

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

SYDNEY 2000 GAMES (INDICIA AND IMAGES) PROTECTION BILL 1995

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Small Business, Customs and Construction,
Senator the Hon Chris Schacht)



SYDNEY 2000 GAMES (INDICIA AND IMAGES) PROTECTION BILL 1995

OUTLINE

The purpose of this Bill is to assist in preserving the financial integrity of the Sydney 2000 Olympic and Paralympic Games (the Games) by facilitating the raising of licensing revenue for the Games through protection of the use of the indicia and images associated with the Games. Without this protection the value derived from being licensed to use the indicia and images could be reduced by ambush marketing, with a consequential loss of revenue.

Ambush marketing is the unauthorised association of businesses with the marketing of an event, such as the Games, without paying for marketing rights. Typically, it is engaged in by large corporate competitors of official sponsors.

The preservation of this revenue is fundamental to achieving a good budget outcome for the Games and ensuring the least call on the public purse (either State or, potentially, the Commonwealth). The Commonwealth Government was involved in the Bid for the Games and has always recognised the importance of protecting its financial integrity. At the same time, the Bill takes account of the Government's recognition that the activities of sporting organisations that are directed to fundraising for and promotion of their preparation of athletes and teams for the Olympic and Paralympic Games should be allowed to continue. Similarly, effective and targeted tourism activities that complement the activities of the Sydney Organising Committee for the Olympic Games (SOCOG) will play an important part in ensuring the success of the Sydney Games and the reasonable needs of tourism bodies are accommodated. It is also not the intention of the Bill to prevent the continued use of designations lawfully used prior to the enactment of the legislation or to restrict any new use of the indicia and images, by any person or corporation, that is non-commercial or merely dissemination of factual information.

The Bill provides that SOCOG and the Sydney Paralympic Organising Committee (SPOC) have the power to use and to license others to use the Sydney 2000 Games indicia and images for commercial purposes as defined in the Act. It gives them the authority to seek injunctions and be awarded damages for loss incurred by reason of unlicensed use of the indicia and images.

The Bill will have a limited term ending on 31 December 2000.

FINANCIAL IMPACT STATEMENT

The on-going cost to the Government of administering this legislation will be minimal. The Australian Customs Service will be able to carry out the measures of this legislation relating to the monitoring of imported goods at the barrier within their existing resources. It is likely that the increased security of the Olympic 2000 indicia and images will enhance SOCOG's and SPOC's capacity to ensure the financial viability of the 2000 Games through its marketing program.

NOTES ON CLAUSES

PART 1 — PRELIMINARY

Clause 1 - Short title

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

Clause 2 - Commencement

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

Clause 3 - Objects of Act

3. This clause sets out the intention of the Act, which is to protect Australia's position as a participant in and supporter of the world Olympic and Paralympic movements, and to assist in protecting the relations of the Sydney Games bodies responsible for organising and staging the Sydney 2000 Olympic and Paralympic Games with the world Olympic and Paralympic movements.

4. The objects will be achieved by protecting the revenue-raising ability of the Sydney Games bodies against ambush marketing by providing them with the right to use and license others to use the prescribed indicia and images. A wide variety of users may be licensed, including large-scale supporters of the Games, suppliers of goods and services for the Games, and small traders who use the indicia and images in relation to their goods or services.

5. Use that may be licensed is that which is for commercial purposes as defined in clause 11.

6. The Sydney 2000 Games bodies described in subclause 3(3) are the bodies that have specific obligations to the world Olympic and Paralympic movements in organising and staging the Sydney 2000 Olympic and Paralympic Games.

Clauses 4 and 5 - Act binds the Crown/Application of Act

7. The Act binds the Crown in all its capacities and extends throughout the Commonwealth and its territories including Christmas Island, Cocos (Keeling) Islands, and Norfolk Island. The operation of the Act also extends to the waters above the Australian continental shelf and to the airspace above Australia and the Australian continental shelf.

Clause 6 - Additional operation of Act

8. This clause refers to the additional operation of the Act.

PART 2 — DEFINITIONS

Clause 7 - General definitions

9. This clause defines certain words and expressions that are used in the Act and confirms that the use of “indicia” and “images” for the purposes of this legislation is not intended to be different from that intended in section 23 of the *Acts Interpretation Act 1901*.

