

STATUTES AMENDMENT BILL (NO. 6)

AS REPORTED FROM THE GOVERNMENT ADMINISTRATION
COMMITTEE

COMMENTARY

Recommendation

The Government Administration Committee has examined the Statutes Amendment Bill (No. 6) and recommends that it be passed with the amendments shown.

Conduct of the examination

The Statutes Amendment Bill (No. 6) is a Government bill. It was formerly part of the Statutes Amendment Bill (No. 5). The committee received one submission on the Flags, Emblems, and Names Protection provisions from the New Zealand Olympic Committee (the NZOC). We met on 12 and 26 November and 3 December 1998 to consider and hear evidence on the bill. In total, we spent 40 minutes hearing evidence and one hour and 33 minutes considering the bill. Advice was received from the Ministry of Justice and Department of Internal Affairs and comment was received from the Ministry of Commerce.

Background

The Minister of Internal Affairs wrote to the Government Administration Committee on 7 October 1998 requesting that additional new clauses be included in the Statutes Amendment Bill (No. 5) relating to the protection of Olympic emblems, words and names. Leave was given for these proposed clauses to be considered with the bill. On 3 December 1998 we decided to separate the provisions relating to the protection of Olympic emblems, words and names from the main bill and report them back to the House as a separate bill. This is due to the rapidly approaching 2000 Olympic Games in Sydney and the time required to pass the proposed legislation into law.

Purpose

The bill provides for the protection of Olympic and Commonwealth Games emblems, words and names. The bill inserts a new section 20A into the Flags,

Emblems, and Names Protection Act 1981 (the principal Act) preventing unauthorised use of certain emblems, words and names relating to the Olympic and Commonwealth Games. This would have the advantage of providing an improved level of protection over that which is currently in place, and some limited protection against ambush or parasite marketing. We recommend that the bill should insert a new section 20B into the principal Act to enhance the NZOC's ability to obtain injunctive relief.

The bill repeals and replaces the penalties section of the principal Act. New section 24 would lift the penalty level from the current \$500 maximum, to a maximum of either \$5,000 for an individual, or \$50,000 for a body corporate. A penalty for ongoing offences would still apply, but would be limited to bodies corporate. That penalty would be lifted from the current level of \$50 per day to \$5,000 per day. The increased penalty level would provide a more effective deterrent to those organisations who are likely to factor penalty costs into their marketing budgets. The bill also inserts a new section 26A and a new Schedule 2A in the principal Act. New Schedule 2A sets out the emblems, words and names protected by the new section 20A.

New Zealand Olympic Committee

The NZOC is New Zealand's national Olympic organisation affiliated to the International Olympic Committee (IOC). The IOC is the supreme authority for the world wide Olympic movement. The predominant function of the IOC is to lead the promotion of Olympism throughout the world in accordance with the Olympic Charter. The Olympic Games are the exclusive property of the IOC, which owns all rights relating to the organisation, exploitation, broadcasting and reproduction of the Games. All profits derived from the celebration of the Olympic Games are applied to the development of the Olympic movement and of sport.

The vision of the NZOC is "Growing the Olympic Spirit in New Zealand" and its mission is "To develop and protect the Olympic movement in New Zealand in accordance with the Olympic Charter." The principal object of the NZOC is to exercise the rights and authorities granted national Olympic organisations under the Olympic Charter including the exclusive powers for the representation of New Zealand and the constitution, organisation and leadership of its delegation at the Olympic Games. The NZOC exercises similar powers with respect to the Commonwealth Games. The Olympic Charter recommends that the NZOC seek sources of financing which will enable it to maintain its autonomy in all respects.

Funding the Olympics in New Zealand

A small administration grant, approximately \$100,000 per annum, is paid to the NZOC by the Government through the Hillary Commission for Sport, Fitness and Leisure. The NZOC is responsible for generating all other income. The costs of sending New Zealand sporting teams to the Summer and Winter Olympics and the Commonwealth Games are met exclusively by the NZOC from its own funds. The Government does not contribute directly to the costs of sending sporting teams away. For the four-year period (an Olympiad) ending 31 December 1996 the NZOC raised in cash and in kind, through its sponsorship programme, approximately \$7 million.

