



Speech By
Hon. Jann Stuckey

MEMBER FOR CURRUMBIN

**COMMONWEALTH GAMES ARRANGEMENTS (BRAND PROTECTION)
AMENDMENT BILL**

 **Hon. JA STUCKEY** (Currumbin—LNP) (Minister for Tourism, Major Events, Small Business and the Commonwealth Games) (3.48 pm): I move—

That the bill be now read a second time.

I thank the State Development, Infrastructure and Industry Committee for its expeditious consideration of the bill, and I note members of that committee here in the House this afternoon. The government has carefully considered the committee's report, which was tabled in the House on 7 March 2013. I am now pleased to table the government's response to the report, which I note has been approved by the Premier.

Tabled paper: State Development, Infrastructure and Industry Committee: Report No. 19—Commonwealth Games Arrangements (Brand Protection) Amendment Bill 2013, government response [\[2305\]](#).

The committee made eight recommendations. The government supports six of the recommendations either fully, in principle or in part. Two recommendations are not supported. I will now speak briefly to the recommendations. The government supports recommendation 1 that the bill be passed and it appreciates the committee's support in this regard. The second recommendation is that the bill be amended to address the issue of ambush marketing. The government supports this recommendation in principle. The premise of this recommendation appears to be that 'the bill omits any explicit provisions prohibiting ambush marketing' outlined at page 4 of the report. There appears to be some confusion about what constitutes ambush marketing so I will endeavour to clarify this.

Ambush marketing includes the direct unauthorised use of intellectual property, as well as various other strategies to leverage off the goodwill and publicity surrounding an event. The bill in fact does address, very directly, the kinds of ambush marketing that need to be addressed at this point, five years before the games. Protection against ambush marketing by way of the unauthorised use of intellectual property is required years before an event such as a Commonwealth Games because emblems, slogans, mascots and the like are launched years before the event. The new games emblem will be launched on 4 April this year and it is important that we have certain protection in place as soon as possible.

There are a number of issues that will need to be dealt with in legislation prior to the games, including ticket touting, ambush marketing by way of advertising close to venues, transport and, of course, security. Most of these issues do not require legislation this far out from the games. In particular, regulating advertising near venues is not urgent. My department has an ongoing legislative development program that will deliver all the legislative needs of the Gold Coast 2018 Commonwealth Games in appropriate timeframes.

Recommendations 3, 4 and 5 relate to negotiations with the Commonwealth government about policy and legislative development within its jurisdiction. The government supports these

recommendations in principle. My department is already undertaking officer-level discussions with the Commonwealth government about complementary legislation for the games. I have also written to the Minister for Sport, Senator Kate Lundy, about complementary legislation. However, given the current point in the Commonwealth electoral cycle, there is no realistic expectation of Commonwealth legislation before late 2014 at the earliest.

I am not concerned about this timing. Although existing remedies will not be sufficient closer to and during the games, they are effective for the current context and are already being used by the Gold Coast 2018 Commonwealth Games Corporation and will continue to be used as required. In the bid for the games, the Commonwealth government has made a commitment to progress appropriate brand protection legislation. I am confident that the Commonwealth government will honour its commitment and progress its legislation at the earliest opportunity. I will forward to the Commonwealth the committee's recommendations 4 and 5 about reviewing the Competition and Consumer Act 2010 and the Broadcasting Services Amendment (Online Services) Act 1999 to ensure the necessary protections for brand protection of major events. However, it will be up to the Commonwealth government on what it progresses.

I make the observation that interjurisdictional enforcement, particularly as it relates to internet breaches, is one with which governments and intellectual property owners around the globe have been grappling with for many years. It is not unique to the games, it pre-dates the games and will be around for a long time after the games. It is not an issue that domestic legislation is able to resolve, whether the jurisdiction is Queensland, Victoria or Canada. The proposed new section 48 provides that the brand protection provisions will apply outside Queensland to the greatest extent possible, but no government can empower its officers, by legislation or otherwise, to go into another jurisdiction to enforce its laws.

I am confident that the Gold Coast 2018 Commonwealth Games Corporation will be able to deal promptly and effectively with breaches originating outside Queensland but within Australia using the Commonwealth legislation once it is passed. International breaches will be a matter for the corporation and the Commonwealth Games Federation and their respective legal advisers to manage on a case-by-case basis.