Clause 8 - Sydney 2000 Games indicia

10. Subclause (1) describes the words and expressions that are protected by the Act. In particular, it specifically sets out the words, phrases and numbers that are covered by the terms “common Sydney 2000 Games indicia”, “Sydney 2000 Olympic Games indicia” and “Sydney 2000 Paralympic Games indicia”. The term “common” means those images that could be used in relation to, or be seen to be referring to, either the Sydney 2000 Olympic Games or the Sydney 2000 Paralympic Games or both.

11. Subclause (2) provides that indicia represented in a language other than English are also considered to be Sydney Games indicia.

Clause 9 - Sydney 2000 Games images

12. This clause describes the images, that is, visual or aural representations, that are protected under the Act. In particular, it sets out what is meant by the terms “common Sydney 2000 Games images”, “Sydney 2000 Olympic Games images” and “Sydney 2000 Paralympic Games images”.

13. The term “common” means those images that could be used in relation to, or be seen to be referring to, either the Sydney 2000 Olympic Games or the Sydney 2000 Paralympic Games or both. Examples of visual and aural representations include pictures, photographs, postcards, illustrations, portraits, film and video recordings, sound recordings, radio and television broadcasts and the like.

Clause 10 - Application of Sydney 2000 Games indicia and images

14. This clause describes ways in which the indicia and images would be taken to have been applied to goods and services. This clause is not intended to exclude the general meaning of the term “applied” or to be limited to the applications specifically mentioned.

15. Subclause (2) refers to Division 3 of Part 4 which relates to injunctions and remedies. Where goods imported into Australia to be sold or distributed have had the Sydney 2000 Games indicia or images applied to them, the person who imports them is taken to have applied the Sydney 2000 Games indicia or images to them.

16. Subclause (3) clarifies the meaning of “covering” and “label” as used in paragraph (1)(b).

Clause 11 - Use for commercial purposes

17. This clause explains the meaning of "use for commercial purposes" as used throughout the Act. To constitute this use, the indicia or images must be applied to the person's goods or services in the course of advertising or promotion or any activity that will increase the sales of those goods or services, and in a manner which suggests that the person is connected in a specific way with the Sydney 2000 Olympic, or Paralympic, Games, or both. That is, a person who sells or promotes their goods or services by using any of the indicia or images in a way that would be understood reasonably as suggesting that the person is claiming a specific connection with the Games would be using them for commercial purposes. On the other hand, the activities of a person who simply employs a protected word or image in a non-trade context or in circumstances other than suggestive of such a connection with the Games, would not fall within the definition.

PART 3 — PROTECTION

Division 1 — Regulation of use

Clause 12 - Regulation of use of Sydney 2000 Games indicia and images

18. Subclauses (1), (2) and (3) set out who may use the indicia and images for commercial purposes. Subclauses (4) and (5) provide that a licensed user may only use for commercial purposes those indicia and images that they have been specifically licensed to use. This use may only be in a manner that is set out in their license.

19. Subclause (6) provides that other indicia will be taken as having been used for commercial purposes under the Act if they are so similar to Sydney Games indicia that a reasonable person would be likely to mistake them for Sydney Games indicia.

Clause 13 - Use of Olympic insignia not regulated by this Act

20. This clause specifies that the operation of the *Olympic Insignia Protection Act 1987* and the use of the Olympic insignia protected by that Act are not affected by, or regulated by, the operation of this Act.

Division 2 — Licensing and registration of users

Clause 14 - Licensing by SOCOG and SPOC

21. This clause provides that SOCOG is the only body that may license the use of all or any of the Sydney 2000 Olympic Games indicia and images, SPOC is the only body that may license the use of all or any of the Sydney 2000 Paralympic Games indicia and images, and either SOCOG or SPOC may license the use of all or any of the common Sydney 2000 Games indicia and images. Furthermore, the license will state that use of the indicia and or images is

allowed in any circumstances, or for specific uses only; and either for a particular time period, or until the Act ceases to have effect. The clause makes it clear that SOCOG or SPOC may impose terms and conditions, such as the payment of money or value in kind, on the grant of a license.

Clause 15 - Registration

22. This clause provides that SOCOG or SPOC must make an entry in the register of licensed users whenever they licence a person to use Sydney 2000 Games indicia or images.

