

**Commonwealth Games  
Arrangements (Brand Protection)  
Amendment Bill 2013**

**Report No. 19**

**State Development, Infrastructure and Industry  
Committee**

**March 2013**

## **State Development, Infrastructure and Industry Committee**

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### **Acknowledgements**

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## Abbreviations

ACGA	Australian Commonwealth Games Association
CGF	Commonwealth Games Federation
Department	Department of Tourism, Major Events, Small Business and the Commonwealth Games
FLP	Fundamental legislative principles
IP	Intellectual property
OCGC	Office of Commonwealth Games Coordination
The Corporation	Gold Coast 2018 Commonwealth Games Corporation
The Committee	The State Development, Infrastructure and Industry Committee
The Games	Gold Coast 2018 Commonwealth Games

## Glossary

<i>commercial purpose</i>	A purpose in relation to which the generation of profit is more than an incidental outcome.
<i>misleading and deceptive conduct</i>	Section 18 of the <a href="#">Australian Consumer Law</a> (ACL), which is found in schedule 2 of the <a href="#">Competition and Consumer Act 2010</a> (formerly the <a href="#">Trade Practices Act 1974</a> ) prohibits conduct by corporations in trade or commerce which is misleading or deceptive or is likely to mislead or deceive. State Fair Trading Legislation contains similar provisions in relation to misleading or deceptive conduct by individuals
<i>protected images and references</i>	Images covering ACGA, CGF or Games – (eg) emblems Reference – ACGA, CGF or Games – (eg) slogans associated with the games
<i>sponsorship arrangement</i>	(a) a relationship of sponsorship, affiliation, approval or association, whether or not for commercial gain; and (b) an arrangement conferring a right on a person, or a Games-related entity, to associate the person, or the person's goods or services, with— (i) a Games-related entity; or (ii) the Commonwealth Games; or (iii) an event or program associated with the Commonwealth Games whether or not the event or program relates to sport.'
<i>trade marks</i>	Section 17 Trade Marks Act 1995 (C'wth) A trade mark is a sign used, or intended to be used, to distinguish goods or services dealt with or provided in the course of trade by a person from goods or services so dealt with or provided by any other person.

<i>relevant place</i>	<p>A regulation may prescribe any of the following as a ‘relevant place’:</p> <ul style="list-style-type: none"><li>(a) a venue or place associated with the Games, or with an event or program associated with the Games (including a non-sporting event or program);</li><li>(b) a public place used by the public to travel to or from the Games;</li><li>(c) a public place where the Games will be shown on a screen;</li><li>(d) a public place where there will be a media presence is expected in connection with the Games; or</li><li>(e) a public place where the public will gather for a Games-related purpose, such as where athletes will make public appearances.</li></ul> <p>This allows places like public transport hubs, ‘live sites’ (where large television screens are erected in public places), and likely media interview locations to be prescribed in a regulation.</p>
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## Chair's foreword

On behalf of the State Development, Infrastructure and Industry Committee of the 54<sup>th</sup> Parliament of Queensland, I present this report on the Commonwealth Games Arrangements (Brand Protection) Amendment Bill 2013.

The Bill was introduced into the Legislative Assembly by the Minister for Tourism, Major Events, Small Business and the Commonwealth Games, Hon Jann Stuckey MP, on 13 February 2013. The committee was required to report to the Legislative Assembly by 12 March 2013.

The committee's task was to consider the policy to be given effect by the legislation, as well as the application of fundamental legislative principles – that is, whether the Bill has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The aim of the Bill is to allow as much community ownership and celebration of the Gold Coast 2018 Commonwealth 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 by:

- prohibiting the unauthorised use of certain images and references for commercial or promotional purposes;
- prohibiting conduct falsely inferring an association with the Games;
- providing for an administrative regime of authorisations for not-for-profit community purposes; and
- providing for a standard practice for resolving breaches informally if possible and appropriate, with proceedings usually a last resort.

On behalf of the committee I thank the officials from The Department of Tourism, Major Events, Small Business and the Commonwealth Games who have informed the committee's deliberations: the committee's secretariat and the Technical Scrutiny of Legislation secretariat.

I commend the report to the House.



