Australian Customs Notice 2001 65

**OLYMPIC INSIGNIA PROTECTION ACT 1987**

# Introduction

This is a guide to the operation of the import provisions of the *Olympic Insignia Protection Act 1987* (the Act) and is intended for the owners and licensed users of registered olympic expressions. Amendments to the Act, which established the import provisions, received Royal Assent on 1 October and will come into effect on 29 October 2001.

The import provisions of the Act permit the owner or the exclusive licensee of registered olympic expressions to object to the importation of goods which use protected olympic expressions for commercial purposes. It is recommended that before lodging a Notice of Objection this matter be discussed with a legal adviser.

The purpose of the Act is to assist in the preservation of Australia as a participant in, and a supporter of, the world Olympic movement.

# Outline

Section 52 of the Act allows the AOC or a licensed user to lodge a Notice of Objection in relation to the importation of goods which bear a protected olympic expression and section 54 empowers Customs to seize contravening goods.

Protected olympic expressions are: Olympic

Olympics Olympic Games Olympiad Olympiads

An expression so closely resembling a protected olympic expression mentioned above that it is likely to be mistaken by a reasonable person as a protected olympic expression, is taken to be a protected olympic expression.

To avoid doubt, the expressions 'Olympian' and 'Olympians' are taken not to resemble a protected olympic expression.

# Notice of Objection to Importation

The AOC or a licensed user may object to the importation of goods that have a protected olympic expression applied to them. The Notice of Objection will have effect in respect of goods bearing a protected olympic expression, imported by a designated owner who is not authorised or licensed to use the expressions.

The Notice takes effect when it is accepted by Customs and does not operate retrospectively. It is expected that Notices of Objection will remain valid for a period of four years, or until the expiry of relevant license agreements, whichever is sooner. A Notice of Objection may be revoked by giving notice in writing to the Chief Executive Officer of Customs at any time, or if the license is revoked.

# The Security

A security is required to reimburse the Commonwealth for any expenses that may be incurred by it in seizing goods as a result of action taken under section 54 of the Act. The security may be provided as a cash deposit or in documentary form. Cash securities are held in trust and unused portions are returned when the Notice of Objection is no longer in place.

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. Where the expenses exceed the security the amount of the excess is a debt due to Customs.

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

the **AOC** in relation to all protected olympic expressions;

a **licensed user,** but only in relation to goods bearing the protected olympic expressions the person is licensed to use and only after seeking the permission of the AOC.

In order for Customs to accept a lodgement of a Notice of Objection by a licensed user, a letter of consent from the licensing body (the AOC) must be obtained. Where, following a request to the AOC for consent, the AOC neither gives nor refuses consent within 8 days of the request, the AOC is taken to have given consent. In that situation the licensed user should provide evidence of the request.

**NOTE:** Persons lodging a Notice of Objection should check all documentation carefully to ensure that all information, including the schedule of protected olympic expressions, is completed and is correct. Documentation that is incomplete or contains any errors may be returned by Customs for correction. Such action may delay the acceptance of the Notice.

# Seizure Provisions

Section 54 provides that where:

goods manufactured outside Australia have been imported into Australia and are subject to the control of Customs; and have had applied to them one or more protected olympic expressions; and

a Notice of Objection is in force; and

it appears that the importer is not authorised or licensed to use the expression for commercial purposes; **Customs is required by law to seize the imported goods unless there are reasonable grounds for believing:**

that the use by the designated owner of the expressions for commercial purposes would not contravene the Act. (Sections 30 and 36 refer).

Customs may refuse to seize the goods if the Objector, or one or more of the Objectors, has not provided sufficient security to the Commonwealth.

The legislative scheme does not provide for the seizure of goods which are imported for personal use and are not intended to be used for commercial purposes. Customs cannot take seizure action where no Notice of Objection is in place.

It is important to note that the seizure powers are drawn directly from section 54(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 Act 1901*.

# Notification of Seizure

As soon as practicable after goods are seized, Customs will give to 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. (Section 55 refers).

# Forfeiture of Goods - by Consent

The designated owner of 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.

# Release of Goods

If seized goods are not forfeited, Customs must release them to the designated owner within ten working days unless the Objector institutes proceedings for an injunction in relation to the goods and provides written notice to Customs of those proceedings. (Refer section 57).