The NZOC recognises that its most valuable assets are the spirit of the Olympic movement, the tradition of the Olympic Games and the commercial value of association with Olympism and the national Olympic organisation. The NZOC has recognised and developed its marketing power with the Olympic ideals and its emblems, words and names. Corporations pay the NZOC to be linked to the

Olympic movement. The NZOC has developed an extensive sponsorship programme.

Sydney 2000 an enormous challenge

The 2000 Sydney Olympic Games represent an enormous challenge for the Olympic movement in New Zealand. In order to meet the demands upon the NZOC of fulfilling its obligations to the Olympic movement, promotion of Olympic ideals, and to high performance sport, the NZOC will need to raise through its sponsorship programme approximately \$11 million. This sum is \$4 million more than was raised for the four-year period incorporating the Atlanta Olympic Games in 1996. Financial and in kind sponsorship of the Olympic movement is crucial to its survival. There is an increasing array of events all of which rely on sponsorship funding. This makes the work of the NZOC in raising sponsorship increasingly difficult. One unnecessary development which hinders the work of the NZOC in this area is the burgeoning practice of parasite marketing.

Parasite marketing will undermine the Olympic movement

Parasite marketing will undermine and possibly wreck the NZOC's efforts to send the country's best athletes to the 2000 Sydney Olympic Games. Parasite marketing has already occurred in Australia in relation to the 2000 Games. It is any action or communication by a non-sponsor which creates confusion in the minds of consumers or misleads consumers as to the identity of the official sponsor. Parasite marketing undermines the power of the Olympic and Commonwealth brands and the very association the NZOC's sponsors seek to secure when paying for the right to be associated with the NZOC and the New Zealand Olympic and Commonwealth Games Teams. If there is any suggestion in the commercial marketplace that the NZOC cannot provide exclusivity of association with Olympic indicia, properties, names and symbols, the sponsorship programme, on which the NZOC's existence rests, will be at risk of complete collapse. No one will provide sponsorship funds if there is inadequate protection. The NZOC does not have funds in the amount necessary to pursue expensive litigation or other strategies. This is why statutory protection is needed.

Parasite marketers

Telecom New Zealand Limited has used parasite marketing techniques to build an association with the Olympic Games despite having no sponsorship connection with the Olympic movement. For example, in 1996 it ran the "With Telecom you can take your own phone to the Olympics" advertising campaign before and during the Atlanta Olympic Games. At the time BellSouth was the official telecommunications sponsor to the NZOC. Telecom had declined an opportunity to be the sponsor. In light of Telecom's activities BellSouth reviewed its relationship with the Olympic movement and declined to sponsor the NZOC further. We were told at a meeting that in one year alone Telecom New Zealand Limited cost the New Zealand Olympic movement nearly \$750,000 in lost sponsorship funding.

Here are some other examples of companies which have implied an association with the Olympic and Commonwealth Games in their marketing but have not contributed to assisting New Zealand athletes get to the related Olympic or Commonwealth Games.

• Sanitarium	1992	“Kiwis Going for Gold” advertising campaign
	1994	“NZ Heroes” advertising campaign
• Acer Computers	1994	“Acer sponsors of the NZ World Champion Ice Racing team at the Lillehammer Winter Olympics” print media campaign
• Speedo	1993	Distribution of swimwear to NZ retailers with swing-tags stating “Official swimwear for the Australian Olympic Team”
• Paper Plus	1993/94	Product sold in stationery shops throughout New Zealand featuring the Olympic rings
• American Express	1992	“You don’t need a visa to go to Barcelona” campaign
	1994	Similar campaign for the Lillehammer Winter Olympics
• Tooheys Blue	1992	Product for sale in New Zealand carrying the Australia Olympic logo
• Countrywide Bank	1994	“Win Grandstand seats at the Commonwealth Games” advertising campaign
• Cadbury Ltd	1994	Games Medals promotion through food retail outlets in New Zealand launched at time of Commonwealth Games

Protection is needed urgently

The Sydney Olympic Games in 2000 are less than two years away. Protection from parasite marketers for the NZOC is required urgently for the Sydney Games and long-term for other Olympic and Commonwealth Games. This bill is necessary to prevent unauthorised individuals or organisations from profiting by the use of Olympic or Commonwealth emblems, words and names associated with the NZOC. This legislation will protect the NZOC’s funding base. The bill is extremely desirable to prevent the sponsorship of the NZOC and New Zealand athletes being compromised. Provision of new statutory protection for the NZOC is central to the bill. In its submission the NZOC sought greater enhancements. We carefully considered its requests which included:

- extending the list of protected names
- expanding the description of the Flaming Torch symbol
- including words, emblems or statements implying support for Olympic activity
- substantially increasing the penalty levels
- including civil remedies like injunctions.