David Gibson MP  
**Chair**

March 2013

## Recommendations

### **Recommendation 1** **3**

The committee recommends that the Commonwealth Games Arrangements (Brand Protection) Amendment Bill 2013 be passed.

### **Recommendation 2** **4**

The committee recommends that the Bill be amended to address the issue of ambush marketing.

### **Recommendation 3** **5**

The committee recommends that the Minister for Tourism, Major Events, Small Business and the Commonwealth Games immediately commence negotiations with the Commonwealth Government to expedite the resolution of existing inter jurisdictional enforcement anomalies in order to achieve the policy objectives of this Bill and that such legislation be sufficiently generic in nature to have application to other major events.

### **Recommendation 4** **5**

The committee recommends that the Minister for Tourism, Major Events, Small Business and the Commonwealth Games immediately commence negotiations with the Commonwealth Government to expedite a review of the Competition and Consumer Act 2010 (Cth) to ensure the necessary protections for brand protection of major events. **5**

### **Recommendation 5** **5**

The committee recommends that the Minister for Tourism, Major Events, Small Business and the Commonwealth Games immediately commence negotiations with the Commonwealth Government Minister for Trade to expedite a review of existing trade mark protections under the Broadcasting Services Amendment (Online Services) Act 1999 (Cth) to ensure the issue of brand protection for major events is adequately regulated online. **5**

### **Recommendation 6** **6**

The committee recommends that in any further work undertaken on this Bill or subsequent amending legislation, the Minister ensures that external stakeholders with appropriate expertise are consulted in the development of the proposed legislation.

### **Recommendation 7** **7**

The committee recommends that the Department develop guidelines for the disposal of seized or forfeited goods under this legislation and that such guidelines be placed in the Commonwealth Games Arrangements Regulation when it is developed.

### **Recommendation 8** **11**

The committee recommends that the Gold Coast Games Corporation amend the Bill to include all games related images and references as a schedule to the Bill in order that the legislation has sufficient regard to the institution of Parliament.





## 1 Introduction

### 1.1 Role of the committee

The State Development, Infrastructure and Industry Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012, consisting of government and non-government members.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of the fundamental legislative principles to the Bill.

### 1.2 Process

The Commonwealth Games Arrangements (Brand Protection) Amendment Bill 2013 was referred to the committee on 13 February 2013, and the committee is required to report to the Legislative Assembly by 12 March 2013. The Department of Tourism, Major Events, Small Business and the Commonwealth Games provided a private briefing to the committee about the Bill on 20 February 2013. The committee heard from three witnesses (see Appendix A) at this briefing. Submissions were invited via email to all subscribers to the committee's email group on 15 February 2013 and closed on 27 February 2013 and no submissions were received.

Transcripts of the briefing by the Department of Tourism, Major Events, Small Business and the Commonwealth Games and supplementary questions on notice are published on the committee's webpage at [www.parliament.qld.gov.au/sdiic](http://www.parliament.qld.gov.au/sdiic).

### 1.3 Policy objectives of the Commonwealth Games Arrangements (Brand Protection) Amendment Bill 2013

The Bill is intended to be part of a suite of tools to encourage community ownership and celebration of the Gold Coast 2018 Commonwealth Games (the Games), while restricting the use of images or references that would dilute the value of the brand to sponsors and therefore compromise sponsorship revenue.

The objective of the Bill 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 explanatory notes of the Bill note that existing law, including the common law concept of 'passing off' and statutory devices such as copyright, trademarks, and that misleading and deceptive conduct, are generally sufficient for brand protection in Australia. However the explanatory notes contend that major sporting events tend to attract larger numbers of people and businesses taking advantage of the publicity and goodwill surrounding the event without seeking the appropriate permissions.

The Bill's explanatory notes highlight that during the bidding period, for example, before the Gold Coast was even awarded the Games, over 20 Internet domain names were acquired by private operators and sites which imply official links to the Games were set up for commercial gain. Further sites have emerged since.

The explanatory notes maintain that the sheer number of cases of misuse of intellectual property makes usual enforcement methods costly and impracticable. Furthermore, the explanatory notes suggest that in the lead up to and during the Games, enforcement will need to be immediate in order to avoid substantial damage. It is therefore argued that remedies are required that are fair but more rapid than those available under existing law.

