

SAMOA

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2005, No.21**AN ACT to amend the 2007 South Pacific Games Authority Act 2002.***[22nd November 2005]*

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

1. Short title and commencement—(1) This Act may be cited as the 2007 South Pacific Games Authority Amendment

Act 2005 and shall be read with and form part of the 2007 South Pacific Games Authority Act 2002 (the Principal Act).

(2) This Act shall commence on the date of assent by the Head of State.

(3) Notice of commencement of this Act shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

2. Interpretation – Section 2 of the Principal Act is amended by:

(1) Inserting in alphabetical order the following definitions:

““Games Event” means an event or activity conducted as part of the Games and includes but is not limited to:

- (a) a sporting event; and
- (b) the opening and closing ceremonies; and
- (c) the torch relay; and
- (d) a cultural event associated with the Games;

“Games Indicia” means:

- (a) the words, numbers, names and marks listed in Schedule 2; and
- (b) the logos, or any part of the logos, in Schedule 3; and
- (c) any other indicia or image that refers to or represents the South Pacific Games or any part of such an indicia or image;

“SPGC indicia” means:

- (a) the words, numbers, names, marks and logos listed in Schedule 4; and
- (b) any other indicia or image that refers to or represents the South Pacific Games Council or any part of such an indicia or image;

“SPGC” means the South Pacific Games Council created under the South Pacific Games Charter.”

(2) Amending the Interpretation of “Intellectual Property Rights” as follows:

- (a) where the word “Schedule” first appears, omit the word “the” appearing immediately before and insert numeral “1” immediately after.
- (b) omit the word “Schedule” appearing after the words “may amend the” and before the words “from time to time” and substitute the word “Schedules”.

3. Membership of the Authority – Section 4 of the Principal Act is amended as follows:

(1) Deleting the words “Two persons” in subsection (1)(f) and substituting the expression “Three members of the executive board of SASNOC”.

4. Alternates of Members – The Principal Act is amended by inserting immediately after section 4:

“**4A. Alternates of Members** – The Chief Executive Officer of the Ministry of Works, Transport and Infrastructure, the Chief Executive Officer of the Ministry of Education, Sports and Culture, the Chief Executive Officer of the Ministry of Finance and the Attorney General may appoint as their alternate a senior officer of their Ministry or Office to attend a meeting of the Authority on their behalf where such officeholder is unable to do so because of illness or other good reason.”

5. Purpose and function of the Authority – Section 5 of the Principal Act is deleted and the following substituted:

“**5. Purpose and functions of the Authority**–(1) The Authority’s purpose and functions are:

- (a) The preparation, management and conduct of the 2007 South Pacific Games in Samoa; and
- (b) Developing and providing facilities for and allocating funds for the training and development

of sports and athletes representing Samoa in the Games.”

6. Vacancies and procedures of the Authority – Section 7 of the Principal Act is amended by:

(1) Deleting subsection (1) and substituting the following:

“(1) A member of the Authority may be removed from office by the Head of State, acting upon the advice of Cabinet for:

- (a) disability;
- (b) inefficiency;
- (c) bankruptcy;
- (d) neglect of duty;
- (e) misconduct;
- (f) permanent departure from Samoa; or
- (g) resignation from office by written notice addressed to the Chairman.

(1a) A member of the Authority appointed under section 4(1)(f) who ceases to be a member of the executive board of SASNOC ceases to be a member of the Authority.

(1b) A member of the Authority appointed under section 4(1)(i) who ceases to be a member of the Apia Park and Sports Facilities Board ceases to be a member of the Authority.”

(2) Deleting from subsection 4 the expression “six (6)” and substituting the expression “seven (7)”.

(3) Inserting after subsection (5) the following:

“(5a) All resolutions must be proposed, seconded and put to a vote.

(5b) The Authority may only exercise powers through resolutions and delegations made by the Authority.”

7. Minutes of the Authority – The Principal Act is amended by inserting the following after section 7:

“7A. Minutes of the Authority–(1) The secretary of the Authority shall be the Executive Secretary to the Minister.

(2) The Authority shall ensure that the secretary maintains accurate minutes of its meeting which shall accurately and faithfully record all resolutions of the Authority (including a notation of dissent by any member if that member requests that such dissent be recorded).

(3) A copy of the minutes of each meeting shall be furnished to each member not later than seven days after the completion of the meeting to which the minutes relate.”

8. Part IV - Protection of media rights amended – Part IV of the Principal Act is amended by inserting after the word **“RIGHTS”** in the heading to Part IV the words **“AND GAMES INDICIA”**.

9. Authority may authorise use of Games Indicia - Section 14 of the Principal Act is deleted and the following substituted:

“14. Authority may authorise use of Games Indicia–(1) The Authority may authorise a person to use the Games Indicia and SPGC Indicia subject to any terms and conditions the Authority deems fit.