The committee also made some comments on the work and research done in developing the policy basis for the bill. To clarify, the process included reviews of legislation prepared for the Sydney 2000, Melbourne 2006, London 2012 and Glasgow 2014 Olympic and Commonwealth games. Numerous discussions were undertaken with senior executives and officers from the Victorian Office of Commonwealth Games Coordination and the M2006 Corporation. Consultation also occurred with the Gold Coast 2018 Commonwealth Games Corporation and its specialist intellectual property lawyer and with relevant Queensland government departments, in particular the Queensland Police Service and the Department of Justice and Attorney-General. The ambush marketing legislation review referred to in the report was also considered early in the project.

The government also supports in principle recommendation 6 that external stakeholders with appropriate expertise are consulted in the development of further legislation. We will continue to consult relevant external stakeholders with appropriate expertise in the ongoing development of games related policy. I note the committee's suggestion in its report that the Gold Coast chamber of commerce should have been consulted on the bill. The object of the bill is not to provide a framework for commercial use of Commonwealth Games branding on which it may have been appropriate to consult the business community; it is to prevent the commercial use of games branding without the permission of, primarily, the Gold Coast 2018 Commonwealth Games Corporation. It is necessary to give the corporation control of the commercial use of images and references in order to achieve the broader objective—that is, to not allow the use of images or references in a way that would dilute the value of the brand to sponsors. If Gold Coast businesses want to use Commonwealth Games references or images for commercial or promotional purposes they will need to negotiate with the corporation. The appropriate point of engagement for local businesses interested in opportunities to benefit from the games is, therefore, with the corporation. I should caution though that permission to use references or images for commercial purposes will usually only be given to sponsors, official suppliers and the like, otherwise there would be no point in becoming a sponsor.

The committee also suggested that the Law Society of Queensland should have been consulted. The government considers sometimes it will be appropriate to consult bodies such as the Law Society and the Bar Association of Queensland in the development of legislation. But this bill is relatively straightforward. It is modelled on legislation that was effective only seven years ago in Melbourne. This bill does not require the detailed opportunities for public input that some other bills do.

Recommendation 7 is that my department develop guidelines for the disposal of seized or forfeited goods under the legislation and that the guidelines form part of the Commonwealth Games regulation when it is developed. While the government agrees to develop and publish guidelines, we will need to further consider whether the guidelines will form part of a regulation. We will seek advice from the Office of the Queensland Parliamentary Counsel before a decision is made.

The final recommendation is that the Gold Coast 2018 Commonwealth Games Corporation amends 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. There are a range of references and images that are still in development and many on which work has not even started yet, such as the pictograms that will denote each sport. The bill provides the detail of how games references and images will be protected. This is the critical material that requires parliamentary consideration. The actual references and images to be protected here are, in a policy sense, much less significant and appropriate to be included in subordinate legislation. The committee notes in its report that the corresponding legislation for the Melbourne 2006 Commonwealth Games included all their references and images in their act rather than a regulation. However, the Victorian Commonwealth Games Arrangements Regulations 2005 prescribed a number of references and images pursuant to a head of power in section 57 of their Commonwealth Games Arrangements Act 2001. Members will, of course, have the opportunity to scrutinise the references and images included in any regulation and move a disallowance motion if any are felt to be inappropriate.

The committee mentions generic games references in particular. The bill allows the unauthorised commercial use of generic games references if the use does not refer to the Commonwealth Games and would not reasonably be taken to refer to the Commonwealth Games. This is because generic games references are those that could, with no intent to deceive, be used to refer to other events such as the Masters Games. Given that references can be prescribed by regulation, it is necessary to also allow the prescribing of those references as generic games references. This will enable the regulation to maintain consistency with the policy of the bill where a new reference could legitimately be used to refer to another event. The government does not consider that allowing the prescribing of images, references or generic references by regulation represents a lack of sufficient regard to the institution of parliament.

I would like to put on record my thanks to the committee for its report. However, I am aware that only three members of the committee—the chair and the members for Burleigh and Sandgate—were able to attend the briefing given by officers of my department on 20 February. I particularly thank those three members, as well as the committee secretariat, for their consideration of the bill.

