

# Commonwealth Games Arrangements Bill 2011

## Explanatory Notes

### Short title

The short title of the Bill is the Commonwealth Games Arrangements Bill 2011.

### Policy objectives and the reasons for them

On 11 November 2011, the President of the Commonwealth Games Federation (CGF), the Honourable Michael Fennell OJ, CD, announced that the Gold Coast had won the bid to host the XXIst Commonwealth Games in 2018.

Following the announcement, the Government signed the Host City Contract which sets out a range of contractual obligations for delivery of the Games. This includes an obligation to constitute an organising committee within six months of signing the agreement.

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

### Achievement of policy objectives

The Bill will establish the corporation and set out its functions and powers. The corporation will have primary responsibility for organising, conducting, promoting, and managing the commercial and financial aspects of the Games.

To manage the affairs of the corporation, a board of at least eight members will be appointed.

The corporation will have the ability to establish committees to provide it with expert advice in specific areas related to the organisation of the Games.

The Bill sets out the framework for the approval and management of budgets and expenditure by the corporation. Strict accounting procedures will be adopted, with the corporation being subject to the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*.

As an additional safeguard, provision has been made in the Bill for the corporation to enter into a funding agreement with the relevant department (presently the Department of the Premier and Cabinet) outlining how funding for each financial year is to be expended.

Finally, the Bill will provide for the winding up of the corporation following the Games and when all matters are concluded.

### **Alternative ways of achieving policy objectives**

In deciding to establish the corporation, the Government considered various governance models including those established for the delivery of the Melbourne 2006 Commonwealth Games and the Sydney 2000 Olympics. The establishment of a statutory corporation will ensure a balance between the need for high standards of accountability and transparency and delivery of the best event possible.

### **Estimated cost for government implementation**

The Candidature File for the Gold Coast's bid for the Games included a Games budget which made provision for the costs of the corporation.

### **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles.

*Clause 29* provides for the protection of a member of the board from civil liability for acts or omissions done honestly and without negligence. While members are protected from civil liability, any liability that may arise would attach to the corporation. The proposed immunity does not extend to a member who has been negligent, and provides an avenue of redress for any affected individuals, by providing that liability attaches to the corporation.

## **Consultation**

Consultation has occurred with the ACGA, the Gold Coast 2018 Commonwealth Games Bid Ltd, and the Gold Coast City Council in relation to the Bill.

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland, and the extent to which it is uniform or complementary to the Commonwealth or another State is not relevant in this context. However, approaches in other jurisdictions, including the Melbourne 2006 Commonwealth Games and the Sydney 2000 Olympic Games, were taken into consideration during the drafting of the Bill.

# **Notes on provisions**

## **Part 1                      Preliminary**

*Clause 1* sets out the short title of the Bill.

*Clause 2* states that the Bill is intended to commence on 1 January 2012.

*Clause 3* outlines the purpose of the Bill which is to establish the corporation to plan, organise and deliver the Games, in conjunction with the ACGA and the CGF.

*Clause 4* provides that the Bill binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other states.

*Clause 5* provides that the dictionary in the schedule defines particular words used in the Bill.

## Part 2

## Gold Coast 2018 Commonwealth Games Corporation

*Clause 6* establishes the corporation as a body corporate with a seal and the ability to sue and be sued in its corporate name. The clause also provides that the corporation does not represent the State.

*Clause 7* provides that the corporation is a public authority under the *Civil Liability Act 2003*; a statutory body under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*; and a relevant EEO agency under the *Public Service Act 2008*.

The *Statutory Bodies Financial Arrangements Act 1982*, part 2B (Powers under this Act and relationship with other Acts) explains how that Act affects the corporation's powers. Part 2B of the *Statutory Bodies Financial Arrangements Act 1982* provides powers, such as banking, borrowing and investment powers, to statutory bodies, additional to powers provided under enabling legislation.

*Clause 8* sets out the functions of the corporation. These functions include to undertake and facilitate the organisation, conduct, promotion and commercial and financial management of the Games. The definition of Commonwealth Games includes events and programs associated with the Games.

*Clause 9* sets out the powers of the corporation and provides that the corporation has all the powers of an individual, such as the power to: enter into contracts; acquire, hold, deal with and dispose of property; appoint agents and attorneys; engage consultants; charge for services it provides; and do anything else necessary or convenient to be done in the performance of its functions. Additionally, the corporation has the powers given to it under this Act or another Act.

The powers of the corporation do not include a power to make a loan, give a guarantee or provide security in connection with a loan made, or to be made, to a member or a member's spouse or a relative of a member or a relative of a member's spouse. In addition, the powers do not include the power to exempt a member from, or to indemnify a member against, any liability that would otherwise attach to the member for breach of duty to the corporation. This is subject to *clause 29* (immunity from proceeding).

*Clause 10* provides that the Minister may give the corporation a written direction about the performance of the corporation's functions or the exercise of its powers, if the Minister is satisfied it is reasonably necessary to give the direction. The Minister may also give written directions to provide a document or information held by or in control of the corporation or to submit a document for the Minister's approval. This could include for example the strategic and operational plans of the corporation.

