

2004-2005

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Melbourne 2006 Commonwealth Games
(Indicia and Images) Protection Bill 2005**

No. , 2005

(Arts and Sport)

**A Bill for an Act to provide for the regulation of the
use for commercial purposes of indicia and images
associated with the Melbourne 2006
Commonwealth Games, and for related purposes**

Contents

Part 1—Preliminary	1
1 Short title.....	1
2 Commencement	2
3 Objects of Act.....	2
4 Act binds the Crown.....	2
5 Application of Act.....	2
6 Additional operation of Act	3
Part 2—Definitions and other interpretation provisions	4
7 Definitions and other interpretation provisions	4
8 Application of Melbourne 2006 Commonwealth Games indicia and images.....	8
9 Meaning of <i>commercial purposes</i>	9
10 Presumption relating to advertising or promotion etc.....	10
11 Criticism, review and provision of information	10
Part 3—Protection	12
12 Regulation of use of Melbourne 2006 Commonwealth Games indicia and images	12
13 Persons involved in contravening section 12	13
Part 4—Importation of goods, remedies and groundless threats	14
Division 1—Standing of authorised users to give notices and pursue remedies	14
14 Consent of Corporation to giving of notices etc.....	14
15 Request for consent.....	14
16 Consent must not be unreasonably refused.....	14
Division 2—Importation of goods	15
17 Determinations about owners of goods.....	15
18 Copy of register to be supplied by the Corporation to the Customs CEO.....	15
19 Notice to Customs CEO of imports by the Corporation, the ACGA or the CGF	15
20 Notice of objection to importation	16
21 Customs CEO may seize goods	17
22 Notice of seizure	18
23 Forfeiture of goods—by consent.....	19
24 Release of goods—no application for injunction	20
25 Application for injunction—additional parties, relief etc.....	21
26 Disposal of goods ordered to be forfeited	22

27	Power of Customs CEO to retain control of goods.....	22
28	Insufficient security.....	23
29	Commonwealth not liable for loss etc. suffered because of seizure	23
30	Modification in relation to Norfolk Island etc.....	23
Division 3—Remedies		24
31	Injunctions.....	24
32	Interim injunctions.....	25
33	Corrective advertisements	25
34	Damages or accounts of profits.....	25
35	Other remedies.....	26
Division 4—Groundless threats		28
36	Groundless threats of legal proceedings	28
37	Counterclaim in action on groundless threats	29
Part 5—Jurisdiction and proceedings of prescribed courts		30
38	Prescribed courts.....	30
39	Jurisdiction of Federal Court and Federal Magistrates Court.....	30
40	Jurisdiction of other prescribed courts.....	30
41	Transfer of proceedings.....	30
Part 6—Miscellaneous		32
42	Requirements for the Register.....	32
43	Trade mark and design rights.....	32
44	Concurrent operation of State and Territory laws.....	32
45	Avoiding direct inconsistency between this Act and the Commonwealth Games Arrangements Act 2001 of Victoria	32
46	Compensation for acquisition of property.....	33
47	Cessation of operation of Act.....	34
48	Regulations.....	34

1 **A Bill for an Act to provide for the regulation of the**
2 **use for commercial purposes of indicia and images**
3 **associated with the Melbourne 2006**
4 **Commonwealth Games, and for related purposes**

5 The Parliament of Australia enacts:

6 **Part 1—Preliminary**
7

8 **1 Short title**

9 This Act may be cited as the *Melbourne 2006 Commonwealth*
10 *Games (Indicia and Images) Protection Act 2005*.

Section 2

1 **2 Commencement**

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

4 **3 Objects of Act**

- 5 (1) The objects of this Act are:
- 6 (a) to protect and further the position of Australia as a participant
7 in, and a supporter of, the Commonwealth of Nations, in
8 relation to the holding of the Melbourne 2006
9 Commonwealth Games; and
- 10 (b) to the extent that it is within the power of the Parliament:
- 11 (i) to assist in protecting the relations of the Melbourne
12 2006 Commonwealth Games bodies and the
13 Government of Victoria with the Commonwealth of
14 Nations; and
- 15 (ii) to assist in ensuring the performance of the obligations
16 of the Melbourne 2006 Commonwealth Games bodies
17 and the Government of Victoria with the
18 Commonwealth of Nations;
19 in relation to the holding of the Melbourne 2006
20 Commonwealth Games.
- 21 (2) Those objects are to be achieved by facilitating the raising of
22 revenue in relation to the Melbourne 2006 Commonwealth Games
23 through the regulation of the use for commercial purposes of the
24 indicia and images associated with the Games.

25 **4 Act binds the Crown**

26 This Act binds the Crown in each of its capacities.

27 **5 Application of Act**

- 28 This Act extends to:
- 29 (a) Norfolk Island; and
30 (b) the Territory of Christmas Island; and
31 (c) the Territory of Cocos (Keeling) Islands.

6 Additional operation of Act

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:

(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 an authorised user that is a corporation within the meaning of subparagraphs (a)(i) to (a)(iii).

Section 7

1

2 **Part 2—Definitions and other interpretation**
3 **provisions**
4

5 **7 Definitions and other interpretation provisions**

6 (1) In this Act:

7 *ACGA* means the Australian Commonwealth Games Association
8 (ABN 55 165 736 898).

