

I hereby certify that this PUBLIC BILL has finally passed the
Legislative Assembly of Queensland.



Legislative Assembly Chamber,
Brisbane,

M. O. Ries.
The Clerk of the Parliament.

27 March 2013

In the name and on behalf of the Queen, I assent to this Bill.

Penelope Wendy

Government House,

Brisbane, *27th March,* 2013



Queensland

No. 12 of 2013
A BILL for

**An Act to amend the Commonwealth Games Arrangements Act 2011 and
the Police Powers and Responsibilities Act 2000 for particular purposes**



Queensland

Commonwealth Games Arrangements (Brand Protection) Amendment Bill 2013

Contents

		Page
Part 1	Preliminary	
1	Short title	6
Part 2	Amendment of Commonwealth Games Arrangements Act 2011	
2	Act amended	6
3	Amendment of long title	6
4	Replacement of pt 1, hdg (Preliminary)	7
5	Replacement of s 3 (Purpose of Act)	7
6	Amendment of s 5 (Definitions)	7
7	Replacement of pt 2, hdg (Gold Coast 2018 Commonwealth Games Corporation).	8
8	Renumbering of pt 3 (The board)	8
9	Replacement of particular headings in ch 2, pt 2 as renumbered by this Act.	8
10	Renumbering of pts 4 and 5.	9
11	Amendment of s 42 (Application of pt 4)	9
12	Insertion of new ch 3	9
	Chapter 3 Use of protected images and references	
	Part 1 Preliminary	
48	Extraterritorial application of ch 3.	9
49	Meaning of prohibited purpose.	9
50	Meaning of deceptively similar	10
	Part 2 Offences	
51	Use of protected image or reference for prohibited purpose	11
52	Misleading conduct in relation to sponsorship arrangements	12

Contents

53	Exception for use of generic Games reference	13
54	Exception for use of business or company name	13
55	Exception for persons with right to prevent passing off	14
Part 3	Authority to use protected images or protected references	
56	Grant of authority	14
57	Register of authorities	15
Part 4	Injunctions and orders	
58	Definitions for pt 4.	16
59	Court's other powers not affected.	17
60	Injunctions	18
61	Disclosure of information and corrective advertising	19
62	Damages	20
63	Account of profits	20
64	Court may make more than one order	21
Part 5	Seizure and surrender	
65	Definitions for pt 5.	21
66	Seizure of goods, advertising material or device during seizure period	22
67	Receipt for seized item	25
68	Seized item must be given to the OCGC	25
69	Return of seized item and compensation.	26
70	Forfeiture of seized item to the State by chief executive's decision	26
71	Voluntary forfeiture of seized item to the State.	27
72	Court may order forfeiture of seized item to the State	27
73	Notification of forfeiture.	28
74	When seized item becomes property of the State	28
75	How property may be dealt with.	28
76	Surrender of goods, advertising material or device	28
Part 6	Other provisions	
77	Civil rights and remedies not affected	30
78	Actions for passing off against particular entities	30
79	Expiry of ch 3	30
13	Replacement of pt 6, hdg (Miscellaneous)	31
14	Renumbering of s 48 (Regulation-making power)	31
15	Numbering and amendment of schedule (Dictionary)	31

16	Insertion of new schs 1 to 3	35
	Schedule 1 Expressions that are ACGA references	
	Schedule 2 Expressions that are CGF references	
	Schedule 3 Games references	
Part 3	Amendment of Police Powers and Responsibilities Act 2000	
17	Act amended	37
18	Amendment of sch 1 (Acts not affected by this Act).	37

2013

A Bill

for

An Act to amend the *Commonwealth Games Arrangements Act 2011* and the *Police Powers and Responsibilities Act 2000* for particular purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Commonwealth Games Arrangements (Brand Protection) Amendment Act 2013*.

Part 2 Amendment of Commonwealth Games Arrangements Act 2011

2 Act amended

This part amends the *Commonwealth Games Arrangements Act 2011*.

3 Amendment of long title

Long title, after ‘Corporation’—

insert—

‘, to regulate the use of references and images associated with the XXI Commonwealth Games,’.

4 Replacement of pt 1, hdg (Preliminary)

Part 1, heading—

omit, insert—

‘Chapter 1 Preliminary’.