23. The effect of a licence granted to a person to use Sydney 2000 Games indicia or images commences when its details are entered into the register of licensed users and ceases when the licence ceases to be in force.

Clause 16 - The register

26. This clause provides that SOCOG must establish and maintain a register of licensed users. The register must be kept by SOCOG at its principal place of business and be open for inspection, at no cost, by any person during SOCOG's normal business hours.

27. The clause further provides for the register to be kept on computer and for copies to be provided in either paper or electronic form. A fee may be payable and copies must be provided within a specified time.

Clause 17 - Entry in register

24. This clause identifies the particulars that, in relation to a licensed user, must be entered into the register of licensed users, including the name and principal place of business of the licensee and the Sydney 2000 Games indicia or images the person may use for commercial purposes.

25. If a licence is revoked, this fact and the date of revocation must be entered in the register.

Clause 18 - Certified copy of entry in register

28. This clause provides that, on request, SOCOG must provide within a specified time, a document certified as being a true copy setting out the particulars entered in the register in relation to a licensed user. A fee may be payable and the clause identifies the persons within SOCOG who may certify a document.

Clause 19 - Effect and evidence of entry in register

29. This clause provides that entry of a person's name in the register is sufficient for them to be taken to be a licensed user under the Act, subject to the provisions of clause 17 relating to the ceasing or revocation of a license. A document certified under clause 18 may be used as evidence that the particulars it contains are those in the relevant entry in the register.

Clause 20 - SPOC may authorise SOCOG to act on its behalf

30. SOCOG must make an entry or note in the register if SPOC requests SOCOG to do so. Any entry or note made or included by SOCOG under this clause is taken to be made or included by SPOC.

Clause 21 - Copy of register to be supplied by SOCOG to Secretary of Department

31. This clause provides that SOCOG must give to the Secretary of the Department of Industry, Science and Technology a copy of the register as soon as practicable after the commencement of this Act. In addition, SOCOG must provide the Secretary with updates of the register as soon as possible after changes have been made. The copies may be provided in electronic form.

Clause 22 - Secretary to make copy of register available

32. After being given a copy of the register, or of subsequent entries or notes, the Secretary must promptly arrange for a copy of the register to be available, or updated, for inspection in offices located in the capital cities of the States and Territories.

Clause 23 - Public access to copy of register

33. This clause provides for the inspection of a copy of the register at offices around Australia and for copies, in electronic or paper form, from this to be made available to the public within a specified time and on payment of a fee. People must be informed that the copy may not be up-to-date.

Division 3 — Act not intended to have certain effects

Clause 24 - Trade mark and design rights

34. This clause specifies that the operation of the *Trade Marks Act 1995* and of the *Designs Act 1906*, including any rights conferred or liabilities imposed by those acts, are not affected by the operation of this Act.

Clause 25 - Provision of information

35. This clause is intended to make it clear that the mere use of the Sydney 2000 Games indicia and images when providing facts and information or for the purposes of criticism or review will not be regarded as an "association" under paragraph 11(c). Examples of such provision of information include the reporting of news and presentation of current affairs, and the factual description of goods or services provided by a business (such as stating that accommodation is available at a hotel that is located near the Olympic site), or the factual description by an athlete of their performance and achievements. Examples of criticism and review are those which are likely to appear in newspapers, magazines or similar periodicals, in a radio or television broadcast, or in a cinematographic film.

PART 4 — IMPORTATION OF GOODS, REMEDIES AND GROUNDLESS THREATS

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

Clauses 26 to 28

36. These clauses provide that a licensed user of Sydney 2000 Games indicia or images must have the written consent of SOCOG or SPOC (the licensing body) before it can:

give a notice of objection to importation to the CEO of Customs under clause 31;

make an application for an injunction under clause 43; or

bring an action for damages under clause 46.

37. The licensing body is given to the end of the working day following the day on which the request for consent was given to give or refuse its consent, and that consent must not be unreasonably refused.

Division 2 — Importation of goods

Clause 29 - Definitions

38. This clause defines certain words and expressions that are used in this Division.

Clause 30 - Copy of register to be supplied by SOCOG to CEO

39. This clause provides that SOCOG must give to the CEO a copy of the register as soon as practicable after the commencement of this Act and subsequently provide updates in a timely manner. The copies and updates may be provided in electronic form if this is acceptable to the CEO.