(2) An authorisation under this section must be in writing.

14A. Uses of Games Indicia which are deemed to be authorized–(1) Subject to subsection (2), the following persons may use Games Indicia and will be deemed to be authorised to do so under this Part:

- (a) Athletes and sports teams competing in the Games and their coaches;
 - (b) SASNOC;
 - (c) Any person, if the use is incidental to the reporting of news and the presentation of current affairs;
 - (d) Any person, if the use is solely for:
 - (i) study, research, review or criticism;
 - or
 - (ii) educational purposes.
- (2) A person is not authorised under subsection (1) if the use of the Games Indicia:
- (a) is for a commercial purpose; or
 - (b) is for a promotional, advertising or marketing purpose, whether or not for commercial gain; or
 - (c) would otherwise be in contravention of section 15B.

14B. Authority may authorise broadcasting or recording-(1) The Authority may authorise a person to:

- (a) Broadcast, telecast or transmit by any means whatsoever any sound or image of any part of a Games Event; or
 - (b) Make any sound recording or any film, television, video or digital recording of moving images of a Games Event.
- (2) An authorisation under this section must be in writing and may be subject to any terms and conditions the Authority deems fit.”

10. Part IVA - Offences and enforcement – The Principal Act is amended by inserting the following after section 14B.

“PART IVA - OFFENCES AND ENFORCEMENT”

11. Offence to use Games Indicia without authorisation

– Section 15 of the Principal Act is deleted and the following substituted:

“15. Offence to use a Games Indicia without authorisation–(1) A person commits an offence if that person uses a Games Indicia, or anything deceptively similar to a Games Indicia, for:

- (a) a commercial purpose; or
- (b) promotional, advertising or marketing purposes, whether or not for commercial gain,

unless the person is authorised under section 14 or section 14A.

(2) Any person convicted of an offence under subsection (1) shall be liable to a fine of up to 1000 penalty units or imprisonment for one (1) year or both a fine and imprisonment.

(3) Any body corporate convicted of an offence under subsection (1) shall be liable to a fine of up to 5000 penalty units or imprisonment for two (2) years or both a fine and imprisonment.

15A. Offence to broadcast or record a Games Event without authorisation–(1) A person who broadcasts, telecasts or transmits by any means whatever any sound or image of a Games Event for profit or gain, or for a purpose that includes profit or gain, commits an offence unless the person is authorised under section 14B.

(2) A person who makes any sound recording or any film, television, video or digital recording of moving images of a Games Event commits an offence unless the person has a broadcasting authorization under section 14B.

(3) Any person convicted of an offence under subsection (1) or (2) shall be liable to a fine of up to 1000

penalty units or imprisonment for one (1) year or both a fine and imprisonment.

(4) Any body corporate convicted of an offence under subsection (1) shall be liable to a fine of up to 5000 penalty units or imprisonment for two (2) years or both a fine and imprisonment.

15B. Offence to engage in conduct that suggests sponsorship, approval or affiliation-(1) A person who engages in conduct which would suggest to a reasonable person:

- (a) That goods or services have a sponsorship, approval or affiliation that they do not have with:
 - (i) the Games; or
 - (ii) a Games Event; or
 - (iii) the Authority; or
 - (iv) the SPGC, commits an offence.
- (b) That any person has a sponsorship, approval or affiliation that they do not have with:
 - (i) the Games; or
 - (ii) a Games Event; or
 - (iii) the Authority; or
 - (iv) the SPGC, commits an offence.

(2) Any person convicted of an offence under subsection (1) shall be liable to a fine of up to 1000 penalty units or imprisonment for one (1) year or both a fine and imprisonment.

(3) Any body corporate convicted of an offence under subsection (1) shall be liable to a fine of up to 5000 penalty units or imprisonment for two (2) years or both a fine and imprisonment.

15C. Attempts, aiding, abetting, etc.-(1) A person commits an offence if that person engages in conduct that

constitutes:

- (a) aiding, abetting, counseling or procuring a person to contravene section 15, 15A or 15B; or
- (b) attempting or conspiring to contravene section 15, 15A or 15B; or
- (c) inducing or attempting to induce a person, whether by threats, promises or otherwise, to contravene section 15, 15A or 15B; or
- (d) being in any way, directly or indirectly, knowingly concerned with the contravention by a person of section 15, 15A or 15B.

15D. Offences by body corporate-(1) This section applies to any person, officer or employee, by whatever name called, who is concerned with or takes part in the management of a body corporate.

(2) If a body corporate is convicted of an offence under this Part, any person, officer or employee of the body corporate who was in any way, by act or omission, directly or indirectly, knowingly concerned with or party to the commission of the offence is also guilty of that offence and liable to the penalty for that offence as if the person, officer or employee were a body corporate.

