

Commonwealth Games Arrangements Bill 2011

Report No. 7

Finance and Administration Committee

November 2011

Finance and Administration Committee

Chair Mr Wayne Wendt MP, Member for Ipswich West

Deputy Chair Mr Ray Stevens MP, Member for Mermaid Beach

Members Ms Ros Bates MP, Member for Mudgeeraba
Hon Desley Boyle MP, Member for Cairns
Mr Michael Crandon MP, Member for Coomera
Ms Peta-Kaye Croft MP, Member for Broadwater

Staff Ms Deborah Jeffrey, Research Director
Mr Peter Rogers, Principal Research Officer
Ms Marilyn Freeman, Executive Assistant
Ms Lynette Whelan, Executive Assistant

Technical Scrutiny Secretariat Ms Renée Easten, Research Director
Mr Ian Caulfield, Principal Research Officer
Ms Dianne Christian, Executive Assistant

Contact details Finance and Administration Committee
Parliament House
George Street
Brisbane Qld 4000

Telephone +61 7 3406 7576

Fax +61 7 3406 7500

Email fac@parliament.qld.gov.au

Web www.parliament.qld.gov.au/fac

Acknowledgements

The committee wishes to acknowledge the assistance provided by the Department of the Premier and Cabinet (DPC).

Contents

Abbreviations	v
Glossary	v
Chair’s Forward	vi
Recommendations	vii
1 Introduction	1
1.1 Role of the committee	1
1.2 The committee’s examination of the Bill	2
1.3 Policy objectives of the Commonwealth Games Arrangements Bill 2011	2
1.4 Should the Bill be passed?	2
2 Examination of the <i>Commonwealth Games Arrangements Bill 2011</i>	3
2.1 Background	3
2.2 Reasons for urgent passage of the bill	4
2.3 Consultation	4
2.4 Policy issues	5
2.4.1 <i>Achievement of policy objectives</i>	5
2.4.2 <i>Part 2 – Gold Coast 2018 Commonwealth Games Corporation</i>	5
2.4.3 <i>Part 3 – The Board</i>	5
2.4.4 <i>Division 7 – Budget and funding agreement</i>	7
2.4.5 <i>Part 4 – Legal proceedings</i>	7
2.4.6 <i>Part 5 – Winding-up of corporation</i>	7
3 Fundamental legislative principles	9
3.1 Rights and liberties of individuals – natural justice	9
3.2 Rights and liberties of individuals – immunity from proceedings or prosecution without adequate justification	10
3.3 Rights and liberties of individuals – clear and unambiguous drafting	10
3.4 Explanatory notes	11

Abbreviations

ACGA	Australian Commonwealth Games Association
Acts	All Acts referred to in this report refer to Queensland Acts unless otherwise specified
CEO	Chief Executive Officer
CGF	Commonwealth Games Federation
DPC	Department of the Premier and Cabinet
FAC	Finance and Administration Committee
FLP	Fundamental Legislative Principles under the <i>Legislative Standards Act 1992</i>
GCCC	Gold Coast City Council
OC	organising committee
OCGC	Office of Commonwealth Games Coordination (OCGC)

Glossary

<i>member</i>	A member means a member of the board appointed under proposed section 14(3) as defined in the schedule - dictionary
The Committee	Finance and Administration Committee
The Corporation	The Gold Coast 2018 Commonwealth Games Corporation proposed to be established under the Bill.

Chair's Forward

The Premier and Minister for Reconstruction introduced the *Commonwealth Games Arrangements Bill 2011* on 17 November 2011 and the House referred the Bill to the Finance and Administration Committee. The Committee is required to report to the House by 28 November 2011.

The objective of the Bill is to establish the Gold Coast 2018 Commonwealth Games Corporation to plan, organise and deliver the 2018 Commonwealth Games in conjunction with the Australian Commonwealth Games Association and the Commonwealth Games Federation.

The Committee received a written briefing from the Department of the Premier and Cabinet about the Bill as well as additional information subsequent to its examination of the fundamental legislative principles arising from the Bill.