These circumstances have resulted in it becoming the norm for host jurisdictions to enact special legislation for events such as Commonwealth and Olympic Games and world cups of major sports. For example, brand protection legislation was passed for the Sydney 2000 Olympic Games, the Melbourne 2006 Commonwealth Games, the London 2012 Olympic Games and the Glasgow 2014 Commonwealth Games.

## 2 Examination of the Commonwealth Games Arrangements (Brand Protection) Amendment Bill 2013

### 2.1 Should the Bill be passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. The committee considered the main policy changes which the Bill would implement, as well as the application of fundamental legislative principles. After its examination of the Bill the committee determined to recommend that the Bill should be passed.

#### **Recommendation 1**

The committee recommends that the Commonwealth Games Arrangements (Brand Protection) Amendment Bill 2013 be passed.

### 2.2 Policy issues

The committee identified a number of policy issues of concern in relation to the Bill.

- The existence of a range of current legislation within Queensland and nationally which already affords a range of “brand protections” for special events.
- The committee’s preference to see a more fully developed and integrated legislative policy framework presented to the Parliament for consideration.
- The absence of provisions to address ambush marketing issues similar to those incorporated in the Major Sports Facilities Act 2001.
- Inter-jurisdictional enforcement, particularly given the geographical location of the event being so close to the border of Queensland and New South Wales.
- The extent to which the majority of the protections might be more effectively achieved through Commonwealth Government legislation.
- The reliance upon anecdotal evidence of the effectiveness of the equivalent Victorian legislation without rigorous empirical and independent academic review of its outcomes prior to using it as the template for this Bill.
- The very limited consideration given to the need for provisions and the absence of any enforcement powers to protect the Commonwealth Games Brand ,where the breach involves activities occurring on websites registered outside of Queensland.
- The lack of consultation undertaken with key external stakeholders capable of adding considerable value to the scope and quality of the Bill.
- The importance of developing administrative guidelines or regulations to deal with the management of the disposal and donation of goods surrendered to the Department.

#### 2.2.1 *Whether the legislation is necessary*

The explanatory notes indicate that there are no alternative ways to achieve the policy objectives, although it is also stated that it is hoped that the presence of the legislation will in itself provide sufficient deterrence to minimise the misuse of the Games related intellectual property.

The committee accepted that there would be potential deterrent benefits to be obtained from the presence of this legislation. However, the committee noted that there are already protections available for companies that have global brands. The committee therefore queried why the Commonwealth Games needs additional protection given the availability of existing arrangements such as those which enabled McDonalds to successfully challenge rugby league clubs for calling themselves 'Maccas'.

In their response to this issue, the Department acknowledged that there are a range of measures already in place in Commonwealth legislation. However the Department stated that the legislation was justified on the basis of the very short time frames involved which presented certain difficulties upon implementation due to the time consuming processes of obtaining a civil remedy through the courts. The Department indicated that existing processes are not sufficiently responsive to the urgency of the circumstances during an eleven day event. Therefore, the Bill provides for immediate remedies both criminal and civil to protect the rights of the sponsors.

The committee accepts the Department's response to this issue.

### *2.2.2 Omission of provisions with respect to ambush marketing*

The committee expressed concerns that the Bill omits any explicit provisions prohibiting ambush marketing and sought advice from the Department as to why the Bill had not incorporated similar provisions to those which exist in the Major Sports Facilities Act 2001.

The Department indicated that future amendments would be introduced to the legislation to address this issue and that the issue was currently being progressed.

The committee was not satisfied with this response and indicated to the Department that these issues should be included in this Bill.

#### **Recommendation 2**

The committee recommends that the Bill be amended to address the issue of ambush marketing.

### *2.2.3 Inter jurisdictional issues*

The committee raised a number of concerns about inter jurisdictional issues and the enforcement limitations of the current Bill. In particular, the challenges associated with the location of the Gold Coast City and environs being so close to the New South Wales border. The committee raised the example of circumstances potentially arising where a person standing on the New South Wales side of the border could get away with something, or at worst only be subjected to civil action for which those a step over the other side of the border in Queensland would be criminally prosecuted. The committee was sufficiently concerned about this issue that it expressed a preference for the Commonwealth introducing legislation to ensure that the issues were covered uniformly. The committee inquired what discussions had occurred with the Commonwealth Government about this issue and the Department advised that, although discussions had commenced, limited progress had been made due to the current position of the Commonwealth Parliament electoral cycle.