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

10 (a) if there is only one objector to the importation of the goods—
11 the period specified in the notice given to the objector under
12 section 22 or, if that period is extended under subsection
13 22(6), that period as so extended; or

14 (b) if there is more than one objector to the importation of the
15 goods—the period beginning on the earliest day on which a
16 period specified in a notice given to an objector under
17 section 22 begins and ending on the later of:

18 (i) the latest day on which a period specified in such a
19 notice ends; or

20 (ii) the latest day on which such a period as extended under
21 subsection 22(6) ends.

22 *apply*, in relation to Melbourne 2006 Commonwealth Games
23 indicia or images, includes the meaning given by section 8.

24 *Australia* includes the following external Territories:

25 (a) Norfolk Island;

26 (b) the Territory of Christmas Island;

27 (c) the Territory of Cocos (Keeling) Islands.

28 *authorised user* means:

29 (a) a person authorised by the Melbourne 2006 Commonwealth
30 Games Corporation to use Melbourne 2006 Commonwealth
31 Games indicia or images under section 56D of the

- 1 **Commonwealth Games Arrangements Act 2001** of
2 Victoria; and
3 (b) the ACGA; and
4 (c) the CGF.
- 5 ***broadcast*** means a transmission by means of:
6 (a) a broadcasting service within the meaning of the
7 *Broadcasting Services Act 1992*; or
8 (b) something that would be such a broadcasting service if the
9 definition of ***broadcasting service*** in subsection 6(1) of that
10 Act were amended by omitting all the words from and
11 including “but does not include” to the end of the definition.
- 12 ***CGF*** means the body known as the Commonwealth Games
13 Federation that has the responsibility for the direction and control
14 of the Commonwealth Games.
- 15 ***commercial purposes*** has the meaning given by section 9.
- 16 ***Customs CEO*** means the Chief Executive Officer of Customs.
- 17 ***designated owner***, in relation to goods imported into Australia,
18 means:
19 (a) the person identified as the owner of the goods on the entry
20 made in relation to the goods under section 68 of the
21 *Customs Act 1901*; or
22 (b) if no such entry exists—the person determined to be the
23 owner of the goods under section 17 of this Act.
- 24 ***Federal Court*** means the Federal Court of Australia.
- 25 ***Melbourne 2006 Commonwealth Games*** means the 18th
26 Commonwealth Games held in Melbourne in 2006.
- 27 ***Melbourne 2006 Commonwealth Games body*** means:
28 (a) the Melbourne 2006 Commonwealth Games Corporation;
29 and
30 (b) the ACGA; and
31 (c) the CGF.

Section 7

1 ***Melbourne 2006 Commonwealth Games Corporation*** means the
2 Melbourne 2006 Commonwealth Games Corporation established
3 under Part 1A of the **Commonwealth Games Arrangements Act**
4 **2001** of Victoria.

5 ***Melbourne 2006 Commonwealth Games images*** means any visual
6 or aural representations that, to a reasonable person, in the
7 circumstances of the presentation, would suggest a connection with
8 the Melbourne 2006 Commonwealth Games.

9 ***Melbourne 2006 Commonwealth Games indicia*** has the meaning
10 given by subsection (2).

11 ***Melbourne 2006 Commonwealth Games indicia and images***
12 means Melbourne 2006 Commonwealth Games indicia and
13 Melbourne 2006 Commonwealth Games images.

14 ***Melbourne 2006 Commonwealth Games indicia or images*** means
15 Melbourne 2006 Commonwealth Games indicia or Melbourne
16 2006 Commonwealth Games images.

17 ***objector***, in relation to seized goods, means a person who has given
18 a notice that is in force under section 20 in relation to the goods.

19 ***prescribed court*** means a court that is a prescribed court under
20 section 38.

21 ***seized goods*** means goods seized under section 21.

22 ***this Act*** includes the regulations.

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

- 25 (a) a Saturday or a Sunday; or
26 (b) a public holiday or a bank holiday in any place in which the
27 act is to be, or may be, done.

28 (2) ***Melbourne 2006 Commonwealth Games indicia*** means any of the
29 following:

- 30 (a) any of the following phrases:
31 (i) “Melbourne 2006 Commonwealth Games”;
32 (ii) “Melbourne Commonwealth Games”;
-

Section 7

- 1 (iii) “Melbourne Games”;
 2 (iv) “Melbourne 2006 Games”;
 3 (v) “Commonwealth Games”;
 4 (vi) “Australian Commonwealth Games”;
 5 (vii) “Friendly Games”;
 6 (viii) “Queen’s Baton Relay”;
 7 (ix) “Commonwealth Games Cultural Program”;
 8 (x) “Melbourne 2006 Cultural Program”;
 9 (xi) “M06 Cultural Program”;
 10 (whether the reference to “2006” in subparagraphs (i), (iv)
 11 and (x) is in words or numerals);
 12 (b) either “M06” or “M2006”;
 13 (c) any combination of an indicium in an item in List A with an
 14 indicium in that item in List B:
 15

Melbourne 2006 Commonwealth Games indicia

Item	List A indicia	List B indicia
1	“Two thousand and six” “2006” “18th” “XVIIIth” “Eighteenth”	“Commonwealth Games” “Games”
2	“Commonwealth Games” “Commonwealth Games athlete”	“Gold” “Silver” “Bronze”
3	“Australian Commonwealth Games team”	“Melbourne” “Melbourne 2006” “Melbourne two thousand and six” “M2006”

- 16 (3) For the purposes of this Act, any Melbourne 2006 Commonwealth
 17 Games indicia that are represented in a language other than English
 18 are taken to be Melbourne 2006 Commonwealth Games indicia.

