

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

OLYMPIC INSIGNIA PROTECTION AMENDMENT BILL 1993

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Science and Small Business, and Minister
Assisting the Prime Minister for Science, Senator the Hon Chris Schacht)

OLYMPIC INSIGNIA PROTECTION AMENDMENT BILL 1993

OUTLINE

The primary purpose of this Bill is to amend the *Olympic Insignia Protection Act 1987* (OIP Act) to widen the protection afforded to Olympic-related designs and words. It will include a mechanism in the OIP Act for the Australian Olympic Committee (AOC) to register its designs that contain or consist of prescribed olympic torch and flames in much the same way as is currently available to it in relation to the Olympic rings.

This will bolster the protection against unauthorised commercial exploitation currently provided by the OIP Act for the olympic insignia (the five interlocking rings and the olympic motto "citius, altius, fortius") and the means for the AOC to derive income by licensing the use of the insignia and of up to ten associated registered olympic designs (created by the OIP Act for this specific purpose).

The commercial application of these designs realises a substantial proportion of the significant funding required to ensure that Australia is represented at each Olympic Games by the best possible team. In consequence, the unauthorised commercial exploitation of these designs and others that look like them, directly threatens the funding program of the AOC and makes more difficult the licensing by the AOC of the designs.

The amendments to the OIP Act made by this Bill will:

- (i) provide a mechanism for the protection of the olympic torch and flame designs for a limited time around each Olympic Games by way of the protected designs provisions of the OIP Act;
- (ii) prohibit registration of trade marks that contain or consist of the English version of the olympic motto ("faster, higher, stronger") in the same manner as those that contain or consist of the motto in Latin ("citius, altius, fortius");
- (iii) include a provision in the Act stating that remedies are also available under the *Trade Practices Act 1974* in relation to conduct generally that is misleading and deceptive, and in relation to false or misleading representations as to sponsorship, affiliations and approval;
- (iv) reflect the name change of the Australian Olympic Federation to the Australian Olympic Committee; and
- (v) change the fee setting provisions to ensure that application fees for registering designs under the OIP Act and for extending their protection periods remain pegged to the corresponding fees of the *Designs Act 1906*.

The amendments preserve currently existing rights under the OIP Act and any rights which have accrued under related provisions of the *Designs Act 1906* or the *Trade Marks Act 1955*.

FINANCIAL IMPACT STATEMENT

The amendments to the *Olympic Insignia Protection Act 1987* have no financial impact.

NOTES ON CLAUSES

Clause 1 - Short title

1. Subclause 1(1) provides that the Act may be cited as the *Olympic Insignia Protection Amendment Act. 1993*.
2. Subclause 1(2) provides that the "Principal Act" means the *Olympic Insignia Protection Act 1993*.

Clause 2 - Commencement

3. This clause provides for commencement to be on receiving the Royal Assent.

Clause 3 - Interpretation

4. This clause both defines and redefines a number of words and expressions for the purposes of the legislation and in particular defines:
 - 'olympic motto' to mean
 - (a) the motto expressed in Latin as 'citius, altius, fortius; and
 - (b) the motto expressed in English as 'faster, higher, stronger'.

This allows the protection currently afforded to the motto in Latin by section 19 of the Principal Act, to be extended to the motto in English.

- 'protected design' to mean each of the following
 - (a) the design of the olympic symbol;
 - (b) a registered olympic design;
 - (c) a registered torch and flame design.
- 'protection period' to mean
 - (a) in relation to a registered olympic design - the period of 12 years commencing on the day the design was registered, as extended or reduced under section 11; or
 - (b) in relation to a registered torch and flame design for a particular Summer or Winter Olympic Games - the period starting"
 - (i) on the 1 January that is least 3 years but less than 4 years before the opening of those Olympic Games; or
 - (ii) when the design is registered;
 whichever is later, and ending on 31 December next after the closing of those Olympic Games, as reduced under section 11A.
- 'olympic artistic work' to mean
 - (a) a prescribed olympic torch and flame; or
 - (b) an artistic work that incorporates either but not both of the following:
 - (i) the olympic symbol;
 - (ii) a prescribed olympic torch and flame.

This mutual exclusivity of the olympic symbol and torch and flame ensures that the torch and flame passes into the public domain at the end of its protection period.

- 'Committee' to mean the Australian Olympic Committee Incorporated, being an association incorporated in Victoria on 24 April 1985 under the *Associations Incorporation Act 1981* of Victoria.

Clause 4 - Insertion of new section - "Artistic work of olympic torch and flame may be prescribed"

5. The design of the olympic torch and flame will change for each Olympic Games. To minimise any confusion that might arise from there being more than one torch and flame for the same type of Games (Summer or Winter) being protected at the same time under the new provisions, the period of protection for each design is prescribed, and at any one time it will only be possible to register designs in relation to a maximum of two olympic torch and flames. This clause inserts new subsection 2A(1) and provides that the regulations may prescribe one, and only one, artistic work of the olympic torch and flame in relation to each of a particular Summer Olympic Games or Winter Olympic Games.

6. A further precondition for the prescription of an artistic work of the olympic torch and flame is that copyright must subsist in the artistic work and the Committee must be the owner of this copyright.

7. New subsection 2A(3) provides, in effect, that gazettal of the regulations be no more than six months before the commencement of the protection period for designs in relation to the particular artistic work. This minimises the period in which common law rights, if any, might accrue in relation to the use of a prescribed torch and flame.

Clause 5 - Repeal of section 6 and substitution of new section - "Ownership of design of olympic symbol "

8. This clause substitutes a new section 6 consequent on the inclusion of ownership of designs by the Committee as one of the preconditions for registration (paragraph 12 refers). It also includes a savings provision in respect of ownership of designs registered under the Principal Act.