New clause 26B

New clause 26B inserts new sections 20A and 20B in the principal Act. New section 20A provides new protections against the unauthorised use of names, words and emblems relating to Olympic and Commonwealth Games. We consider that the provision included in the clauses tabled at the committee allow the NZOC too much discretion when making a decision on an application for its authorisation to use an emblem, word or name. We believe that the NZOC should make a decision on such an application within 10 working days after receipt of the information necessary to make the decision and recommend that the bill be amended accordingly.

New section 20B provides for the NZOC to seek injunctive relief. In its submission the NZOC proposed a new section 20B be inserted in the principal Act that would allow it to apply for an injunction, should it appear that an offence has been

committed or is about to be committed against the new section 20A. This proposal was central to the NZOC's whole submission. Our amendment to clause 26B provides that where it appears to the Court, on application of the NZOC or any person, that a person has committed or is likely to commit an offence against section 20A, the Court may, by order, grant an injunction restraining any person from engaging in any conduct that appears to the Court to constitute such an offence. The NZOC has experienced great difficulty obtaining injunctive relief using common law procedures against parasite marketers. We consider its efforts to obtain injunctive relief would greatly benefit from the insertion of the provision we have recommended for inclusion in the bill. The new section would give the NZOC fast and effective access to injunctive relief before damage could be caused by the actions, intended or otherwise, of a parasite marketer.

New clause 26C

This new clause repeals section 24 of the principal Act and substitutes a new section 24. New section 24 provides a general penalty for offences against the Act.

New clause 26D

This new clause inserts new section 26A in the principal Act. The new section 26A confers a power to make Orders in Council to amend new Schedule 2A by adding, omitting, or amending the specifications and descriptions of Olympic and Commonwealth Games names, words and emblems.

New clause 26E

This new clause inserts new Schedule 2A in the principal Act. New Schedule 2A sets out the emblems, words and names protected by the new section 20A. Part 1 of the new Schedule specifies emblems. Part 2 specifies names. Part 3 specifies words relating to the Sydney Olympic Games. In its submission the NZOC asked that Part 1 of new Schedule 2A be amended so that the note above the depiction of the Olympic Flame Symbol includes a reference to a handheld Torch with the Five Ring Olympic Symbol. We recommend that new Part 1 of new Schedule 2A include such a reference.

The NZOC has proposed a number of additional words for inclusion in Part 2 of new Schedule 2A. We consider that the following words are not clearly the exclusive property of the Olympic movement or NZOC and should not be included: Gold, Olympia, Olympiad, Olympism, Olympic, Citus Altius Fortus, Faster Higher Stronger, the Flaming Torch symbol. We consider that some names can be considered the property of the Olympic movement or the NZOC. We recommend that Part 2 of new Schedule 2A include the following names:

- Olympic Games
- Olympic Gold
- Commonwealth Games
- the Five Ring Olympic symbol
- the Five Ring Olympic symbol with a Fern Leaf.

Expiry of Part 3 of new Schedule 2A

New clause 26F is a sunset clause, providing that Part 3 of new Schedule 2A expires at the close of 30 June 2001.

Conclusion

Sport is the favourite pastime of most New Zealanders and for many it is a career. Sport brings great enjoyment and fulfilment to both spectators and participants. The pinnacle of sport in the world today is the Olympic Games. Sending a team to the Olympic Games or the Commonwealth Games for that matter is a major and costly exercise. The NZOC, which receives minimal government funding, can only afford to undertake such an exercise through the generous sponsorship of leading New Zealand companies. Sponsorship, however, is a two-way street. If companies that pay nothing to the Olympic movement are seen to receive the same benefits official association with the Olympic movement brings, official sponsors will back away from providing financial and in kind support.

