

COPY No.

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1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
THE SENATE

Presented and read a first time

OLYMPIC INSIGNIA PROTECTION AMENDMENT  
BILL 1993

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
3. Interpretation
4. Insertion of new section  
2A. Artistic work of olympic torch and flame may be prescribed
5. Repeal of section 6 and substitution of new section
6. Ownership of design of olympic symbol
6. Infringement of monopoly in protected design
7. Insertion of new section  
9A. Trade Practices Act 1974 provides further remedies
8. Repeal of section 10 and substitution of new section  
10. Registration of designs

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## TABLE OF PROVISIONS—continued

Section 9	Extension or reduction of protection periods in relation to registered Olympic designs
10.	Insertion of new section
11A.	Reduction of protection periods for registered torch and flame designs
11.	Register of Olympic Designs
12.	Certain purported dispositions or charges to be void
13.	Application of the <i>Copyright Act 1968</i>
14.	Certain marks not to be registered under the <i>Trade Marks Act 1955</i>
15.	Preservation of certain existing rights
16.	Further amendments

## SCHEDULE

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
THE SENATE

Presented and read a first time

**A BILL**

FOR

**An Act to amend the *Olympic Insignia Protection Act 1987***

The Parliament of Australia enacts:

**Short title etc**

1.(1) This Act may be cited as the *Olympic Insignia Protection Amendment Act 1993*.

5 (2) In this Act, "Principal Act" means the *Olympic Insignia Protection Act 1987*.

**Commencement**

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

**Interpretation**

10 3. Section 2 of the Principal Act is amended:

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Olympic Insignia Protection Amendment No. , 1993

- (a) by omitting from subsection (1) the definitions of "olympic motto", "protected design", "protection period" and "registered olympic design", and substituting the following definitions:

" 'olympic motto' means:

- (a) the motto expressed in Latin as 'citius, altius, fortius'; and 5
- (b) the motto expressed in English as 'faster, higher, stronger';

'protected design' means each of the following:

- (a) the design of the olympic symbol;
- (b) a registered olympic design;
- (c) a registered torch and flame design; 10

'protection period' means:

- (a) in relation to a registered olympic design—the period of 12 years starting 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: 15
  - (i) on the 1 January that is at least 3 years but less than 4 years before the opening of those Olympic Games; 20
  - or
  - (ii) when the design is registered; 20
 whichever is later, and ending on 31 December next after the closing of those Olympic Games, as reduced under section 11A;

'registered olympic design' means a design registered under this Act in relation to an artistic work that incorporates the olympic symbol;"; 25

- (b) by omitting the definition of "Federation" in subsection (1);
- (c) by inserting in subsection (1) the following definitions:

" 'Committee' means the Australian Olympic Committee 30 Incorporated, being an association incorporated on 24 April 1985 under the Associations Incorporation Act 1981 of Victoria;

'olympic artistic work' means:

- (a) a prescribed olympic torch and flame; or
- (b) an artistic work that incorporates either but not both of the following: 35
  - (i) the olympic symbol;
  - (ii) a prescribed olympic torch and flame;

'prescribed olympic torch and flame' means an artistic work prescribed under section 2A; 40

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*Olympic Insignia Protection Amendment No. , 1993*

3

'registered design' means a design registered under section 10;

'registered torch and flame design' means a design registered under this Act in relation to an artistic work that is or incorporates a prescribed olympic torch and flame;".

5 **Insertion of new section**

4. After section 2 of the Principal Act the following section is inserted:

**Artistic work of olympic torch and flame may be prescribed**

10 "2A.(1) The regulations may prescribe a single artistic work of an olympic torch and flame for a particular Summer Olympic Games or for a particular Winter Olympic Games. The artistic work must not incorporate the olympic symbol.

"(2) The regulations must not prescribe an artistic work unless:

(a) copyright under the *Copyright Act 1968* subsists in the artistic work; and

15 (b) the Committee is the owner of the copyright in the artistic work.

20 "(3) The Governor-General may not make a regulation prescribing an artistic work for a particular Olympic Games before the 1 July that is at least 3<sup>1</sup>/<sub>2</sub> years but less than 4<sup>1</sup>/<sub>2</sub> years before the opening of those Olympic Games (that is, 6 months before the earliest date on which the protection period for a registered torch and flame design for those Olympic Games could start)."