Section 8

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

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

6 **8 Application of Melbourne 2006 Commonwealth Games indicia and**
7 **images**

8 (1) For the purposes of this Act and without limiting the generality of
9 the meaning of the expression, Melbourne 2006 Commonwealth
10 Games indicia or images are ***applied*** to goods or services if:

11 (a) in the case of goods, the indicia or images:

12 (i) are woven in, impressed on, worked into, or affixed or
13 annexed to, the goods; or

14 (ii) are applied to any covering, document, label, reel or
15 thing in or with which the goods are, or are intended to
16 be, dealt with or provided in the course of trade; or

17 (b) in the case of goods or services, the indicia or images:

18 (i) are used on a signboard or in an advertisement
19 (including a television or radio advertisement) that
20 promotes the goods or services; or

21 (ii) are used in an invoice, price list, catalogue, brochure,
22 business letter, business paper or other commercial
23 document that relates to the goods or services.

24 (2) For the purposes of Divisions 2 and 3 of Part 4, Melbourne 2006
25 Commonwealth Games indicia or images are ***applied*** to goods by a
26 person if:

27 (a) the goods are imported into Australia for the purpose of sale
28 or distribution by the person; and

29 (b) when imported, the goods have already had the indicia or
30 images applied to them.

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

32 ***covering*** includes packaging, frame, wrapper, container, stopper,
33 lid or cap.

34 ***label*** includes a band or ticket.

9 Meaning of *commercial purposes*

- 1
- 2 (1) This section sets out the 2 situations in which a person uses
3 Melbourne 2006 Commonwealth Games indicia or images for
4 ***commercial purposes***.
- 5 (2) For the purposes of this Act, if:
- 6 (a) a person (the ***first person***) causes Melbourne 2006
7 Commonwealth Games indicia or images to be applied to
8 goods or services of the first person; and
- 9 (b) the application is for the primary purpose of advertising or
10 promotion, or for the primary purpose of enhancing the
11 demand for the goods or services; and
- 12 (c) the application would suggest, to a reasonable person, that
13 the first person is or was a sponsor of, or is or was the
14 provider of other support for:
- 15 (i) the Melbourne 2006 Commonwealth Games; or
16 (ii) any event arranged by a Melbourne 2006
17 Commonwealth Games body in connection with the
18 Melbourne 2006 Commonwealth Games;
- 19 the application is use by the first person of the indicia or images for
20 ***commercial purposes***.
- 21 Note: This rule is affected by sections 10 (presumption relating to
22 advertising etc.) and 11 (criticism, review and provision of
23 information).
- 24 (3) For the purposes of this Act (other than sections 20 and 21), if:
- 25 (a) a person (the ***first person***), other than the Melbourne 2006
26 Commonwealth Games Corporation or an authorised user,
27 causes Melbourne 2006 Commonwealth Games indicia or
28 images to be applied to goods or services of the first person;
29 and
- 30 (b) the application is for the primary purpose of advertising or
31 promotion, or for the primary purpose of enhancing the
32 demand for the goods or services; and
- 33 (c) the application would suggest, to a reasonable person, that
34 the first person is or was a sponsor of, or is or was the
35 provider of other support for:
- 36 (i) the Melbourne 2006 Commonwealth Games; or

Section 10

- 1 (ii) any event arranged by a Melbourne 2006
2 Commonwealth Games body in connection with the
3 Melbourne 2006 Commonwealth Games; and
4 (d) any of the following conditions are satisfied in relation to a
5 person (the *second person*) other than the first person:
6 (i) in the case of goods or services—the second person
7 supplies, or offers to supply, the goods or services;
8 (ii) in the case of goods—the second person exposes the
9 goods for supply by the second person;
10 (iii) in the case of goods—the second person keeps the
11 goods for supply by the second person or by another
12 person;
13 the supply, offer, exposure or keeping, as the case requires, by the
14 second person is use by the second person of the indicia or images
15 for *commercial purposes*.
16 Note: This rule is affected by sections 10 (presumption relating to
17 advertising etc.) and 11 (criticism, review and provision of
18 information).

- 19 (4) In this section:
20 *supply* includes:
21 (a) in the case of goods—supply (including re-supply) by way of
22 sale, exchange, lease, hire or hire-purchase; and
23 (b) in the case of services—provide, grant or confer.

24 **10 Presumption relating to advertising or promotion etc.**

25 The application of Melbourne 2006 Commonwealth Games indicia
26 or images by a person for the primary purpose of advertising or
27 promotion, or for the primary purpose of enhancing the demand for
28 the goods or services, is prima facie sufficient to suggest the
29 existence of a sponsorship arrangement, or the provision of other
30 support, for the purposes of paragraph 9(2)(c) or (3)(c).

31 **11 Criticism, review and provision of information**

- 32 (1) The use of Melbourne 2006 Commonwealth Games indicia or
33 images:
34 (a) for the primary purpose of criticism or review; or
-

1 (b) for the primary purpose of the provision of information;
2 is not alone sufficient to suggest the existence of a sponsorship
3 arrangement, or the provision of other support, for the purposes of
4 paragraph 9(2)(c) or (3)(c).

5 (2) In subsection (1):

6 (a) a reference to criticism or review includes a reference to
7 criticism or review:

8 (i) in a newspaper, magazine or similar periodical; or

9 (ii) in a broadcast; or

10 (iii) in a cinematograph film; and

11 (b) a reference to the provision of information includes a
12 reference to the reporting of news and the presentation of
13 current affairs.

