Australian Customs Notice 1997 03

**SYDNEY 2000 GAMES (INDICIA AND IMAGES) PROTECTION ACT 1996**

**Introduction**

This is a guide to the operation of the Customs seizure provisions of the Sydney 2000 Games (Indicia and Images) Protection Act 1996 (the Act) and is intended for the owners and licensed users of the Sydney 2000 Games indicia and images. The Act came into effect on 28 June 1996 and ceases on 31 December 2000.

The Act establishes a legislative scheme to permit the owner of material bearing the Sydney 2000 Games indicia and/or images, or an exclusive licensee, to object to the importation of goods which allegedly infringe their usage of these indicia and/or images for commercial purposes. It is recommended that persons considering lodgement of a Notice of Objection discuss the matter with their legal advisers before proceeding with the Notice.

The purpose of the Act is to assist in preserving the financial integrity of the Sydney 2000 Olympic and Paralympic Games by facilitating the raising of licensing revenue for the Games through the protection of the use of the indicia and images associated with the Sydney Games.

Preservation of this revenue is fundamental in achieving a good financial outcome for the Games whilst ensuring a limited call on the national public purse. The Olympics, whilst based in Sydney, is an Australian event and is funded by both major sponsors and royalty payments that will come from the sale of authorized merchandise after 1 January 1997.

Customs is working closely with the Sydney Organizing Committee for the Olympic Games (SOCOG) and the Sydney Paralympic Organizing Committee (SPOC) and will ensure that only authorized licence holders are able to import merchandise with the approved logos and associated markings.

1. **Outline**

Section 32 of the Act establishes a scheme to be able to lodge a Notice of Objection in respect of these goods and Section 33 of the Act empowers Customs to seize such goods pending resolution of an action brought by the Objector as to whether the importation of the goods infringes notified indicia and/or images.

1. **The Legislative Scheme - Seizure Provisions** Section 33 provides that where:
2. goods manufactured outside Australia have been imported into Australia and are subject to the control of Customs; and
3. the imported goods have had applied to them Sydney 2000 Games indicia and/or images; and
4. there has been given to Customs, a Notice in writing objecting to the importation of goods that have applied to them Sydney 2000 Games indicia and/or images, in respect of the imported goods; and
5. the goods, in the opinion of Customs, have applied to them Sydney 2000 Games indicia and/or images that the designated owner is not authorised by, or licensed under, the Act to use for commercial purposes in relation to the goods;

**then Customs must seize the imported goods unless there are reasonable grounds for believing:**

the Sydney 2000 Games indicia and/or images (refer section 12 of the Act)would not be contravened by the use by the designated owner of the indicia and/or images for commercial purposes; or

the Objector, or one or more of the objectors, has not provided sufficient security to reimburse the Commonwealth in respect of expenses that may be incurred by the Commonwealth if the goods were seized.

The legislative scheme does not provide for seizure of goods which are imported for the personal use of the importer and are not intended to be dealt with or provided for commercial purposes (refer section 11 of the Act). It also does not empower Customs to take seizure action on its own behalf.

It is important to note that the seizure powers are drawn directly from section 33(2)of the Act. The authority to seize is separate from and should not be confused with the more general seizure provisions (relating to Customs search and seizure) contained in the Customs, Excise and Bounty Legislation Amendment Act 1995.

**NOTES:**

The Sydney 2000 Games (Indicia and Images) Protection Act 1996 contains definitions as follows:

SOCOG means the Sydney Organising Committee for the Olympic Games constituted by the Sydney Organising Committee for the Olympic Games Act 1993 of New South Wales.

SPOC means Sydney Paralympic Organising Committee Limited incorporated under the law of New South Wales.

Sydney 2000 Games means the Sydney 2000 Olympic Games and the Sydney 2000 Paralympic Games.

### Sydney 2000 Games Images

common Sydney 2000 games images, means any visual or aural representations that, to a reasonable person, in the circumstances of the presentation, would suggest a connection with the Sydney 2000 Olympic Games and the Sydney 2000 Paralympic Games.

Sydney 2000 Olympic Games images means any visual or aural representations that, to a reasonable person, in the circumstances of the presentation, would suggest a connection with the Sydney 2000 Olympic Games. Sydney 2000 Paralympic Games images means any visual or aural representations that, to a reasonable person, in the circumstances of the presentation, would suggest a connection with the Sydney 2000 Paralympic Games.

common Sydney 2000 Games indicia means: - any of the following phrases: "Games City"; "Millennium Games"; "Sydney Games"; "Sydney 2000"; or - any combination of the words "Games" and the number "2000" or the words "Two Thousand".