In raising issues concerning the role of the Commonwealth Government legislation to cover the Commonwealth Games the committee also suggested to the Department that whatever legislation is ultimately put in place should ideally be of a sufficiently generic nature to capture a broad range of major events rather than having to develop legislation to cover specific events. The Department indicated in response that in its discussions with the Commonwealth, the Commonwealth

Government had indicated it was considering such an approach in recognition of the need to address these issues for other major events.

The committee is sympathetic to the challenges faced by the Department in respect to the challenges of negotiating with the Commonwealth Government at this point in the electoral cycle. However the committee believes the Department needs to make greater efforts to progress this issue given the significance of the inter jurisdictional anomalies which currently exist. In particular, the committee encourages the Department to actively progress the issue of national uniform legislation and to give particular attention to the enforceability of a consistent regime in Queensland and New South Wales.

**Recommendation 3**

The committee recommends that the Minister for Tourism, Major Events, Small Business and the Commonwealth Games immediately commence negotiations with the Commonwealth Government to expedite the resolution of existing inter jurisdictional enforcement anomalies in order to achieve the policy objectives of the Bill and that such legislation be sufficiently generic in nature to have application to other major events.

**2.2.4 Internet Regulation**

During the briefing from the Department, the committee heard conflicting evidence about the application of the Bill to internet sites hosted outside of Queensland. The Department, during questioning by the committee indicated that it had already registered a range of domain names as a trademark under Commonwealth legislation. Furthermore, any sites hosted within Queensland would be caught by the duties and prohibitions proposed within this Bill, particularly with respect to the protection of terminology and emblems. However, it is reasonable to assume that not all websites will be hosted within Queensland or even Australia. As the Department indicated earlier in the briefing, the enforcement of existing Commonwealth legislation and international treaties can be complex and time consuming, thereby preventing a timely response, which is a critical issue for the protection of sponsors' interests during a comparatively short period of eleven days when the Games are to be held.

**Recommendation 4**

The committee recommends that the Minister for Tourism, Major Events, Small Business and the Commonwealth Games immediately commence negotiations with the Commonwealth Government to expedite a review of the Competition and Consumer Act 2010 (Cth) to ensure the necessary protections for brand protection of major events.

**Recommendation 5**

The committee recommends that the Minister for Tourism, Major Events, Small Business and the Commonwealth Games immediately commence negotiations with the Commonwealth Government Minister for Trade to expedite a review of existing trade mark protections under the Broadcasting Services Amendment (Online Services) Act 1999 (Cth) to ensure the issue of brand protection for major events is adequately regulated online.

### 2.2.5 Consultation

During the Departmental briefing, the Department was asked who it had consulted with during the development of the Bill apart from the Australian Commonwealth Games Association and the Commonwealth Games Federation. The Department informed the committee it had not consulted with any 'outside' stakeholders. The committee asked the Department if it had sought the input of the business community via the Gold Coast Chamber of Commerce in respect to issues associated with protecting terminology. The Department indicated it had not consulted with this organisation or any other business groups.

The Department was also asked whether it had consulted with the Law Society or any other peak bodies about the issues surrounding inter jurisdictional enforcement. The Department indicated it had not consulted with the Law Society or any other peak bodies.

The committee was not satisfied with this response and believes that it is appropriate for such organisations to have been consulted during the development of the Bill.

#### **Recommendation 6**

The committee recommends that in any further work undertaken on the Bill or subsequent amending legislation, the Minister for Tourism, Major Events, Small Business and the Commonwealth Games ensures that external stakeholders with appropriate expertise are consulted in the development of the proposed legislation.

### 2.2.6 The need for more rigorous analysis of comparable template legislation used elsewhere

During the Departmental briefing, the Department was asked what empirical or analytical research was undertaken to evaluate the efficacy of the template model being adopted. The Department indicated that anecdotal evidence from Victoria suggested that the presence of the legislation was sufficient deterrent in itself to protect sponsor branding and that there had been no prosecutions recorded.