Clause 31 - Notice to CEO of imports by SOCOG and SPOC

40. This clause provides that SOCOG and SPOC must provide written notice to the CEO of any goods imported by or for either of them and to which any of the Sydney 2000 Games indicia or images have been applied. The notice must contain sufficient detail to allow the CEO to identify the goods.

Clause 32 - Notice of objection to importation

41. This clause provides that SOCOG, SPOC or a licensed user, may give to the CEO a notice in writing, objecting to the importation of goods that have Sydney 2000 Games indicia

or images applied to them, where the designated owner has no authorisation or license under the Act to use the indicia or images for commercial purposes. The notice may apply only to importation after the date of the notice and it must be accompanied by any prescribed document and any prescribed fee payable.

42. SOCOG may give notice only in respect of Sydney 2000 Olympic Games indicia and images or common Sydney 2000 Olympic Games indicia and images. SPOC may give notice only in respect of Sydney 2000 Paralympic Games indicia and images or common Sydney 2000 Games indicia and images. A licensed user is only entitled to give notice in respect of the indicia and images the person is licensed to use. A notice remains in force until the Act ceases to have effect but may be revoked earlier if the person who gave the notice notifies the CEO in writing.

Clause 33 - CEO may seize goods

43. This clause only applies to goods manufactured outside Australia that are imported into Australia and are subject to the control of the Customs.

44. It provides for the seizure of goods to which Sydney 2000 Games indicia or images have been applied, when there is a current notice of objection and it appears that the designated owner is not entitled under the Act to use the indicia or images in relation to the goods, unless the CEO has reason to believe that the use of the indicia or images does not constitute a breach of clause 12.

45. If an objector (or objectors) fails to give the CEO security sufficient to reimburse the Commonwealth for reasonable expenses incurred for the seizure of the goods, the CEO may refuse to seize the goods.

Clause 34 - Notice of seizure

46. This clause requires the CEO to notify the designated owner of the seized goods that the goods have been seized. The CEO must provide prompt written notice to each objector that:

the goods have been seized;

gives the full name and address of the designated owner of the seized goods and any information reasonably likely to help identify the designated owner; and

- states that the goods will be released to the designated owner unless the objector makes an application for an injunction and gives to the CEO notice of the application within 10 working days of the day specified in the notice of seizure, or within such further period, not exceeding 10 working days, that the CEO reasonably allows.

Clause 35 - Forfeiture of goods—by consent

47. The designated owner of any seized goods may, at any time before an objector makes an application for an injunction, consent to the goods being forfeited to the Commonwealth by giving written notice to the CEO. Such goods must be disposed of as the CEO directs.

Clause 36 - Release of goods—no application for injunction

48. This clause provides for the release to the designated owner of seized goods which have not been forfeited and if:

after the application period, the CEO has not been informed in writing that an objector has applied for an injunction; or

before the end of the application period, the objector has consented in writing to their release or the CEO is satisfied that there are no reasonable grounds for believing that the importation of the goods would contravene clause 12, and no objector has made an application for an injunction.

Clause 37 - Application for injunction—additional parties, relief etc

49. This clause makes various provisions for the conduct of an application for an injunction under clause 43. Persons demonstrating sufficient interest in the proceedings may be joined as respondents. The court may order that the seized goods be released to their designated owner (with or without conditions), or that they be forfeited to the Commonwealth. If the court decides not to grant an injunction, the court may order that the objector compensate the designated owner of the goods for any loss or damage caused by the seizure. A time limit is set within which the court may order that the goods not be released, otherwise the CEO must release them to the designated owner.

Clause 38 - Disposal of goods ordered to be forfeited

50. Goods that are forfeited to the Commonwealth by an order of a Court are to be disposed of as the CEO directs.

Clause 39 - Power of CEO to retain control of goods

51. This clause provides that the CEO does not have to release or dispose of any seized goods if he or she is required or allowed to retain the goods under any other law of the Commonwealth.