5 Replacement of s 3 (Purpose of Act)

Section 3—

omit, insert—

‘3 Purposes of Act

‘The purposes of this Act are to—

- (a) establish the Gold Coast 2018 Commonwealth Games Corporation to plan, organise and deliver the Commonwealth Games, in conjunction with the ACGA and the CGF; and
- (b) protect the integrity of images or expressions, and sponsorship arrangements, associated with the Commonwealth Games by—
 - (i) prohibiting the unauthorised use of protected images and protected references; and
 - (ii) prohibiting conduct falsely inferring a person’s association with the Commonwealth Games; and
 - (iii) conferring rights of redress on entities associated with the Commonwealth Games who are affected by a person’s contravention of a prohibition mentioned in subparagraph (i) or (ii).’.

6 Amendment of s 5 (Definitions)

Section 5, ‘the schedule’—

omit, insert—

‘schedule 4’.

[s 7]

7 Replacement of pt 2, hdg (Gold Coast 2018 Commonwealth Games Corporation)

Part 2, heading—

omit, insert—

‘Chapter 2 Gold Coast 2018 Commonwealth Games Corporation

‘Part 1 Establishment and functions’.

8 Renumbering of pt 3 (The board)

Part 3—

renumber as part 2 of chapter 2.

9 Replacement of particular headings in ch 2, pt 2 as renumbered by this Act

- (1) This section amends particular headings in chapter 2, part 2 as renumbered by this Act to convert divisions 6 and 7 into parts and subdivisions of division 6 into divisions.
- (2) Chapter 2, part 2 as renumbered by this Act is amended by omitting each heading mentioned in column 1 and inserting each heading mentioned in column 2—

Column 1	Column 2
Heading omitted	Heading inserted
Chapter 2, Part 2, division 6, heading	Part 3 Staff of the corporation
Chapter 2, Part 2, division 6, subdivision 1, heading	Division 1 Chief executive officer
Chapter 2, Part 2, division 6, subdivision 2, heading	Division 2 Other staff members
Chapter 2, Part 2, division 7, heading	Part 4 Budget and funding agreement

10 Renumbering of pts 4 and 5

Parts 4 and 5—

renumber as parts 5 and 6 of chapter 2.

11 Amendment of s 42 (Application of pt 4)

Section 42, heading, ‘pt 4’—

omit, insert—

‘pt 5’.

12 Insertion of new ch 3

After section 47—

insert—

‘Chapter 3 Use of protected images and references

‘Part 1 Preliminary

‘48 Extraterritorial application of ch 3

- ‘(1) This chapter applies both within and outside Queensland.
- ‘(2) This chapter applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

‘49 Meaning of *prohibited purpose*

- ‘(1) For this chapter, the use of an image or expression is for a *prohibited purpose* if the use—
 - (a) is for a commercial purpose; or
 - (b) is for an advertising, marketing or promotional purpose, whether or not for commercial gain; or

[s 12]

- (c) would cause a reasonable person to believe that a particular person has a sponsorship arrangement with or relating to—
 - (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.
- ‘(2) However, the use of an image or expression is not for a ***prohibited purpose*** if—
- (a) the use is for the primary purpose of—
 - (i) genuine reporting of news of, or associated with, the Commonwealth Games; or
 - (ii) genuine criticism or review of, or associated with, the Commonwealth Games; or
 - (iii) genuine research, study or education; or
 - (iv) seeking or giving genuine professional advice; or
 - (v) a judicial proceeding or a report of a judicial proceeding; and
 - (b) the use is reasonable having regard to—
 - (i) the primary purpose mentioned in paragraph (a); and
 - (ii) the need to protect the rights of persons who are authorised to use the image or expression by an authority granted under section 56.

‘50 **Meaning of *deceptively similar***

‘For this chapter, an image or expression is ***deceptively similar*** to a protected image or a protected reference if it so nearly resembles the protected image or protected reference that it is likely to deceive or cause confusion.

Note—

This Act refers to an image or expression that is substantially identical with, or deceptively similar to, a protected image or protected reference. The concepts of ‘substantially identical with’ (which is not defined in this Act) and ‘deceptively similar’ (which is defined in this section) are used for consistency with the *Trade Marks Act 1995* (Cwlth).

