; and
- (b) pays the prescribed fee (if any).

30 If the copy of the register is kept by the use of a computer and the person asks for the copy on a floppy disk, the Secretary must give the copy on a floppy disk. The person is not, however, entitled to have the floppy disk formatted for an operating system preferred by the person.

Division 3—Act not intended to have certain effects

Trade mark and design rights

24. Nothing in this Act is intended to affect the operation of the following Acts:

(a) the *Trade Marks Act 1995*;

5

(b) the *Designs Act 1906*;

or to affect any rights conferred, or liabilities imposed, by or under those Acts.

Provision of information

25.(1) In order to avoid doubt, it is declared that the use of Sydney 2000 Games indicia and images 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 an association for the purposes of paragraph 11(c).

10

(2) In subsection (1):

15

(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

20

(ii) in a broadcast; or

(iii) in a cinematograph film.

**PART 4—IMPORTATION OF GOODS, REMEDIES AND
GROUNDLESS THREATS**

*Division 1—Standing of licensed users to give notices and pursue
remedies*

5 **Consent of SOCOG or SPOC to giving of notices etc.**

26. A licensed user may not:

- (a) give a notice of objection to importation under section 32; or
- (b) make an application for an injunction under section 43; or
- (c) bring an action for damages under section 46;

10 except with the written consent of the body (the *licensing body*) that licensed the person to use the Sydney 2000 Games indicia or images to which the notice, application or action (as the case may be) relates.

Request for consent

27. If:

- 15 (a) a licensed user gives SOCOG or SPOC (whichever is the licensing body) a written request for consent under section 26; and
- (b) the licensing body neither gives nor refuses that consent before the end of the working day following the day on which the request was given;

20 the licensing body is to be taken to have given the consent.

Consent must not be unreasonably refused

28. Consent under section 26 must not be unreasonably refused.

Division 2—Importation of goods

Definitions

29. 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 34 or, if that period is extended under subsection 34(5), that period as so extended; or 5
 - (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 34 commences and ending: 10
 - (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 34(5) ends; 15
- whichever is the later.

CEO means the Chief Executive Officer of Customs.

designated owner, in relation to goods imported into Australia, means the person identified as the owner of the goods in the entry made in relation to the goods under section 68 of the *Customs Act 1901*. 20

objector, in relation to seized goods, means the person by whom a notice in force under section 32 in relation to the goods was given.

seized goods means goods seized under section 33.

Copy of register to be supplied by SOCOG to CEO 25

30.(1) For the purposes of this Division, SOCOG must give the CEO a copy of the register as soon as practicable after the commencement of this Act. SOCOG must also give the CEO a copy of any entry, or note in an entry, subsequently made in the register as soon as practicable after the entry is made or the note is included, as the case may be. 30

(2) If the register is kept by the use of a computer, SOCOG may, if the CEO agrees, give the copy, and a copy of any subsequent entry or note, on a floppy disk.

Notice to CEO of imports by SOCOG and SPOC

- 31.(1)** If: 35
- (a) goods are to be imported by or for SOCOG; and
 - (b) any of the Sydney 2000 Games indicia and images specified in subsection 12(2) have been applied to the goods;

SOCOg must give the CEO a written notice specifying the indicia and images so applied and setting out particulars sufficient to enable the CEO to identify the goods.

(2) If:

- 5 (a) goods are to be imported by or for SPOC; and
(b) any of the Sydney 2000 Games indicia and images specified in subsection 12(3) have been applied to the goods;

SPOC must give the CEO a written notice specifying the indicia and images so applied and setting out particulars sufficient to enable the CEO to identify
10 the goods.

Notice of objection to importation

32.(1) Subject to this section SOCOg, SPOC 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 Sydney 2000 Games
15 indicia or images that the designated owner of the goods is not authorised by, or licensed under, this Act to use for commercial purposes in relation to the goods.

(2) A notice:

- 20 (a) is to be given together with any prescribed document; and
(b) is to be accompanied by the prescribed fee (if any).

(3) SOCOg may only give a notice in relation to the following Sydney 2000 Games indicia and images:

- 25 (a) common Sydney 2000 Games indicia;
(b) Sydney 2000 Olympic Games indicia;
(c) common Sydney 2000 Games images;
(d) Sydney 2000 Olympic Games images.

(4) SPOC may only give a notice in relation to the following Sydney 2000 Games indicia and images:

- 30 (a) common Sydney 2000 Games indicia;
(b) Sydney 2000 Paralympic Games indicia;
(c) common Sydney 2000 Games images;
(d) Sydney 2000 Paralympic Games images.

(5) A licensed user may only give a notice in relation to the Sydney 2000 Games indicia and images the person is licensed to use.