On behalf of the Committee, I wish to thank the departmental officers for their cooperation in providing information to the Committee on a timely basis. The Committee appreciated the prompt response in addressing the Committee's queries during its examination of the Bill.

Finally, I would like to thank the other Members of the Committee for their continuing hard work and support.



Wayne Wendt MP
Chair

Recommendations

Standing Order 132 states that a portfolio committee report on a Bill is to indicate the committee's determinations on:

- whether to recommend that the Bill be passed
- any recommended amendments
- the application of fundamental legislative principles and compliance with the requirements for Explanatory Notes.

The committee has made the following recommendations:

Recommendation 1 **2**

The Committee recommends that the *Commonwealth Games Arrangements Bill 2011* be passed.

Recommendation 2 **6**

The Committee recommends that the Bill be amended to stipulate that at least 25% of the members of the board emanate from the Gold Coast community.

Recommendation 3 **6**

The Committee recommends that the Bill be amended to stipulate that members remuneration, allowances and terms and conditions be disclosed publicly as soon as practicable after the decision of the Governor in Council.

Recommendation 4 **11**

The Committee recommends that the Bill be amended to clarify Clause 24 regarding who has the casting vote in the event that the chairperson, as nominated by the Minister, is absent from a vote and the process to be followed in such an event.

1 Introduction

1.1 Role of the Committee

The Finance and Administration Committee (the Committee) is a portfolio committee established by the *Parliament of Queensland Act 2001* and the Standing Orders of the Legislative Assembly on 16 June 2011.¹ The Committee's primary areas of responsibility are:

- Premier and Cabinet;
- Reconstruction;
- Treasury;
- Finance;
- Arts; and
- Public Works and IT.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio area to consider –

- a) the policy to be given effect by the legislation;
- b) the application of fundamental legislative principles to the legislation; and
- c) for subordinate legislation – its lawfulness.

Standing Order 132(1) provides that the Committee shall:

- a) determine whether to recommend that the Bill be passed;
- b) may recommend amendments to the Bill; and
- c) consider the application of fundamental legislative principles contained in Part 2 of the *Legislative Standards Act 1992* to the Bill and compliance with Part 4 of the *Legislative Standards Act 1992* regarding explanatory notes.

Standing Order 132(2) provides that a report by a portfolio committee on a Bill is to indicate the committee's determinations on the matters set out in Standing Order 132(1).

Standing Order 133 provides that a portfolio committee to which a Bill is referred may examine the Bill by any of the following methods:

- a) calling for and receiving submissions about a Bill;
- b) holding hearings and taking evidence from witnesses;
- c) engaging expert or technical assistance and advice; and
- d) seeking the opinion of other committees in accordance with Standing Order 135.

¹ *Parliament of Queensland Act 2001*, s.88 and Standing Order 194

1.2 The Committee's examination of the Bill

The *Commonwealth Games Arrangements Bill 2011* was referred to the Committee on 17 November 2011. The Committee is required to report to the Legislative Assembly by 28 November 2011.

The Committee's consideration of the Bill included a written briefing from the Department of the Premier and Cabinet (DPC). The Committee was unable to call for public submissions due to the short time frame allowed for reporting on the Bill agreed to by the House. The Committee considered expert advice on the Bill's conformance with fundamental legislative principles listed in Section 4 of the *Legislative Standards Act 1992* and also sought additional information from the department.

1.3 Policy objectives of the Commonwealth Games Arrangements Bill 2011

The Bill will establish the Gold Coast 2018 Commonwealth Games Corporation to plan, organise and deliver the 2018 Commonwealth Games in conjunction with the Australian Commonwealth Games Association (ACGA) and the Commonwealth Games Federation (CGF).

The key elements of the Bill are:

- establishment of the corporation, its functions and powers;
- membership, appointment, and duties of the board of members;
- appointment of the Chief Executive Officer and staff of the corporation;
- establishment of committees by the board;
- financial arrangements; and
- winding up the corporation once the Games conclude.²

1.4 Should the Bill be passed?

Pursuant to Standing Order 132(1)(a), the Committee recommends that the Bill be passed.

