



# **Olympic Insignia Protection Act 1987**

## **Act No. 27 of 1987 as amended**

This compilation was prepared on 16 August 2010  
taking into account amendments up to Act No. 103 of 2010

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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**An Act to make provision for the protection of the  
olympic insignia, for the regulation of the  
commercial use of certain olympic expressions, and  
for related purposes**

**Chapter 1—Introduction**

**Part 1.1—Introduction**

**1 Short title** [see Note 1]

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

**1A Simplified outline**

The following is a simplified outline of this Act:

- Chapter 2 of this Act protects the olympic insignia by:
  - (a) making the AOC the owner of copyright in the olympic symbol; and
  - (b) making the AOC the owner of certain olympic designs; and
  - (c) providing that the olympic motto, the olympic symbol and certain other olympic images must not be registered as trade marks.
- Chapter 3 of this Act prohibits the commercial use of certain olympic expressions unless the user holds a licence granted by the AOC.

## Chapter 2—Copyright and design protection

### Part 2.1—Introduction

#### 2 Interpretation

- (1) In this Chapter, unless the contrary intention appears:

*AOC* or *Australian Olympic Committee* means the Australian Olympic Committee Incorporated, being an association incorporated on 24 April 1985 under the *Associations Incorporation Act 1981* of Victoria.

*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.

*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.

*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 artistic work* means:

- (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.

**olympic motto** means:

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

**olympic symbol** means the symbol an outline of which is set out in the Schedule.

**prescribed olympic torch and flame** means an artistic work prescribed under section 2A.

**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.

**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:
  - (i) on the 1 January that is at 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.

**registered design** means a design registered under section 10.

**registered olympic design** means a design registered under this Act in relation to an artistic work that incorporates the olympic symbol.

**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.

**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*.

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- (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 Chapter to an article does not include a reference to an article so specified.
- (3) Unless the contrary intention appears, an expression used in this Chapter and the *Designs Act 1906* has the same meaning in this Chapter as in the *Designs Act 1906*.

**2A Artistic work of olympic torch and flame may be prescribed**

- (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
  - (b) the AOC is the owner of the copyright in the artistic work.
- (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).

**3 Act to bind Crown**

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

**4 Extension of Act to external Territories**

This Chapter extends to the external Territories.

## **Part 2.2—Copyright protection**

### **5 Ownership etc. of copyright in the olympic symbol**

- (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 AOC 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 AOC 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 2.3—Design protection

### 6 Ownership of design of olympic symbol

The AOC 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 1994*.

### 7 Monopoly of design

- (1) The AOC has a monopoly in a protected design.
- (2) The rights of the AOC with respect to a protected design are personal property and, subject to this Chapter, 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.

### 8 Infringement of monopoly in protected design

- (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 or registered torch and flame design—during the protection period in relation to that design;the person, without the licence of the AOC:
  - (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 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 subparagraph (1)(e)(i) in relation to an article if, at the time when the person did the act that, but for this subsection, 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 subsection (4), if a person infringes the monopoly in a protected design:
  - (a) the AOC; 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 AOC.
- (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 AOC, for the consent of the AOC under subsection (4) to the institution by the person of an action or proceeding for infringement of the monopoly in the design; and
  - (b) the AOC 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 AOC shall, at the end of that period, be deemed to have granted that consent under subsection (4).
- (6) Consent under subsection (4) to the institution of an action or proceeding shall not be unreasonably refused.

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- (7) Subsection (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.
- (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.

**9 Remedies for infringement of monopoly in protected design**

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.

**9A *Trade Practices Act 1974* provides further remedies**

- (1) The remedies provided under this Chapter 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:
  - (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).
- (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 Chapter.

## 10 Registration of designs

- (1) The AOC 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.
- (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.
- (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.
- (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 AOC is the owner of the copyright in the olympic artistic work; and
  - (c) the AOC 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).

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- (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 AOC 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
  - (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.

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

- (1) The AOC 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 subsection (1):
  - (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.
- (3) Where an application is made under subsection (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 AOC 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 subsection (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*.

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

**11A Reduction of protection periods for registered torch and flame designs**

- (1) The Registrar must, on the application of the AOC 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*.

**12 Register of Olympic Designs**

- (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; 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
  - (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.
- (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 subsection (6) shall be given to the Registrar, who may be heard on the application.
- (8) A copy of an order under subsection (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.

### **13 Delegation**

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.

### **14 Approved forms**

- (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.

### **14A Doing act when Designs Office reopens after end of period otherwise provided for doing act**

- (1) If the last day of a period provided by this Chapter (except this section), or regulations made for the purposes of this Chapter, for doing an act is a day when the Designs Office is not open for

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business, the act may be done in prescribed circumstances on the next day when the office is open for business.

- (2) For the purposes of this section, the Designs Office is taken not to be open for business on a day:
- (a) declared by regulations to be a day on which the office is not open for business; or
  - (b) declared, by a prescribed person in writing published in the prescribed way, to be a day on which the office is not open for business.

*Declarations*

- (3) A declaration mentioned in paragraph (2)(a) or (b) may identify the day by reference to its being declared a public holiday by or under a law of a State or Territory. This does not limit the way the declaration may identify the day.
- (4) A declaration mentioned in paragraph (2)(b):
- (a) may be made before, on or after the day; and
  - (b) is not a legislative instrument.

*Relationship with other law*

- (5) This section has effect despite the rest of this Chapter.
- (6) Subsection 36(2) of the *Acts Interpretation Act 1901* does not apply in relation to the act mentioned in subsection (1) of this section.

*Exception for prescribed act*

- (7) This section does not apply to a prescribed act.

Note: Subsection 36(2) of the *Acts Interpretation Act 1901* is relevant to a prescribed act.

## **Part 2.4—Miscellaneous**

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

- (1) A disposition, by assignment, declaration of trust or by any other means, purporting to be made by the AOC of the whole or any part of:
  - (a) its interest in the copyright in the olympic symbol; or
  - (b) its interest in a registered olympic design;is void.
- (2) A charge purporting to be given by the AOC with respect to an asset of the AOC 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 registered olympic design;is void.
- (3) A disposition, by assignment, declaration of trust or by any other means, purporting to be made by the AOC of the whole or any part of its interest in a registered torch and flame design is void.
- (4) A charge purporting to be given by the AOC with respect to an asset of the AOC that consists of, or includes, the whole or any part of its interest in a registered torch and flame design is void.

### **16 Validation of certain licences**

Where, before the date of commencement of this Act, the AOC 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.

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**17 Application of the *Copyright Act 1968***

- (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
  - (aa) the copyright in a prescribed olympic torch and flame; 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 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 subsection (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.
- (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.

- (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.

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

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.

