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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

OLYMPIC INSIGNIA PROTECTION BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Sport, Recreation and Tourism,
the Hon John Brown MP)

OUTLINE

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OLYMPIC INSIGNIA PROTECTION BILL

The purpose of this Bill is to enable the Australian Olympic Federation to regulate the use of the Olympic symbol (the five interlocking rings) and other nominated (Olympic) designs within Australia.

The commercial application of these designs realises a substantial proportion of the funds needed to ensure that Australia is represented at the Olympic Games by the best possible team.

The unauthorized use of the designs and look-alike logos directly threatens the funding program of the Australian Olympic Federation (the Federation) and makes more difficult the licensing by the Federation of the designs.

Since its inception in 1895, the Federation has been responsible for raising sufficient funds to finance Australian participation at Olympic Games. Given the ever increasing cost of doing this the Federation licenses the use of certain designs including the Olympic symbol to raise funds. Because the Australian Olympic Federation's title to

the copyright of the Olympic symbol is uncertain the Bill proposes to clarify this matter by vesting ownership of the copyright of the symbol in the Australian Olympic Federation.

Moreover to ensure that the Federation has commercial protection for the design of the Olympic symbol and certain other logos (which may be registered for a period of 12 years under the Bill as registered Olympic designs) the Bill proposes that the Federation shall be taken to be the owner of the protected designs. The design protection provided by the Bill is similar to that provided by the Designs Act (1906) and enables the Federation (or its licencees) to take legal action to prevent the unlicensed use of the designs or to prohibit the importation of articles bearing the designs.

The Bill limits the number of designs that may be registered to 10 and provides that if the Federation does not re-register the designs at the expiration of the 12 year protection period, or if the Federation wishes to abandon a registered design, that design passes into the public domain, provided it is not used with the Olympic symbol.

Financial Impact

The on-going cost to the Government of administering this legislation will be minimal. The Department of Sport, Recreation and Tourism has no on-going administrative costs. The Office of Patents, Trade Marks and Designs will incur costs associated with the registration of Olympic designs. However, given that the Australian Olympic Federation is the only eligible applicant, and that a maximum of 10 designs only will be registered at any one time, the administrative costs will be minimal and, in any case, will be offset by the payment of an appropriate fee, for each registration. This fee is currently set at \$65. This is the same as the amount charged for design registrations under the Designs Act (1906). It is likely that the increased security of the Olympic designs will improve the Federation's capacity to raise funds from its marketing program and consequently reduce its call on Commonwealth financial assistance.

NOTES ON CLAUSES

Clause 1 Short Title

Clause 2 Defines a number of words and expressions for
the purposes of the legislation and in
particular defines:

- "Federation" to mean the Australian
Olympic Federation Incorporated being an
association incorporated on 24 April 1985
under the Associations Incorporation Act
1981 of Victoria
- "protected design" to mean a design of
the Olympic symbol and an Olympic design
registered under the Bill
- "protection period" in relation to a
registered Olympic design to mean
12 years commencing on the day the design
was registered.

Sub-clause(2) clarifies that where certain
literary or artistic work may have copyright or
designs protection, it shall have copyright
protection.

- Clause 3 Subject to Part VII of the Copyright Act (1968), provides for this Bill to bind the Crown.
- Clause 4 Provides for the operation of the legislation to extend to external Territories.
- Clause 5 Provides that for the purposes of the Copyright Act (1968), ownership of the copyright in the Olympic symbol is to vest in the Federation but that the copyright in the symbol is not infringed if it is used for the purpose of giving of information in the media. The Federation's rights are specifically not extended to bringing an action or proceeding under the law of a foreign country for an infringement of this copyright.
- Clause 6 Vests ownership of a protected design in the Federation.

Clause 7 Provides for the owner of the protected design to have a monopoly in that design. Sub-clause 2 provides for the owner to have rights of ownership as if the protected design is personal property.

