



Olympic Insignia Protection Act 1987

No. 27 of 1987

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SCHEDULE

OUTLINE OF THE OLYMPIC SYMBOL



Olympic Insignia Protection Act 1987

No. 27 of 1987

An Act to make provision for the protection of the olympic insignia, and for related purposes

[Assented to 26 May 1987]

[Date of commencement 23 June 1987]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Olympic Insignia Protection Act 1987*.

Interpretation

2. (1) In this Act, unless the contrary intention appears—
“Australia”, when used in a geographical sense, includes the external Territories;
“charge” means a charge created in any way and includes a mortgage and an agreement to give or execute a charge or mortgage, whether upon demand or otherwise;

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“corresponding design”, in relation to an artistic work, means a design that, when applied to an article, results in a reproduction of that work;

“design of the olympic symbol” means the design that, when applied to any article, results in a reproduction of the olympic symbol;

“Federal Court” means the Federal Court of Australia;

“Federation” means the Australian Olympic Federation Incorporated, being an association incorporated on 24 April 1985 under the Associations Incorporation Act 1981 of Victoria;

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

“olympic motto” means the motto “citius, altius, fortius”;

“olympic symbol” means the symbol an outline of which is set out in the Schedule;

“protected design” means—

- (a) the design of the olympic symbol; and
- (b) a registered olympic design;

“protection period”, in relation to a registered olympic design, means the period of 12 years commencing on the day the design was registered, as extended or reduced under section 11;

“registered olympic design” means a design registered under this Act;

“Registrar” means the Registrar of Designs holding office under the *Designs Act 1906*;

“reproduction”, in relation to an artistic work, has the same meaning as in the *Copyright Act 1968*.

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

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

Act to bind Crown

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

Extension of Act to external Territories

4. This Act extends to the external Territories.

PART II—COPYRIGHT PROTECTION

Ownership, &c., of copyright in the olympic symbol

5. (1) For the purposes of the *Copyright Act 1968*—

- (a) the olympic symbol shall be taken to be an original artistic work in which copyright subsists; and
- (b) the Federation shall be taken to be the owner of the copyright in the olympic symbol.

(2) Notwithstanding anything in the *Copyright Act 1968*—

- (a) copyright in the olympic symbol subsists indefinitely; and
- (b) a fair dealing with the olympic symbol does not constitute an infringement of the copyright in the olympic symbol if it is for the purpose of, or is associated with, the giving of information (including the reporting of news)—
 - (i) in a newspaper, magazine or similar periodical; or
 - (ii) by means of broadcasting or in a cinematograph film.

(3) An expression used in this section and in the *Copyright Act 1968* has the same meaning in this section as it has in that Act.

(4) The Federation does not have the capacity to bring an action or proceeding under the law of a foreign country for an infringement of copyright in the olympic symbol.

PART III—DESIGN PROTECTION

Ownership of protected design

6. The Federation shall be taken to be the owner of a protected design.

Monopoly of design

7. (1) The Federation has a monopoly in a protected design.

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

Infringement of monopoly in protected design

8. (1) A person infringes the monopoly in a protected design if—

- (a) in the case of the design of the olympic symbol—at any time; or
- (b) in the case of a registered olympic design—during the protection period in relation to that design,

the person, without the licence of the Federation—

- (c) applies the design or any fraudulent or obvious imitation of it to any article;
- (d) imports into Australia for sale, or for use for the purposes of any trade or business, any article to which the design or any fraudulent

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or obvious imitation of it has been applied, whether before or after the commencement of this Act, outside Australia; or

- (e) sells, or offers or keeps for sale, or hires, or offers or keeps for hire—
 - (i) any article to which the design or any fraudulent or obvious imitation of it has been applied in infringement of the monopoly in the design; or
 - (ii) any article—
 - (A) to which the design or any fraudulent or obvious imitation of it has been applied; and
 - (B) that has been imported into Australia in infringement of the monopoly in the design.

(2) A person does not infringe the monopoly in a protected design by virtue of the application of paragraph (1) (c) or sub-paragraph (1) (e) (i) in relation to an article if, at the time when the person did the act that, but for this sub-section, would have constituted the infringement, the person did not intend that the article would be used in Australia at a later time by any person.

(3) Subject to sub-section (4), if a person infringes the monopoly in a protected design—

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

may bring an action or proceeding against the person in the Federal Court for infringement of the monopoly in the design.