Without sponsorship the NZOC cannot function. Parasite marketers free-riding on the back of the Olympic movement have already cost the movement dearly. They could easily jeopardise New Zealand's full participation in future Olympic and Commonwealth Games, particularly the 2000 Sydney Olympic Games. This event is a major showcase for the entire region. Free-riders should not be tolerated and this bill will provide the NZOC with statutory protection against them. We consider the bill strikes the right balance between providing the appropriate protection for emblems, words and names which are clearly the property of the Olympic movement, and protecting the rights of individuals and businesses to carry on lawful commercial activity.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

New (Unanimous)

Subject to this Act,

Text inserted unanimously

New (Majority)

Subject to this Act,

Text inserted by a majority

Indicates clauses remaining as Statutes Amendment Bill (No. 5)

Rt Hon D A M Graham

STATUTES AMENDMENT (NO. 6)

ANALYSIS

Title 1. Short Title	20B. Injunction for breach of section 20A
.....	26C. General penalty
.....	26D. Power to amend Schedule 2A
PART 8A	26E. New Schedule inserted
FLAGS, EMBLEMS, AND NAMES PROTECTION ACT 1981	26F. Expiry of Part 3 of Schedule 2A
26A. Part to be part of Flags, Emblems, and Names Protection Act 1981
26B. New sections inserted
20A. Unauthorised use of emblems, words, and names relating to Olympic Games and Commonwealth Games	SCHEDULES

	New Schedule 2A of Principal Act

A BILL INTITULED

An Act to amend the Flags, Emblems, and Names Protection Act 1981

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title**—This Act may be cited as the Statutes Amendment Act (No. 6) 1998.

New (Unanimous)

PART 8A

FLAGS, EMBLEMS, AND NAMES PROTECTION ACT 1981

10 **26A. Part to be part of Flags, Emblems, and Names Protection Act 1981**—This Part is part of the Flags, Emblems,

New (Unanimous)

and Names Protection Act 1981* (in this Part referred to as the principal Act).

26B. New sections inserted—The principal Act is amended by inserting, after section 20, the following sections:

“20A. Unauthorised use of emblems, words, and names relating to Olympic Games and Commonwealth Games—(1) Every person commits an offence who, without the written authorisation of the New Zealand Olympic Committee Incorporated,—

“(a) Causes an association (whether incorporated or unincorporated) to be formed under any name, title, style, or designation—

“(i) That includes any word or name to which this subsection applies; or

“(ii) That so closely resembles any word or name to which this subsection applies as to be likely to deceive or mislead any person; or

“(b) In a business, trade, or occupation carries on activities under any word, name, title, style, or designation—

“(i) That includes any emblem, word, or name to which this subsection applies; or

“(ii) That so closely resembles any emblem, word, or name to which this subsection applies as to be likely to deceive or mislead any person; or

“(c) In any business, trade, or occupation displays, exhibits, or otherwise uses any word, name, title, style, or designation—

“(i) That includes any emblem, word, or name to which this subsection applies; or

“(ii) That so closely resembles any emblem, word, or name to which this subsection applies as to be likely to deceive or mislead any person.

“(2) **Subsection (1)** applies to—

“(a) The emblems specified in Part 1 of **Schedule 2A**;

“(b) The names specified in Part 2 of **Schedule 2A**;

“(c) The words specified in Part 3 of **Schedule 2A**.

“(3) **Subsection (1)** does not apply to the display, exhibition, or use of any emblem, word, or name if—

*1981, No. 47

Amendment: 1985, No. 176

New (Unanimous)