### **18A AOC to maintain Register of licences**

- (1) The AOC is to maintain a Register in which the AOC includes prescribed particulars of:
  - (a) licences granted by the AOC in relation to copyright in the olympic symbol; and
  - (b) licences granted by the AOC in relation to the protected designs.
- (2) The Register may be maintained by electronic means.
- (3) The Register is to be made available for inspection on the internet.

### **19 Certain marks not to be registered under the *Trade Marks Act 1995***

The Registrar of Trade Marks shall not register under the *Trade Marks Act 1995* 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;

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- (b) the olympic symbol;
- (ba) where an artistic work of an olympic torch and flame is prescribed for the purposes of section 2A—the artistic work;
- (c) where the design in relation to an artistic work is registered under this Act—the artistic work.

**20 Preservation of certain existing rights**

- (1) Subject to subsection (3), nothing in this Chapter affects any rights conferred by law on a person in respect of:
  - (a) a trade mark registered under the *Trade Marks Act 1995*; or
  - (b) a design registered under the *Designs Act 1906*.
- (2) Subject to subsection (3), nothing in this Chapter affects the use of a symbol by a person on or after a relevant date 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.
- (2A) In subsection (2):

*relevant date* means each of the following:

  - (a) the date of commencement of this Act (23 June 1987);
  - (b) the date of commencement of the *Olympic Insignia Protection Amendment Act 1994*;
  - (c) the date of registration of a registered torch and flame design.
- (3) In an action or proceeding against:
  - (a) the AOC; or
  - (b) the holder of a licence granted by the AOC in respect of:
    - (i) the copyright in, or the design of, the olympic symbol;  
or
    - (ia) the copyright in a prescribed olympic torch and flame;  
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 1995*;

- (d) the infringement of the monopoly of a design registered under the *Designs Act 1906*; or
- (e) passing off arising out of the use of a symbol as mentioned in subsection (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.

## **21 Compensation for acquisition of property**

- (1) Where, but for this subsection, the operation of a provision of this Chapter 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 Chapter 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 Chapter 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.

## Chapter 3—Protected olympic expressions

### Part 3.1—Introduction

#### Division 1—General provisions

##### 22 Object of Chapter

- (1) The object of this Chapter is to protect, and to further, the position of Australia as a participant in, and a supporter of, the world Olympic movement.
- (2) This object is to be achieved by facilitating the raising of licensing revenue through the regulation of the use for commercial purposes of certain expressions associated with the world Olympic movement.

##### 23 Definitions

In this Chapter, unless the contrary intention appears:

**advertisement** means any writing, still or moving picture, sign, symbol or other visual image, or any audible message, or any combination of 2 or more of those things, that promotes:

- (a) goods or services; or
- (b) a person.

An advertisement may:

- (c) be in the form of a signboard; or
- (d) be in a newspaper or periodical; or
- (e) be broadcast on radio or television; or
- (f) be placed on a website; or
- (g) be in any other form.

**AOC** or **Australian Olympic Committee** means the Australian Olympic Committee Incorporated, being an association incorporated on 24 April 1985 under the *Associations Incorporation Act 1981* of Victoria.

**Australia**, when used in a geographical sense, includes the following external Territories:

- (a) Christmas Island;
- (b) Cocos (Keeling) Islands;
- (c) Norfolk Island.

**broadcast** means a transmission by means of:

- (a) a broadcasting service within the meaning of the *Broadcasting Services Act 1992*; or
- (b) something that would be such a broadcasting service if the definition of **broadcasting service** in subsection 6(1) of that Act were amended by omitting all the words from and including “but does not include” to the end of the definition.

**continental shelf** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

**designated owner**, in relation to goods imported into Australia, means:

- (a) the person identified as the owner of the goods on the entry made in relation to the goods under section 68 of the *Customs Act 1901*; or
- (b) if no such entry exists—the person determined to be the owner of the goods under section 50 of this Act.

**expression** includes a single word.

**Federal Court** means the Federal Court of Australia.

**IOC** or **International Olympic Committee** means the organisation created by the Congress of Paris on 23 June 1894, being the organisation entrusted with the control and development of the modern Olympic Games.

**licence** means a licence in force under section 38.

**licensed user** means a person in relation to whom a licence is in force.

**national sporting organisation** has the same meaning as in the *Australian Sports Anti-Doping Authority Act 2006*.

**Olympian** means a person who:

- (a) was accredited by the IOC as a competitor in a sports competition in a Summer or Winter Olympic Games; and
- (b) has competed in that sports competition.

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*prescribed court* means a court that is a prescribed court under section 66.

*promote* includes give publicity to.

*protected olympic expression* has the meaning given by section 24.

*sponsorship-like support* has the meaning given by section 29.

*statement* includes a statement made orally, in writing or in any other way.

*use for commercial purposes*, in relation to a protected olympic expression, has the meaning given by section 30.

## **24 Protected olympic expressions**

- (1) For the purposes of this Chapter, each of the following expressions is a *protected olympic expression*:
  - (a) Olympic;
  - (b) Olympics;
  - (c) Olympic Games;
  - (d) Olympiad;
  - (e) Olympiads.
- (2) For the purposes of this Chapter, an expression so closely resembling a protected olympic expression mentioned in subsection (1) as to be likely to be mistaken, by a reasonable person, for such a protected olympic expression is taken to be a protected olympic expression.
- (3) To avoid doubt, for the purposes of this Chapter, the expressions “Olympian” and “Olympians” are taken not to resemble a protected olympic expression mentioned in subsection (1).

## **25 Chapter binds the Crown**

This Chapter binds the Crown in all its capacities.

## **26 Application of Chapter**

This Chapter extends to:

- (a) Christmas Island; and

- (b) Cocos (Keeling) Island; and
- (c) Norfolk Island; and
- (d) the waters above the continental shelf of Australia; and
- (e) the airspace above Australia and the continental shelf of Australia.

## **27 Additional operation of Chapter**

- (1) Without prejudice to its effect apart from this section, this Chapter also has effect as provided by this section.
- (2) This Chapter has, by force of this subsection, the effect it would have if each reference to use for commercial purposes were a reference to:
  - (a) use for commercial purposes by a corporation to which paragraph 51(xx) of the Constitution applies; 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, telephonic or other like 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 Chapter on a licensed user that is a corporation to which paragraph 51(xx) of the Constitution applies.

## Division 2—Use for commercial purposes etc.

### 28 Application of expressions or statements

- (1) For the purposes of this Chapter, an expression or a statement is taken to be *applied* to goods or services if:
  - (a) in the case of goods, the expression or statement:
    - (i) is woven in, impressed on, worked into, or affixed or annexed to, the goods; or
    - (ii) is applied to any covering, document, label, reel or thing in or with which the goods are, or are intended to be, dealt with or provided; or
  - (b) in the case of goods or services, the expression or statement:
    - (i) is used in an advertisement that promotes the goods or services; or
    - (ii) is used in an invoice, price list, catalogue, brochure, business letter, business paper or other commercial document that relates to the goods or services.
- (2) For the purposes of this Chapter, if:
  - (a) an advertisement promotes a particular person; and
  - (b) the person provides goods or services; and
  - (c) it would be concluded, by a reasonable person, that the advertisement was designed to enhance the commercial image of the person mentioned in paragraph (a);the advertisement is taken to promote those goods or services.
- (3) In this section:

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

*label* includes a band or ticket.