‘Part 2 Offences

‘51 Use of protected image or reference for prohibited purpose

- ‘(1) A person must not use any of the following for a prohibited purpose—
- (a) a protected image or protected reference;
 - (b) an image that is substantially identical with, or deceptively similar to, a protected image;
 - (c) an image or expression that is substantially identical with, or deceptively similar to, a protected reference.

Maximum penalty—100 penalty units.

- ‘(2) Subsection (1) does not apply to—
- (a) the use of a protected image or protected reference that is authorised by an authority granted under section 56; or
 - (b) the use of an image or expression by—
 - (i) the corporation; or
 - (ii) the ACGA; or
 - (iii) the CGF.

Note—

See also sections 53, 54 and 55 for other exceptions.

[s 12]

‘52 Misleading conduct in relation to sponsorship arrangements

- ‘(1) A person commits an offence if—
- (a) the person engages in conduct that would cause a reasonable person to believe a particular person has a sponsorship arrangement with or relating to—
 - (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; and

- (b) the arrangement does not exist.

Maximum penalty—100 penalty units.

Note—

See, however, sections 53, 54 and 55.

- ‘(2) A person commits an offence if—
- (a) the person engages in conduct that would cause a reasonable person to believe that goods or services have an affiliation 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; and

- (b) the affiliation does not exist.

Maximum penalty—100 penalty units.

Note—

See, however, sections 53, 54 and 55.

‘53 Exception for use of generic Games reference

- ‘(1) Sections 51 and 52 do not apply to the use of a generic Games reference, or a similar thing, by a person if—
- (a) the reference or thing, when used by the person—
 - (i) does not refer to the Commonwealth Games; and
 - (ii) does not refer to an event or program associated with the Commonwealth Games whether or not the event or program relates to sport; and
 - (b) a reasonable person would not infer that the reference refers to, or is intended to refer to, a thing mentioned in paragraph (a)(i) or (ii).

- ‘(2) In this section—

generic Games reference means—

- (a) a Games reference that is an expression mentioned in schedule 3, part 1, item 3, 9 or 12; or
- (b) a Games reference that is prescribed under a regulation as a generic Games reference; or
- (c) a Games reference that is an adaptation of an expression mentioned in paragraph (a) or (b).

similar thing, in relation to a generic Games reference, means an image or expression that is substantially identical with, or deceptively similar to, the generic Games reference.

‘54 Exception for use of business or company name

- ‘(1) Sections 51 and 52 do not apply to the use of—
- (a) a registered business name; or
 - (b) a registered name of a company incorporated under the *Corporations Act 2001* (Cwlth).

- ‘(2) In this section—

registered business name means a business name registered under the *Business Names Registration Act 2011* (Cwlth).

[s 12]

‘55 Exception for persons with right to prevent passing off

- ‘(1) Sections 51 and 52 do not apply to the use of a protected image, a protected reference or a similar thing by a person (the *existing user*) if—
- (a) immediately before the commencement of this chapter, the existing user would have been entitled, through an action for passing off, to prevent another person from using the image, reference or thing to pass off goods, services or a business as goods, services or a business of the existing user; and
 - (b) the use of the image, reference or thing is substantially consistent with the purpose for which it was used immediately before commencement.
- ‘(2) In this section—
- similar thing* means—
- (a) an image that is substantially identical with, or deceptively similar to, a protected image; or
 - (b) an image or expression that is substantially identical with, or deceptively similar to, a protected reference.

‘Part 3 Authority to use protected images or protected references

‘56 Grant of authority

- ‘(1) The corporation may grant a person an authority to use a Games image or Games reference for a prohibited purpose.
- ‘(2) The ACGA may grant a person an authority to use an ACGA image or ACGA reference for a prohibited purpose.
- ‘(3) The CGF may grant a person an authority to use a CGF image or CGF reference for a prohibited purpose.