1

2

Part 3—Protection

3

4

12 Regulation of use of Melbourne 2006 Commonwealth Games indicia and images

5

6

(1) A person, other than:

7

(a) the Melbourne 2006 Commonwealth Games Corporation; or

8

(b) an authorised user;

9

must not use Melbourne 2006 Commonwealth Games indicia or images for commercial purposes.

10

11

Note: This rule is affected by section 45 (avoiding direct inconsistency with the Victorian Act).

12

13

Use by Melbourne 2006 Commonwealth Games bodies

14

(2) The Corporation, the ACGA and the CGF may use Melbourne 2006 Commonwealth Games indicia and images for commercial purposes.

15

16

17

Use by authorised user

18

(3) An authorised user (other than the ACGA or the CGF):

19

(a) may only use, for commercial purposes, the Melbourne 2006 Commonwealth Games indicia or images that the person is authorised to use under section 56D of the **Commonwealth Games Arrangements Act 2001** of Victoria; and

20

21

22

23

(b) may only use those indicia or images in accordance with the authorisation.

24

25

Indicia that closely resembles Melbourne 2006 Commonwealth Games indicia

26

27

(4) For the purposes of subsection (1), the use of an indicium that so closely resembles a Melbourne 2006 Commonwealth Games indicium that a reasonable person is likely to mistake it for the Melbourne 2006 Commonwealth Games indicium is taken to be the use of that Melbourne 2006 Commonwealth Games indicium.

28

29

30

31

13 Persons involved in contravening section 121
2
3
4
5
6
7
8
9
10
11
12
13
14

For the purposes of this Act, a person is taken to have contravened section 12 if:

- (a) the person has attempted to contravene section 12; or
- (b) the person has aided, abetted, counselled or procured a person to contravene section 12; or
- (c) the person has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene section 12; or
- (d) the person has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of section 12; or
- (e) the person has conspired with others to contravene section 12.

Section 14

1

2 **Part 4—Importation of goods, remedies and**
3 **groundless threats**

4 **Division 1—Standing of authorised users to give notices**
5 **and pursue remedies**

6 **14 Consent of Corporation to giving of notices etc.**

7 An authorised user may not:
8 (a) give a notice of objection to importation under section 20; or
9 (b) make an application for an injunction under section 31; or
10 (c) bring an action for damages or for an account of profits under
11 section 34;
12 except with the written consent of the Melbourne 2006
13 Commonwealth Games Corporation.

14 **15 Request for consent**

15 The Melbourne 2006 Commonwealth Games Corporation is taken
16 to have given the consent if:
17 (a) an authorised user gives the Corporation a written request for
18 consent under section 14; and
19 (b) the Corporation neither gives nor refuses that consent before
20 the end of the third working day following the day on which
21 the request was given.

22 **16 Consent must not be unreasonably refused**

23 Consent under section 14 must not be unreasonably refused.

1

2 **Division 2—Importation of goods**

3 **17 Determinations about owners of goods**

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

10 **18 Copy of register to be supplied by the Corporation to the**
11 **Customs CEO**

- 12 (1) For the purposes of this Division, the Melbourne 2006
13 Commonwealth Games Corporation must give the Customs CEO a
14 copy of the register maintained under section 56J of the
15 **Commonwealth Games Arrangements Act 2001** of Victoria as
16 soon as practicable after the commencement of this section.
- 17 (2) The Corporation must give the Customs CEO a copy of an entry,
18 or a note in an entry, subsequently made in the register as soon as
19 practicable after the entry or note is made.
- 20 (3) The Corporation must give the Customs CEO a copy of the
21 register, entry or note by electronic means.

22 **19 Notice to Customs CEO of imports by the Corporation, the**
23 **ACGA or the CGF**

- 24 (1) If:
- 25 (a) goods are to be imported by or for the Melbourne 2006
26 Commonwealth Games Corporation, the ACGA or the CGF;
27 and
28 (b) any Melbourne 2006 Commonwealth Games indicia or
29 images have been applied to the goods;

Part 4 Importation of goods, remedies and groundless threats

Division 2 Importation of goods

Section 20

1 the Corporation, the ACGA or the CGF (as the case requires) must
2 give the Customs CEO a written notice specifying the indicia or
3 images so applied.

4 (2) The notice must set out particulars sufficient to enable the Customs
5 CEO to identify the goods.

6 **20 Notice of objection to importation**

7 (1) This section applies if a designated owner of goods is not
8 authorised by this Act to use, for commercial purposes, goods that
9 have had Melbourne 2006 Commonwealth Games indicia or
10 images applied to them.

11 *Notice may be given objecting to importation of goods*

12 (2) The Melbourne 2006 Commonwealth Games Corporation or an
13 authorised user may give the Customs CEO a written notice
14 objecting to the importation of the goods.

15 (3) The notice:

16 (a) must be given before the day on which the goods are
17 imported; and

18 (b) must be given together with any prescribed document; and

19 (c) must be accompanied by the prescribed fee (if any).

20 *Limitation on authorised user's notice*

21 (4) An authorised user (other than the ACGA or the CGF) may only
22 give a notice in relation to Melbourne 2006 Commonwealth Games
23 indicia or images that the person is authorised to use under
24 section 56D of the **Commonwealth Games Arrangements Act**
25 **2001** of Victoria.