Recommendation 1

The Committee recommends that the *Commonwealth Games Arrangements Bill 2011* be passed.

² Correspondence dated 21 November 2011 to FAC from Mr J Bradley, Director-General, Department of the Premier and Cabinet: 1

2 Examination of the *Commonwealth Games Arrangements Bill 2011*

2.1 Background

The Gold Coast was named as the host the XXIst Commonwealth Games in 2018 by the President of the CGF, the Honourable Michael Fennell OJ, CD, on 11 November 2011.

It is proposed that the Opening Ceremony of the Games will be on Wednesday, 4 April 2018, with competition beginning on Thursday, 5 April 2018 for 11 days until Sunday, 15 April 2018, the night of the Closing Ceremony. This period is free from any other major events scheduled in Australia which means there will be no conflict or impediment to staging the Games in the City.³

The bid documentation⁴ advises that the legal entity, (ie the organising committee (OC)), that will be responsible for the organisation of the Commonwealth games will be the Gold Coast 2018 Commonwealth Games Corporation which will be established as a statutory corporation responsible to the Minister for the Commonwealth Games. The OC will be 100% owned by the Queensland Government and will report directly to the Minister for the Commonwealth Games through to the Premier and a Commonwealth Games Cabinet Sub-Committee.⁵

It should be noted that the Premier intends to retain responsibility for the games. She advised that she has had responsibility over the past 18 months and she considers that it is important at this point in the Games' development to maintain continuity and to maintain the central-agency focus across a number of government departments.⁶

The bid documentation further notes that this structure will ensure direct government oversight of the Games' planning and delivery along with high-level reporting and decision-making. The OC membership will include the Queensland Government, Gold Coast City Council (GCCC), the appropriate ACGA and CGF representatives, an athlete representative and independent representatives of the business community.⁷

The bid documentation highlights that legislation may be required to establish the OC, facilitate the timely completion of the Games infrastructure and provide sufficient power to the Minister for the Commonwealth Games to direct all aspects of Games planning and delivery, and to comply with the conditions and obligations of the Host City Contract.⁸

The bid documentation notes that an Office of Commonwealth Games Coordination (OCGC) will be a business unit within the framework of the DPC. It will report to an interdepartmental working group chaired by the Director-General, DPC, and consist of Directors-General from relevant departments across the Queensland Government. The OCGC will be responsible for development and construction of all Games capital infrastructure and coordination of whole-of-government service delivery for activities including the operation of security and transport, community engagement, the Games cultural program, public domain activities, city branding, legacy and stakeholder liaison (broadly the activities outside the venues).⁹

³ Gold Coast 2018 Commonwealth Games Bid Ltd, *Gold Coast City 2018 Commonwealth Games – Candidate City File – Vol 1*, May 2011: 4

⁴ A copy of the bid documentation is available on the CGF website at: <http://www.thecgf.com/games/bid.asp>

⁵ Gold Coast 2018 Commonwealth Games Bid Ltd, *Gold Coast City 2018 Commonwealth Games – Candidate City File – Vol 1*, May 2011: 31

⁶ Queensland Legislative Assembly, Hon AM Bligh MP, Premier and Minister for Reconstruction, Ministerial Statement, *Parliamentary Debates (Hansard)*, 15 November 2011: 3553

⁷ Gold Coast 2018 Commonwealth Games Bid Ltd, *Gold Coast City 2018 Commonwealth Games – Candidate City File – Vol 1*, May 2011: 31

⁸ Gold Coast 2018 Commonwealth Games Bid Ltd, *Gold Coast City 2018 Commonwealth Games – Candidate City File – Vol 1*, May 2011: 31

⁹ Gold Coast 2018 Commonwealth Games Bid Ltd, *Gold Coast City 2018 Commonwealth Games – Candidate City File – Vol 1*, May 2011: 31