Clause 40 - Insufficient security

52. This clause provides that if the security given by an objector who gave a notice objecting to the importation of goods under clause 32 is insufficient to meet the expenses incurred as a result of the action taken by the CEO, the objector must repay any expense that the Commonwealth may incur in seizing the goods. The Commonwealth may take action in any court of competent jurisdiction to recover the debt.

Clause 41 - Commonwealth not liable for loss etc. suffered because of seizure

53. Actions of the CEO in seizing, or failing to seize, goods or releasing seized goods, do not, under the terms of this clause, render the Commonwealth liable for any loss or damage suffered by a person as a consequence of the CEO's actions.

Clause 42 - Modification in relation to Christmas Island etc.

54. This Division may be modified or adapted by regulation in its application to Christmas Island, Cocos (Keeling) Islands or Norfolk Island. Those Territories have their own customs regimes which are best placed to administer the seizure provisions of this part.

Division 3 — Remedies

Clauses 43 to 47

55. These clauses provide remedies for conduct which contravenes clause 12. They include:

the grant of injunctions on the application of SOCOG, SPOC or a licensed user, but only in respect of conduct constituting, respectively, use of the Sydney 2000 Games indicia or images which each of SOCOG, SPOC or the licensed user may use; in this regard, the use of indicia sufficiently close to the relevant Sydney 2000 Games indicia is taken to be use of that Sydney 2000 Games indicia (clause 43);

interim injunctions may be granted pending the issue of a decision in the proceedings (clause 44);

a court order that a person must broadcast or publish corrective advertisements, but only in relation to applications by SOCOG or SPOC, and in addition to any other relief that a court may grant (clause 45);

damages awarded to cover loss suffered by SOCOG, SPOC or a licensed user, so long as the action to recover them is brought within 3 years of the date of contravention, and the licensed user seeks the relevant consent under clause 27 not later than the day preceding the last working day before this Act ceases to have effect (clause 46).

56. Remedies under other Commonwealth, State or Territory laws are not excluded by this Division; for example, any remedies provided by the *Trade Practices Act 1974* that are relevant to conduct in contravention of clause 12 would be available to SOCOG, SPOC or a licensed user.

Division 4 — Groundless threats

Clause 48 - Groundless threats of legal proceedings

57. This clause provides that if SOCOG, SPOC or a licensed user threatens to make an application, or bring an action, against a person on the ground that the threatened person has engaged, is engaging or is proposing to engage in conduct which involves the use for

commercial purposes of Sydney 2000 Games indicia and images, any person aggrieved may bring an action in a prescribed court against the person threatening the action.

58. In an action brought by an aggrieved person, the court may declare that SOCOG, SPOC or a licensed user had no grounds for making the threat and grant an injunction restraining the person threatening the action from continuing to make the threat. The court may also award damages to the aggrieved person for losses suffered as a result of the threat.

59. If the person making the threat has made an application (or has brought an action) under Division 3 of Part 4 to this Act against a threatened person, the threatened person may not bring an action or continue an action under this clause.

60. It is a defence under this clause that the conduct of the threatened person, in relation to which the threat was made, constitutes unlicensed use for commercial purposes of Sydney 2000 Games indicia and images.

Clause 49 - Counterclaim in action on groundless threats

61. This clause provides that if a threatened person brings an action under clause 48 and SOCOG, SPOC or a licensed user would be entitled to bring an action for unlicensed use for commercial purposes of Sydney 2000 Games indicia and images against that person, SOCOG, SPOC or a licensed user may make a counterclaim for any relief that may be available under Division 3 of Part 4 to this Act.

62. The provisions of Divisions 1, 2 and 3 of Part 4 to this Act apply as if a counterclaim were an application or action made or brought under Division 3.

PART 5 — JURISDICTION AND PROCEEDINGS OF PRESCRIBED COURTS

Clauses 50 to 53

63. These clauses:

specify that the Federal Court and the Supreme Courts of a State, the Australian Capital Territory, Northern Territory and Norfolk Island are prescribed courts (clause 50);

confer original jurisdiction on the Federal Court in respect of all matters arising under this Act (clause 51);

- confer original jurisdiction on prescribed courts other than the Federal Court, with the exception that the jurisdiction conferred on the Supreme Court of a Territory extends only to the extent that the Constitution allows (clause 52);

enable an action or proceeding, by court order, to be transferred from one prescribed court to another (clause 53).