Clause 6 - Infringement of monopoly in protected design

9. This clause amends existing paragraph 8(1)(b) to extend the infringement provisions to registered torch and flame designs. It also inserts new subsection 8(9) to provide that a design may be considered to be a fraudulent or obvious imitation of a registered torch and flame design even if it does not incorporate a prescribed olympic torch and flame. This provision corresponds to existing subsection 8(8) which deals with fraudulent or obvious imitations of registered olympic designs.

Clause 7 - Insertion of new section - "Trade Practices Act 1974 provides further remedies"

10. New subsection 9A(1) is inserted in order to heighten the awareness of potential infringers of the Principal Act to the relevant remedies under the *Trade Practices Act 1974*, in relation to engaging in conduct that is misleading or deceptive, and particularly in relation to false representations as to sponsorship, affiliation and approval.

11. New subsection 9A(2) makes it clear that other provisions of the Trade Practices Act may also apply in relation to the types of conduct covered by that Act.

Clause 8 - Repeal of section 10 and substitution of new section - "Registration of designs"

12. This clause sets out the circumstances in which the Committee may apply to have a design registered, including the requirement that the Committee must be the owner of the design and that there must be no other persons with any interest in the design. The process for registration is set out, as are the criteria on which the Registrar of Designs must base a decision about whether or not to register a design, and on which persons may object to such a registration. There is also provision for an appeal to the Federal Court from a decision of the Registrar to register, or to refuse to register a design.

Clause 9 - Extension or reduction of protection periods in relation to registered olympic designs

13. This clause amends existing paragraph 11(2)(b) to ensure that the application fee for extending the protection periods remain pegged to the corresponding fee in the *Designs Act 1906* in the light of Statutory Rules 1993 No. 234. It also updates the language of existing subsection 11(2).

Clause 10 - Insertion of new section - "Reduction of protection periods for registered torch and flame designs"

14. Existing section 11 provides for the extension or reduction of protection periods in relation to registered olympic designs. There is to be no provision for extending the protection period of a registered torch and flame design, however, the protection period is to be reducible on the application of the Committee. New subsection 11A(1) provides for this possibility.

15. New subsection 11A(2) provides that notice of the end of a protection period for a registered torch and flame design, whether the ending of the period occurs by reduction or effluxion of time, must be published in the *Gazette* and the *Official Journal*. This corresponds to the actions that must follow the reduction of the protection periods for registered olympic designs as provided for in existing subsection 11(8).

Clause 11 - Register of Olympic Designs

16. This clause amends current section 12 to provide that additional particulars are to be entered in the Register of Olympic Designs - namely particulars of registered torch and flame designs and the end of protection periods in relation to these designs.

Clause 12 - Certain purported dispositions or charges to be void

17. Existing subsection 15(1) ensures that the Committee cannot dispose of, or otherwise divest itself of, the whole, or any part of its interest in the copyright or the design of the olympic symbol or a registered olympic design. Clause 12(a) makes changes to existing paragraphs 15(1)(b) and 15(2)(b) consequent on the new definition of "protected design". Clause 12(b) adds new subsection 15(β) to provide that similar dispositions cannot be made by the Committee of the whole, or any part, of its interest in a registered torch and flame design.

18. Current subsection 15(2) ensures that the Committee cannot give a charge on any assets that include the whole or any part of its interest in the copyright or design of the olympic symbol, and should it do so the charge would be void. New subsection 15(4) is inserted by clause 12(b) to provide corresponding provisions in relation to charges given by the Committee on any assets that include the whole or any part of its interest in a registered torch and flame design.

Clause 13 - Application of the *Copyright Act 1968*

19. Clause 13(a) amends existing paragraph 17(1)(a) to extend its coverage to the copyright in a prescribed olympic torch and flame. This has the effect that the copyright-limiting provisions of Division 8 of Part III of the *Copyright Act 1968* will not apply to prescribed torch and flames.

20. Clause 13(b) amends existing subsection 17(3) with the effect of extending it to registered torch and flame designs (see the new definition of "registered design" in clause 3). New subsection 17(5A) is inserted by clause 13(c) to provide that when the protection period in relation to a registered torch and flame design has ended, it will not be an infringement of the copyright in the artistic work concerned to apply the design to an article. This means that the protection afforded to the Committee for its designs will derive solely from the Principal Act. When that protection ends, registered torch and flame designs enter the public domain.

Clause 14 - Certain marks not to be registered under the *Trade Marks Act 1955*

21. Current section 19 is amended to also instruct the Registrar of Trade Marks not to register under the *Trade Marks Act 1955* a trade mark which contains or consists of an artistic work of a prescribed olympic torch and flame.

Clause 15 - Preservation of certain existing rights

22. Current section 20 is amended to provide that all existing rights under the *Trade Marks Act 1955* and the *Designs Act 1906*, and all existing passing off rights are preserved. As the determination of the time at which these existing rights came into being will be important, new section 20(2A) introduces the concept of a 'relevant date', which will be either the date of commencement of the principal Act (23 June 1987), the date of commencement of the *Olympic Insignia Protection Amendment Act 1993*, or the date of registration of a registered torch and flame design.

23. Subsection 20(3), as amended by this clause, maintains the defence that the Committee or its licensee has in any action against it for infringement of existing rights, including the copyright in a prescribed olympic torch and flame, that the Committee or its licensee was not aware of the existing right and that it had taken all reasonable steps to ascertain whether that right existed.

Clause 16 - Further amendments

24. This clause provides that further amendments are as set out in the Schedule.

SCHEDULE

25. Amends the Principal Act by replacing all references to "Federation" with "Committee", reflecting the 1990 change of name of the Australian Olympic Federation Inc to the Australian Olympic Committee Inc.