15E. Injunctions-(1) The Authority, or any person authorised by the Authority under section 14 or 14B, may apply to the Supreme Court for the grant of an injunction restraining a person from engaging in conduct that constitutes a contravention of sections 15, 15A, 15B or 15C.

(2) The Supreme Court may grant an injunction restraining a person from engaging in the conduct referred to in sections 15, 15A, 15B or 15C if the Court:

- (a) is satisfied on the balance of probabilities that the person is engaging or has been engaging in conduct of that kind, whether or not it appears to the Court that:

- (i) the person intends to continue to engage in, or engage again, in such conduct;
or
 - (ii) there is any imminent danger of substantial damage to the applicant; or
- (b) determines it to be appropriate in all of the circumstances.

15F. Action for damages or account of profits-(1) If the Authority, or any person authorised by the Authority under section 14 or 14B, suffers any loss or damage by a contravention of section 15, 15A or 15B, the Authority or any person authorised by the Authority may recover the amount of the loss or damage by proceeding in the Supreme Court against any person involved in the contravention.

(2) The Authority or any person authorised by the Authority under section 14 or 14B may apply for an account of profits in respect of a contravention of section 15, 15A or 15B by proceeding in the Supreme Court against any person involved in the contravention.

(3) The Authority or any person authorised by the Authority under section 14 or 14B is not entitled to bring proceedings for both damages and an account of profits in respect of the same contravention of section 15, 15A or 15B.”

12. Seizure of unlawful materials – Section 16 of the Principal Act is amended by:

(1) Deleting from the title of the section the word “media”.

(2) Inserting after the number 15 in section 16(1)(a) the following:

“15A, 15B or 15C.”

(3) Deleting subsection (3) and substituting the following:

“(3) Any item or object seized under this section may be used in connection with a prosecution for an offence

under section 15, 15A, 15B or 15C or any proceedings brought under section 15E or 15F.”

(4) Deleting subsection (4) and substituting the following:

“(4) Any item, object or material seized under this section shall be forfeited to the Independent State of Samoa if it:

- (a) Is found to have been used or involved with the commission of an offence under, or a contravention of, section 15, 15A, 15B or 15C; or
- (b) Is found to have been created or brought into existence as part of or as a consequence of a person committing an offence under, or a contravention of, section 15, 15A, 15B or 15C; or
- (c) Remains seized at 30 June 2008 and has not been forfeited under this section or returned to the person from whom it was seized under subsection (6).”

(5) Inserting immediately after subsection 16(4) the following:

“(5) Before proceedings are commenced for an offence under section 15, 15A, 15B or 15C in relation to any seized item, object or material, the person from whom it was seized may voluntarily forfeit that item, object or material to the Independent State of Samoa by written notice given to the Authority.

(6) If any item, object or material seized under this section has not been voluntarily forfeited under section 16(4) and:

- (a) Proceedings are not instituted for an offence against section 15, 15A, 15B or 15C in relation to the seized item, object or material within 12 months of seizure; or
- (b) After proceedings have been instituted and completed, the defendant is found not guilty, the person from whom such item, object or material was seized is entitled to recover the seized item, object or material upon written request to the Authority.”

13. Section 19 repealed – The Principal Act is amended by repealing section 19.

14. Part VA-Protection Of Games Events – The Principal Act is amended by:

(1) Inserting immediately after section 20 the following:

“PART VA–PROTECTION OF GAMES EVENTS

20A. Offence to obstruct or hinder a Games Event–

(1) A person who intentionally or recklessly engages in conduct that obstructs or hinders a Games Event is guilty of an offence.

(2) Any person convicted of an offence under subsection (1) shall be liable to a fine of up to 1000 penalty units or imprisonment for one (1) year or both a fine and imprisonment.

(3) Any body corporate convicted of an offence under subsection (1) shall be liable to a fine of up to 5000 penalty units or imprisonment for two (2) years or both a fine and imprisonment.”

15. Extraterritoriality - The Principal Act is amended by inserting immediately after section 24 the following:

“25. Extraterritoriality–(1) It is intended by Parliament that this Act operates in relation to all acts, omissions, transactions and things done or not done, entered into or occurring inside and outside Samoa.

(2) The Supreme Court of Samoa shall have extraterritorial jurisdiction in any proceedings brought under this Act.”

16. Schedules – The Principal Act is amended by:

- (1) Inserting the number “1” immediately after the word “SCHEDULE”.
- (2) Inserting the following after Schedule 1:

SCHEDULE 2 – GAMES INDICIA
(words, numbers, names and marks)

SCHEDULE 3 – GAMES INDICIA
(logos)

SCHEDULE 4 – SPGC INDICIA
(words, numbers, names, marks and logos)

**The 2007 South Pacific Games Authority Amendment Act 2005 is
administered in the 2007 South Pacific Games Authority**

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