



Queensland

Commonwealth Games Arrangements Regulation 2013

Explanatory Notes for SL 2013 No. 44

made under the

Commonwealth Games Arrangements Act 2011

General outline

Short title

Commonwealth Games Arrangements Regulation 2013.

Authorising law

Sections 53 and 80 and the definitions of protected reference and protected image in schedule 4 of the Commonwealth Games Arrangements Act 2011.

Policy objectives and the reasons for them

Chapter 3 of the Commonwealth Games Arrangements Act 2011 (the Act) is one of several tools which will have the overall effect of allowing as much community ownership and celebration of the Gold Coast 2018 Commonwealth Games (the Games) as possible, while not allowing the use of images or references to an extent that would dilute the value of the brand to sponsors and therefore compromise sponsorship revenue.

The objective of chapter 3 is to prohibit the unauthorised use of certain images and references for commercial or promotional purposes, and prohibit conduct falsely inferring an association with the Games. The other

main tools will be (1) an administrative regime of authorisations for not-for-profit community purposes, and (2) a standard practice of resolving breaches informally if possible and appropriate, with proceedings usually a last resort.

The objective of this Regulation is to bring a number of references and images under the protection of chapter 3 of the Act. These references and images are the intellectual property of the Gold Coast 2018 Commonwealth Games Corporation (the Corporation), the Commonwealth Games Federation (the CGF), and the Australian Commonwealth Games Association (the ACGA).

They require the enhanced remedies provided in chapter 3 to enable speedy and cost-effective enforcement, particularly close to and during the Commonwealth Games 2018 Commonwealth Games when existing Australian intellectual property laws will not be sufficient.

Achievement of policy objectives

The policy objective will be achieved by prescribing the references and images.

Consistency with policy objectives of authorising

The Regulation is consistent with the policy objectives of the authorising law as described above.

Inconsistency with policy objectives of other legislation

There is no inconsistency with the policy objectives of other legislation.

Benefits and costs of implementation

Prescribing the images and references prescribed in this Regulation was anticipated when chapter 3 was inserted into the Act, and the benefits and costs of implementation were considered at that point.

Monitoring and enforcement will primarily be carried out by the Corporation, within its existing budget.

The functions and powers of police in relation to these images and references are not expected to be a significant impost on police resources

and the Queensland Police Service is not anticipating a need for any additional funding.

Consistency with fundamental legislative principles

Prescribing the images and references prescribed in this Regulation was anticipated when chapter 3 was inserted into the Act, and consistency with fundamental legislative principles (FLPs) was considered at that point. See the explanatory notes to the Commonwealth Games Arrangements (Brand Protection) Amendment Bill 2013.

The Regulation does not prescribe anything in relation to which the Corporation, the CGF or the ACGA would not have a remedy under existing laws, such as for breach of trade mark or, on the establishment of a trading reputation, for passing off.

The Regulation merely applies the Act's streamlined process for enforcement, appropriate for an event such as the Commonwealth Games, to the prescribed images and references.

Two possible FLP issues raised by the application of the Act to the images and references prescribed in the Regulation are that the criminal offences will coexist with the civil remedies, and that police seizure power will apply to goods or advertising material displaying the references or images. These are additional to the consequences unauthorised use of those references and images would otherwise attract, and therefore could be construed as an abrogation of common law rights.

The offences also necessitate consideration of the principle that legislation should not subject a person to more than one court or tribunal process arising out of a single act or omission without sufficient justification.

There are a number of existing examples of a single act or omission exposing a person to more than one legal process. A defamatory statement can lead to civil action under the *Defamation Act 2005* and criminal proceedings under the Criminal Code; an assault or damage to property can also lead to civil action for damages as well as a criminal prosecution. A closer parallel is found in section 45 of the *Motor Racing Events Act 1990*, which provides that a person who uses 'official motor racing insignia' in the course of a trade or business without consent commits the tort of conversion and commits an offence.

The exposure to criminal prosecution for using the references and images prescribed in the Regulation is justified by the significance of the Games,

the public expectation that dishonest exploitation of Games goodwill will be monitored and stopped, and the risk such exploitation poses to the significant taxpayer investment in the Games.

The relevant provisions in the Act are to expire on 31 December 2018. This ensures that acts done when the above-mentioned justifications no longer carry significant weight will not attract the dual exposure.

Police already have a broad power under the *Police Powers and Responsibilities Act 2000* to seize evidence of an offence. The Regulation applies the Act's police seizure powers to the prescribed images and references, even if criminal proceedings are not intended. This is also justified by the significance of the Games, the public expectation that dishonest exploitation of Games goodwill will be monitored and stopped, and the risk such exploitation poses to the significant taxpayer investment in the Games; and also by the need to act immediately in the event of a breach.

The power to seize applies only during the critical period of several months before and during the Games, and only in or near Games venues or other significant sites. The Act also includes appropriate checks and balances, such as provision for the return of the property and compensation where proceedings are not instituted, or where proceedings do not result in a finding of guilt or an order.

It is hoped that most or all breaches will be resolved informally, without the need for civil action or prosecution. The Act therefore also provides that where goods are voluntarily surrendered, rather than seized, the same checks and balances apply.

Consultation

The Corporation was consulted. At the time the Regulation was being prepared, the references and images prescribed in the Regulation had not been released publicly.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Tourism, Major Events, Small Business and the Commonwealth Games.

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