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

(5) Where—

- (a) a person, being the holder of a licence in relation to a protected design, applies, by notice in writing served on the Federation, for the consent of the Federation under sub-section (4) to the institution by the person of an action or proceeding for infringement of the monopoly in the design; and
- (b) the Federation does not grant or refuse that consent before the end of the period of 7 days after the day on which the notice was served,

the Federation shall, at the end of that period, be deemed to have granted that consent under sub-section (4).

(6) Consent under sub-section (4) to the institution of an action or proceeding shall not be unreasonably refused.

(7) Sub-section (4) does not affect the granting of an interlocutory injunction on the application of a holder of a licence in relation to a protected design.

(8) For the purposes of this section, a design shall not be taken not to be a fraudulent or obvious imitation of a registered olympic design by reason only that the first-mentioned design does not incorporate the design of the olympic symbol.

Remedies for infringement of monopoly in protected design

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

Registration of olympic designs

10. (1) The Federation may, in relation to an artistic work that incorporates the olympic symbol, apply to the Registrar for the registration under this Act of the design that, when applied to any article, results in a reproduction of the artistic work.

(2) An application under sub-section (1)—

- (a) shall be in accordance with an approved form;
- (b) shall be accompanied by a fee of \$65 or such higher fee as is prescribed; and
- (c) shall be lodged by being left at, or delivered by post to, the Designs Office.

(3) Where an application is made under sub-section (1), the Registrar shall cause notice of the application to be published in the *Gazette* and in the *Official Journal*.

(4) A notice of an application shall invite persons who wish to object to the grant of the application on any relevant grounds to make representations in connection with the application by such date, not being a date earlier than 60 days after the date of the notice, as is specified in the notice.

(5) A person may, not later than the date specified in the notice, make representations to the Registrar in connection with the application in accordance with an approved form.

(6) Subject to sub-section (7), after the Registrar has considered any such representations made in respect of an application for registration of the design in relation to an artistic work, the Registrar shall register the design if, and only if—

- (a) copyright under the *Copyright Act 1968* subsists in the artistic work;
- (b) the Federation is the owner of the copyright in the artistic work;

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- (c) no corresponding design in relation to the artistic work is registered under the *Designs Act 1906*; and
- (d) if the design in relation to the artistic work were registered under this Act, the number of registered olympic designs with unexpired protection periods would not exceed 10.

(7) A design shall not be registered under this Act unless it is a new or original design and in particular, shall not be registered if the design—

- (a) differs only in immaterial details or in features commonly used in a relevant trade from; or
- (b) is an obvious adaptation of,
a design that—
 - (c) was registered under the *Designs Act 1906*; or
 - (d) was published or used in Australia in respect of any article, before the date on which the application was made.

(8) For the purposes of sub-section (7), account shall not be taken of any secret use.

(9) Where the Federation is the owner of the copyright in an artistic work, the design in relation to the artistic work shall not be treated for the purposes of this section as being other than new or original, or as having been published or used, by reason only of any use made of the artistic work before the application for registration of the design.

(10) Where the Registrar makes a decision under sub-section (6) to register or to refuse to register a design, the Registrar shall cause notice of the decision to be published in the *Gazette* and in the *Official Journal*.

(11) An appeal lies to the Federal Court from a decision of the Registrar under sub-section (6) to register or to refuse to register a design.

Extension or reduction of protection periods in relation to registered olympic designs

11. (1) The Federation may, not later than 6 months before the end of the protection period in relation to a registered olympic design (including a protection period that has been extended or reduced under this section), apply to the Registrar for that period to be extended by a further period of 12 years.

(2) An application under sub-section (1)—

- (a) shall be in accordance with an approved form;
- (b) shall be accompanied by a fee of \$65 or such higher fee as is prescribed; and
- (c) shall be lodged by being left at, or delivered by post to, the Designs Office.

(3) Where an application is made under sub-section (1), the Registrar shall cause notice of the application to be published in the *Gazette* and in the *Official Journal*.

(4) A notice of an application shall invite persons who wish to object to the grant of the application on any relevant grounds to make representations in connection with the application by such date, not being a date earlier than 60 days after the date of the notice, as is specified in the notice.

(5) A person may, not later than the date specified in the notice, make representations to the Registrar in connection with the application in accordance with an approved form.