26 *Notice may be revoked*

27 (5) A notice may be revoked at any time, by notice in writing, given to
28 the Customs CEO by the objector.

1 *When notice ceases to have effect*

- 2 (6) A notice ceases to have effect at the earliest of the following times:
3 (a) when the notice is revoked;
4 (b) when this Act ceases to have effect;
5 (c) for an authorised user (other than the ACGA or the CGF)—
6 on the day on which the user’s authorisation ceases to be in
7 force.

8 Note: For when this Act ceases to have effect, see section 47.

9 *Limitation on reference to use of indicia or images*

- 10 (7) A reference in this section to the use of indicia or images for
11 commercial purposes does not include a reference to use covered
12 by subsection 9(3).

13 **21 Customs CEO may seize goods**

- 14 (1) This section applies to goods manufactured outside Australia:
15 (a) that are imported into Australia; and
16 (b) that are subject to the control of the Customs within the
17 meaning of the *Customs Act 1901*; and
18 (c) that have had Melbourne 2006 Commonwealth Games
19 indicia or images applied to them.

20 *Customs CEO must seize goods*

- 21 (2) The Customs CEO must seize the goods if:
22 (a) a notice in force under section 20 relates to the goods; and
23 (b) it appears to the Customs CEO that the designated owner is
24 not authorised by this Act to use the indicia or images for
25 commercial purposes in relation to the goods.

26 *When Customs CEO is not required to seize goods*

- 27 (3) However, the Customs CEO is not required to seize the goods if he
28 or she has reasonable grounds for believing that section 12 of this
29 Act would not be contravened by the designated owner’s use of the
30 indicia or images for commercial purposes.

Part 4 Importation of goods, remedies and groundless threats

Division 2 Importation of goods

Section 22

- 1 (4) The Customs CEO is not required to seize the goods if the objector
2 has not given security that the Customs CEO considers sufficient to
3 reimburse the Commonwealth for the reasonable expenses that
4 may be incurred by the Commonwealth if the goods were seized.

5 *Seized goods must be kept securely*

- 6 (5) Goods seized under this section must be kept in a secure place as
7 directed by the Customs CEO.

8 *Limitation on reference to use of indicia or images*

- 9 (6) A reference in this section to the use of indicia or images for
10 commercial purposes does not include a reference to use covered
11 by subsection 9(3).

12 **22 Notice of seizure**

13 *Customs CEO to give notice of seizure*

- 14 (1) As soon as practicable after goods are seized under section 21, the
15 Customs CEO must give the designated owner and each objector a
16 written notice:

- 17 (a) identifying the goods; and
18 (b) stating that they have been seized under section 21.

- 19 (2) The notice may be given personally, by post or by electronic
20 means.

21 *Contents of notice for objector*

- 22 (3) A notice under subsection (1) that is given to each objector must
23 also:

- 24 (a) specify:
25 (i) the full name and address of the designated owner of the
26 goods; and
27 (ii) any information that the Customs CEO has and that he
28 or she believes, on reasonable grounds, to be likely to
29 help the objector, or objectors, to identify the designated
30 owner; and

- 1 (b) state that:
2 (i) the objector may make an application for an injunction
3 under section 31 in relation to the goods within the
4 period of 10 working days beginning on a specified day;
5 and
6 (ii) if the objector does so, the objector must give written
7 notice of the application to the Customs CEO within
8 that period; and
9 (c) state that the goods will be released to the designated owner
10 unless the objector, or one of the objectors, makes an
11 application for an injunction under section 31.

- 12 (4) The day specified for the purpose of subparagraph (3)(b)(i) must
13 not be earlier than the day on which the notice is given.

14 *Extension of period to apply for an injunction*

- 15 (5) An objector may request that the period of 10 working days
16 mentioned in subparagraph (3)(b)(i) be extended. The objector
17 does so by giving a written notice to the Customs CEO, before the
18 end of the period, that specifies the grounds on which the request is
19 made.

- 20 (6) The Customs CEO may, in writing, extend the period if:
21 (a) a request is made in accordance with subsection (5); and
22 (b) the Customs CEO is satisfied that it is reasonable that the
23 request be granted.

24 The Customs CEO must not extend the period by more than 10
25 working days.

- 26 (7) The notice under subsection (1), and the extension under
27 subsection (6), are not legislative instruments.

28 **23 Forfeiture of goods—by consent**

- 29 (1) At any time before an objector makes an application for an
30 injunction under section 31 in relation to seized goods, the
31 designated owner of the goods may consent to them being forfeited
32 to the Commonwealth.

Part 4 Importation of goods, remedies and groundless threats

Division 2 Importation of goods

Section 24

1 (2) The designated owner consents by giving a written notice to that
2 effect to the Customs CEO.

3 (3) If the designated owner gives such a notice:
4 (a) the goods are forfeited to the Commonwealth; and
5 (b) the goods must be disposed of as the Customs CEO directs.

6 Note: For an exception to this requirement, see section 27.

7 **24 Release of goods—no application for injunction**

8 *Customs CEO must release goods if objector consents*

9 (1) At any time before the end of the application period, the Customs
10 CEO must release the seized goods to their designated owner if an
11 objector consents to the release of the goods. The objector consents
12 by giving a written notice to the Customs CEO before the end of
13 the application period.