A preliminary literature review undertaken on this issue by the committee suggests that there are a number of peer reviewed articles published containing independent evaluations and case-law on the subject. Such research findings may be helpful to the Department in its future work on this legislation and the committee would encourage the Department to review such material prior to finalising this legislation.<sup>1, 2</sup>

### 2.2.7 How forfeited property may be dealt with

During the Departmental hearing the committee sought to clarify the reasons for why Clause 67(1) of the Bill creates a duty for an officer to issue a receipt when seizing goods; however in subsection (2) it establishes an authority but not a duty for the police officer who has seized the goods to describe all of the seized items in the receipt they issue to the offender. The Department took this question on notice and in correspondence to the committee clarified that:

<sup>1</sup> Frontier Economics Pty Ltd., Melbourne, Ambush Marketing Legislation Review Prepared for IP Australia and the Department of Communications, Information Technology and the Arts (DCITA), October 2007

<sup>2</sup> Vassallo, E., Blemaster, K. and Werner, P. An International Look at Ambush Marketing, Trademark Reporter, Vol 95, pp. 1338-1356, 2005

Our view is that paragraph (2)(a) provides police with the sensible option to issue one collective receipt for a large number of items, where appropriate; and 2(b) mandates a description of the item or items seized. Each paragraph is independent of the other; the obligation imposed by (b) applies to every item seized, regardless of whether the police officer exercises a discretion under (a).<sup>3</sup>

The committee accepts and is satisfied with this explanation by the Department

The new clause 75 (1) gives the Chief Executive the power to deal with a seized item as he or she considers appropriate, including, for example, by destroying it or giving it away. In its briefing from the Department the committee asked the Department what guidelines are in place that will ensure that discretion is exercised in accordance with the expected standards of probity.

The Department indicated that the clause had been drafted in a manner to afford natural justice for seized items. It was explained that items to be surrendered would be taken into the custody of the Department. If there was no conviction, the goods could be provided back at a later date. However, the respondent might elect to forfeit the goods as they may not be in a suitable condition or they may not want them back, in which case the Department faces the dilemma of what to do with the items. However, when pressed further on the point the Department conceded that presently there were no guidelines and that these would need to be developed.

In the interests of transparency and good governance, the committee strongly supports the development of such guidelines.

**Recommendation 7**

The committee recommends that the Department of Tourism, Major Events, Small Business and the Commonwealth Games develop guidelines for the disposal of seized or forfeited goods under this legislation and that such guidelines be placed in the Commonwealth Games Arrangements Regulation when it is developed.

<sup>3</sup> Correspondence to the Committee from Dr Richard Eden, Director General of Tourism, Major Events, Small Business and the Commonwealth Games, 21 February 2013. p.1

### 3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ 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.

#### 3.1 Rights and liberties of individuals

##### 3.1.1 Proportion and relevance

Consequences imposed by legislation should be proportionate and relevant to the actions targeted by the legislation. The desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy. By way of explanation, proportionality and relevance would be absent from a situation where a ‘sledgehammer is used to crack a nut’.

The definition of ‘commercial purpose’ in clause 15, schedule provides:

‘Commercial purpose means a purpose in relation to which the generation of profit is more than an incidental outcome’.

The second limb of the definition of ‘prohibited purpose’ in new section 49 provides:’

‘Is for an advertising, marketing or promotional purpose, whether or not for commercial gain’.

Therefore it appears that the Bill prohibits use of Commonwealth-games related images and references even if they are not being used for a commercial purpose.

The typical rationale for intellectual property law is to protect the right of the originator or inventor to commercialise his or her ideas or inventions. This rationale is missing from this Bill because even non-commercial uses are prohibited. Therefore, the proportionality and relevance of the provisions of the Bill are called into question.

The committee sought a response from the Department to outline the rationale for the breadth of this definition and the potential for it to unintentionally capture legitimate not for profit activities associated with the Commonwealth Games. The Department indicated that:

Our view is that if the generation of profit is more than merely an incidental outcome of the use, then it is one of the purposes of the use (even if not the major purpose), and is the kind of risk the legislation is intended to manage. It is a risk to sponsors (and therefore to the State, since sponsorship revenue would be at risk), and to the integrity and reputation of the Commonwealth Games.