(6) After the Registrar has considered any such representations made in respect of an application for the extension of the protection period in relation to a registered olympic design, the Registrar shall, before the end of the protection period, extend the protection period for a further period of 12 years if the Registrar would be required to register the design if an application for registration of the design had been made immediately after the end of the protection period.

(7) The Registrar shall, on the application of the Federation made in accordance with an approved form, reduce the duration of the protection period in relation to a registered olympic design.

(8) Where the protection period in relation to a registered olympic design ends or is extended, the Registrar shall cause notice of the end or extension to be published in the *Gazette* and in the *Official Journal*.

(9) Where the Registrar makes a decision under sub-section (6) refusing to extend a protection period, the Registrar shall cause notice of the decision to be published in the *Gazette* and in the *Official Journal*.

(10) An appeal lies to the Federal Court from a decision of the Registrar under sub-section (6) to extend or to refuse to extend a protection period.

Register of Olympic Designs

12. (1) There shall be kept at the Designs Office a Register of Olympic Designs.

(2) The Registrar shall enter in the Register of Olympic Designs particulars of—

- (a) registered olympic designs;
- (b) the end and extension of protection periods in relation to registered olympic designs; and
- (c) any other prescribed matters.

(3) The Register of Olympic Designs shall be open to the inspection of the public at the times, and on payment of the fees (if any), prescribed for the purposes of this section.

(4) The regulations may make further provision with respect to the Register of Olympic Designs, including, but without limiting the generality of the foregoing, provision for the correction of errors in the Register of Olympic Designs.

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(5) Section 36 of the *Designs Act 1906* applies in relation to the Register of Olympic Designs in the same manner as it applies in relation to the Register of Designs.

(6) The Federal Court, on the application of a person aggrieved, may order the rectification of the Register of Olympic Designs by—

- (a) the making of any entry wrongly omitted to be made in the Register of Olympic Designs; or
- (b) the expunging or amendment of any entry wrongly made in or remaining on the Register of Olympic Designs; or
- (c) the correcting of any error or defect in the Register of Olympic Designs.

(7) Notice of each application under sub-section (6) shall be given to the Registrar, who may be heard on the application.

(8) A copy of an order under sub-section (6) shall be served on the Registrar, who shall, on receipt of the order, take such steps as are necessary to give effect to the order.

(9) A defendant in an action or proceeding for the infringement of the monopoly in a protected design may apply, by way of counter-claim in the action or proceeding, for the rectification of the Register of Olympic Designs by the expunging of the entry of the registration of the design from the Register of Olympic Designs.

Delegation

13. Section 8A of the *Designs Act 1906* applies in relation to the Registrar's powers under this Part in the same manner in which it applies in relation to the Registrar's powers under that Act.

Approved forms

14. (1) A reference in this Part to an approved form is a reference to a form approved by the Registrar in writing.

(2) An approved form may require any statement in the form to be verified by a statutory declaration accompanying the form.

PART IV—MISCELLANEOUS

Certain purported dispositions or charges to be void

15. (1) A disposition, by assignment, declaration of trust or by any other means, purporting to be made by the Federation of the whole or any part of—

- (a) its interest in the copyright in the olympic symbol; or
- (b) its interest in a protected design,

is void.

(2) A charge purporting to be given by the Federation with respect to an asset of the Federation that consists of, or includes, the whole or any part of—

- (a) its interest in the copyright in the olympic symbol; or
- (b) its interest in a protected design,

is void.

Validation of certain licences

16. Where, before the date of commencement of this Act, the Federation purported to grant a licence for a particular period ending after that date in respect of the copyright in, or the design of, the olympic symbol, the licence is as valid and effectual as it would have been if it had been granted on that date for the part of that period that commenced on that date.

Application of the *Copyright Act 1968*

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

- (a) the copyright in the olympic symbol; and
- (b) where the design in relation to an artistic work is registered under this Act—the copyright in the artistic work.

(2) It is not an infringement of the copyright in the olympic symbol to apply the design of the olympic symbol to an article.

(3) During the protection period in relation to a registered olympic design, being the design in relation to an artistic work, it is not an infringement of the copyright in the artistic work to apply the design to an article.