14 Note: For an exception to this requirement, see section 27.

15 *Customs CEO may release goods if section 12 would not be*
16 *contravened*

17 (2) At any time before the end of the application period, the CEO may
18 release the seized goods to their designated owner if:
19 (a) the CEO, having regard to information that has come to his
20 or her knowledge after the goods were seized, does not have
21 reasonable grounds for believing that section 12 would be
22 contravened by the importation of the goods; and
23 (b) an objector has not made an application for an injunction
24 under section 31 in relation to the goods.

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

28 *Customs CEO must release goods if section 20 notice ceases to be*
29 *in force*

30 (3) At any time before the end of the application period, the Customs
31 CEO must release the seized goods to their designated owner if, at
32 that time:

- 1 (a) there is no notice under section 20 that is in force in relation
2 to the goods; and
3 (b) no objector has made an application for an injunction under
4 section 31 in relation to the goods.

5 Note: For an exception to this requirement, see section 27.

6 *Customs CEO must release goods if no one applies for an*
7 *injunction*

- 8 (4) At the end of the application period, the Customs CEO must
9 release the seized goods (not being goods forfeited to the
10 Commonwealth under section 23) to their designated owner unless,
11 within that period, an objector has:
12 (a) made an application for an injunction under section 31 in
13 relation to the goods; and
14 (b) given written notice of the application to the Customs CEO.

15 Note: For an exception to this requirement, see section 27.

16 **25 Application for injunction—additional parties, relief etc.**

- 17 (1) This section applies if a person who is an objector in relation to
18 seized goods makes an application for an injunction under
19 section 31.
- 20 (2) A prescribed court in which the application is pending:
21 (a) may allow another person to join the application as a
22 respondent if:
23 (i) the person applies to be joined; and
24 (ii) the person has sufficient interest in the subject-matter of
25 the application; and
26 (b) must allow the Customs CEO to appear and be heard.
- 27 (3) In addition to any relief that the court may grant apart from this
28 section, the court may:
29 (a) at any time, if it thinks it just, order that the seized goods be
30 released to their designated owner subject to such conditions
31 (if any) as the court thinks fit; or
32 (b) order that the seized goods be forfeited to the
33 Commonwealth.
-

Part 4 Importation of goods, remedies and groundless threats

Division 2 Importation of goods

Section 26

- 1 (4) The court may order the objector to pay compensation to the
2 designated owner of the goods or any other respondent if:
3 (a) the court decides that an injunction should not be granted
4 under section 31; and
5 (b) the designated owner or the respondent satisfies the court that
6 he or she has suffered loss or damage because the goods were
7 seized.

8 The amount of compensation determined by the court must
9 compensate the owner or respondent for any part of the loss or
10 damage that is attributable to any period beginning on or after the
11 day on which the application was made.

- 12 (5) The Customs CEO must release the goods to their designated
13 owner if, after the period of 3 weeks beginning on the day on
14 which the application was made, there is no order of the court in
15 force preventing the goods from being released.

16 Note: For an exception to this requirement, see section 27.

- 17 (6) If the court orders that the goods be released, the Customs CEO
18 must comply with the order.

19 Note: For an exception to this requirement, see section 27.

20 **26 Disposal of goods ordered to be forfeited**

21 If, under section 25, the court orders that goods be forfeited to the
22 Commonwealth, the goods are to be disposed of as the Customs
23 CEO directs.

24 Note: For an exception to this requirement, see section 27.

25 **27 Power of Customs CEO to retain control of goods**

26 Despite this Part, the Customs CEO:

- 27 (a) must not release, or dispose of, any seized goods; and
28 (b) must not take any action in relation to the goods to give
29 effect to any order of a court under section 25;

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

1 **28 Insufficient security**

2 (1) This section applies if the security given under subsection 21(4) by
3 an objector or objectors is not sufficient to meet the expenses
4 incurred by the Commonwealth as a result of the action taken by
5 the Customs CEO under this Division because of the notice given
6 by the objector or objectors.

7 (2) The amount of the difference between those expenses and the
8 amount of security given:

9 (a) is a debt due by the objector, or by the objectors jointly and
10 severally, to the Commonwealth; and

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

13 **29 Commonwealth not liable for loss etc. suffered because of seizure**

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

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

18 (b) because of the release or disposal of any seized goods.

19 **30 Modification in relation to Norfolk Island etc.**

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

22 (a) Norfolk Island; and

23 (b) the Territory of Christmas Island; and

24 (c) the Territory of Cocos (Keeling) Islands.

Section 31

1

2 **Division 3—Remedies**

3 **31 Injunctions**

- 4 (1) If a person has engaged, is engaging, or is proposing to engage, in
5 conduct that contravenes section 12, a prescribed court may grant
6 an injunction restraining the person from engaging in the conduct.
- 7 (2) The power of the court to grant an injunction may be exercised:
8 (a) whether or not it appears to the court that the person intends
9 to engage again, or to continue to engage, in conduct of that
10 kind; and
11 (b) whether or not the person has previously engaged in conduct
12 of that kind.
- 13 (3) An injunction under this section may only be granted on the
14 application of the Melbourne 2006 Commonwealth Games
15 Corporation or an authorised user.
- 16 (4) An injunction granted under this section on the application of a
17 person who is an authorised user (other than the ACGA or the
18 CGF) may only relate to Melbourne 2006 Commonwealth Games
19 indicia or images to which the person's authorisation under
20 section 56D of the **Commonwealth Games Arrangements Act**
21 **2001** of Victoria relates.
- 22 (5) The court may discharge or vary an injunction granted under this
23 section.
- 24 (6) The powers conferred on the court by this section are in addition
25 to, and not in derogation of, any other powers of the court, whether
26 conferred by this Act or otherwise.
- 27 (7) For the purposes of subsection (4), if an indicium so closely
28 resembles the Melbourne 2006 Commonwealth Games indicium
29 referred to in that subsection that a reasonable person is likely to
30 mistake it for that Melbourne 2006 Commonwealth Games
31 indicium, the indicium is taken to be the Melbourne 2006
32 Commonwealth Games indicium referred to.