### 29 Sponsorship-like support

- (1) For the purposes of this Chapter, a person provides *sponsorship-like support* for:
    - (a) the AOC; or
    - (b) the IOC; or
-

- (c) a Summer or Winter Olympic Games; or
  - (d) the organising committee for a Summer or Winter Olympic Games; or
  - (e) an Australian Olympic team; or
  - (f) a section of an Australian Olympic team; or
  - (g) an individual member of an Australian Olympic team;
- if, and only if, the person provides support on the understanding (whether express or implied) that the support is provided in exchange for a right to associate:
- (h) the person; or
  - (i) goods or services of the person;
- with the committee, games, team, section or individual concerned.
- (2) A right mentioned in subsection (1) need not be legally enforceable.
  - (3) An exchange mentioned in subsection (1) may be wholly or partly for the right mentioned in that subsection.

### **30 Use for commercial purposes**

- (1) This section sets out the 2 situations in which a person is said to use a protected olympic expression for commercial purposes.

#### *Use for commercial purposes—situation (1)*

- (2) For the purposes of this Chapter, if:
  - (a) a person (the **first person**) causes a protected olympic expression to be applied to goods or services of the first person; and
  - (b) the application is for advertising or promotional purposes, or is likely to enhance the demand for the goods or services; and
  - (c) the application, to a reasonable person, would suggest that the first person is or was a sponsor of, or is or was the provider of sponsorship-like support for:
    - (i) the AOC; or
    - (ii) the IOC; or
    - (iii) a Summer or Winter Olympic Games; or
    - (iv) the organising committee for a Summer or Winter Olympic Games; or

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- (v) an Australian Olympic team; or
- (vi) a section of an Australian Olympic team; or
- (vii) an individual member of an Australian Olympic team;

then:

- (d) if the expression is applied in Australia—the application is use by the first person of the expression for commercial purposes; or
- (e) if:
  - (i) the expression is applied to goods outside Australia; and
  - (ii) the goods are imported into Australia for the purpose of sale or distribution; and
  - (iii) there is a designated owner of the goods; the importation is use by the designated owner of the expression for commercial purposes.

*Use for commercial purposes—situation (2)*

- (3) For the purposes of this Chapter, if:
  - (a) a person (the **first person**), other than the AOC or a licensed user, causes a protected olympic expression to be applied to goods or services of the first person; and
  - (b) the application is for advertising or promotional purposes, or is likely to enhance the demand for the goods or services; and
  - (c) the application, to a reasonable person, would suggest that the first person is or was a sponsor of, or is or was the provider of sponsorship-like support for:
    - (i) the AOC; or
    - (ii) the IOC; or
    - (iii) a Summer or Winter Olympic Games; or
    - (iv) the organising committee for a Summer or Winter Olympic Games; or
    - (v) an Australian Olympic team; or
    - (vi) a section of an Australian Olympic team; or
    - (vii) an individual member of an Australian Olympic team; and
  - (d) any of the following conditions are satisfied in relation to a person (the **second person**) other than the first person:
    - (i) in the case of goods or services—the second person supplies, or offers to supply, the goods or services;

- (ii) in the case of goods—the second person exposes the goods for supply by the second person;
- (iii) in the case of goods—the second person keeps the goods for supply by the second person or by another person;

the supply, offer, exposure or keeping, as the case may be, by the second person is use by the second person of the expression for commercial purposes.

*Definition*

- (4) In this section:

*supply* includes:

- (a) in the case of goods—supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and
- (b) in the case of services—provide, grant or confer.

**31 Exemption—statements about past participation of Olympians**

For the purposes of this Chapter, if:

- (a) a person has been involved in a Summer or Winter Olympic Games as an Olympian; and
- (b) the Games have ended; and
- (c) the person makes, or authorises another person to make, a statement that consists of, or includes, a factual reference to that involvement; and
- (d) the statement includes a protected olympic expression; and
- (e) the statement is applied to goods or services; and
- (f) the application of the statement is for advertising or promotional purposes, or is likely to enhance the demand for the goods or services; and
- (g) the application of the statement would not suggest, to a reasonable person, that any person is or was a sponsor of, or is or was the provider of sponsorship-like support for:
  - (i) the AOC; or
  - (ii) the IOC; or
  - (iii) a Summer or Winter Olympic Games that has not ended; or

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- (iv) the organising committee for a Summer or Winter Olympic Games that has not ended; or
- (v) an Australian Olympic team in relation to a Summer or Winter Olympic Games that has not ended; or
- (vi) a section of an Australian Olympic team in relation to a Summer or Winter Olympic Games that has not ended; or
- (vii) an individual member of an Australian Olympic team in relation to a Summer or Winter Olympic Games that has not ended;

the application of the statement is to be disregarded for the purposes of this Chapter.

**32 Exemption—statements about preparation or training of Olympians by sporting organisations and institutes**

- (1) For the purposes of this Chapter, if:
  - (a) a body that is:
    - (i) a national sporting organisation in relation to a sport; or
    - (ii) the Australian Sports Commission; or
    - (iii) a State/Territory institute or academy of sport; has been involved in preparing or training Olympians in relation to a Summer or Winter Olympic Games; and
  - (b) the Games have ended; and
  - (c) the body makes, or authorises another person to make, a statement that consists of, or includes, a factual reference to that involvement; and
  - (d) the statement includes a protected olympic expression; and
  - (e) the statement is applied to goods or services; and
  - (f) the application of the statement is for advertising or promotional purposes, or is likely to enhance the demand for the goods or services; and
  - (g) the application of the statement would not suggest, to a reasonable person, that any person is or was a sponsor of, or is or was the provider of sponsorship-like support for:
    - (i) the AOC; or
    - (ii) the IOC; or
    - (iii) a Summer or Winter Olympic Games that has not ended; or

- (iv) the organising committee for a Summer or Winter Olympic Games that has not ended; or
- (v) an Australian Olympic team in relation to a Summer or Winter Olympic Games that has not ended; or
- (vi) a section of an Australian Olympic team in relation to a Summer or Winter Olympic Games that has not ended; or
- (vii) an individual member of an Australian Olympic team in relation to a Summer or Winter Olympic Games that has not ended;

the application of the statement is to be disregarded for the purposes of this Chapter.