I now turn to the bill. As I said in this House when I introduced the bill on 13 February this year, the bill will insert into the Commonwealth Games Arrangements Act 2011 a framework for the protection of the branding materials and goodwill of the Gold Coast 2018 Commonwealth Games. This bill is one part of an overall package designed to allow for community ownership and celebration of the games, while not allowing the use of Commonwealth Games images or references in a way that would dilute the value of the brand to sponsors. This would compromise sponsorship revenue, which forms a sizeable chunk of the games budget. It is prudent that we take reasonable steps to protect the government's significant investment in the games.

The bill provides streamlined procedures for the enforcement of intellectual property associated with the Gold Coast 2018 Commonwealth Games, references such as 'Commonwealth Games' and 'Queen's baton relay' and images such as the games emblem and mascot. It also prevents people from falsely suggesting that they have a relationship with the games as a sponsor or supplier. There are criminal sanctions co-existing with civil remedies, injunctions, corrective advertising, damages and account of profits. Seizure powers also apply in the critical few months leading up to and including the games, in and around games venues and other key locations to be prescribed, such as public transport hubs and live sites. It is critical that we have these fair but speedy enforcement options to give sponsors the confidence that their investment will be protected.

As I said before, the proposed new section 48 provides that the protections and remedies will apply extraterritorially to the greatest extent possible. Part 1 of the new chapter 3 sets out some critical definitions for the terms 'prohibited purpose' and 'deceptively similar'. The definition of 'prohibited purpose' includes exceptions for things such as genuine news reporting, criticism and review or education.

Part 2 sets out the offences and includes the special arrangements for generic games references, which can be used in good faith to refer to other events such as the Masters Games, and the safeguard for people who happen to already be using an image or reference that becomes protected.

Part 3 provides authorities for the use of references and images that would otherwise be a prohibited use. The corporation can authorise the use of games images and references that are essentially those that are created for the Gold Coast 2018 games. The Australian Commonwealth Games Association and the Commonwealth Games Federation can authorise the use of their own references and images, their names and their emblems. The minister can authorise the non-commercial use of games references to ensure community celebration of the games is facilitated where there is no impact on sponsors' rights or on the integrity of the Commonwealth Games. There is also provision for a publicly available register of authorisations, so that any member of the public can check if they have suspicions that someone is misusing a protected reference or image.

Part 4 sets out the civil remedies which co-exist with the criminal sanctions. The civil remedies, of course, will be heard and decided by courts exercising civil jurisdiction to a civil standard. They are injunctions, corrective advertising, damages and account of profits, although for any single incident a court can order damages or an account of profits, but not both.

Part 5 sets out the powers allowing police to seize contraband in key places from January to April 2018. This is the period when this is the greatest risk of the kinds of ambush marketing activities that occur in places where the media or large numbers of people will be gathering; places such as Commonwealth Games venues, airports where athletes will be arriving, public transport routes and hubs and live sites where large screens will be erected in public places to broadcast the games. The power extends to electronic devices that contain unauthorised references or images. It requires a reasonable belief, by a police officer, that the reference or image is being used or is intended to be used in contravention of the bill. There is comprehensive provision for transparency and natural justice after a seizure. The same provisions apply where an item is surrendered to the Gold Coast 2018 Commonwealth Games Corporation. This is important, as it is hoped that all matters can be resolved informally and quickly, which will usually involve the surrender of the alleged contraband to a corporation officer in the field.

Part 5 facilitates sensible outcomes. For example, if all parties agree that a seizure was in error, the item can be returned promptly to its owner. Alternatively, if the person acknowledges a use was unauthorised but there is no public interest in commencing either civil or criminal proceedings, the person can forfeit the item to the state and that can be the end of the matter. If no proceedings are commenced within six months, the item is to be returned to its owner.

Part 6 includes a range of provisions, including an assurance that the bill does not affect any existing civil right or remedy, and the expiry of the provisions at the end of 2018, when the justification for the criminal sanctions and the streamlined civil remedies will have passed.

As I said earlier, this bill is one part of an overall package designed to allow for community ownership and celebration of the games while not allowing the use of protected images or references in a way that would dilute the value of the brand to sponsors. The other main part of the overall package will be a suite of options for not-for-profit community uses, including a blanket authorisation that will allow low-key use subject only to common-sense guidelines. The government will work with the corporation on the development of these options.

This bill is another important step in our preparation for the 2018 Commonwealth Games, which will be proudly hosted on the Gold Coast. This promises to be the best games yet and will create a wonderful legacy for the Gold Coast and indeed for all of Queensland and Australia.