35 (6) A notice given by SOCOg, SPOC or a licensed user may be revoked at any time by notice in writing given to the CEO by the person who gave the original notice.

(7) If a notice is not revoked under subsection (6), it ceases to have effect:

- (a) in the case of SOCOG and SPOC—when this Act ceases to have effect; and
- (b) in the case of a licensed user—when this Act ceases to have effect or, if the licence is for a specified time or is revoked, on the day on which the licence ceases to be in force, whichever is the earlier.

Note: For when this Act ceases to have effect see section 55.

CEO may seize goods

33.(1) This section applies to goods manufactured outside Australia that: 10

- (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: 15

- (a) goods to which this section applies have had applied to them Sydney 2000 Games indicia or images; and
- (b) a notice in force under section 32 relates to the goods; and
- (c) it appears to the CEO that the designated owner is not authorised by, or licensed under, this Act, to use the indicia or images for commercial purposes in relation to the goods; 20

the CEO must seize the goods unless the CEO has reasonable grounds for believing that section 12 of this Act would not be contravened by the use by the designated owner of the indicia or images 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. 25

(4) Goods seized under this section must be kept in a secure place as directed by the CEO. 30

Notice of seizure

34.(1) As soon as practicable after goods are seized under section 33, 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 33. 35

- (2) A notice under subsection (1) that is given to each objector must also:
 - (a) specify:

- 5
- (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:
- 10
- (i) an application for an injunction under section 43 in relation to the goods is made by the objector, or by one of the objectors, within the period of 10 working days commencing 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.

- 15
- (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:

- 20
- (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.

Forfeiture of goods—by consent

25

35.(1) The designated owner of any seized goods may, at any time before an objector makes an application for an injunction under section 43 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.

Release of goods—no application for injunction

30

36.(1) The CEO must release seized goods (not being goods forfeited to the Commonwealth under section 35) to their designated owner at the end of the application period unless, within that period, the objector, or one of the objectors, has:

- 35
- (a) made an application for an injunction under section 43 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: 5

- (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 12 would be contravened by the importation of the goods; and 10
- (b) the objector has not, or none of the objectors has, made an application for an injunction under section 43 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*.

Application for injunction—additional parties, relief etc. 15

37.(1) In this section, a reference to an application for an injunction under section 43 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 43 is pending: 20

- (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: 25

- (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. 30

(4) If:

- (a) the court decides that an injunction should not be granted under section 43; 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; 35

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 43 was made. 40

(5) If, at the end of 3 weeks commencing on the day on which the application for an injunction under section 43 was made, there is not in force an order of the court preventing the goods from being released, the CEO must release the goods to their designated owner.

5 (6) If the court orders that the goods be released, the CEO must, subject to section 39, comply with the order.

Disposal of goods ordered to be forfeited

38. If the court orders under section 37 that goods be forfeited to the Commonwealth, the goods are to be disposed of as the CEO directs.

10 **Power of CEO to retain control of goods**

39. In spite of this Part, the CEO:

(a) must not release, or dispose of, any seized goods; or

(b) must not take any action in relation to the goods to give effect to any order of a court under section 37;

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

Insufficient security

20 40. If security given under subsection 33(3) by the objector or objectors who gave notice under section 32 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

25 (b) may be recovered by action in any court of competent jurisdiction.

Commonwealth not liable for loss etc. suffered because of seizure

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

30 (a) because the CEO seized, or failed to seize, goods under this Division;
or

(b) because of the release of any seized goods.

Modification in relation to Christmas Island etc.

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

35 (a) Christmas Island; or

(b) Cocos (Keeling) Islands; or

(c) Norfolk Island.

Division 3—Remedies

Injunctions

- 43.(1)** If a person has engaged, is engaging, or is proposing to engage, in conduct in contravention of section 12, a prescribed court may grant an injunction restraining the person from engaging in the conduct. 5
- (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. 10
- (3)** An injunction under this section may only be granted on the application of SOCOG, SPOC or a licensed user.
- (4)** An injunction granted under this section on the application of SOCOG may only relate to conduct constituting use of Sydney 2000 Games indicia or images referred to in one or more of the following paragraphs: 15
- (a)** common Sydney 2000 Games indicia;
- (b)** Sydney 2000 Olympic Games indicia;
- (c)** common Sydney 2000 Games images;
- (d)** Sydney 2000 Olympic Games images.
- (5)** An injunction granted under this section on the application of SPOC 20 may only relate to conduct constituting use of Sydney 2000 Games indicia or images referred to in one or more of the following paragraphs:
- (a)** common Sydney 2000 Games indicia;
- (b)** Sydney 2000 Paralympic Games indicia;
- (c)** common Sydney 2000 Games images; 25
- (d)** Sydney 2000 Paralympic Games images.
- (6)** An injunction granted under this section on the application of a person who is a licensed user may only relate to conduct constituting a use of Sydney 2000 Games indicia or images to which the licence granted to the person under Division 2 of Part 3 relates. 30
- (7)** The court may discharge or vary an injunction granted under this section.
- (8)** The powers conferred on the court by this section are in addition to, and not in derogation of, any other powers of the court, whether conferred by this Act or otherwise. 35