The Premier, in her introductory statements, confirmed that an Office of Games Coordination will be established within DPC to work with the corporation to deliver the Games. She also confirmed that the office will be responsible for coordinating government involvement in the Games, as it is important to maintain a central agency focus across departments involved in this process.¹⁰

2.2 Reasons for urgent passage of the Bill

DPC advised the Committee that the government is seeking passage of the legislation this year for commencement of the Act on 1 January 2012. Urgent passage is required to give absolute certainty to the organising arrangements for the Gold Coast 2018 Commonwealth Games. They noted that following the announcement of winning the rights to host the Games, it is important that the momentum continues and the corporation is operational at the earliest opportunity.¹¹

Clause 2 of the Bill identifies that the Bill is intended to commence on 1 January 2012.

2.3 Consultation

The explanatory notes identify that consultation occurred with the ACGA, the Gold Coast 2018 Commonwealth Games Bid Ltd and the GCCC.

DPC advised the Committee that consultation has occurred with the Gold Coast 2018 Commonwealth Games Bid Ltd, the ACGA and the GCCC. They advised that on 14 September 2011, the Premier wrote to the Chairman of the bid company seeking input from the board of the bid company and the ACGA on governance arrangements if the Gold Coast bid was successful.¹²

They also advised that the bid company was provided with a copy of the overview of the legislation to the ACGA for consideration. The bid company and the ACGA provided their comments to the Premier on 4 October 2011 and 26 September 2011 respectively. DPC advised that these comments were taken into consideration in the final drafting of the Bill.¹³

Subsequent to the notification that the Gold Coast was the successful bidder, the Chairman and Chief Executive Officer (CEO) of the bid company were consulted on the draft Bill which was substantially similar to the Bill presented to the House, apart from the details of membership of the board.¹⁴ DPC advised that in the week commencing 14 November 2011, final discussions were held with the GCCC and the ACGA regarding the provisions in the Bill regarding membership of the board.

DPC also advised that the bid company also held extensive discussions with the GCCC on proposed governance arrangements for the organising committee and on 27 September 2011, the council provided the Premier with its comments.¹⁵

¹⁰ Queensland Legislative Assembly, Hon AM Bligh MP, Premier and Minister for Reconstruction, Introduction and Referral to Finance and Administration Committee, *Parliamentary Debates (Hansard)*, 17 November 2011: 3778

¹¹ Correspondence dated 21 November 2011 to FAC from Mr J Bradley, Director-General, Department of the Premier and Cabinet: 1

¹² Correspondence dated 21 November 2011 to FAC from Mr J Bradley, Director-General, Department of the Premier and Cabinet: 2

¹³ Correspondence dated 21 November 2011 to FAC from Mr J Bradley, Director-General, Department of the Premier and Cabinet: 2

¹⁴ Correspondence dated 21 November 2011 to FAC from Mr J Bradley, Director-General, Department of the Premier and Cabinet: 2

¹⁵ Correspondence dated 21 November 2011 to FAC from Mr J Bradley, Director-General, Department of the Premier and Cabinet: 2

2.4 Policy issues

2.4.1 Achievement of policy objectives

The purpose of the Bill is to establish a Corporation to plan, organise and deliver the Games in conjunction with the ACGA and the CGF.

The explanatory notes identify that in deciding to establish the Corporation, the government considered various governance models including those established for the delivery of the Melbourne 2006 Commonwealth Games and the Sydney 2000 Olympics. Approaches in other jurisdictions were taken into consideration during the drafting of the Bill.

2.4.2 Part 2 – Gold Coast 2018 Commonwealth Games Corporation

Clauses 6 to 11 set out the details of the Gold Coast 2018 Commonwealth Games Corporation. The Corporation will be a body corporate with the ability to sue and be sued in its corporate name. The Corporation will be a statutory body under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*. Clause 6 provides that the corporation does not represent the State.

Clause 8 sets out the functions of the Corporation as follows:

- a) to undertake and facilitate the organisation, conduct, promotion and commercial and financial management of the Commonwealth Games (including events and programs associated with the Commonwealth Games); and
- b) to do all the things necessary for or in connection with a matter mentioned in a).