PART 6 — MISCELLANEOUS

Clause 54 - Concurrent operation of State and Territory laws

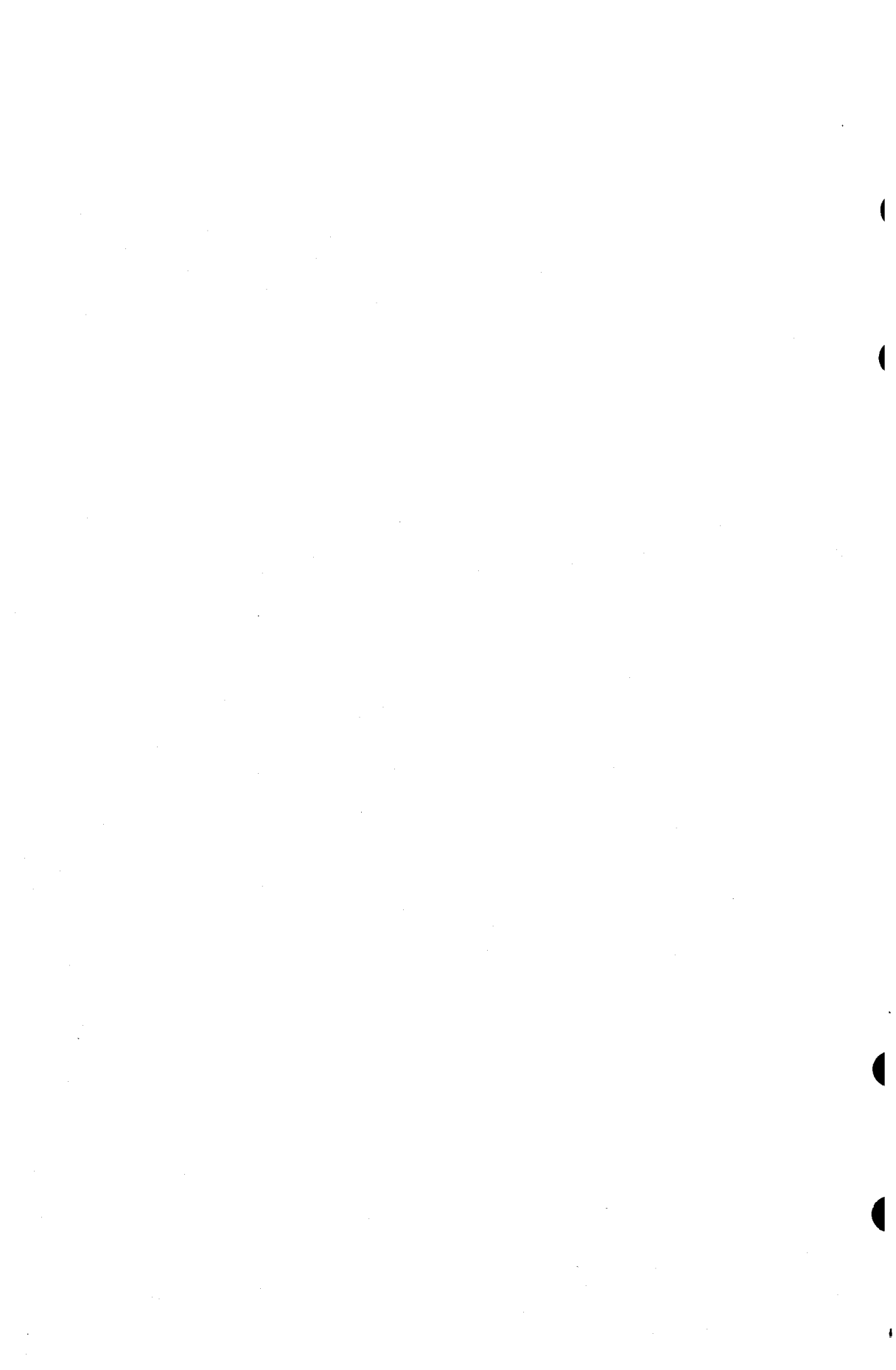
64. This clause provides that the Parliament intends that the operation of this Act is not to affect the operation of a State or Territory law to the extent that the law is capable of operating concurrently with this Act.