-
- ‘(4) The Minister may grant a person an authority to use a Games reference for a prohibited purpose that is not a commercial purpose.
- ‘(5) Before granting an authority mentioned in subsection (4), the Minister must consult with the corporation, the ACGA and the CGF regarding the grant of the authority.
- ‘(6) If the ACGA, the CGF or the Minister grants an authority under this section, the grantor of the authority must give written notice of the grant to the corporation.
- ‘(7) An authority granted under this section—
- (a) must be in writing; and
 - (b) must contain—
 - (i) a description of the protected image or protected reference authorised by the authority to be used (the *stated image or reference*); and
 - (ii) the name of the person authorised by the authority to use the stated image or reference (the *stated person*); and
 - (iii) the purpose (the *stated prohibited purpose*) for which the authority authorises the stated person to use the stated image or reference; and
 - (iv) the date the authority was granted; and
 - (v) the duration of the authority; and
 - (c) may include reasonable conditions the grantor of the authority considers appropriate having regard to the use of the protected image or the protected reference for which the authority is granted; and
 - (d) authorises the stated person to use the stated image or reference for the stated prohibited purpose.

‘57 Register of authorities

- ‘(1) The corporation must—

-
- (b) if the conduct relates to a protected image or protected reference and a person has a current authority granted under section 56 to use the image or reference—includes that person.

authorised applicant, for conduct mentioned in section 60(1) or 61(1)—

- (a) means generally—
- (i) for conduct relating to a Games image or Games reference—the corporation; or
 - (ii) for conduct relating to an ACGA image or ACGA reference—the ACGA; or
 - (iii) for conduct relating to a CGF image or CGF reference—the CGF; and
- (b) if, in relation to the conduct, the offending party has been charged with an offence against section 51 or 52, or an offence of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against section 51 or 52—includes a prosecutor prosecuting the offence; and
- (c) if the conduct relates to a protected image or protected reference and a person has a current authority granted under section 56 to use the image or reference—includes that person.

offending party means—

- (a) for conduct mentioned in section 60(1)—the offending party mentioned in that subsection; or
- (b) for conduct mentioned in section 61(1)—the offending party mentioned in that subsection.

‘59 Court’s other powers not affected

‘The powers conferred on a court by this part are in addition to, and do not limit, any other powers of the court under the *Penalties and Sentences Act 1992* or any other law.

[s 12]

‘60 Injunctions

- ‘(1) This section applies if an authorised applicant reasonably believes a person (an *offending party*) has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute—
- (a) an offence against section 51 or 52; or
 - (b) an offence of counselling or procuring the commission of, or attempting or conspiring to commit, an offence mentioned in paragraph (a).
- ‘(2) The authorised applicant may apply to the court for an injunction restraining the offending party from engaging in the conduct or continuing to engage in the conduct.
- ‘(3) The court may grant an interim injunction, restraining the offending party from engaging in the conduct or continuing to engage in the conduct, pending a decision about the application.
- ‘(4) After considering the application, the court may—
- (a) if 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—grant the injunction; or
 - (b) refuse to grant the injunction.
- ‘(5) If the court is satisfied there is adequate reason for doing so, the court may grant an injunction under subsection (3) or (4) without notice to the offending party.
- ‘(6) The court may grant the injunction—
- (a) if the court is satisfied the offending party has engaged in the conduct mentioned in subsection (1)—whether or not it appears to the court that the offending party intends to engage again or continue to engage in the conduct; or
 - (b) if it appears to the court that, if the injunction is not granted, it is likely that the offending party will engage

or continue to engage in the conduct mentioned in subsection (1)—

- (i) whether or not the offending party has previously engaged in the conduct; and
- (ii) whether or not there is an imminent danger of substantial damage to a person if the offending party engages in the conduct.

‘(7) In this section—

court means the Supreme Court of Queensland.

‘61 Disclosure of information and corrective advertising

‘(1) This section applies if a court is reasonably satisfied that a person (an *offending party*) has engaged in conduct that—

- (a) contravenes section 51 or 52; or
- (b) constitutes counselling or procuring the contravention of, or attempting or conspiring to contravene, section 51 or 52.

‘(2) The court may, on the application of an authorised applicant, make either or both of the following orders—

- (a) an order requiring the offending party to disclose information relating to the conduct that is in the party’s possession, or to which the party has access—
 - (i) to the public or a person stated in the order; and
 - (ii) in the way stated in the order;
- (b) an order requiring the offending party to publish an advertisement—
 - (i) in terms stated in the order; and
 - (ii) in the way, and at the times, stated in the order; and
 - (iii) at the expense of the offending party.