I do not believe the Bill has adverse implications for the rights and liberties of individuals and organisations whose activities are not motivated by profit. On the contrary, I believe it has adverse implications only for those who are motivated by profit. Some of those individuals and organisations may also have other more altruistic motives, but unfortunately the risk presented by a profit motive is not mitigated or offset by other non-profit motives; any profit motive will be of legitimate concern to sponsors, the Corporation, and the Government.<sup>4</sup>

The committee accepts the justification offered by the Department on this matter.

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<sup>4</sup> Email Correspondence to the Committee from Dr Richard Eden, Director General, Department of Tourism, Major Events, Small Business and the Commonwealth Games 27 February 2013



### 3.1.2 *Natural justice*

It is possible for the same conduct to lead to both a criminal prosecution under section 51 or 52 and civil action (an injunction under section 60, disclosure of information and corrective advertising under section 61, damages under section 62 or an account of profits under section 63). That is, a person could be subject to multiple court processes arising out of a single act or omission. As explained by the Office of the Queensland Parliamentary Counsel,

‘Multiple processes set up under legislation for a single act or omission must be examined with care to ensure there is sufficient justification’.

When examining a scheme making a person subject to multiple court processes arising out of a single act or omission, the former Scrutiny of Legislation Committee expressed its concern that the relevant clause may have the effect of overriding the spirit of protection of section 16 of the Criminal Code. Section 16 of the Criminal Code provides that a person cannot be twice punished for the same act or omission. The Committee also sought clarification as to why it was not considered acceptable for one avenue to be chosen.

The explanatory notes identify this issue of fundamental legislative principle and state:

‘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.’

The explanatory notes go on to identify three justifications for the imposition of criminal liability. These are:

- significance of the Games;
- public expectation that dishonest exploitation of Games goodwill will be monitored and stopped;
- risk to significant taxpayer investment in the Games.

The most compelling of these arguments is the third. However, criminal prosecutions will not protect tax payer investment other than by acting as a deterrent. The deterrent aspect of this Bill is recognised in the explanatory notes, which state:

‘It is hoped that most or all breaches will be able to be resolved informally, without the need for civil action or prosecution.’

The justifications set out above are not of the same nature as the justifications for double jeopardy for defamation (protection of reputation) and assault (protection of one’s person). Therefore, it is debatable whether there is sufficient justification for multiple court processes and the consequential implications for the rights and liberties of individuals. However, on balance the committee has determined it supports the need for both civil and criminal remedies given the special nature of this major event and notes that a similar approach has been adopted in other jurisdictions hosting equivalent events of this nature.

### 3.1.3 *Injunctions*

Proposed new section 60 provides that the Supreme Court of Queensland may grant an injunction or an interim injunction restraining an offending party from engaging in or continuing to engage in conduct offending against proposed new sections 51 or 52. The test under section 60 is that the court is satisfied on the balance of probabilities that the offending party has engaged or is likely to engage or continue to engage in the conduct. Proposed new section 60(5) provides that an injunction or interim injunction may be granted without notice to the offending party. The test under section 60(5) for giving an injunction without notice is that the court is satisfied there is

adequate reason for doing so. Proposed new section 60(6)(b) is similar to provisions in the Gas Supply Act 2003 section 270Y(7) and the Electricity Act 1994 section 120Z.

Interim injunctions without notice to the party affected are available under other legislative provisions in Queensland. However, this is not common. Interim injunctions can also be made without the person against whom they are made having an opportunity to be heard – for example, Industrial Relations Act 1999, section 119 and Queensland Civil and Administrative Tribunal Act 2009, section 59.

Interim injunctions without notice may be justified on the grounds of urgency. Therefore, interim injunctions without notice raise less serious issues of fundamental legislative principle than injunctions without notice.

The consequence of making injunctions without notice is that the offending party will not have a right to be heard in response to the application for an injunction. The right to be heard is part of natural justice. Williams JA of the Queensland Court of Appeal in *Re Criminal Proceeds Confiscation Act 2002(Qld)* [2003] QCA 249 stated:

One of the requirements [of natural justice] is that a party likely to be affected by the decision shall be duly notified when and where the matter will be heard and then be given full opportunity of stating the case in response. There are throughout the law reports innumerable cases containing statements to the effect that a person may not be condemned unheard or without being given reasonable opportunity of putting forward a case. That is a universal principle which applies to both civil and criminal proceedings.