1 **32 Interim injunctions**

- 2 (1) A prescribed court may grant an interim injunction pending the
3 determination of an application under section 31.
- 4 (2) For the purposes of subsection (1) of this section, a contravention
5 of section 12 is to be taken to have caused immediate and
6 irreparable damage to the applicant.

7 **33 Corrective advertisements**

- 8 (1) The Melbourne 2006 Commonwealth Games Corporation may
9 apply to a prescribed court for an order requiring a person to
10 publish a corrective advertisement at the person's expense.
- 11 (2) The court may make the order if the court is satisfied that the
12 person has engaged in conduct contravening section 12.
- 13 (3) The order must:
- 14 (a) specify the means (including a broadcast) by which the
15 person must publish the advertisement; and
- 16 (b) specify the times at which the advertisement must be
17 published.
- 18 (4) The terms of the advertisement must either:
- 19 (a) be specified in the order; or
20 (b) be determined in accordance with the order.
- 21 (5) This section does not limit the generality of section 31 and applies
22 whether or not relief is granted under that section.

23 **34 Damages or accounts of profits**

- 24 (1) If the Melbourne 2006 Commonwealth Games Corporation or an
25 authorised user (the *plaintiff*) suffers loss or damage as a result of
26 anything done by a person that contravenes section 12, the plaintiff
27 may bring an action under this section against the person.

28 Note: A plaintiff may not bring an action under this section and section 56S
29 or 56T of the **Commonwealth Games Arrangements Act 2001** of
30 Victoria: see subsections (6) and (7).

Section 35

1 (2) The relief that a court may grant under this section is, at the option
2 of the plaintiff, either damages or an account of profits.

3 (3) The action must be brought within 3 years after the day on which
4 the contravention occurred.

5 (4) A request under section 14 for consent to the bringing of an action
6 must not be given later than the working day preceding the last
7 working day before this Act ceases to have effect.

8 Note: For when this Act ceases to have effect, see section 47.

9 (5) The grant of an injunction under section 31 does not prevent the
10 award of damages or an account of profits under this section.

11 (6) However, a plaintiff may not bring an action against a person under
12 this section in relation to the use of Melbourne 2006
13 Commonwealth Games indicia or images if the plaintiff has
14 already brought an action against the person under section 56S or
15 56T of the **Commonwealth Games Arrangements Act 2001** of
16 Victoria in relation to that use.

17 (7) A plaintiff may not continue an action against a person under this
18 section in relation to the use of Melbourne 2006 Commonwealth
19 Games indicia or images if the plaintiff brings an action against the
20 person under section 56S or 56T of the **Commonwealth Games**
21 **Arrangements Act 2001** of Victoria in relation to that use.

22 **35 Other remedies**

23 (1) Subject to subsections 34(6) and (7), the remedies provided under
24 this Division are in addition to remedies provided by any law
25 (whether a law of the Commonwealth or a law of a State or
26 Territory) that confers any rights or powers on the Melbourne 2006
27 Commonwealth Games Corporation or an authorised user in
28 relation to conduct of a kind that contravenes section 12 of this
29 Act.

30 Note: For other rules about the relationship between this Act and other laws,
31 see sections 43, 44 and 45.

32 (2) Without limiting the generality of subsection (1), the remedies
33 provided under this Division are in addition to the remedies

- 1 provided by the *Trade Practices Act 1974* in relation to engaging
2 in conduct that is misleading or deceptive (see section 52 of that
3 Act) and, in particular, in relation to representations:
- 4 (a) that goods or services have sponsorship or approval that they
5 do not have (see paragraph 53(c) of that Act); or
- 6 (b) that a corporation (as defined in that Act) has a sponsorship,
7 approval or affiliation that it does not have (see paragraph
8 53(d) of that Act).
- 9 (3) The references in subsection (2) to particular provisions of the
10 *Trade Practices Act 1974* do not imply that other provisions of that
11 Act do not apply in relation to conduct of a kind that contravenes
12 section 12 of this Act.

1

2 **Division 4—Groundless threats**

3 **36 Groundless threats of legal proceedings**

4 (1) This section applies if the Melbourne 2006 Commonwealth Games
5 Corporation or an authorised user threatens to make an application,
6 or bring an action, against a person (the *threatened person*) on the
7 ground that the threatened person has engaged, is engaging, or is
8 proposing to engage in conduct that contravenes section 12.

9 (2) Any person aggrieved by the threat may bring an action in a
10 prescribed court against the Corporation or the authorised user (as
11 the case requires).

12 (3) In an action under this section, the court may:

13 (a) make a declaration that the Corporation or the authorised
14 user had no grounds for making the threat; and

15 (b) grant an injunction restraining the Corporation or the
16 authorised user from continuing to make the threat.

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

19 (4) An action may not be brought under this section if the person who
20 made the threat has made an application, or brought an action,
21 under Division 3 against the threatened person in relation to the
22 act, or proposed act, to which the threat related.