The Corporation will have all the powers of an individual and may for example enter into contracts; acquire, hold, deal with and dispose of property; appoint agents and attorneys; engage consultants; charge a fee for its service; and do anything else necessary or convenient to be done in the performance of its functions.

However, the powers of the Corporation do not include the following:

- a) making a loan to a member¹⁶, member's spouse, relative of a member or relative of a member's spouse;
- b) giving a guarantee, or providing security, in connection with a loan made, or to be made by another person to a member, member's spouse, relative of a member or relative of a member's spouse;
- c) exempting, or indemnifying, a member from or against any liability for a breach of duty relating to the corporation.

Clause 10 allows that the Minister may give a written direction. Any direction must be detailed in the annual report of the corporation.

2.4.3 Part 3 – The Board

Clauses 12 to 20 set out the establishment, role and membership of the board. The board is responsible for the way the corporation performs its functions and exercises its functions in an appropriate, effective and efficient way.

The board will be appointed by Governor-in-Council. Clause 14 stipulates that the Minister must consult with ACGA about the appointment of each member and the board must consist of at least eight members.

¹⁶ A member means a member of the board appointed under proposed section 14(3) as defined in the schedule - dictionary

In its consideration of the Bill, the Committee considered the composition of the board. Whilst the Committee understands that consultation must take place with the ACGA, as the Games are to be hosted by the Gold Coast, the Committee has an expectation that the Gold Coast community would have a substantial representation on the board. To this end, the Committee has recommended that a minimum of 25% of board members should emanate from the Gold Coast community.

Recommendation 2

The Committee recommends that the Bill be amended to stipulate that at least 25% of the members of the board emanate from the Gold Coast community.

Clause 16 provides that the Governor in Council will decide the remuneration and allowances to be paid to board members and decide the terms and conditions, not provided in the Act. Under the *Financial Accountability Act 2009* the corporation will be required to prepare and publish an annual report which will include details of member and CEO remuneration.

The Committee considers that these positions are high profile public positions and as such full public disclosure of the remuneration and terms and conditions should be provided as soon as practicable after appointment rather than waiting until the first annual report of the corporation is published. The Committee therefore recommends that the Bill be amended to ensure that this public disclosure is provided at the earliest opportunity.

Recommendation 3

The Committee recommends that the Bill be amended to stipulate that members remuneration, allowances and terms and conditions be disclosed publicly as soon as practicable after the decision of the Governor in Council.

Clause 17 allows the Governor in Council to remove a member from office for any reason or none at any time.

The Premier advised in her introductory statements that to keep politics out of the day-to-day running of the Games, parliamentarians and local government councillors will be precluded from appointment to the board. Clause 18 stipulates that a member of the Commonwealth Parliament or a State Parliament or a councillor of a local government, are not eligible for appointment as a member.

Clause 19 specifies that the Chairperson is a member nominated by the Minister after consultation with ACGA. The Committee notes that whilst all members of the board are appointed by Governor in Council, and the Chairperson will be one of those members appointed by Governor in Council, the Chairperson is to be nominated by the Minister and not by Governor in Council.

Clause 20 specifies that the Deputy Chairperson is either the President of ACGA, if he/she is on the Board; or a member nominated by the Minister, after consultation with ACGA, if the President of the ACGA is not on the Board.

Clauses 21 to 25 set out board proceedings, including details such as:

- time and place of meetings
- quorum
- presiding at meetings
- conduct of meetings
- minutes and other records

Refer section 3.3 of this report for further discussion regarding the provision of the casting vote to the Chairperson.

Clauses 26 to 28 set out the duties of members, including the procedures to be followed where a board member has a conflict of interest. The Bill places the onus on members to act honestly and exercise care and diligence in carrying out their duties. It also prohibits a member or former member from making improper use of their position or information acquired because of their position. Clause 27 allows the Minister to recover profits, losses or damages in the event of a contravention of Clause 26. Clause 28 covers members' duties of disclosure.