‘(3) In this section—

court means—

[s 12]

- (a) if the order is sought in conjunction with, and in the course of, another proceeding under this chapter, whether for an offence or otherwise—the court hearing the other proceeding; or
- (b) if paragraph (a) does not apply—a Magistrates Court, regardless of any civil jurisdictional limit, including any monetary limit, applying to a Magistrates Court.

‘62 Damages

- ‘(1) This section applies if an aggrieved party suffers loss or damage because of the conduct of another person (the *offending party*) that—
 - (a) contravenes section 51 or 52; or
 - (b) constitutes counselling or procuring the contravention of, or attempting or conspiring to contravene, section 51 or 52.
- ‘(2) The aggrieved party may, by claim, start a proceeding in a court of competent jurisdiction against the offending party to recover the amount of the loss or damage.
- ‘(3) If the court is reasonably satisfied of the matters mentioned in subsection (1), the court may grant the relief mentioned in subsection (2).
- ‘(4) An action under this section must not be brought after the earlier of the following—
 - (a) the expiration of 6 years from the date on which the cause of action arose;
 - (b) the dissolution day.

‘63 Account of profits

- ‘(1) This section applies if the conduct of a person (the *offending party*)—
 - (a) contravenes section 51 or 52; or

- (b) constitutes counselling or procuring the contravention of, or attempting or conspiring to contravene, section 51 or 52.
- ‘(2) An aggrieved party may, by claim, start a proceeding in a court of competent jurisdiction against the offending party for relief by way of an account of profits.
- ‘(3) If the court is reasonably satisfied of the matter mentioned in subsection (1)(a) or (b), the court may grant the relief mentioned in subsection (2).
- ‘(4) An action under this section must not be brought after the earlier of the following—
 - (a) the expiration of 6 years from the date on which the cause of action arose;
 - (b) the dissolution day.

‘64 Court may make more than one order

- ‘(1) Subject to subsection (2), a court may in a proceeding—
 - (a) grant an injunction and 1 or more orders under this part;
or
 - (b) make more than 1 order under this part.
- ‘(2) An aggrieved party is not entitled to, and a court must not order, damages under section 62 and an account of profits under 63 in relation to the same conduct.

‘Part 5 Seizure and surrender

‘65 Definitions for pt 5

‘In this part—

appropriate body, for a seized item, means—

[s 12]

- (a) if the relevant contravention relates to a games image or games reference—the corporation; or
- (b) if the relevant contravention relates to an ACGA image or ACGA reference—the ACGA; or
- (c) if the relevant contravention relates to a CGF image or CGF reference—the CGF.

marked with, in relation to goods—

- 1 Goods are *marked with* an image or expression if the image or expression is marked on 1 or more of the following, whether in physical or electronic form—
 - (a) the goods;
 - (b) any covering or container in which the goods are wholly or partly enclosed;
 - (c) anything placed in or attached to a covering or container mentioned in paragraph (1)(b);
 - (d) anything attached to the goods or around which the goods are wrapped or wound.
- 2 In paragraph 1, a reference to *marked in relation to* a thing mentioned in paragraph 1(a) to (d) includes a reference to attached to, or incorporated into or with the thing.

owner, of a seized item, includes a person who would be entitled to possession of the item had it not been seized.

relevant contravention, for a seized item, means the contravention of section 51 or 52 on the basis of which the item was seized under section 66.

seized item means goods, advertising material or a device seized under section 66.

‘66 Seizure of goods, advertising material or device during seizure period

- ‘(1) This section applies if—

- (a) during the seizure period, a police officer finds goods, advertising material or a device in, or in the immediate vicinity of, a relevant place; and
 - (b) the goods are marked with, or the material or device contains—
 - (i) a protected image or protected reference; or
 - (ii) an image or expression that is substantially identical with, or deceptively similar to, a protected reference; or
 - (iii) an image that is substantially identical with, or deceptively similar to, a protected image; and
 - (c) the police officer reasonably believes that the image or expression mentioned in paragraph (b) is being used, or is intended to be used, in contravention of section 51 or 52.
- ‘(2) The police officer may seize the goods, material or device.
- ‘(3) A regulation may prescribe any of the following as a relevant place for this section—
- (a) a venue, or other place, associated with—
 - (i) the Commonwealth Games, whether or not the venue or place is used for sport; or
 - (ii) an event or program associated with the Commonwealth Games, whether or not the event or program relates to sport;
 - (b) a public place that may be used by members of the public for travelling to or from the Commonwealth Games, including a place in Brisbane or another area outside the Gold Coast area that may be used by members of the public for travelling to or from the Gold Coast;
 - (c) a public place at which the Commonwealth Games are shown or are expected to be shown on a screen, whether live or otherwise, for viewing by members of the public;