Sydney 2000 Olympic Games indicia *means: - either of the words "Olympiad"; "Olympic"; or*

* *any of the following phrases: "Share the Spirit"; "Summer Games"; "Team Millennium"; or*
* *any combination of "24th", "Twenty-Fourth" or "XXIVth" and the word "Olympics" or "Games"; or*
* *any combination of the word "Olympian", or "Olympics" with any of the following word, words, phrase or number: "Bronze, Games, Gold, Green and Gold, Medals, Millennium, Silver, Spirit, Sponsor, Summer, Sydney, Two Thousand, 2000".*

### Sydney 2000 Paralympic Games indicia *means:*

* *either of the words "Paralympiad"; "Paralympic"; or*
* *any combination of "11th", "Eleventh" or "XIth" and the word "Paralympics" or "Games"; or*
* *any combination of the word "Paralympian", or "Paralympics" with any of the following word, words, phrase or number: "Bronze, Games, Gold, Green and Gold, Medals, Millennium, Silver, Spirit, Sponsor, Summer, Sydney, Two Thousand, 2000".*

NOTE: if any Sydney 2000 Games indicia is represented in a language other than English it will still be taken to have been applied.

# Application of Sydney 2000 Games indicia and images (part definition);

## without limiting the generality of the meaning, is taken to be applied in the case of goods when the indicia and/or images:

are woven in, impressed on, worked into, or affixed or annexed to, the goods; or are 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 in the course of trade.

When goods that have applied to them the Sydney 2000 Games indicia and or images, are imported into Australia for the purpose of sale or distribution by a person, the person who imports them is taken to have applied the indicia and or images to them.

## Use for Commercial Purposes; a person is taken to have used the Sydney 2000 Games indicia and/or images for commercial purposes if they have applied them to any of their goods or services in the course of advertising, or promotion, or any activity that would increase their sales. In addition, if a person has applied the indicia and/or images in a manner which would suggest to a reasonable person that they are, or have been a sponsor, or provided support for the Sydney 2000 Olympic or Paralympic Games, or both, then they are also taken to have been used commercially.

NOTE: a person who simply employs a protected word or image in a non-trade context or in circumstances which does not suggest sponsorship or support for the Games would not be considered as having used them for commercial purposes.

### Notice of Objection to Importation

A Notice of Objection, to be valid for the purpose of section 32, must be lodged objecting to the importation of goods that have applied to them Sydney 2000 Games indicia and/or images that the designated owner of the goods is not authorised or licensed under the Act to use for commercial purposes in relation to the goods. It must be accompanied by a copy certified by the Chief Executive Officer of SOCOG or an authorized person (refer Section 18 of the Act) of the particulars contained in the Register of licensed users of the Sydney 2000 Games indicia and/or images in relation to each item for which the objector has given a notice.

A Notice of Objection must be accompanied by a security and be lodged and accepted by Customs before the goods are imported as it cannot operate retrospectively. It may be revoked by notice given in writing to the Chief Executive Officer of Customs at any time and all Notices cease to have effect when the Act ceases to have effect unless the license is for a specified period.

1. The Security *The amount of the Security will be an amount that the Chief Executive Officer of Customs considers sufficient to reimburse the Commonwealth for any expenses that may be incurred by it in seizing goods as a result of action taken under section 33 of the Act. Where a debit note has been issued to an Objector for seizure expenses and the claim is not satisfied within a specified time, Customs will draw on the Security.*

Where the Security is insufficient to reimburse the Commonwealth for expenses incurred in relation to action taken under section 33 the amount of the excess is a debt due by the Objector or Objectors which is recoverable in a Court of competent jurisdiction. Customs' practice is to require that sureties to a Customs security be either an Australian bank or guarantee company which has been approved as a surety to Customs securities. A list of these institutions is available from Customs offices.

1. Persons Entitled to Lodge a Notice of Objection *A Notice of Objection may be lodged by:*

SOCOG, but only in relation to Sydney 2000 Olympic Games indicia and/or images; or common Sydney 2000 Olympic Games indicia and/or images; SPOC, but only in relation to Sydney 2000 Paralympic Games indicia and/or images; or common Sydney 2000 Games indicia and/or images;

a licensed user, but only in relation to the Sydney 2000 Games indicia and/or images the person is licensed to use.

Customs would be satisfied as to the entitlement of a licensed user to lodge a Notice of Objection where, for example, a letter or facsimile in the form of either, a letter of consent from the licensing body authorising the objector to give the notice, or a copy of the request which establishes that the licensing body received a request and that the time for a response (the end of the next working day) from the licensing body had elapsed.

NOTE: Persons lodging a Notice of Objection should check carefully all documentation to ensure that all information is included and is correct and that clear copies of all indicia and/or images and all attachments are enclosed. Documentation that is incomplete or contains any errors will be returned to the Objector for correction. Such action will delay the acceptance of the Notice and the introduction of the surveillance of goods that have applied to them the Sydney 2000 Olympic Games indicia and/or images in question.

1. Help Customs to Help You *(a)*

## Customs will take all reasonable steps to carry out its obligations under this legislation. However, as a very large volume of goods passes through the Customs barrier each day, it is not possible to physically examine every item that is imported. Customs instead carries out a system of electronic checks, random physical checks, documentary and targeted examinations to check compliance with regulations and other requirements.