5 (9) For the purposes of subsections (4), (5) and (6), the use of indicia so closely resembling the Sydney 2000 Games indicia referred to in those subsections as to be likely to be mistaken, by a reasonable person, for the Sydney 2000 Games indicia referred to, is to be taken to be use of the Sydney 2000 Games indicia referred to.

Interim injunctions

44.(1) A prescribed court may grant an interim injunction pending the determination of an application under section 43.

10 (2) For the purposes of subsection (1) of this section, a contravention of section 12 is to be taken to have caused immediate and irreparable damage to the applicant.

Corrective advertisements

15 45. Without limiting the generality of section 43 and whether or not relief is granted under that section, where, on the application of SOCOG or SPOC, a prescribed court is satisfied that a person has engaged in conduct constituting a contravention of section 12, the court may make an order requiring the person, by such means (including a broadcast) as the court thinks fit, at the person's own expense and 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.

Damages

25 46.(1) If SOCOG, SPOC or a licensed user suffers loss or damage as a result of anything done by a person in contravention of section 12, 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. A request under section 27 for consent to the bringing of an action must be given not later than the day preceding the last working day before this Act ceases to have effect.

30 Note: For when this Act ceases to have effect see section 55.

(3) The grant of an injunction under section 43 does not prevent the award of damages under this section.

Other remedies

35 47.(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 SOCOG, SPOC or a licensed user in relation to conduct of a kind that constitutes a contravention of section 12 of this Act.

(2) Without limiting the generality of subsection (1), 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: 5

- (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) 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 12 of this Act. 10

Division 4—Groundless threats

Groundless threats of legal proceedings

5 48.(1) If SOCOG, SPOC 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 12, any person aggrieved by the threat may bring an action in a prescribed court against SOCOG, SPOC or the licensed user (as the case may be).

(2) In an action under subsection (1), the court may:

- 10 (a) make a declaration that SOCOG, SPOC or the licensed user had no grounds for making the threat; and
(b) grant an injunction restraining SOCOG, SPOC or the licensed user from continuing to make the threat.

15 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 3 against the threatened person in relation to the act, or proposed act, to which the threat related.

20 (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 3 against the threatened person in relation to the act, or proposed act, to which the threat related.

25 (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 12.

Counterclaim in action on groundless threats

30 49.(1) If SOCOG, SPOC or a licensed user would be entitled to make an application, or bring an action, against a person for a contravention of section 12, SOCOG, SPOC or the licensed user may, in an action under section 48, make a counterclaim for any relief to which SOCOG, SPOC or the licensed user would be entitled under Division 3.

35 (2) The provisions of Divisions 1, 2 and 3 apply as if a counterclaim were an application or action made or brought by SOCOG, SPOC or a licensed user under Division 3.

PART 5—JURISDICTION AND PROCEEDINGS OF PRESCRIBED COURTS

Prescribed courts

5 **50.** Each of the following courts is a prescribed court for the purposes of this Act:

- (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;
- 10 (e) the Supreme Court of Norfolk Island.

Jurisdiction of Federal Court

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

Jurisdiction of other prescribed courts

15 **52.(1)** Each prescribed court (other than the Federal Court) has federal jurisdiction in relation to all matters arising under this Act.

(2) The jurisdiction conferred by subsection (1) on the Supreme Court of a Territory is conferred to the extent that the Constitution permits.

Transfer of proceedings

20 **53.(1)** A prescribed court in which an application has been made, or an action brought, under this Act may, on the application of a party made at any stage, by an 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:

- 25 (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:
 - 30 (i) it had been started there; and
 - (ii) all steps taken in the transferring court had been taken in the other court.

PART 6—MISCELLANEOUS

Concurrent operation of State and Territory laws

5 **54.** It is the intention of the Parliament that this Act 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 Act.

Cessation of operation of Act

55. If this Act is not repealed before the end of 31 December 2000, it ceases to have effect at that time.

Note: In relation to an Act that ceases to have effect, see section 8B of the *Acts Interpretation Act 1901*.

10 **Regulations**

56. The Governor-General may make regulations:

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



9 780644 345231