Giving a party adequate notice of a hearing is also part of procedural fairness. Procedural fairness is part of natural justice. This clause does not appear to be consistent with natural justice and therefore this clause may not have sufficient regard for the rights and liberties of individuals. The committee considered this issue and while recognising that it is contentious, on balance determined that it is necessary for the Supreme Court to be given the power to issue an injunction or an interim injunction given the need for an expedited response during the limited timeframes involved during the Commonwealth Games.

#### *3.1.4 Powers to enter premises*

New section 66 provides that a police officer may seize goods, advertising material or a device without a warrant. The Office of the Queensland Parliamentary Counsel has stated that Queensland drafting practice currently established, by precedent, to achieve consistency with fundamental legislative principles includes... property must not be interfered with or seized without particular justification. The former Scrutiny of Legislation Committee considered that if legislation permits seizure without a warrant, this departure from the safeguards provided by a search warrant should be carefully considered and adequately justified. The explanatory notes on this matter state:

Police already have a broad power under the Police Powers and Responsibilities Act 2000 to seize evidence of an offence. The Bill provides a power to seize to protect Games-related intellectual property, 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 Bill also provides important 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 able to be resolved informally, without the need for civil action or prosecution. The Bill therefore also provides that where goods are voluntarily surrendered, rather than seized, the same checks and balances apply.

The committee acknowledges that the ability to seize goods, advertising material or a device without a warrant is contentious, however given the limited scope of its application and the time limited nature of the power, the committee is satisfied that the inclusion of this power in the Bill is justified.

### 3.2 The institution of parliament

#### 3.2.1 *Delegation of administrative power in appropriate circumstances to appropriate persons*

The definition of 'generic games reference' in section 53(2) includes Games references prescribed under a regulation as a generic Games reference (section 53(2)(b)). The term 'generic games reference' is an important term in section 53, which creates an exception to sections 51 and 52. Therefore, it would be preferable if the entire definition for the term 'generic games reference' was included in the Act rather than delegated legislation. It is questionable whether this is an appropriate delegation of legislative power. Therefore, this clause may not have sufficient regard for the institution of Parliament.

Definitions ACGA, CGF and Games images and references

The definitions of the following terms:

- ACGA image
- ACGA reference
- CGF image
- CGF reference
- Games image
- Games reference

include images and references prescribed under a regulation. These terms are used in section 56 'grant of authority'. Therefore, it would be preferable if the entire definition for these terms was included in the Act rather than delegated legislation. The corresponding legislation for the Melbourne 2006 Commonwealth Games included the relevant logos in the Act rather than a regulation. It is questionable whether this is an appropriate delegation of legislative power. Therefore, this clause may not have sufficient regard for the institution of Parliament.

#### **Recommendation 8**

The committee recommends that the Gold Coast Games Corporation amend the Bill to include all games related images and references as a schedule to the Bill in order that the legislation has sufficient regard to the institution of Parliament.

## References

Correspondence to the Committee from Dr Richard Eden, Director General of Tourism, Major Events, Small Business and the Commonwealth Games, 21 February 2013.p.1

Email correspondence to the Committee from Dr Richard Eden, Director General of Tourism, Major Events, Small Business and the Commonwealth Games, 27 February 2013.p.1

Frontier Economics Pty Ltd., Melbourne, Ambush Marketing Legislation Review Prepared for IP Australia and the Department of Communications, Information Technology and the Arts (DCITA), October 2007

Vassallo, E., Blemaster, K. and Werner, P. An International Look at Ambush Marketing, Trademark Reporter, Vol 95, pp. 1338-1356, 2005

## Appendices

### Appendix A – Witnesses at Private Departmental Briefing to the Committee – 20 March 2013

<b>Witness</b>	<b>(Commonwealth Games Arrangements (Brand Protection) Amendment Bill 2013 of individual OR organisation)</b>
1	Dr Richard Eden, Director-General, Department of Tourism, Major Events, Small Business and the Commonwealth Games.
2	Mr Nick Elliot, Assistant Director-General, Department of Tourism, Major Events, Small Business and the Commonwealth Games.
3	Mr Mark Peters, Chief Executive Officer, Commonwealth Games Corporation