Clause 29 provides for immunities from proceeding. Refer section 3.2 for further discussion regarding this issue.

Clause 30 enables the establishment of board committees.

Clauses 31 to 38 cover the CEO and other staff of the Corporation. Refer section 3.1 for further discussion regarding the terms of employment of the CEO.

2.4.4 Division 7 – Budget and funding agreement

Clause 39 requires that the corporation develop, adopt and submit to the Minister a budget for each financial year. This budget must be approved by the Minister before it is made available to the public.

Clause 40 requires that the Corporation enter into a funding agreement for each financial year with the department. This funding agreement will set out the way funding for the financial year is to be expended. Clause 41 requires the corporation to act in accordance with the approved budget and the funding agreement.

As noted above, the Corporation is required under the *Financial Accountability Act 2009* to prepare and publish an annual report. This will fulfil on going accountability requirements.

2.4.5 Part 4 – Legal proceedings

Clauses 42 to 45 set out the legal proceedings processes.

2.4.6 Part 5 – Winding-up of corporation

Clause 46 requires that the Corporation is to be dissolved not later than 18 months after the end of the closing ceremony. This date may be prescribed by regulation, however, if not prescribed by regulation dissolution day will be 18 months from the end of the closing ceremony.

The Committee notes that the closing ceremony date proposed in the bid documentation is Sunday 15 April 2018.¹⁷ The final dissolution date would therefore be 15 October 2019.

¹⁷ Gold Coast 2018 Commonwealth Games Bid Ltd, *Gold Coast City 2018 Commonwealth Games – Candidate City File – Vol 1*, May 2011: 4

Clause 47 provides that when the corporation is dissolved, the State is the successor in law of the Corporation and therefore all assets and liabilities will vest in the State. The State will also be substituted as a party to any contract, lease or other instrument or any current legal proceeding to which the Corporation is party.

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ (FLP) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The Committee examined the Bill’s consistency with FLPs. This section of the report discusses potential breaches of FLPs identified during the Committee’s examination of the Bill and includes any reasons or justifications contained in the explanatory notes and provided by the department.

3.1 Rights and liberties of individuals – natural justice

Clause 37 deals with a vacancy in the office of the CEO of the Gold Coast 2018 Commonwealth Games Corporation. A mirror provision to Clause 37 is contained in Clause 17 in respect of Board members for the Corporation.

Clause 37(1) provides that the office of the CEO becomes vacant if the CEO completes a term of office, resigns, is convicted of an indictable offence, becomes insolvent/bankrupt, or is removed from office by the Governor in Council under subsection (2). Clause 37(2) states that:

The Governor in Council may at any time remove the chief executive officer from office for any reason or none.

Whilst membership of a board is often not the sole income stream for a particular board member, the nature of the role of a CEO is that it is typically a full-time job and the main (or only) income stream of that person. Given the role of CEO for the corporation would involve significant responsibility, the remuneration for that position is likely to be substantial. If a person assumed financial liabilities (eg. home mortgage) commensurate with that level of remuneration and then they were suddenly removed from their position, without recourse to any appeal mechanism, it is reasonably conceivable that they (and their family) may encounter sudden and significant financial hardship.

No appeal rights from the Governor in Council’s actions are specified in this Bill, however the CEO may still have some action at law in respect of their removal from office (eg. under their contract of employment). Any challenge to the decision is made more difficult by the fact that the removal decision can be made ‘for any reason or none’ and the fact that there is no requirement under the Bill for any kind of information notice or written reasons to be provided (such as would normally provide grounds upon which to base an appeal/seek redress).

A provision for the Governor in Council to remove a statutory body’s corporate CEO ‘for any reason or none’ does appear to be historically unusual, although a mirror provision does exist in the recent *Queensland Reconstruction Authority Act 2011*.