(4) Where—

- (a) an artistic work incorporates the olympic symbol;
- (b) the design in relation to the artistic work is registered under this Act; and
- (c) the protection period in relation to the design has ended,

it is not an infringement of the copyright in the artistic work to apply a design to an article, being—

- (d) a design that is a corresponding design in relation to an artistic work that is a public domain version of the first-mentioned artistic work; or
- (e) a design that differs from the design referred to in paragraph (d) only in immaterial details or in features commonly used in a relevant trade.

(5) For the purposes of sub-section (4), where an artistic work incorporates the olympic symbol, the artistic work (if any) that would result from the omission of the olympic symbol from the first-mentioned artistic work shall be taken to be the public domain version of the first-mentioned artistic work.

(6) Where, by virtue of this section, it is not an infringement of the copyright in an artistic work to apply a particular design to an article at a particular time, it is not an infringement of the copyright in the artistic work to do any of the following acts or things at that time:

- (a) import into Australia any article to which the design has been applied;
- (b) sell, offer or keep for sale, or hire, or offer or keep for hire, any article to which the design has been applied.

Protected designs not to be registered under the *Designs Act 1906*

18. The Registrar shall not register under the *Designs Act 1906*—

- (a) a protected design;
- (b) a design incorporating a protected design;
- (c) a design that differs from a protected design only in immaterial details or in features commonly used in a relevant trade; or
- (d) a design that is an obvious adaptation of a protected design.

Certain marks not to be registered under the *Trade Marks Act 1955*

19. The Registrar of Trade Marks shall not register under the *Trade Marks Act 1955* a trade mark that contains or consists of any of the following marks or a mark so nearly resembling any of those marks as to be likely to be taken for that mark:

- (a) the olympic motto;
- (b) the olympic symbol;
- (c) where the design in relation to an artistic work is registered under this Act—the artistic work.

Preservation of certain existing rights

20. (1) Subject to sub-section (3), nothing in this Act affects any rights conferred by law on a person in respect of—

- (a) a trade mark registered under the *Trade Marks Act 1955* before the date of commencement of this Act; or
- (b) a design registered under the *Designs Act 1906* before that date.

(2) Subject to sub-section (3), nothing in this Act affects the use of a symbol by a person on or after the date of commencement of this Act if, immediately before that date, the person would have been entitled to prevent another person from passing off, by means of the use of that symbol or of a similar symbol, goods or services as the goods or services of that first-mentioned person.

- (3) In an action or proceeding against—
 - (a) the Federation; or
 - (b) the holder of a licence granted by the Federation in respect of—
 - (i) the copyright in, or the design of, the olympic symbol; or

- (ii) a design registered, or purporting to be registered, under this Act,

for—

- (c) the infringement of a trade mark registered under the *Trade Marks Act 1955* before the date of commencement of this Act;
- (d) the infringement of the monopoly of a design registered under the *Designs Act 1906* before that date; or
- (e) passing off arising out of the use of a symbol of the kind referred to in sub-section (2),

it is a defence if the defendant satisfies the court—

- (f) that, at the time of the infringement or use, the defendant was not aware that the trade mark or design was so registered, or that the plaintiff was entitled to prevent the passing off, as the case may be; and
- (g) that the defendant had, before that time, taken all reasonable steps to ascertain whether the trade mark was so registered, a monopoly in the design so existed or the plaintiff had such an entitlement to prevent a passing off, as the case may be.

Compensation for acquisition of property

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

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

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

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

Regulations

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

- (a) required or permitted by this Act to be prescribed; or

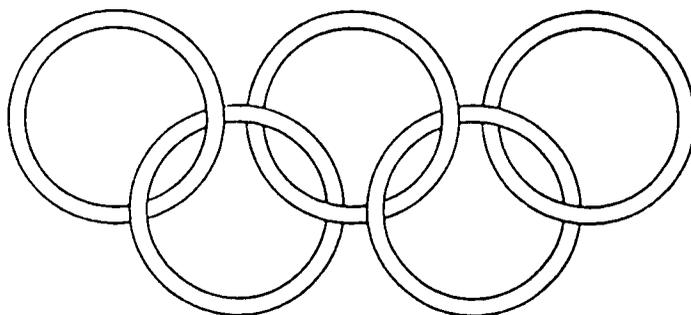
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- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

SCHEDULE

Sub-section 2 (1)

OUTLINE OF THE OLYMPIC SYMBOL



*[Minister's second reading speech made in—
House of Representatives on 23 October 1986
Senate on 20 February 1987]*