- (2) For the purposes of this section, a State/Territory institute or academy of sport is a body that is recognised by the Government of a State or Territory as the principal organisation within the State or Territory that has responsibility for preparing elite sportsmen and sportswomen for sporting competition at the elite level.
- (3) For the purposes of this section:
  - (a) an organisation that is a part of another body is taken to be a body in its own right; and
  - (b) anything done on behalf of, or in the name of, the organisation by the other body is taken to have been done by the organisation.

### **33 Exemption—statements about sports-related personal services**

- (1) For the purposes of this Chapter, if:
  - (a) a person has provided sports-related personal services (the *athlete services*) to one or more Olympians in the person's capacity as a member of an Olympic team that participated in a Summer or Winter Olympic Games; and
  - (b) the Games have ended; and
  - (c) the person makes, or authorises another person to make, a factual statement about the provision of the athlete services; and
  - (d) the subject matter of the statement is limited to the provision of the athlete services; and
  - (e) the statement includes a protected olympic expression; and

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- (f) the statement is applied to sports-related personal services of the person (the *ordinary services*) that are the same as, or similar to, the athlete services; and
  - (g) the application of the statement is for advertising or promotional purposes in relation to the ordinary services, or is likely to enhance the demand for the ordinary services;
- the application of the statement is to be disregarded for the purposes of this Chapter.

(2) In this section:

*sports-related personal services* means any of the following:

- (a) coaching services;
- (b) medical or other health services;
- (c) dietary consultative services;
- (d) psychological or other counselling services;
- (e) any similar services designed to maintain or enhance a person's sporting performance.

**34 Exemption—statements about supply of goods or services to past teams or Games**

For the purposes of this Chapter, if:

- (a) a person supplied goods or services (other than services covered by paragraph 33(1)(a)) to:
  - (i) an Olympic team that participated in a Summer or Winter Olympic Games; or
  - (ii) the organising committee for a Summer or Winter Olympic Games; and
- (b) the Games have ended; and
- (c) the person makes, or authorises another person to make, a factual statement about that supply; and
- (d) the subject matter of the statement is limited to that supply; and
- (e) the statement identifies the Games in relation to which the supply was made; and
- (f) the statement includes a protected olympic expression; and

- (g) the statement is applied to goods or services of the person (the *ordinary goods or services*) that are the same as, or similar to, the goods or services mentioned in paragraph (a); and
- (h) the application of the statement is for advertising or promotional purposes in relation to the ordinary goods or services, or is likely to enhance the demand for the ordinary goods or services;

the application of the statement is to be disregarded for the purposes of this Chapter.

### **35 Certain uses not alone sufficient to suggest sponsorship or sponsorship-like support**

- (1) To avoid doubt, for the purposes of this Chapter, the use of a protected olympic expression for the purposes of, or in connection with, the provision of information or for the purposes of criticism or review is not alone sufficient to suggest a sponsorship, or the provision of sponsorship-like support, for the purposes of paragraph 30(2)(c) or (3)(c).
- (2) In subsection (1):
  - (a) a reference to the provision of information includes a reference to the reporting of news and the presentation of current affairs; and
  - (b) a reference to criticism or review includes a reference to criticism or review:
    - (i) in a newspaper, magazine or similar periodical; or
    - (ii) in a broadcast; or
    - (iii) on the internet; or
    - (iv) in a video recording or a film.

## **Part 3.2—Protection of protected olympic expressions**

### **36 Regulation of use of protected olympic expressions**

- (1) A person, other than the AOC, must not use a protected olympic expression for commercial purposes.
- (2) Subsection (1) does not apply to the use by a person of a protected olympic expression if:
  - (a) the person is a licensed user; and
  - (b) the protected olympic expression is an expression that the person is licensed to use; and
  - (c) that use is in accordance with the terms and conditions of the licence.

### **37 Persons involved in contraventions of section 36**

For the purposes of this Chapter, a person is taken to have contravened section 36 if the person:

- (a) has attempted to contravene section 36; or
- (b) has aided, abetted, counselled or procured a person to contravene section 36; or
- (c) has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene section 36; or
- (d) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of section 36; or
- (e) has conspired with others to contravene section 36.

## **Part 3.3—Licensing**

### **38 Licensing by the AOC**

- (1) For the purposes of this Chapter, the AOC may license a person to use all, or any one or more, of the protected olympic expressions mentioned in subsection 24(1) for commercial purposes:
  - (a) in all circumstances or in specified circumstances; or
  - (b) during a specified period or without any limitation as to time.
- (2) This section is not intended to affect the capacity of the AOC to determine the terms and conditions on which a person is licensed, including terms and conditions relating to the payment of money.

### **39 Limitation on licence**

A licence does not authorise the use of a protected olympic expression for commercial purposes if the use is covered by subsection 30(3).

### **40 AOC to maintain Register of licences**

- (1) The AOC is to maintain a Register in which the AOC includes prescribed particulars of licences.
- (2) The Register may be maintained by electronic means.
- (3) The Register is to be made available for inspection on the internet.

## **Part 3.4—Enforcement**

### **Division 1—Remedies**

#### **41 Injunctions**

- (1) If a person has engaged, is engaging, or is proposing to engage, in conduct in contravention of section 36, a prescribed court may grant an injunction:
  - (a) restraining the person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.
- (2) The power of the court to grant an injunction may be exercised:
  - (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind.
- (3) An injunction under this section may only be granted on the application of the AOC or a licensed user.
- (4) An injunction granted under this section on the application of a person who is a licensed user may only relate to:
  - (a) a protected olympic expression to which the person's licence relates; or
  - (b) an expression so closely resembling the protected olympic expression to which the person's licence relates as is likely to be mistaken, by a reasonable person, for that expression.
- (5) The court may discharge or vary an injunction granted under this section.
- (6) The powers conferred on the court by this section are in addition to, and not instead of, any other powers of the court, whether conferred by this Chapter or otherwise.

## **42 Interim injunctions**

- (1) A prescribed court may grant an interim injunction pending the determination of an application under section 41.
- (2) For the purposes of subsection (1) of this section, a contravention of section 36 is taken to have caused immediate and irreparable damage to the applicant.

## **43 Corrective advertisements**

- (1) If, on the application of the AOC, a prescribed court is satisfied that a person has engaged in conduct constituting a contravention of section 36, the court may make an order requiring the person:
  - (a) by such means (including a broadcast or internet publication) as the court thinks fit; and
  - (b) at the person's own expense; and
  - (c) at times specified in the order;to publish advertisements the terms of which are specified in, or are to be determined in accordance with, the order.
- (2) Subsection (1) does not limit section 41.
- (3) A court may make an order under subsection (1) whether or not relief is granted under section 41.

## **44 Damages**

- (1) If the AOC or a licensed user suffers loss or damage as a result of anything done by a person in contravention of section 36, the amount of the loss or damage may be recovered by action in a prescribed court.
- (2) The action must be brought within 3 years after the day on which the contravention occurred.
- (3) The grant of an injunction under section 41 does not prevent the recovery of loss or damages under this section.
- (4) The AOC or a licensed user is not entitled to both:
  - (a) the recovery of loss or damages under this section; and
  - (b) an account of profits under section 45;in respect of the same contravention of section 36.