The Committee sought additional comments from the department on this issue. DPC advised that although there will be an ability to remove the CEO without reason, the person appointed will be accepting the position in the full knowledge of this condition. The CEO’s contract of employment will contain provisions dealing with termination which will include the opportunity for the CEO to provide reasons why his/her employment should not be terminated. This will provide an avenue to be heard. DPC advised that this is similar to current provisions in chief executive and senior executive service contracts within the public service.¹⁸

¹⁸ Correspondence dated 24 November 2011 to FAC from Mr J Bradley, Director-General, Department of the Premier and Cabinet: 1

The Committee is satisfied with the explanation provided by the department.

3.2 Rights and liberties of individuals – immunity from proceedings or prosecution without adequate justification

Clause 29(1) provides that a (board) member does not incur civil liability for an act done, or omission made, honestly and without negligence under the Act. Where subsection (1) prevents a civil liability attaching to a member, the liability attaches instead to the Corporation (Clause 29(2)).

While this does confer some limited immunity from prosecution, it is a fairly standard provision designed to allow persons to undertake their statutory duties without fear of personal liability (absent dishonesty and negligence). Attaching civil liability to the Corporation gives aggrieved persons an alternative avenue for redress.

The explanatory notes highlight that the proposed immunity does not extend to a member who has been negligent; and provides an avenue of redress for any affected individuals, by providing that liability attaches to the Corporation.

The Committee is satisfied that this is a standard provision that provides an avenue of redress to any affected individuals in the event of enforcement of this provision.

3.3 Rights and liberties of individuals – clear and unambiguous drafting

Clauses 23 and 24 provide for the conduct of board meetings of the Gold Coast 2018 Commonwealth Games Corporation. Clause 23 provides that the chairperson presides at all meetings at which they are present and, in their absence, the deputy chairperson presides. If both the chairperson and deputy chairperson are absent, a member chosen by the members present presides. Clause 24 provides that a question at a meeting of the Board is to be decided by a majority of the votes of the members present at the meeting (Clause 24(4)).

Clause 24(5) states:

If the votes are equal, the chairperson has a casting vote.

What is not clear from the wording of Clause 24(5) is whether the casting vote afforded to ‘the chairperson’ is intended to belong to:

- (a) the appointed (regular) chairperson of the Board (even if they are absent from that particular meeting but able to give a casting vote by proxy); or
- (b) a board member (who is not the regular chairperson of the Board) who is chairing that particular meeting and who is acting as the chairperson/presiding for the purposes of that particular meeting *only*.

The Committee considered that it is normal meeting procedure that the person chairing the meeting would ordinarily have the casting vote.

Under the *Corporations Act 2001* (Cwlth) directors must elect a director present to chair their meetings, or part of it, if a director has not already been elected or a previously elected chair is not available or declines to act, for the meeting or part of the meeting.¹⁹ That Act specifies that the chair has a casting vote, if necessary, in addition to any vote they have in their capacity as a director. The section notes that the chair may be precluded from voting, for example, by a conflict of interest.²⁰ This Bill differs from this process in that it proposes the Chair be nominated by the Minister rather than by the other members of the board.

¹⁹ Corporations Act 2001 (Cwlth), s248E

²⁰ Corporations Act 2001 (Cwlth), s248G

The Committee sought additional comments from the department on this issue. DPC advised that the appointed (regular) chairperson of the board will have the casting vote if the votes at a meeting are equal.²¹

No process is proposed to enable the regular chairperson to have a casting vote if they are not present at the meeting. The Committee considers that the wording of the clause is not clear in its intent and recommends that the clause be amended accordingly.

Recommendation 4

The Committee recommends that the Bill be amended to clarify Clause 24 regarding who has the casting vote in the event that the chairperson, as nominated by the Minister, is absent from a vote and the process to be followed in such an event.

3.4 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. Subsection 22(1) states that when introducing a Bill in the Legislative Assembly, a member must circulate to members an explanatory note for the Bill. Section 23 requires an explanatory note for a Bill to be in clear and precise language and to include the Bill's short title and a brief statement providing certain information.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by section 23 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and genesis.

²¹ Correspondence dated 24 November 2011 to FAC from Mr J Bradley, Director-General, Department of the Premier and Cabinet: 1