23 (5) An action under this section may not be continued if the person
24 who made the threat makes an application, or brings an action,
25 under Division 3 against the threatened person in relation to the
26 act, or proposed act, to which the threat related.

27 (6) It is a defence to an action under this section that the conduct of the
28 threatened person, in relation to which the threat was made,
29 contravenes section 12.

1 **37 Counterclaim in action on groundless threats**

- 2 (1) If the Melbourne 2006 Commonwealth Games Corporation or an
3 authorised user would be entitled to make an application, or bring
4 an action, against a person for contravening section 12, the
5 Corporation or the authorised user may, in an action under
6 section 36, make a counterclaim for any relief to which the
7 Corporation or the authorised user would be entitled under
8 Division 3.
- 9 (2) The provisions of Divisions 1, 2 and 3 apply as if a counterclaim
10 were an application or action made or brought by the Corporation
11 or an authorised user under Division 3.

Section 38

1

2 **Part 5—Jurisdiction and proceedings of prescribed**
3 **courts**

4

5 **38 Prescribed courts**

6 Each of the following courts is a prescribed court for the purposes
7 of this Act:

- 8 (a) the Federal Court;
9 (b) the Federal Magistrates Court;
10 (c) the Supreme Court of a State;
11 (d) the Supreme Court of the Australian Capital Territory;
12 (e) the Supreme Court of the Northern Territory;
13 (f) the Supreme Court of Norfolk Island.

14 **39 Jurisdiction of Federal Court and Federal Magistrates Court**

- 15 (1) The Federal Court has jurisdiction in relation to all matters arising
16 under this Act.
17 (2) The Federal Magistrates Court has jurisdiction in relation to all
18 matters arising under this Act.

19 **40 Jurisdiction of other prescribed courts**

- 20 (1) Each prescribed court (other than the Federal Court and the Federal
21 Magistrates Court) has federal jurisdiction in relation to all matters
22 arising under this Act.
23 (2) The jurisdiction conferred by subsection (1) on the Supreme Court
24 of a Territory is conferred to the extent that the Constitution
25 permits.

26 **41 Transfer of proceedings**

- 27 (1) A prescribed court in which an application has been made, or an
28 action brought, under this Act may, on the application of a party
29 made at any stage, by an order, transfer the application or action to
-

- 1 another prescribed court having jurisdiction to hear and determine
2 the application or action.
- 3 (2) When a court transfers an application or action to another court:
- 4 (a) all relevant documents of record filed in the transferring court
5 must be sent to the other court by the Registrar or other
6 appropriate officer of the transferring court; and
- 7 (b) the application or action continues in the other court as if:
- 8 (i) it had been started there; and
- 9 (ii) all steps taken in the transferring court had been taken in
10 the other court.

1

2 **Part 6—Miscellaneous**

3

4 **42 Requirements for the Register**

5

An entry in the register maintained by the Melbourne 2006 Commonwealth Games Corporation under section 56J of the **Commonwealth Games Arrangements Act 2001** of Victoria must contain the following information in relation to an authorised user (other than the ACGA or the CGF):

6

7

8

9

10

(a) whether the authorisation applies generally or in specified circumstances;

11

12

13

14

(b) whether the authorisation authorises the use of all Melbourne 2006 Commonwealth Games indicia and images or specified kinds of such indicia or images.

15

43 Trade mark and design rights

16

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

17

18

19

(a) the *Trade Marks Act 1995*;

20

21

(b) the *Designs Act 2003*;

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

22

44 Concurrent operation of State and Territory laws

23

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.

24

25

26

45 Avoiding direct inconsistency between this Act and the Commonwealth Games Arrangements Act 2001 of Victoria

27

28

29

A provision of this Act does not:

- 1 (a) prohibit a person's use of Melbourne 2006 Commonwealth
2 Games indicia or images for commercial purposes; or
3 (b) impose a liability in respect of such use;
4 if the person is authorised to use, or is not prevented from using,
5 the indicia or images for commercial purposes under the following
6 provisions of the **Commonwealth Games Arrangements Act**
7 **2001** of Victoria:
8 (c) section 56B (use of business or company names);
9 (d) section 56C (rights in respect of passing off);
10 (e) section 56E (authorisations by ACGA);
11 (f) section 56F (authorisations by CGF);
12 (g) section 56K (use of indicia and images without
13 authorisation).

14 **46 Compensation for acquisition of property**

- 15 (1) If:
16 (a) the operation of this Act would result in an acquisition of
17 property otherwise than on just terms; and
18 (b) the acquisition would not be valid, apart from this section,
19 because a particular person has not been compensated;
20 the Commonwealth is liable to pay a reasonable amount of
21 compensation to the person.
- 22 (2) If the Commonwealth and the person do not agree on the amount
23 of the compensation, the person may institute proceedings in a
24 court of competent jurisdiction for the recovery from the
25 Commonwealth of such reasonable amount of compensation as the
26 court determines.
- 27 (3) In determining the reasonable amount of compensation, any
28 damages or compensation recovered, or other remedy given, in a
29 proceeding begun otherwise than under this section and arising out
30 of the same event or transaction must be taken into account.
- 31 (4) In this section:
32 ***acquisition of property*** has the same meaning as in paragraph
33 51(xxxi) of the Constitution.

Section 47

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

3 **47 Cessation of operation of Act**

4 If this Act is not repealed before the end of 30 June 2006, it ceases
5 to have effect at that time.

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

8 **48 Regulations**

9 The Governor-General may make regulations:

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