(b)

## When completing your Notice of Objection you can assist Customs by limiting it to those Sydney 2000 Games indicia and/or images where there is, prima facie, a risk of infringement. The inclusion of indicia and/or images for which there is no risk attached serves no worthwhile purpose and only diverts attention from those areas where there is a risk.

(c)

## To help Customs to intercept shipments of infringing goods your assistance is necessary. Any information you are able to provide will help protect your rights with respect to goods which bear the Sydney 2000 Olympic Games indicia and/or images. The following information would be particularly useful:

designated name of owner/importer; name of overseas supplier/manufacturer; name of ship, airline/flight number; expected date/port of arrival;

details/description/quantity/country of origin of the goods.

(d)

# All information will be treated in the strictest confidence.

### Notification of Seizure

Section 34 of the Act provides that as soon as practicable after goods are seized, Customs will give both the designated owner and each Objector, either personally or by post, a written notice identifying the goods and stating that the goods have been seized under section 33.

### Forfeiture of Goods - by Consent

The designated owner of any seized goods may, at any time before an Objector makes an application for an injunction in respect of the goods, consent to the goods being forfeited to the Commonwealth by giving a written notice to Customs.

1. Release of Goods - No Application for Injunction *(a)*

*Customs must release seized goods which have not been forfeited to the Commonwealth (refer section 35 of the Act) to the designated owner of the goods if, within the specified application period (described in 7 above):*

proceedings for an injunction have not been instituted by the Objector in relation to the goods; or

though proceedings may have been instituted, the Objector has not given written notice to Customs advising that proceedings have been instituted.

## WARNING: Objectors should be aware that when advised by Customs of an importation unless they have procedures in place

*and matters in hand at the end of the nominated timeframe, the goods* will be released *to the importer.*

1. General Information

Compliance with the requirements outlined in this notice should facilitate the prompt processing of the Notice of Objection. All Notice of Objection applications should be sent directly to the Australian Customs Service, Intellectual Property Rights (Policy) Group, Cargo Facilitation Branch, 5 Constitution Avenue, Canberra City, ACT 2601, or lodged at the nearest Regional Customs office for forwarding to Canberra for processing.

Further information regarding the Sydney 2000 Games (Indicia And Images) Protection Act 1996 may be obtained from either the Australian Industrial Property Organisation (AIPO), Canberra on (06) 293 7444; or the Australian Customs Service, Intellectual Property Rights (Policy) Group, Cargo Facilitation Branch, on telephone (06) 275 6571 or facsimile (06) 275 6997.

Copies of the Act can be obtained from the Australian Government Publishing Service.

Regional Customs offices will assist with enquiries. These centres are the contact points for operational matters, e.g. accepting information relating to particular importations, seizure of infringing material etc. The addresses and contact numbers for Regional Customs Offices are attached.

A. Paterson

for National Manager Cargo Facilitation Branch for

Chief Executive Officer 15 January 1997

(Cargo Facilitation: C95/11309)

## Attachment 1 Regional Customs Offices Attachment 2 Form B449

*Attachment 3 Form B450*

Attachment 1

COMMERCE PROHIBITIONS AND RESTRICTIONS

Regional Offices

### FURTHER INFORMATION REGARDING CONTROLS ON THE INTELLECTUAL PROPERTY OF IMPORTED GOODS MAY BE OBTAINED BY CONTACTING:

Canberra *Assistant Director*

Intellectual Property Rights (Policy) Cargo Facilitation Branch

Customs House

5 Constitution Avenue

Canberra ACT 2600

Tel: 06 275 6571

Fax: 06 275 6997

New South Wales *Chief Inspector*

Commerce Prohibitions and Restrictions Level 3

ACS Link Road Office Mascot NSW 2020

Tel: 02 9317 7020

Fax: 02 9317 7156

Victoria *Senior Inspector*

Commerce Prohibitions and Restrictions 10th Floor

414 La Trobe Street Melbourne VIC 3000

Tel: 03 9244 8423

Fax: 03 9244 8440

Queensland *Inspector*

Import Clearance Australia House 363 Adelaide Street

Brisbane QLD 4000

Tel: 07 3835 3291

Fax: 07 3835 3337

Western Australia *Senior Inspector*

Commerce Prohibitions and Restrictions Customs House

2 Henry Street

Fremantle WA 6160

Tel: 09 430 1405

Fax: 09 430 1751

South Australia *Inspector*

Commerce Prohibitions and Restrictions Customs House

220 Commercial Road Port Adelaide SA 5015 Tel: 08 47 9378

Fax: 08 47 9349

Northern Territory *Inspector*

Cargo Facilitation Customs House

21 Lindsay Street

Darwin NT 0800

Tel: 08 8946 9851

Fax: 08 8946 9953

Tasmania *Inspector*

Exports and Entry Processing 25 Argyle Street

Hobart TAS 7000

Tel: 002 30 1231

Fax: 002 30 1262