Once proceedings have been instituted, Customs must release the goods to the designated owner after 20 working days, unless there is a court order in place preventing the release.

**WARNING:** Objectors should be aware that when advised by Customs of an importation it is important to keep Customs informed of developments, otherwise at the end of the nominated timeframes, the goods **will be released** to the importer.

*A protected olympic expression****,*** without limiting the generality of the meaning, is taken to be applied to goods if the expression or statement is: woven in, impressed on, worked into, or affixed or annexed to, the goods; or

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 used in an advertisement that promotes the goods; or

used in an invoice, price list, catalogue, brochure, business letter, business paper or other commercial document that relates to the goods.

When goods that have applied to them the protected olympic expressions, and 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 protected expression.

A person is taken to have used protected olympic expressions for *commercial purposes* if they have;

applied them to any goods(or imported goods bearing them) in the course of advertising, promotion, or any activity that would increase sales; and a reasonable person would believe that the person is or was provider of sponsorship-like support for

the AOC; the IOC;

a summer or winter Olympic Games;

the organising committee for a summer or winter Olympic Games; an Australian Olympic team;

a section of an Australian Olympic team; or

an individual member of an Australian Olympic team.

*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 Olympics would not be considered as having used them for commercial purposes.

# Assistance to Customs

Customs will take all reasonable steps to carry out its obligations under this legislation. However, as a 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 risk assessment which encompasses electronic checks, random physical checks, documentary and targeted examinations in order to check compliance with regulations and other requirements.

To help Customs to intercept shipments of contavening goods your assistance is necessary. Any information you are able to provide will help protect your rights with respect to goods which bear protected olympic expressions. The following information would be particularly useful:

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.

All information will be treated in the strictest confidence.

# 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, 5 Constitution Avenue, Canberra City, ACT 2601, and marked "Attention : Intellectual Property Rights".

Further information and copies of relevant forms regarding the import provisions of the Olympic Insignia Protection Act 1987 may be obtained from the Australian Customs Service, Intellectual Property and Customs Stores, Import/Export Management Branch, on telephone (02) 6275 6577 or facsimile (02) 6275 6699.

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

JEFF BUCKPITT

National Manager

Import/Export Management Branch for

Chief Executive Officer

**Attachment 1 Regional Customs Offices**

**COMMERCE PROHIBITIONS AND RESTRICTIONS**

Regional Customs offices will also be able to assist with enquiries. However, these offices are more correctly the contact points for operational matters, eg seizure of infringing or xontravening goods. Relevant Customs regional contact points are :

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| Canberra  Intellectual Property &amp; Customs Stores Import/Export Management Branch Customs House  5 Constitution Avenue  Canberra ACT 2600  Tel: 02 6275 6577  Fax: 02 6275 6699 | New South Wales  Customs Supervisor  Commerce Prohibitions and Restrictions Level 3  ACS Link Road Office Mascot NSW 2020  Tel: 02 9317 7020  Fax: 02 9317 7156 |
| Victoria | Queensland |
| Senior Inspector  Commerce Prohibitions and Restrictions 10th Floor  414 La Trobe Street Melbourne VIC 3000  Tel: 03 9244 8423  Fax: 03 9244 8440 | Customs Supervisor  Commerce Prohibitions and Restrictions Terrica Place  140 Creek Street  Brisbane QLD 4000  Tel: 07 3835 3276  Fax: 07 3835 3494 |

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| Western Australia  Customs Supervisor  Commerce Prohibitions and Restrictions Customs House  2 Henry Street  Fremantle WA 6160  Tel: 08 9430 1402  Fax: 08 9430 1751 | South Australia  Senior Customs Officer  Commerce Prohibitions and Restrictions Customs House  220 Commercial Road Port Adelaide SA 5015 Tel: 08 8447 9316  Fax: 08 8447 9227 |
| Northern Territory | Tasmania |
| Senior Customs Officer Import/Export Management Branch Customs House  21 Lindsay Street  Darwin NT 0800  Tel: 08 8946 9851  Fax 08 8946 9953 | Customs Supervisor Imports/Exports  25 Argyle Street  Hobart TAS 7000  Tel: 03 6230 1256  Fax: 03 6230 1261 |