[s 12]

- (d) a public place at which members of the media are or are expected to be present for reporting news of, or associated with, the Commonwealth Games;
- (e) a public place at which members of the public are congregated, or are expected to congregate, for a purpose associated with the Commonwealth Games.

Example—

a public place at which 1 or more persons selected to compete in the Commonwealth Games are making a public appearance

‘(4) A regulation—

- (a) may prescribe a public place as a relevant place under subsection (3)(b), (c), (d) or (e) only for the part of the seizure period during which the place is or is expected to be of a kind mentioned in the paragraph; and
- (b) must state the part of the seizure period for which the public place is a relevant place for this section.

‘(5) In this section—

public place means a place—

- (a) that the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or

Examples of a place that may be a public place under paragraph (a)—

a bus or train station, a park, a road

- (b) the occupier of which allows, whether or not on payment of money, members of the public to enter.

Examples of a place that may be a public place under paragraph (b)—

a shopping mall, a showground

seizure period means the period commencing on 1 January 2018 and ending on 30 April 2018.

‘67 Receipt for seized item

- ‘(1) If a police officer seizes goods, advertising material or a device under section 66, the officer must, as soon as reasonably practicable after seizing the goods, material or device—
- (a) if the person from whom the goods, material or device was seized is present—give, or cause to be given, to the person a receipt for the seized item; or
 - (b) if for any reason it is not practicable to comply with paragraph (a)—leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- ‘(2) A receipt under subsection (1)—
- (a) may be for all items seized from the person or the place; and
 - (b) must generally describe the seized item and its condition.
- ‘(3) This section does not apply if the police officer reasonably believes—
- (a) there is no-one apparently in possession of the seized item or the seized item has been abandoned; or
 - (b) because of the condition, nature and value of the seized item it would be unreasonable to require the officer to comply with this section.

‘68 Seized item must be given to the OCGC

- ‘(1) If a police officer seizes goods, advertising material or a device under section 66, the officer must give the seized item to the OCGC as soon as practicable after the seizure.
- ‘(2) The OCGC must keep the seized item until it is—
- (a) returned to its owner under section 69; or
 - (b) forfeited to the State under this part.

[s 12]

‘69 Return of seized item and compensation

- ‘(1) Subsection (2) applies if a seized item has some intrinsic value and is not forfeited to the State under this part.
- ‘(2) The OCGC must return the seized item to its owner—
 - (a) generally—within 6 months after the seizure; or
 - (b) if a proceeding involving the item is started under this Act within the 6 months—at the end of the proceeding and any appeal from the proceeding.
- ‘(3) If a seized item has been destroyed, the appropriate body for the item must pay, to the item’s owner, compensation—
 - (a) equal to the market value of the item at the time of the seizure; and
 - (b) any other loss or damage incurred by the owner as a result of the seizure.
- ‘(4) Nothing in this section affects a lien or other security over the seized item.
- ‘(5) In this section—
destroyed, for a seized item, includes damaged to the extent that the item is no longer fit for its intended use.

‘70 Forfeiture of seized item to the State by chief executive’s decision

- ‘(1) This section applies if a seized item is required to be returned to its owner under section 69.
- ‘(2) The chief executive may decide the seized item is forfeited to the State if the OCGC—
 - (a) after making reasonable inquiries, can not find its owner; or
 - (b) after making reasonable efforts, can not return it to its owner.
- ‘(3) However, the OCGC is not required to—
 - (a) make inquiries if it would be unreasonable to make inquiries to find the seized item’s owner; or

- (b) make efforts if it would be unreasonable to make efforts to return the seized item to its owner.

