

Commonwealth Games Arrangements Amendment Regulation (No. 2) 2016

Explanatory notes for SL 2016 No. 177

made under the

Commonwealth Games Arrangements Act 2011

General Outline

Short title

Commonwealth Games Arrangements Amendment Regulation (No. 2) 2016

Authorising law

Section 80 of the *Commonwealth Games Arrangements Act 2011*

Policy objectives and the reasons for them

The *Commonwealth Games Arrangements Act 2011* (the Act) protects the Gold Coast 2018 Commonwealth Games brand. The Act prohibits the unauthorised use of certain images and references for commercial or promotional purposes, and prohibits conduct falsely inferring an association with the Gold Coast 2018 Commonwealth Games.

The *Commonwealth Games Arrangements Regulation 2013* (the Regulation) brings a number of Games references and images under the protection of the Act. They require the enhanced remedies provided in the Act to enable speedy and cost-effective enforcement, particularly close to and during the Games when timeframes involved under existing Australian intellectual property laws will not be sufficient.

The *Commonwealth Games Arrangements Amendment Regulation (No. 2) 2016* (the Amendment Regulation) amends the Regulation to protect the Queen's Baton Relay and the Festival 2018 sub-brands of the Games.

Queen's Baton Relay

The Queen's Baton Relay, similar to the Olympic Torch Relay, is a relay around the 71 Commonwealth member nations and territories that is held prior to the beginning of each Commonwealth Games. The Queen's Baton Relay begins at Buckingham Palace in London with the Queen, as Head of the Commonwealth, placing a message in the baton that is later

read at the opening ceremony of the Games. Since its inception in 1958, the Queen's Baton Relay has become an iconic part of the Games because of the opportunity it provides to enhance engagement with local communities whose support is vital to the success of the Games.

The expression "Queen's Baton Relay" is already protected under the Act. However, at the time the expression was protected under the Act, the Queen's Baton Relay sub-brand had not been developed. Now that the sub-brand has been developed it is to be protected by including the Queen's Baton image in the Regulation.

Festival 2018

The Commonwealth Games Arts and Cultural Program provides an ideal opportunity to celebrate the spirit of the Commonwealth and showcase Queensland's lifestyle, culture and creativity and capture the authentic spirit of the Gold Coast and its communities. The program will feature arts and cultural activities throughout the Gold Coast as the Host City for the Commonwealth Games. It will also feature activations across the Event Cities of Brisbane, Cairns and Townsville.

In 2013 when the Regulation was first drafted, the reference "Gold Coast 2018 Arts and Community Festival Program" was included in Schedule 4 to protect the Arts and Cultural Program for the Games. Consistent with expectations at the time, the Games sub-brand for the Arts and Cultural Program has further developed and is now denoted as "Festival 2018". This aligns with the use of "Festival" in relation to the Arts and Cultural programs of previous Commonwealth Games including the Melbourne 2006, Delhi 2010 and Glasgow 2014 Commonwealth Games. Accordingly, the Festival 2018 sub-brand is also to be protected by including the Festival image in the Regulation and updating the current Games reference to "Festival 2018" in Schedule 4 of the Regulation.

Achievement of policy objectives

The policy objective will be achieved by inserting the Queen's Baton Relay image and the Festival 2018 image into Schedule 3 of the Regulation and by omitting the current Games reference "Gold Coast 2018 Arts and Community Festival Program" from Schedule 4 of the Regulation and inserting the new Games reference "Festival 2018" in its place.

Consistency with policy objectives of authorising law

The Amendment 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

The costs of implementing the Amendment Regulation are negligible.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles under the *Legislative Standards Act 1992*.

The Amendment Regulation strengthens existing frameworks to protect the Queen's Baton Relay and Festival 2018 intellectual property. The Queen's Baton Relay and Festival 2018 sub-brands will be protected by existing Australian intellectual property law, so the Amendment Regulation does not prohibit anything for which there is not already a legal remedy for intellectual property breaches.

As previously noted, the Queen's Baton Relay reference is already prescribed under the Act as a protected Games reference. Including the Queen's Baton Relay image as a protected image aligns with the intent of protecting the Queen's Baton Relay brand under the legislation and prevents its misuse – including both the reference and the image.

Similarly, the term “Gold Coast 2018 Arts and Community Festival Program” is already prescribed under the Regulation. Omitting this term from the Regulation and replacing it with Festival 2018 aligns with the original intent of protecting the Arts and Cultural Program's sub brand.

By protecting the Queen's Baton Relay and Festival 2018 sub-brands under the Act, the Amendment Regulation will provide streamlined remedies for enforcement of the sub-brands' intellectual property rights. The rationale for doing so is the large number of breaches that occur around major sporting events such as the Commonwealth Games, and the need to make timely enforcement realistically achievable for Games organisers.

The Act also provides safeguards to ensure consistency with fundamental legislative principles. For example, section 53 provides that a person does not commit an offence if the use of a protected reference does not refer to the Games or an event or program associated with the Games.

Consultation

Consultation occurred with the Gold Coast 2018 Commonwealth Games Corporation and the Queensland Productivity Commission (QPC).

QPC advised that as the proposal is of a machinery nature, it is excluded from further assessment under the Regulatory Impact Statement guidelines.

All parties consulted support the Amendment Regulation.