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**45 Account of profits**

- (1) If, on the application of the AOC or a licensed user, a prescribed court is satisfied that a person has engaged in conduct in contravention of section 36, the court may make an order granting relief by way of an account of profits.
- (2) The application must be made within 3 years after the day on which the contravention occurred.
- (3) An order made under this section on the application of a person who is a licensed user may only relate to:
  - (a) a protected olympic expression to which the person's licence relates; or
  - (b) an expression so closely resembling the protected olympic expression to which the person's licence relates as is likely to be mistaken, by a reasonable person, for that expression.
- (4) A court may make an order under this section whether or not an injunction is granted under section 41.
- (5) The AOC or a licensed user is not entitled to both:
  - (a) an account of profits under this section; and
  - (b) the recovery of loss or damages under section 44;in respect of the same contravention of section 36.

**46 Destruction or delivery of goods**

- (1) If, on the application of the AOC or a licensed user, a prescribed court is satisfied that a person has engaged in conduct constituting a contravention of section 36 in relation to goods, the court may order that the goods be:
  - (a) destroyed; or
  - (b) delivered up to the AOC or to the licensed user, as the case may be; or
  - (c) otherwise dealt with in such manner as the court thinks fit.
- (2) An order made under this section on the application of a person who is a licensed user may only relate to:
  - (a) a protected olympic expression to which the person's licence relates; or

- (b) an expression so closely resembling the protected olympic expression to which the person's licence relates as is likely to be mistaken, by a reasonable person, for that expression.
- (3) A court may make an order under this section whether or not an injunction is granted under section 41.

#### **47 Consent of the AOC to institute remedial proceedings**

- (1) A licensed user must not:
  - (a) make an application for an injunction (other than an interim injunction) under section 41; or
  - (b) bring an action for damages under section 44; or
  - (c) make an application for an order under section 45; or
  - (d) make an application for an order under section 46;except with the written consent of the AOC.
- (2) If:
  - (a) a licensed user gives the AOC a written request for consent under subsection (1); and
  - (b) the AOC neither gives nor refuses that consent before the end of the period of 8 days beginning on the day on which the request was given;the AOC is taken to have given the consent.
- (3) Consent under subsection (1) must not be unreasonably refused.

#### **48 Other remedies**

- (1) The remedies provided under this Division are in addition to remedies provided by any law (whether a law of the Commonwealth or a law of a State or Territory) that confers any rights or powers on the AOC or a licensed user in relation to conduct of a kind that constitutes a contravention of section 36.
- (2) The remedies provided under this Division 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:
  - (a) that goods or services have sponsorship or approval that they do not have (see paragraph 53(c) of that Act); or

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- (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).
- (3) Subsection (2) does not limit subsection (1).
- (4) The references in subsection (2) 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 of a kind that constitutes a contravention of section 36 of this Act.

## Division 2—Importation of goods

### 49 Definitions

In this Division, unless the contrary intention appears:

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

- (a) if there is only one objector to the importation of the goods—the period specified in the notice given to the objector under section 55 or, if that period is extended under subsection 55(5), that period as so extended; or
- (b) if there is more than one objector to the importation of the goods—the period beginning on the earliest day on which a period specified in a notice given to an objector under section 55 commences and ending:
  - (i) on the last day on which a period specified in such a notice ends; or
  - (ii) on the last day on which such a period as extended under subsection 55(5) ends;whichever is the later.

**CEO** means the Chief Executive Officer of Customs.

**objector**, in relation to seized goods, means the person by whom a notice in force under section 52 in relation to the goods was given.

**officer of Customs** has the meaning given by subsection 4(1) of the *Customs Act 1901*.

**seized goods** means goods seized under section 54.

**working day** means a day that is not:

- (a) a Saturday; or
- (b) a Sunday; or
- (c) a public holiday in the Australian Capital Territory.

### 50 Determinations about owners of goods

The CEO or an officer of Customs may determine that a person is the owner of goods for the purposes of paragraph (b) of the definition of **designated owner** in section 23 if the person is an

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owner (within the meaning of subsection 4(1) of the *Customs Act 1901*) of the goods.

**51 Importation of goods by the AOC**

The AOC may import goods to which a protected olympic expression has been applied, so long as the importation does not contravene a law of the Commonwealth other than this Chapter.

**52 Notice of objection to importation**

- (1) Subject to this section, the AOC or a licensed user may give the CEO a written notice objecting to the importation, after the day on which the notice is given, of goods that have applied to them a protected olympic expression that the designated owner of the goods is not authorised by, or licensed under, this Chapter to use for commercial purposes in relation to the goods.
- (2) A notice:
  - (a) is to be given together with any prescribed document; and
  - (b) is to be accompanied by the prescribed fee (if any).
- (3) A licensed user may only give a notice in relation to a protected olympic expression that the person is licensed to use.
- (4) A notice given by the AOC or a licensed user may be revoked at any time by written notice given to the CEO by the person who gave the original notice.
- (5) Unless sooner revoked, a notice ceases to have effect at the end of the prescribed period. This subsection has effect subject to subsection (6).
- (6) If:
  - (a) a notice given by a licensed user is not revoked under subsection (4); and
  - (b) the licence expires or is revoked;the notice ceases to have effect on the day on which the licence ceases to be in force.
- (7) A reference in this section to the use of protected olympic expressions for commercial purposes does not include a reference to use covered by subsection 30(3).

### **53 Consent of the AOC to giving of notices**

- (1) A licensed user must not give a notice of objection to importation under section 52 except with the written consent of the AOC.
- (2) If:
  - (a) a licensed user gives the AOC a written request for consent under subsection (1); and
  - (b) the AOC neither gives nor refuses that consent before the end of the period of 8 days beginning on the day on which the request was given;the AOC is taken to have given the consent.
- (3) Consent under subsection (1) must not be unreasonably refused.

### **54 CEO may seize goods**

- (1) This section applies to goods manufactured outside Australia that:
  - (a) are imported into Australia; and
  - (b) are subject to the control of the Customs within the meaning of the *Customs Act 1901*.
- (2) If:
  - (a) goods have had applied to them one or more protected olympic expressions; and
  - (b) a notice in force under section 52 relates to the goods; and
  - (c) it appears to the CEO that the designated owner is not authorised by, or licensed under, this Chapter, to use the expressions for commercial purposes in relation to the goods;the CEO must seize the goods unless the CEO has no reasonable grounds for believing that section 36 would be contravened by the use of the expressions by the designated owner for commercial purposes.
- (3) The CEO may refuse to seize the goods unless the CEO has been given by the objector, or by one or more of the objectors, security in an amount that the CEO considers sufficient to reimburse the Commonwealth for the reasonable expenses that may be incurred by the Commonwealth if the goods were seized.
- (4) Goods seized under this section must be kept in a secure place as directed by the CEO.