Clause 8 Sets out the circumstances in which a person is deemed to infringe the monopoly in a protected design (in the case of the Olympic symbol - at any time and in the case of a registered Olympic design - during the protection period relating to that design). These circumstances include:

- . without licence applying the design, or an imitation, to an article
- . without licence, importing an article to which the design, or an imitation has been applied outside Australia
- . without licence, selling or hiring an article to which the design, or an imitation has been applied in infringement of the monopoly of the design

without licence, selling or hiring an article to which the design, or imitation has been applied and that has been imported into Australia in infringement of the monopoly in design.

By virtue of sub-clause (2) a person does not infringe the monopoly of design where it is not intended that the article concerned will be used in Australia.

Sub-Clause (3) gives the owner of the design or a licence holder the right to bring an action in the Federal Court for infringement of the monopoly in design.

Sub-Clause (4) requires licence holders to obtain consent of the owner of the design before commencing an action for infringement of the monopoly in the design. Sub-clause (5) deems that consent is given in certain circumstances and sub-clause (6) ensures that consent will not be unreasonably refused.

Sub-clause (8) provides that a design may be considered to be fraudulent or an obvious imitation even if it does not incorporate a design of the Olympic symbol.

Clause 9 Provides examples of the relief that a court may grant in an action or proceeding for the infringement of the monopoly in the protected design.

Clause 10 Sets out the circumstances in which the Federation may apply to have a design registered. The process for registration is set out, as is the criteria on which the Registrar shall register a design or on which persons shall object to such a registration. An appeal to the Federal Court may lie against a decision of the Registrar to register or to refuse to register a design.

Clause 11 Provides that on application by the Federation, and on being satisfied of the criteria specified in clause 10 for registration, the Registrar shall extend for a period of 12 years the protection period in relation to a registered design.

The Federation is able, by virtue of sub-clause 11(1), to apply not later than 6 months before the end of the protection period, and irrespective of whether that protection period has or has not been previously extended, for an extension of the protection period.

Clause 12 Provides for a Register of Designs in which particulars are kept of registered Olympic designs and the protection periods in relation to them.

Sub-clause (6) allows the Federal Court to order a rectification of the Register and sub-clause (8) provides for the Registrar to give effect to that order.

Clause 13 Provides that the Registrar may delegate his powers, other than the power of delegation, under this Bill, to an Assistant Registrar of Olympic Designs.

Clause 14 Provides that references to an approved form in Part III of the Bill is a reference to a form approved by the Registrar in writing. Specific provision is made in sub-clause (2) for statutory declarations to be required to accompany any statement in a form.

Clause 15 Ensures that the Federation 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 protected design.

Sub-clause (2) ensures that the Federation cannot give a charge on any assets that includes the whole or any part of its interest in the copyright or design of the Olympic symbol or a protected design.

Clause 16 Validates licences granted by the Federation before the commencement of this legislation.

Clause 17 Ensures that the Bill is the sole source of protection for protected designs and consequently eliminates coverage under the Copyright Act (1968).

Sub-clause (4) provides that it is not an infringement in the copyright in the artistic work to apply a public domain version (which is defined in sub-clause (5)) of an artistic work corresponding to that which is registered under this legislation and the protection period in relation to which has ended.

Clause 18 Instructs the Registrar of Designs to not register under the Designs Act (1906) a protected design or a design incorporating a protected design or similar designs.

Clause 19 Instructs the Registrar of Trade Marks to not register under the Trade Marks Act (1955) a trademark which consists of:

- . the Olympic motto
- . the Olympic symbol
- . an artistic work of which a corresponding design is registered under this legislation.

Clause 20 Provides that existing rights conferred by the Trade Marks Act (1955), the Designs Act (1906) or existing passing off rights are preserved.

- Sub-clause (3) provides that it is a defence in an action against the Federation or its licensee, for infringement of existing rights, that the Federation 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 21 Provides for compensation for a person from whom property is acquired as a result of the operation of this legislation.

Clause 22 Regulation making power.

Schedule Outlines the Olympic Symbol for the purposes of sub-clause 2(1).