**Repeal of section 6 and substitution of new section**

5. Section 6 of the Principal Act is repealed and the following section is substituted:

25 **Ownership of design of olympic symbol**

"6. The Committee is taken to be the owner of:

(a) the design of the olympic symbol; and

(b) any registered olympic design that was registered under this Act immediately before the commencement of the *Olympic Insignia Protection Amendment Act 1993*."

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**Infringement of monopoly in protected design**

6. Section 8 of the Principal Act is amended:

(a) by inserting in paragraph (1)(b) "or registered torch and flame design" after "registered olympic design";

35 (b) by adding at the end the following subsection:

4 *Olympic Insignia Protection Amendment No. 1993*

"(9) For the purposes of this section, a design may be a fraudulent or obvious imitation of a registered torch and flame design in relation to an artistic work that incorporates a prescribed torch and flame even though the first-mentioned design relates to an artistic work that does not include the prescribed olympic torch and flame."

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**Insertion of new section**

7. After section 9 the following section is inserted:

***Trade Practices Act 1974 provides further remedies***

"9A.(1) The remedies provided under this Act in relation to protected designs are in addition to the remedies provided by the *Trade Practices Act 1974* in relation to engaging in conduct that is misleading or deceptive (see section 52 of that Act) and, in particular, in relation to representations: 10

- (a) that goods or services have sponsorship or approval that they do not have (see paragraph 53(c) of that Act); or
- (b) that a corporation as defined in that Act has a sponsorship, approval or affiliation that it does not have (see paragraph 53(d) of that Act). 15

"(2) The references in subsection (1) to particular provisions of the *Trade Practices Act 1974* do not imply that other provisions of that Act do not apply in relation to conduct that is also covered by this Act."

**Repeal of section 10 and substitution of new section**

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8. Section 10 of the Principal Act is repealed and the following section is substituted:

**Registration of designs**

"10.(1) The Committee may apply to the Registrar to register under this Act the design that, when applied to any article, results in a reproduction of an olympic artistic work. 25

"(2) An application:

- (a) must be in accordance with an approved form; and
- (b) must be accompanied by the prescribed fee; and
- (c) must be lodged by being left at, or delivered by post to, the Designs Office. 30

"(3) The Registrar must cause notice of an application to be published in the *Gazette* and in the *Official Journal*.

"(4) A notice of an application must 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 a day specified in the notice. 35

*Olympic Insignia Protection Amendment No. , 1993*

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"(5) The day specified in the notice must be at least 60 days after the date of the notice.

"(6) A person may, not later than the day specified in the notice, make representations to the Registrar about the application in accordance with an approved form.

"(7) Subject to subsection (8), after the Registrar has considered any representations made about the application, the Registrar must register the design if, and only if:

(a) copyright under the *Copyright Act 1968* subsists in the olympic artistic work; and

(b) the Committee is the owner of the copyright in the olympic artistic work; and

(c) the Committee is the owner of the design; and

(d) no other person has an interest in the design; and

(e) no corresponding design in relation to the olympic artistic work is registered under the *Designs Act 1906*; and

(f) upon registration of the design, there would be no more than 10 registered designs with unexpired protection periods (including registered designs whose protection periods have not yet started).

"(8) A design must not be registered under this section unless it is a new or original design and in particular, must not be registered if the design:

(a) differs from a published design only in immaterial details or in features commonly used in a relevant trade; or

(b) is an obvious adaptation of a published design.

"(9) For the purposes of subsection (8), a design in relation to an artistic work is not to be treated:

(a) as other than new or original; or

(b) as having been published or used:

merely because of any use made of the artistic work by the Committee before the day on which the application for registration of the design was lodged.

"(10) Where the Registrar decides under subsection (7) to register, or to refuse to register, a design, the Registrar must cause notice of that decision to be published in the *Gazette* and in the *Official Journal*.

"(11) An appeal lies to the Federal Court from the decision of the Registrar to register, or to refuse to register, a design.

"(12) In this section:

'published design', in relation to an application under this section, means a design that:

(a) was registered under the *Designs Act 1906*; or

6 *Olympic Insignia Protection Amendment No. , 1993*

(b) was published or used in Australia in respect of any article; before the day on which the application was lodged.