- 5 “(a) The display, exhibition, or use is expressly authorised by or under any Act or by the Governor-General by Order in Council; or
- “(b) Immediately before the date of the commencement of this section, either—
- “(i) That display, exhibition, or use was expressly authorised by any consent, permission, approval, or authority given by a person lawfully entitled to give it; or
- 10 “(ii) The emblem, word, or name was registered under any statutory authority; or
- “(c) The emblem, word, or name is part of the description of any sporting or recreational facilities operated by a local authority or community organisation; or
- 15 “(d) The display, exhibition, or use is for the purposes of, or associated with, the reporting of news or criticism or review in a newspaper or magazine or by means of a television, film, Internet, or other means of reporting by a person who ordinarily engages in the business of such reporting; or
- 20 “(e) The display, exhibition, or use is for the purposes of, or associated with, a radio or television programme, the Internet, or a film, book, or article for publication in a newspaper or magazine, relating to a person who was a member or official of the New Zealand team that competed at an Olympic Games or Commonwealth Games; or
- 25 “(f) In the case of a word or name, the word or name comprises the whole or part of the proper name of any town or road or other place in New Zealand; or
- 30 “(g) In the case of a word or name, the word or name is the surname or initials (not being used for the purpose of defeating the intention of this section) of a foundation member of the association or (as the case may be) of the person engaging in the business, trade, or occupation.
- 35 “(4) The New Zealand Olympic Committee Incorporated must make a decision on an application for its written authorisation under **subsection (1)** within 10 working days after receipt of the information necessary to make that decision, and
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New (Unanimous)

if it fails to do so the Committee is to be treated as having given the written authorisation sought in the application.

“(5) A decision of the New Zealand Olympic Committee under **subsection (4)** is an exercise of a statutory power of decision for the purposes of the Judicature Amendment Act 1972.

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New (Majority)

“**20B. Injunction for breach of section 20A**—(1) Where it appears to the Court, on the application of the New Zealand Olympic Committee or any person, that a person has committed or is likely to commit an offence against **section 20A**, the Court may, by order, grant an injunction restraining any person from engaging in any conduct that appears to the Court to constitute such an offence.

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“(2) The Court may at any time rescind or vary an injunction granted under this Part of this Act.

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“(3) Where an application is made to the Court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the Court may,—

“(a) If it is satisfied that the person has engaged in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or

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“(b) If in the opinion of the Court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind—

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.

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“(4) Where an application is made to the Court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the Court may,—

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“(a) If it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or

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“(b) If in the opinion of the Court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind—

New (Majority)

whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in the conduct of that kind.”

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New (Unanimous)

26C. General penalty—The principal Act is amended by repealing section 24, and substituting the following section:

“24. Every person who commits an offence against this Act is liable on summary conviction,—

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“(a) In the case of an individual, to a fine not exceeding \$5,000:

“(b) In the case of a body corporate, to a fine not exceeding \$50,000 and, where the offence is a continuing one, to a further fine not exceeding \$5,000 for every day during which the offence has continued.”

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26D. Power to amend Schedule 2A—The principal Act is amended by inserting, after section 26, the following section:

“26A. The Governor-General may, from time to time, by Order in Council,—

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“(a) Amend **Schedule 2A** by adding, omitting, or amending the specification or description of any emblem, word, or name:

“(b) Revoke **Schedule 2A** or a Part of **Schedule 2A** and substitute a new **Schedule 2A** or a new Part of **Schedule 2A**.”

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26E. New Schedule inserted—The principal Act is amended by inserting, after the Second Schedule, the **Schedule 2A** set out in the **Schedule** of this Act.

26F. Expiry of Part 3 of Schedule 2A—Part 3 of **Schedule 2A** expires at the close of 30 June 2001.

SCHEDULES

New (Unanimous)

Section 26E

SCHEDULE

NEW SCHEDULE 2A OF PRINCIPAL ACT

Section 20A

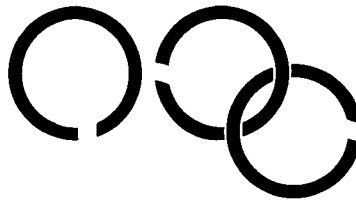
“SCHEDULE 2A

OLYMPIC GAMES AND COMMONWEALTH GAMES EMBLEMS, WORDS, AND NAMES

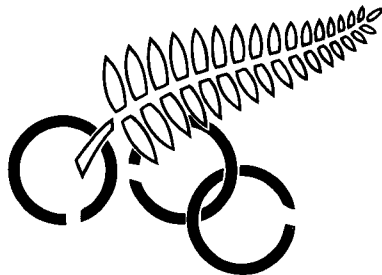
PART 1

Emblems

THE FIVE RING OLYMPIC SYMBOL
(as depicted below, or in black)