Example for paragraph (b)—

the owner of the seized item has migrated to another country

- ‘(4) Regard must be had to the seized item’s condition, nature and value in deciding—
 - (a) whether it is reasonable to make inquiries or efforts; and
 - (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

‘71 Voluntary forfeiture of seized item to the State

- ‘(1) The owner of a seized item may, at any time, forfeit the item to the State by written notice to the OCGC.
- ‘(2) On receipt by the OCGC of the written notice, the seized item is forfeited to the State.

‘72 Court may order forfeiture of seized item to the State

- ‘(1) This section applies if a court—
 - (a) convicts a person of an offence against section 51 or 52; or
 - (b) grants an injunction, or makes an order under part 4 against a person in relation to a contravention of section 51 or 52.
- ‘(2) When imposing a sentence on the person for the offence, or granting the injunction or making the order, the court may also order a seized item to be forfeited to the State if—
 - (a) the person is the owner of the item; and
 - (b) the item was the subject of the contravention of section 51 or 52.
- ‘(3) The court may also make any order that it considers appropriate to enforce the forfeiture.

[s 12]

‘73 Notification of forfeiture

- ‘(1) This section applies if a seized item is forfeited to the State under this part.
- ‘(2) The OCGC must notify the corporation, the ACGA and the CGF in writing of the forfeiture.

‘74 When seized item becomes property of the State

‘A seized item becomes the property of the State if the item is forfeited to the State under this part.

‘75 How property may be dealt with

- ‘(1) This section applies if, under section 74, a seized item becomes the property of the State.
- ‘(2) The chief executive may deal with the seized item as the chief executive considers appropriate, including, for example, by destroying it or giving it away.
- ‘(3) The chief executive must not deal with the seized item in a way that could prejudice the outcome of an appeal against the forfeiture under this part.
- ‘(4) If the seized item is to be disposed of by sale, the chief executive must consult with the appropriate body for the item before the sale.

‘76 Surrender of goods, advertising material or device

- ‘(1) This section applies if the corporation notifies a person that the corporation reasonably believes—
 - (a) the person owns or possesses goods that are marked with, or advertising material or a device that contains—
 - (i) a protected image or protected reference; or
 - (ii) an image or expression that is substantially identical with, or deceptively similar to, a protected reference; or

- (iii) an image that is substantially identical with, or deceptively similar to, a protected image; and
 - (b) the image or expression mentioned in paragraph (a) is being used, or is intended to be used, in contravention of section 51 or 52.
- ‘(2) The person may surrender the goods, advertising material or device to the corporation.
- ‘(3) If the goods, advertising material or device (the *surrendered item*) is surrendered under this section—
 - (a) sections 68 to 75 apply, with necessary changes, to the surrendered item as if it were a seized item; and
 - (b) the corporation must, as soon as reasonably practicable after the surrender, give, or cause to be given, to the person a receipt for the surrendered item.
- ‘(4) The notice under subsection (1) must—
 - (a) be in writing; and
 - (b) explain, in plain English, the effect that sections 68 to 75 will have, under subsection (3), in relation to the goods, material or device.
- ‘(5) A receipt under subsection (3)(b)—
 - (a) may be for all items surrendered by the person; and
 - (b) must generally describe the surrendered item and its condition.
- ‘(6) The corporation must not accept a surrender of goods, advertising material or a device, other than in response to a notice under subsection (1).

13 Replacement of pt 6, hdg (Miscellaneous)

Part 6, heading—

omit, insert—

‘Chapter 4 Miscellaneous’.

14 Renumbering of s 48 (Regulation-making power)

Section 48—

renumber as section 80.

15 Numbering and amendment of schedule (Dictionary)

(1) Schedule—

number as schedule 4.

(2) Schedule 4, as numbered by this Act—

insert—

‘ACGA image means—

- (a) an image prescribed under a regulation as an ACGA image; or
- (b) an adaptation of an image mentioned in paragraph (a).

ACGA reference means—

- (a) an expression mentioned in schedule 1; or
- (b) an expression prescribed under a regulation as an ACGA reference; or
- (c) an adaptation of an expression mentioned in paragraph (a) or (b).

adaptation means—

- (a) for an ACGA image, CGF image or Games image—
 - (i) if the image is in a two-dimensional form—a version of the image produced in a three-dimensional form; or

[s 15]

- (ii) if the image is in a three-dimensional form—a version of the image produced in a two-dimensional form; or
- (b) for an ACGA reference, CGF reference or Games reference—
 - (i) a version of the reference in which all or part of the reference is presented in a language other than English; or
 - (ii) a version of the reference in which all or part of the reference forms part of a pictorial representation; or
 - (iii) a version of the reference in which all or part of the reference is changed from upper to lower case or lower to upper case; or
 - (iv) a version of the reference in which any numbers forming part of the reference are presented in words or Arabic, Roman or other numerals; or
 - (v) a version of the reference expressed in auditory form.

aggrieved party, for chapter 3, part 4, see section 58.

appropriate body, for chapter 3, part 5, see section 65.