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- (5) A reference in this section to the use of protected olympic expressions for commercial purposes does not include a reference to use covered by subsection 30(3).

**55 Notice of seizure**

- (1) As soon as practicable after goods are seized under section 54, the CEO must give the designated owner and each objector, either personally or by post, a written notice identifying the goods and stating that they have been seized under section 54.
- (2) A notice under subsection (1) that is given to each objector must also:
- (a) specify:
    - (i) the full name and address of the designated owner of the goods; and
    - (ii) any information that the CEO has and that the CEO believes, on reasonable grounds, to be likely to help the objector, or objectors, to identify the designated owner; and
  - (b) state that the goods will be released to the designated owner unless:
    - (i) an application for an injunction under section 41 in relation to the goods is made by the objector, or by one of the objectors, within the period of 10 working days beginning on a specified day; and
    - (ii) written notice of the making of the application is given to the CEO within that period.
- (3) The day specified for the purpose of subparagraph (2)(b)(i) must not be earlier than the day on which the notice is given.
- (4) An objector may, by written notice given to the CEO before the end of the period specified in a notice for the purposes of subparagraph (2)(b)(i), request that the period be extended.
- (5) If:
- (a) a request is made in accordance with subsection (4); and
  - (b) the CEO is satisfied that it is reasonable that the request be granted;
- the CEO may extend the period by not more than 10 working days.

### **56 Forfeiture of goods—by consent**

- (1) The designated owner of any seized goods may, at any time before an objector makes an application for an injunction under section 41 in relation to the goods, consent to the goods being forfeited to the Commonwealth by giving a written notice to that effect to the CEO.
- (2) If the designated owner gives such a notice, the goods are forfeited to the Commonwealth and must be disposed of as the CEO directs.

### **57 Release of goods—no application for injunction**

- (1) The CEO must release seized goods (other than goods forfeited to the Commonwealth under section 56) to their designated owner at the end of the application period unless, within that period, the objector, or one of the objectors, has:
  - (a) made an application for an injunction under section 41 in relation to the goods; and
  - (b) given to the CEO written notice of the application.
- (2) The CEO must also release the seized goods to their designated owner if, before the end of the application period, the objector, or each of the objectors, has, by written notice given to the CEO, consented to the release of the goods.
- (3) The CEO may release the seized goods to their designated owner at any time before the end of the application period if:
  - (a) the CEO, having regard to information that has come to his or her knowledge after the goods were seized, does not have reasonable grounds for believing that section 36 would be contravened by the importation of the goods; and
  - (b) the objector has not, or none of the objectors has, made an application for an injunction under section 41 in relation to the goods.

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

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**58 Application for injunction—additional parties, relief etc.**

- (1) In this section, a reference to an application for an injunction under section 41 is a reference to such an application made, in relation to seized goods, by a person who is an objector in relation to the goods.
- (2) A prescribed court in which an application for an injunction under section 41 is pending:
  - (a) may, on the application of a person having a sufficient interest in the subject matter of the application, allow the person to be joined as a respondent to the application; and
  - (b) must allow the CEO to appear and be heard.
- (3) In addition to any relief that the court may grant apart from this section, the court may:
  - (a) at any time, if it thinks it just, order that the seized goods be released to their designated owner subject to such conditions (if any) as the court thinks fit; or
  - (b) order that the seized goods be forfeited to the Commonwealth.
- (4) If:
  - (a) the court decides that an injunction should not be granted under section 41; and
  - (b) the designated owner of the goods, or any other respondent, satisfies the court that he or she has suffered loss or damage because the goods were seized;the court may order the objector to pay to the designated owner or other respondent compensation, in the amount determined by the court, for any part of that loss or damage that is attributable to any period beginning on or after the day on which the application under section 41 was made.
- (5) If, at the end of 20 working days beginning on the day on which the application for an injunction under section 41 was made, there is not in force an order of the court directed at the CEO preventing the goods from being released, the CEO must release the goods to their designated owner.
- (6) If the court orders that the goods be released, the CEO must, subject to section 60, comply with the order.

**59 Disposal of goods ordered to be forfeited**

If the court orders under section 58 that goods be forfeited to the Commonwealth, the goods are to be disposed of as the CEO directs.

**60 Power of CEO to retain control of goods**

Despite anything in this Part, the CEO must not:

- (a) release, or dispose of, any seized goods; or
- (b) take any action in relation to the goods to give effect to any order of a court under section 58;

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

**61 Insufficient security**

If security given under subsection 54(3) by the objector or objectors who gave notice under section 52 is not sufficient to meet the expenses incurred by the Commonwealth as a result of the action taken by the CEO under this Division because of the notice, the amount of the difference between those expenses and the amount of security:

- (a) is a debt due by the objector, or by the objectors jointly and severally, to the Commonwealth; and
- (b) may be recovered by action in any court of competent jurisdiction.

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

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

- (a) because the CEO seized, or failed to seize, goods under this Division; or
- (b) because of the release of any seized goods.

**63 Modification in relation to Christmas Island etc.**

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

- (a) Christmas Island; or

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- (b) Cocos (Keeling) Islands; or
- (c) Norfolk Island.

## **Division 3—Groundless threats**

### **64 Groundless threats of legal proceedings**

- (1) If the AOC or a licensed user threatens to make an application, or bring an action, against a person (the *threatened person*) on the ground that the threatened person has engaged, is engaging, or is proposing to engage in conduct in contravention of section 36, any person aggrieved by the threat may bring an action in a prescribed court against the AOC or the licensed user, as the case may be.
- (2) In an action under subsection (1), the court may:
  - (a) make a declaration that the AOC or the licensed user had no grounds for making the threat; and
  - (b) grant an injunction restraining the AOC or the licensed user from continuing to make the threat.The court may also award damages for loss that the person aggrieved has suffered as a result of the making of the threat.
- (3) An action may not be brought under this section if the person who made the threat has made an application, or brought an action, under Division 1 against the threatened person in relation to the act, or proposed act, to which the threat related.
- (4) An action under this section may not be continued if the person who made the threat makes an application, or brings an action, under Division 1 against the threatened person in relation to the act, or proposed act, to which the threat related.
- (5) It is a defence to an action under subsection (1) that the conduct of the threatened person, in relation to which the threat was made, constitutes a contravention of section 36.

### **65 Counterclaim in action on groundless threats**

- (1) If the AOC or a licensed user would be entitled to make an application, or bring an action, against a person for a contravention of section 36, the AOC, or the licensed user may, in an action under section 64, make a counterclaim for any relief to which the AOC or the licensed user would be entitled under Division 1.

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- (2) The provisions of Divisions 1 and 2 apply as if a counterclaim were an application or action made or brought by the AOC or a licensed user under Division 1.