The corporation must ensure the direction is complied with. If a direction or notice is given under this clause of the Bill, the corporation must include details of the direction in its annual report and a comment on the effect on the corporation's activities of complying with the direction. This clause ensures that there is transparency in the process by which a direction is given.

*Clause 11* provides that the corporation may delegate its functions (including powers) to an appropriately qualified officer or employee of the corporation.

## **Part 3                    The board**

### **Division 1                Establishment, role and membership**

*Clause 12* stipulates that the corporation has a board of members.

*Clause 13* provides that the board is responsible for the way the corporation performs its functions and exercises its powers, and for ensuring the corporation performs its functions and exercises its powers in an appropriate, effective and efficient way.

*Clause 14* provides for the composition of the board of the corporation. The board is to consist of at least eight members appointed by the Governor in Council. The Minister must consult with the ACGA about the appointment of each member.

*Clause 15* provides that a member holds office for the period stated in the member's instrument of appointment and the period of appointment can end no later than the dissolution day of the corporation. The clause also

allows for the reappointment of a member who completes a period of office.

*Clause 16* sets out a member's terms and conditions of appointment, which are that a member is to be paid the remuneration and allowances decided by the Governor in Council and a member holds office on the terms and conditions, not provided by this Act, that are decided by the Governor in Council.

*Clause 17* provides that the office of a member becomes vacant if the member completes a period of office; resigns office by signed notice given to the Minister; is removed from office by the Governor in Council under this clause; is convicted of an indictable offence; is a person who is an insolvent under administration under the *Corporations Act*; or becomes employed by, or becomes a contractor of, the corporation.

Additionally, the clause stipulates that the Governor in Council may at any time remove a member of the corporation from office for any reason or none.

*Clause 18* stipulates that a member of the Commonwealth Parliament or a State Parliament or a councillor of a local government is not eligible for appointment as a member.

*Clause 19* provides that the chairperson is nominated by the Minister after consultation with the ACGA.

*Clause 20* provides that there is to be a deputy chairperson of the board. If the president of the ACGA is a member of the Board, the president is the deputy chairperson. If the president stops being the president of the ACGA, the president ceases to be the deputy chairperson and the deputy chairperson is a member nominated by the Minister after consultation with the ACGA.

## **Division 2            Proceedings**

*Clause 21* sets out that the board may hold its meetings when and where it decides but the board must meet at least twice a year. Further, the chairperson may at any time call a meeting of the board and must call a meeting if asked by at least four other members.

*Clause 22* provides that a quorum for a meeting of the board is at least half of the members.

*Clause 23* states that the chairperson presides at all meetings of the board at which the chairperson is present. However, if the chairperson is absent, the deputy chairperson presides. Also if the chairperson and deputy chairperson are absent a member chosen by the members present presides.

*Clause 24* provides for the conduct of board meetings. The clause stipulates that the board may conduct its proceedings, including its meetings, as it considers appropriate. This includes using any necessary technology to hold the meeting. If such technology is used, the member who takes part in a meeting using this technology is taken to be present at the meeting.

The clause further provides that a question at a meeting of the board is to be decided by a majority of the votes of the members present at the meeting. If the votes are equal, the chairperson has a casting vote. Additionally, a resolution is a valid resolution of the board, even though it is not passed at a meeting of the board, if at least half the members give written agreement to the resolution and notice of the resolution is given under procedures approved by the board.

*Clause 25* provides that the board must keep minutes of its meetings and a record of any decisions and resolutions of the board.

### **Division 3            Duties of members**

*Clause 26* sets out the duties of members of the board. Members are required to act honestly and exercise a reasonable degree of care and diligence when performing their functions and exercising their powers. In addition, a member or former member must not make improper use of information acquired by virtue of their position as a member to gain an advantage for themselves or another person or to cause detriment to the corporation. A member must also not make improper use of their position as a member to gain an advantage for themselves or another person or to cause detriment to the corporation.

The duties in *Clause 26* apply in addition to the requirements of any law relating to the criminal or civil liability of members. The clause does not prevent the starting of civil or criminal proceedings in respect of civil or criminal liability.

*Clause 27* authorises the corporation or the Minister to recover any profit made as a result of a contravention of the duties set out in clause 26 and to

recover any loss or damage suffered by the corporation as a result of such a contravention.

*Clause 28* sets out the procedure where a board member has a conflict of interest.

The clause states that if a member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a board meeting which appears to raise a conflict with the proper performance of the member's duties, the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the board. If such a disclosure is made it must be recorded by the board in a register of interests kept for the purpose.

After a member has disclosed the nature of an interest in any matter, the member must not be present during any deliberation of the board about the matter, or take part in any decision of the board about the matter.

For the purposes of the making of a decision by the board where there is a disclosed conflict of interest by a member, that member must not be present during any deliberation of the board for the purpose of making the decision; or take part in the making of the decision by the board.