Australian Commonwealth Games Team means the persons who are—

- (a) selected by the ACGA to represent Australia, as athletes or officials, in the Commonwealth Games; and
- (b) accredited by the CGF as participants in the Commonwealth Games.

authorised applicant, for chapter 3, part 4, see section 58.

CGF means the Commonwealth Games Federation.

CGF image means—

- (a) an image prescribed under a regulation as an CGF image; or

- (b) an adaptation of an image mentioned in paragraph (a).

CGF reference means—

- (a) an expression mentioned in schedule 2; or
(b) an expression prescribed under a regulation as an CGF reference; or
(c) an adaptation of an expression mentioned in paragraph (a) or (b).

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

compete means compete as an individual or as a member of a team.

deceptively similar see section 50.

expression includes a phrase, reference or word.

Games image means—

- (a) an image prescribed under a regulation as a Games image; or
(b) an adaptation of an image mentioned in paragraph (a).

Games reference means—

- (a) an expression mentioned in schedule 3, part 1; or
(b) an expression that combines an expression mentioned in column 1 of an item in schedule 3, part 2, and an expression mentioned in column 2 of that item, whether or not the combined expression includes any other words; or
(c) an expression prescribed under a regulation as a Games reference; or
(d) an adaptation of an expression or phrase mentioned in paragraph (a), (b) or (c).

Games-related entity means—

- (a) the corporation; or
(b) the ACGA; or

[s 15]

- (c) the CGF; or
- (d) a person who competes, or has been selected to compete, in the Commonwealth Games; or
- (e) the Australian Commonwealth Games Team.

marked with, for part 5, see section 65.

OCCG means the Office of Commonwealth Games Coordination.

offending party, for chapter 3, part 4, see section 58.

owner, for chapter 3, part 5, see section 65.

prohibited purpose see section 49.

protected image means an ACGA image, CGF image or Games image.

protected reference means an ACGA reference, CGF reference or Games reference.

reasonably believes means believes on reasonable grounds.

reasonably satisfied means satisfied on reasonable grounds.

relevant contravention, for chapter 3, part 5, see section 65.

seized item, for chapter 3, part 5, see section 65.

sponsorship arrangement includes—

- (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.

16 Insertion of new schs 1 to 3

Before schedule 4, as numbered by this Act—

insert—

‘Schedule 1 Expressions that are ACGA references

schedule 4, definition *ACGA reference*, paragraph (a)

- 1 ACGA
- 2 Australian Commonwealth Games Association

‘Schedule 2 Expressions that are CGF references

schedule 4, definition *CGF reference*, paragraph (a)

- 1 CGF
- 2 Commonwealth Games Federation

‘Schedule 3 Games references

schedule 4, definition *games reference*, paragraphs (a) and (b)

‘Part 1 Individual expressions that are Games references

- 1 Australian Commonwealth Games

[s 16]

- 2 Coast 2018 Games
- 3 Coast Games
- 4 Comm Games
- 5 Commonwealth Games
- 6 GC18
- 7 GC2018
- 8 Gold Coast 2018 Commonwealth Games
- 9 Gold Coast 2018 Cultural Program
- 10 Gold Coast 2018 Games
- 11 Gold Coast Commonwealth Games
- 12 Gold Coast Games
- 13 GOLDOC
- 14 Queen's Baton Relay

'Part 2 Combinations of expressions that are Games references

	Column 1	Column 2
1	2018 21 st	Commonwealth Games Games
2	Commonwealth Games Commonwealth Games athlete	gold silver bronze
3	Australian Commonwealth Games Team	Gold Coast Gold Coast 2018 GC2018
4	Games Commonwealth Games Australian Commonwealth Games Team	partner sponsor provider supplier'.