## **Part 3.5—Jurisdiction of prescribed courts etc.**

### **66 Prescribed courts**

Each of the following courts is a *prescribed court* for the purposes of this Chapter:

- (a) the Federal Court;
- (b) the Supreme Court of a State;
- (c) the Supreme Court of the Australian Capital Territory;
- (d) the Supreme Court of the Northern Territory;
- (e) the Supreme Court of Norfolk Island.

### **67 Jurisdiction of Federal Court**

The Federal Court has jurisdiction in relation to all matters arising under this Chapter.

### **68 Jurisdiction of other prescribed courts**

- (1) Each prescribed court (other than the Federal Court) has federal jurisdiction in relation to all matters arising under this Chapter.
- (2) The jurisdiction conferred by subsection (1) on the Supreme Court of a Territory is conferred to the extent that the Constitution permits.

### **69 Transfer of proceedings**

- (1) A prescribed court in which an application has been made, or an action brought, under this Chapter may, on the application of a party made at any stage, by order, transfer the application or action to another prescribed court having jurisdiction to hear and determine the application or action.
- (2) When a court transfers an application or action to another court:
  - (a) all relevant documents of record filed in the transferring court must be sent to the other court by the Registrar or other appropriate officer of the transferring court; and

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- (b) the application or action continues in the other court as if:
  - (i) it had been started there; and
  - (ii) all steps taken in the transferring court had been taken in the other court.

## Part 3.6—Miscellaneous

### 70 Concurrent operation of State and Territory laws

It is the intention of the Parliament that this Chapter 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 Chapter.

### 71 Preservation of existing rights

#### *Trade marks and designs*

- (1) This Chapter, so far as it applies in relation to a protected olympic expression, does not affect rights conferred by law on a person in relation to:
  - (a) a trade mark that is registered under the *Trade Marks Act 1995*; or
  - (b) a design that is registered under the *Designs Act 1906*; and was so registered immediately before 20 September 2001 in relation to the expression.
- (2) For the purposes of subsection (1), a trade mark is taken to have been registered under the *Trade Marks Act 1995* on the date of registration (within the meaning of that Act) of the trade mark.
- (3) For the purposes of subsection (1), a design is taken to have been registered under the *Designs Act 1906* at the time when the registration of the design came into force as mentioned in subsection 27A(1) of that Act.

#### *Passing off*

- (4) This Chapter, so far as it applies to a protected olympic expression, does not affect the use of the expression by a person (the ***first person***) if, immediately before 20 September 2001, the first person would have been entitled to prevent another person from passing off, by means of the use of the expression or a similar expression, goods or services as the goods or services of the first person.

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*Business names*

- (5) This Chapter does not apply to the use of a business name in connection with a business if:
- (a) the name is registered in relation to the business under a law of a State or Territory relating to business names; and
  - (b) the name was so registered immediately before 20 September 2001 in relation to the business.

*Company names*

- (6) This Chapter does not apply in relation to the use of the name of an incorporated company if:
- (a) the company was in existence immediately before 20 September 2001; and
  - (b) the company uses the name in connection with a business carried on by the company; and
  - (c) the company used the name in connection with the business immediately before 20 September 2001.

**72 Acquisition of property**

- (1) This Chapter has no effect to the extent (if any) to which:
- (a) the operation of this Chapter would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution.

- (2) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

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

**73 Implied freedom of political communication**

This Chapter does not apply to the extent (if any) that it would infringe any doctrine of implied freedom of political communication.

#### **74 Chapter has effect in addition to contracts**

This Chapter has effect in addition to any contract:

- (a) that relates to the use of a protected Olympic expression for commercial purposes; and
- (b) to which any of the following is a party:
  - (i) the IOC;
  - (ii) the AOC;
  - (iii) the organising committee for a Summer or Winter Olympic Games.

#### **75 Validation of certain licences**

- (1) This section applies if, before the commencement of this section, the AOC purported to grant a licence for a particular period ending after that commencement authorising a person to use all, or any one or more, of the protected Olympic expressions for commercial purposes.
- (2) This Chapter has effect as if the licence had been granted under section 38 for the part of that period that began after the commencement of this section.

## **Chapter 4—Regulations**

### **Part 4.1—Regulations**

#### **76 Regulations**

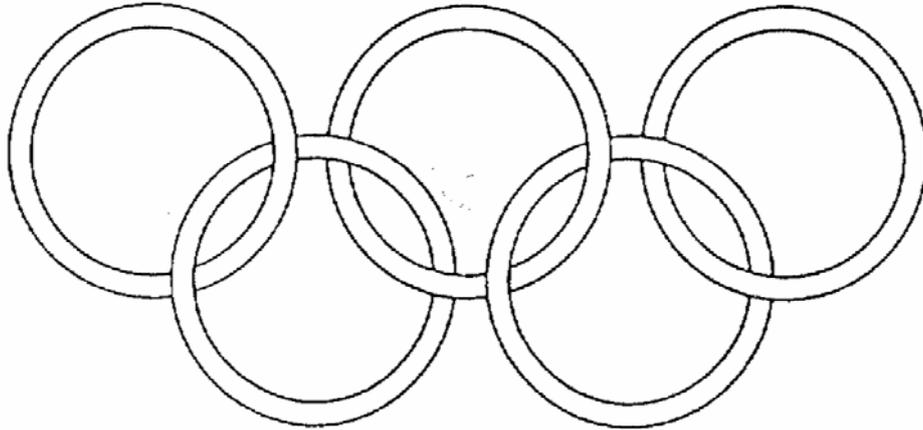
The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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## **Schedule—Outline of the olympic symbol**

Subsection 2(1)





**Table of Acts****Notes to the *Olympic Insignia Protection Act 1987*****Note 1**

The *Olympic Insignia Protection Act 1987* as shown in this compilation comprises Act No. 27, 1987 amended as indicated in the Tables below.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Olympic Insignia Protection Act 1987</i>	27, 1987	26 May 1987	23 June 1987	
<i>Olympic Insignia Protection Amendment Act 1994</i>	44, 1994	15 Mar 1994	15 Mar 1994	—
<i>Olympic Insignia Protection Amendment Act 2001</i>	156, 2001	1 Oct 2001	29 Oct 2001	—
<i>Australian Sports Anti-Doping Authority (Consequential and Transitional Provisions) Act 2006</i>	7, 2006	7 Mar 2006	Schedule 1 (item 9): 13 Mar 2006 (see s. 2(1) and F2006L00764)	—
<i>Intellectual Property Laws Amendment Act 2006</i>	106, 2006	27 Sept 2006	Schedule 12 (item 3): 27 Mar 2007	—
<i>Statute Law Revision Act 2010</i>	8, 2010	1 Mar 2010	Schedule 5 (item 76): Royal Assent Schedule 5 (item 137(a)): (a)	—
<i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i>	103, 2010	13 July 2010	Schedule 6 (items 176–188): [see Note 2]	—