A contravention of the section does not invalidate any decision of the board, however, if the board becomes aware a member contravened these requirements, the board must reconsider any decision made in which the member took part in contravention of this clause.

A member may have regard to, or may act in, the interests of their nominating entity under clause 14 (Composition of the Board). However, the member may not act in a way that is contrary to the interests of the corporation.

A reference to an interest or to a conflict of interest is a reference to a matter within its ordinary meaning under the general law, and, in relation to an interest, the definition in the Acts Interpretation Act 1954, section 36 does not apply.

## **Division 4            Immunity from proceeding**

*Clause 29* provides that a member of the board is not personally liable for an act done, or omission made, honestly and without negligence under this

Act. Where by virtue of this provision a member is not personally liable in respect of a particular liability, that liability attaches instead to the corporation.

## **Division 5            Committees**

*Clause 30* provides for the establishment of committees by the board to assist in carrying out its functions. The board may decide on the membership and functions of the committee. A committee may conduct its proceedings, including meetings as it considers appropriate, unless the board determines otherwise.

## **Division 6            Staff of the corporation**

### **Subdivision 1    Chief executive officer**

*Clause 31* provides that the corporation must have a chief executive officer nominated by the Minister and approved by the ACGA, who is appointed by the Governor in Council.

*Clause 32* stipulates that a member of the corporation must not be appointed as chief executive officer.

*Clause 33* provides that the chief executive officer of the corporation is employed under this Act, and not under the *Public Service Act 2008*.

*Clause 34* provides that the chief executive officer holds office for the term stated in the officer's instrument of appointment and that the period of office can end no later than the dissolution day of the corporation.

*Clause 35* sets out the functions of the chief executive officer. These functions are to ensure the corporation is managed as required by the priorities of the board and the effective and efficient administration and operation of the corporation.

*Clause 36* sets out the chief executive officer's terms and conditions of appointment, which are that the chief executive officer is to be paid the remuneration and allowances decided by the Governor in Council, and that

the chief executive officer holds office on the terms and conditions, not provided by this Act, that are decided by the Governor in Council.

*Clause 37* provides that the office of the chief executive officer becomes vacant if the chief executive officer: completes a term of office; resigns office by signed notice given to the Minister; is removed from office by the Governor in Council under this clause; is convicted of an indictable offence; or is a person who is an insolvent under administration under the *Corporations Act*.

Additionally, the clause stipulates that the Governor in Council may at any time remove the chief executive officer from office for any reason or none.

## **Subdivision 2 Other staff members**

*Clause 38* provides that the corporation may employ other staff it considers appropriate to perform its functions. Such staff are to be employed under this Act and not the *Public Service Act 2008*.

## **Division 7 Budget and funding agreement**

*Clause 39* provides that the corporation must, for each financial year, develop, adopt, and submit a budget to the Minister for approval by the day the Minister directs. During a financial year, the corporation may submit amendments to its approved budget to the Minister for approval. The Minister's approval may only be given with the consent of the Minister administering the *Financial Accountability Act 2009*. Unapproved budget and budget amendments may not be made available to the public.

*Clause 40* provides that the corporation must, for each financial year, enter into a funding agreement with the relevant department (currently the Department of the Premier and Cabinet) providing the way that funding is to be expended.

*Clause 41* provides that the corporation must, for each financial year, act in accordance with the approved budget or approved amendment of that budget and the funding agreement.

## **Part 4                      Legal proceedings**

*Clause 42* provides that this part applies to a proceeding under this Act.

*Clause 43* states that the following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it -

- the appointment of the chairperson;
- the appointment of the deputy chairperson;
- the authority of a person to do anything under this Act.

*Clause 44* sets out that for a legal proceeding, a signature purporting to be the signature of the chairperson or the chief executive officer of the corporation is evidence of the signature it purports to be.

*Clause 45* states that in a proceeding, a certificate purporting to be that of the chief executive officer stating any of the following matters is evidence of the matter-

- a stated document is an appointment or direction made or given under this Act;
- a stated document is a document given to the corporation or chief executive officer;
- a stated document is a copy of a document mentioned in two sub-paragraphs above.

Further, a statement in a complaint for a breach of duty under this Bill that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of when the matter came to the complainant's knowledge.

## **Part 5                      Winding up of corporation**

*Clause 46* provides that a regulation may prescribe a day, not later than 18 months after the end of the closing ceremony as the dissolution day. If on the day that is 18 months after the end of the closing ceremony, no day is prescribed by regulation, that day is the dissolution day.

*Clause 47* provides that on the dissolution day, the State is the successor in law of the corporation. All assets and liabilities will vest in the State. The State is also substituted as a party to any contract, lease or other instrument or any current legal proceeding to which the corporation is party.

## **Part 6                      Miscellaneous**

*Clause 48* provides the Governor in Council with regulation making power.

## **Schedule                  Dictionary**

The Schedule provides a dictionary which defines key terms used in the Bill.