"(13) For the purposes of the definition of 'published design' in subsection (12), any secret use of the design is to be disregarded."

**Extension or reduction of protection periods in relation to registered olympic designs** 5

9. Section 11 of the Principal Act is amended:

(a) by omitting paragraphs (2)(a) and (b) and substituting the following paragraphs:

"(a) must be in accordance with an approved form; and 10

(b) must be accompanied by the prescribed fee; and";

(h) by omitting from paragraph (2)(c) "shall" and substituting "must".

**Insertion of new section**

10. After section 11 of the Principal Act the following section is inserted:

**Reduction of protection periods for registered torch and flame designs** 15

"11A.(1) The Registrar must, on the application of the Committee made in accordance with an approved form, reduce the duration of the protection period in relation to a registered torch and flame design.

"(2) Where the protection period in relation to a registered torch and flame design ends, the Registrar must cause notice of the end of that period to be published in the *Gazette* and in the *Official Journal*." 20

**Register of Olympic Designs**

11. Section 12 of the Principal Act is amended by omitting paragraph (2)(b) and substituting the following word and paragraphs: 25

"and (b) the end and extension of protection periods in relation to registered olympic designs; and

(ba) registered torch and flame designs; and

(bb) the end of protection periods in relation to registered torch and flame designs; and". 30

**Certain purported dispositions or charges to be void**

12. Section 15 of the Principal Act is amended:

(a) by omitting from paragraphs (1)(b) and (2)(b) "protected design" and substituting "registered olympic design";

(b) by adding at the end the following subsections: 35

"(3) A disposition, by assignment, declaration of trust or by any other means, purporting to be made by the Committee of the whole or any part of its interest in a registered torch and flame design is void.



*Olympic Insignia Protection Amendment No. , 1993*

7

"(4) A charge purporting to be given by the Committee with respect to an asset of the Committee that consists of, or includes, the whole or any part of its interest in a registered torch and flame design is void."

5 **Application of the *Copyright Act 1968***

13. Section 17 of the Principal Act is amended:

- (a) by inserting after paragraph (1)(a) the following paragraph  
"aa) the copyright in a prescribed olympic torch and flame; and";  
(b) by omitting from subsection (3) "olympic";  
10 (c) by inserting after subsection (5) the following subsection:

"(5A) Where the protection period in relation to a registered torch and flame design has ended, it is not an infringement of the copyright in the artistic work concerned to apply the design to an article."

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

15 14. Section 19 of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

"(ba) where an artistic work of an olympic torch and flame is prescribed under this Act—the artistic work;"

**Preservation of certain existing rights**

20 15. Section 20 of the Principal Act is amended:

- (a) by omitting from paragraph (1)(a) "before the date of commencement of this Act";  
(b) by omitting from paragraph (1)(b) "before that date";  
(c) by omitting from subsection (2) "the date of commencement of this Act" and substituting "a relevant date";  
25 (d) by inserting after subsection (2) the following subsection:

"(2A) In subsection (2):

'relevant date' means each of the following:

- (a) the date of commencement of this Act (23 June 1987);  
30 (b) the date of commencement of the *Olympic Insignia Protection Amendment Act 1993*;  
(c) the date of registration of a registered torch and flame design.";

(e) by inserting after subparagraph (3)(b)(i) the following subparagraph:

- 35 "ia) the copyright in a prescribed olympic torch and flame; or";  
(f) by omitting from paragraph (3)(c) "before the date of commencement of this Act";

8 *Olympic Insignia Protection Amendment No. , 1993*

- (g) by omitting from paragraph (3)(d) "before that date";
- (h) by omitting from paragraph (3)(e) "of the kind referred to" and substituting "as mentioned".

**Further amendments**

16. The Principal Act is further amended as set out in the Schedule.
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*Olympic Insignia Protection Amendment No. , 1993*

**SCHEDULE**

Section 16

The following provisions are amended by omitting "Federation" (wherever occurring) and substituting "Committee":

Subsections 5(1) and (4)

Section 7

Subsections 8(1), (3), (4) and (5)

Subsections 11(1) and (7)

Section 15

Section 16

Subsection 20(3).

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**NOTE**

L. No. 27, 1987.