## Act Notes

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- (a) Subsection 2(1) (items 31 and 38) of the *Statute Law Revision Act 2010* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
31. Schedule 5, items 1 to 51	The day this Act receives the Royal Assent.	1 March 2010
38. Schedule 5, Parts 2 and 3	Immediately after the provision(s) covered by table item 31.	1 March 2010

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**Table of Amendments****Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Title .....	am. No. 156, 2001
<b>Chapter 1</b>	
Heading to Chapt. 1 .....	ad. No. 156, 2001
<b>Part 1.1</b>	
Heading to Part I .....	rep. No. 156, 2001
Heading to Part 1.1 .....	ad. No. 156, 2001
of Chapt. 1	
S. 1A .....	ad. No. 156, 2001
<b>Chapter 2</b>	
Heading to Chapt. 2 .....	ad. No. 156, 2001
<b>Part 2.1</b>	
Heading to Part 2.1 .....	ad. No. 156, 2001
of Chapt. 2	
S. 2 .....	am. No. 44, 1994; No. 156, 2001
S. 2A .....	ad. No. 44, 1994; No. 156, 2001
Ss. 3, 4 .....	am. No. 156, 2001
<b>Part 2.2</b>	
Heading to Part II .....	rep. No. 156, 2001
Heading to Part 2.2 .....	ad. No. 156, 2001
of Chapt. 2	
S. 5 .....	am. No. 44, 1994; No. 156, 2001
<b>Part 2.3</b>	
Heading to Part III .....	rep. No. 156, 2001
Heading to Part 2.3 .....	ad. No. 156, 2001
of Chapt. 2	
S. 6 .....	rs. No. 44, 1994 am. No. 156, 2001
Ss. 7, 8 .....	am. No. 44, 1994; No. 156, 2001
S. 9A .....	ad. No. 44, 1994 am. No. 156, 2001
S. 10 .....	rs. No. 44, 1994 am. No. 156, 2001
S. 11 .....	am. No. 44, 1994; No. 156, 2001
S. 11A .....	ad. No. 44, 1994 am. No. 156, 2001
S. 12 .....	am. No. 44, 1994
S. 14A .....	ad. No. 106, 2006
<b>Part 2.4</b>	
Heading to Part IV .....	rep. No. 156, 2001
Heading to Part 2.4 .....	ad. No. 156, 2001
of Chapt. 2	

**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 15, 16.....	am. No. 44, 1994; No. 156, 2001
S. 17.....	am. No. 44, 1994
S. 18A.....	ad. No. 156, 2001 am. No. 8, 2010
Heading to s. 19.....	am. No. 156, 2001
S. 19.....	am. No. 44, 1994; No. 156, 2001
S. 20.....	am. No. 44, 1994; No. 156, 2001
S. 21.....	am. No. 156, 2001
<b>Chapter 3</b>	
Chapt. 3.....	ad. No. 156, 2001
<b>Part 3.1</b>	
<b>Division 1</b>	
S. 22.....	ad. No. 156, 2001
S. 23.....	ad. No. 156, 2001 am. No. 7, 2006; No. 8, 2010
Ss. 24–27.....	ad. No. 156, 2001
<b>Division 2</b>	
Ss. 28–34.....	ad. No. 156, 2001
S. 35.....	ad. No. 156, 2001 am. No. 8, 2010
<b>Part 3.2</b>	
Ss. 36, 37.....	ad. No. 156, 2001
<b>Part 3.3</b>	
Ss. 38, 39.....	ad. No. 156, 2001
S. 40.....	ad. No. 156, 2001 am. No. 8, 2010
<b>Part 3.4</b>	
<b>Division 1</b>	
Ss. 41, 42.....	ad. No. 156, 2001
S. 43.....	ad. No. 156, 2001 am. No. 8, 2010
Ss. 44–48.....	ad. No. 156, 2001
<b>Division 2</b>	
Ss. 49–63.....	ad. No. 156, 2001
<b>Division 3</b>	
Ss. 64, 65.....	ad. No. 156, 2001
<b>Part 3.5</b>	
Ss. 66–69.....	ad. No. 156, 2001
<b>Part 3.6</b>	
Ss. 70–75.....	ad. No. 156, 2001

**Table of Amendments**

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

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Provision affected	How affected
<b>Chapter 4</b>	
Heading to Chapt. 4.....	ad. No. 156, 2001
<b>Part 4.1</b>	
Heading to Part 4.1 of ..... Chapt.4	ad. No. 156, 2001
S. 22	
Renumbered s. 76 .....	No. 156, 2001

## **Note 2**

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### **Note 2**

*Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010*  
(No. 103, 2010)

The following amendments commence on the start of 1 January 2011:

### **Schedule 6**

#### **176 Subsection 2(1)**

Insert:

*Australian Consumer Law* means Schedule 2 to the *Competition and Consumer Act 2010* as applied under Subdivision A of Division 2 of Part XI of that Act.

#### **177 Subsection 9A(1)**

Omit “*Trade Practices Act 1974*”, substitute “Australian Consumer Law”.

Note: The heading to section 9A is altered by omitting “*Trade Practices Act 1974*” and substituting “**Australian Consumer Law**”.

#### **178 Subsection 9A(1)**

Omit “section 52 of that Act”, substitute “section 18 of the Australian Consumer Law”.

#### **179 Paragraph 9A(1)(a)**

Omit “paragraph 53(c) of that Act”, substitute “paragraph 29(1)(g) of the Australian Consumer Law”.

#### **180 Paragraph 9A(1)(b)**

Omit “paragraph 53(d) of that Act”, substitute “paragraph 29(1)(h) of the Australian Consumer Law”.

#### **181 Subsection 9A(2)**

Omit “*Trade Practices Act 1974*”, substitute “Australian Consumer Law”.

#### **182 Subsection 9A(2)**

Omit “that Act”, substitute “the Australian Consumer Law”.

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**183 Subsection 48(2)**

Omit “*Trade Practices Act 1974*”, substitute “Australian Consumer Law”.

**184 Subsection 48(2)**

Omit “section 52 of that Act”, substitute “section 18 of the Australian Consumer Law”.

**185 Paragraph 48(2)(a)**

Omit “paragraph 53(c) of that Act”, substitute “paragraph 29(1)(g) of the Australian Consumer Law”.

**186 Paragraph 48(2)(b)**

Omit “paragraph 53(d) of that Act”, substitute “paragraph 29(1)(h) of the Australian Consumer Law”.

**187 Subsection 48(4)**

Omit “*Trade Practices Act 1974*”, substitute “Australian Consumer Law”.

**188 Subsection 48(4)**

Omit “that Act”, substitute “the Australian Consumer Law”.

As at 16 August 2010 the amendments are not incorporated in this compilation.