THE FIVE RING OLYMPIC SYMBOL WITH A FERN LEAF
(as depicted below, or in black, with or without the words “New Zealand”
or “New Zealand Olympic Committee” or any abbreviation or
combination of those words)



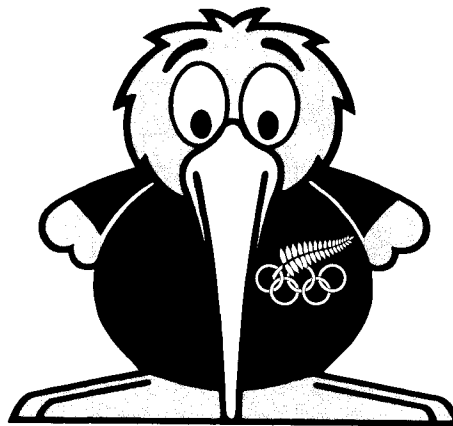
SCHEDULES—*continued*

New (Unanimous)

NEW SCHEDULE 2A OF PRINCIPAL ACT—*continued*
THE FIVE RING OLYMPIC SYMBOL WITH A FERN LEAF AND THE WORDS
“NEW ZEALAND”
(as depicted below)



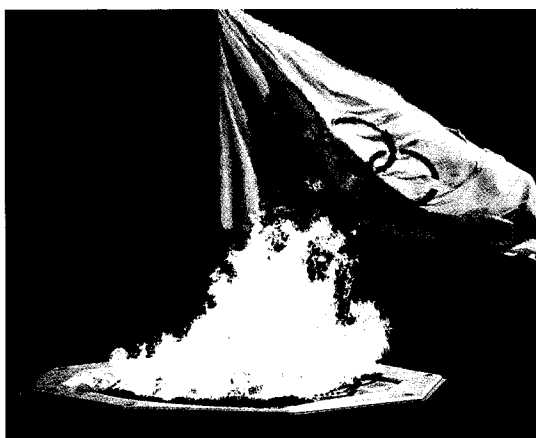
“GOLDIE” THE OFFICIAL NEW ZEALAND OLYMPIC MASCOT
(as depicted below, or in any other form, colours, or pose, with or
without any sporting equipment, with or without the New Zealand Flag
or any flag picturing the five Olympic rings, and with or without words
or other symbols)



SCHEDULES—*continued**New (Unanimous)*NEW SCHEDULE 2A OF PRINCIPAL ACT—*continued*

THE OLYMPIC FLAME SYMBOL

(as depicted below, or in any other form, colours, context, or position, or in a hand-held torch with the Five Ring Olympic symbol, whether or not the Five Ring Olympic symbol is on a flag, and whether or not the torch and symbol are with the New Zealand Flag, or a Fern Leaf, or both)



THE STYLISTED NEW ZEALAND COMMONWEALTH GAMES EMBLEM

(as depicted below)



SCHEDULES—*continued*

New (Unanimous)

NEW SCHEDULE 2A OF PRINCIPAL ACT—*continued*

PART 2

Names

1. Commonwealth Games
 - Five Ring Olympic symbol
 - Five Ring Olympic symbol with a Fern Leaf
 - International Olympic Committee
 - New Zealand Olympic Committee Incorporated
 - National Olympic Committee
 - New Zealand Olympic and Commonwealth Games Association Incorporated
 - New Zealand Olympic Team
 - New Zealand Commonwealth Games Team
 - Olympic Games
 - Olympic Gold.
2. Any abbreviation, extension, or derivation of the names in clause 1.
3. Names that have the same or a similar meaning to the names in clause 1.

PART 3

Words Relating to the Sydney Olympic Games

1. “Sydney 2000”, “Sydney Two Thousand”, and any words in Column A when used in connection with any words in Column B.

Column A

Games
 Olympiad
 Olympian
 Olympic

Column B

Sydney
 Two Thousand
 2000
 24th
 Twenty-Fourth
 XXIVth
 27th
 Twenty-Seventh
 XXVIIth

2. The following expressions:
 - “Games City”
 - “Sydney Games”
 - “Gold Games”.
3. Any abbreviation, extension, or derivation of a word or words in clause 1 or clause 2.
4. Words that have the same or a similar meaning to a word or words in clause 1 or clause 2.