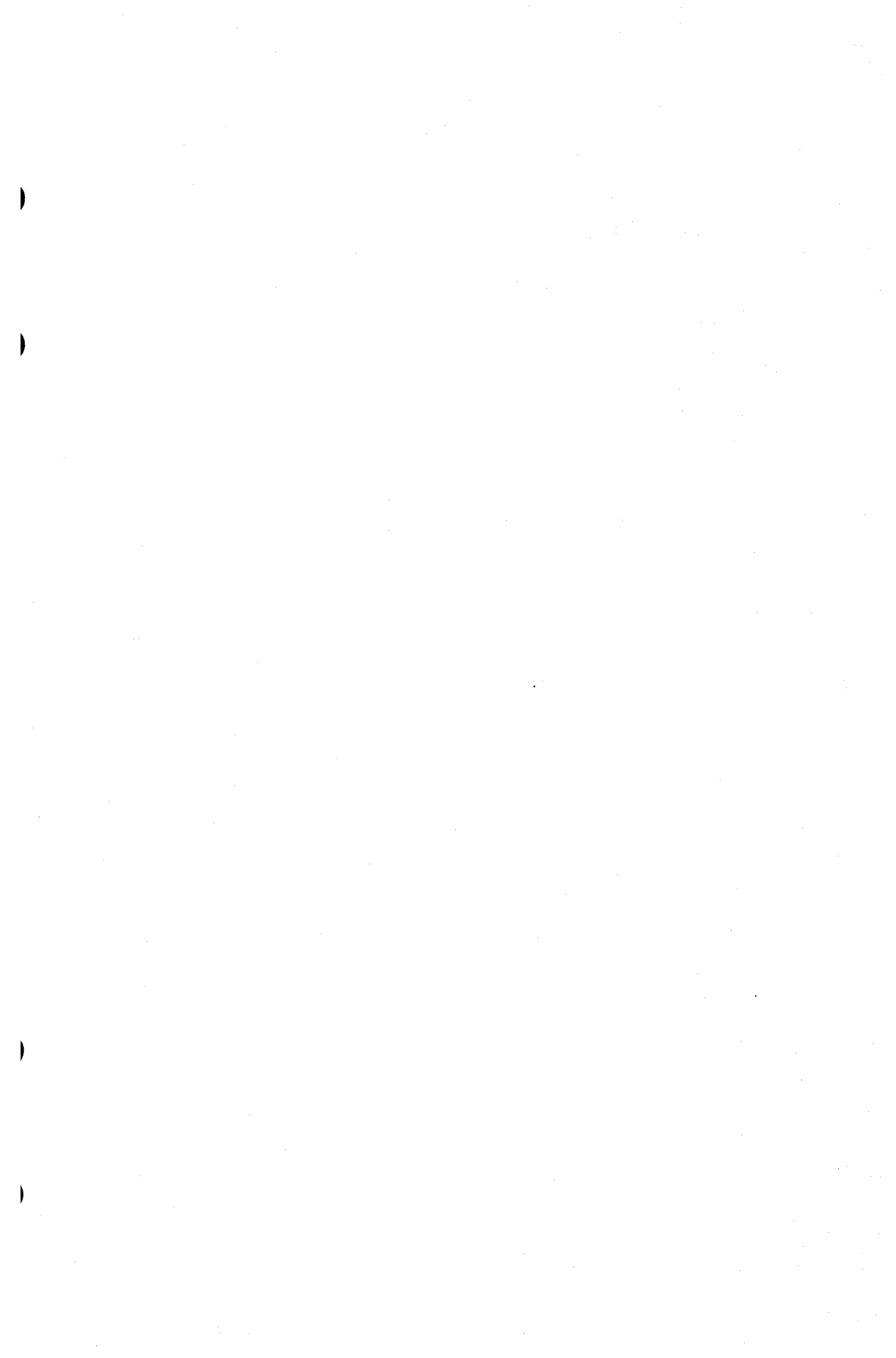
Clause 55 - Cessation of operation of Act

65. This clause provides that this Act will cease to have effect at the end of 31 December 2000 if it is not repealed before that time.

Clause 56 - Regulations

66. This clause provides that the Governor-General may make Regulations prescribing matters required, or permitted by this Act to be prescribed, or matters convenient to be prescribed for carrying out or giving effect to this Act.





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