



*Tonga*

# **PACIFIC GAMES ORGANIZATION ACT 2013**

**Act No. 2 of 2013**





## PACIFIC GAMES ORGANIZATION ACT 2013

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# PACIFIC GAMES ORGANIZATION ACT 2013

Act No. 2 of 2013

**AN ACT TO ESTABLISH A STATUTORY AUTHORITY INDEPENDENT OF GOVERNMENT TO ORGANIZE, OVERSEE AND CONDUCT THE SOUTH PACIFIC GAMES IN TONGA IN 2019 AND GENERALLY PROVIDE FOR THE GOOD ORGANIZATION OF THOSE GAMES**

I assent  
Tupou VI  
17<sup>th</sup> April 2013

**BE IT ENACTED** by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

## PART I

### PRELIMINARY

#### 1 Short title

This Act may be cited as the Pacific Games Organization Act 2013.

#### 2 Interpretation

In this Act unless the context otherwise requires –

“**Act**” means the Pacific Games Organization Act 2013;

“**Authority**” means the Audit and Governance Authority established under section 15;

“**Chairperson**” means, as the context requires, the Chairperson of the Organizing Committee or of the Authority;

“**Chief Executive Officer**” mean the Chief Executive Officer appointed under section 9, and includes any person authorised to act in the Chief Executive Officer’s place during his absence;

“**Court**” means the Supreme Court of Tonga;

“**Games**” means the 2019 Pacific Games;

“**Host Contract**” means the contract dated 19 October 2012 between the Pacific Games Council, Tonga Pacific Games Association and the Government of Tonga;

“**intellectual property rights**” means the complete range of intangible property rights, including but not limited to patents, trademarks, design rights and copyright, in the names, titles, items, matters and events listed in regulations made under the Act;

“**media rights**” means the right to report, broadcast, film, photograph, record, publish, televise, or distribute any report, photograph, film, recording, publication or broadcast of any event or activity of the 2019 Pacific Games in Tonga through any publicly accessible media, including, but not limited to, newspapers, radio, television, cinema, internet, books, magazines, recordings and any computer based technology;

“**Minister**” means the Minister for Internal Affairs or such other Minister who is primarily responsible for the Games;

“**Organizing Committee**” means the Tonga Pacific Games Organizing Committee established as a statutory authority under section 3;

“**Secretary**” means the Chief Executive Officer of the Ministry for Internal Affairs or otherwise such other Head of the Department of Government responsible for the Games;

“**TASANOC**” means the Tonga Sports Association and National Olympic Committee; and for the purposes of the Pacific Games Charter and Protocols, TASANOC shall be the Tonga Pacific Games Association; and

“**TOPGOC**” means the Tonga Pacific Games Organizing Committee.

## PART II

### TONGA PACIFIC GAMES ORGANIZING COMMITTEE

#### 3 Tonga Pacific Games Organizing Committee

- (1) There is established a statutory authority called the Tonga Pacific Games Organizing Committee.

- (2) The Organizing Committee is a body corporate with separate legal personality, perpetual succession, a common seal and is capable of –
  - (a) acquiring, holding and disposing of real and personal property;
  - (b) suing and being sued; and
  - (c) doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.
- (3) The Organizing Committee shall have a common seal to authenticate its important documents and the seal may be affixed only in the presence of a member of the Organizing Committee and with an attestation by the signature of another member of the Organizing Committee or other person authorized in writing by the Organizing Committee.

#### **4 Membership of the Organizing Committee**

- (1) The Organizing Committee shall consist of not less than 9 persons including the following –
  - (a) the Chief Executive Officer, who shall be the Chairperson;
  - (b) the Secretary General of TASNOC;
  - (c) the Solicitor General;
  - (d) one person representing business, nominated by the Minister;
  - (e) one person nominated by the Pacific Games Council; and
  - (f) one person having a national stature as a sportsperson.
- (2) Members of the Organizing Committee shall be appointed by the Authority after consultation with the Pacific Games Council and TASNOC, in writing as follows –
  - (a) the Authority may after consultation with the Pacific Games Council and TASNOC (except in relation to those members specified in subsection (1)(a), (b), (c), (d) and (e)) appoint persons who it considers appropriate and the Authority may at any time and entirely at its discretion alter those members by notice in writing of termination and appointment and on presentation of such notice to the Chairperson, the Organizing Committee shall be composed accordingly;
  - (b) the members specified in subsection (1)(a), (b) and (c) shall be *ex officio* appointments, holding office whilst they remain Chief Executive Officer, Secretary General and Solicitor General respectively;
  - (c) the nominee of the Minister referred to in subsection (1)(d) shall be appointed by the Authority after it receives the nomination in writing by the Minister, and the Minister may at any time and entirely at his discretion replace the nominee by notice in writing of change of nominee; and on receipt of the change of nominee the Authority shall

terminate the former appointment and appoint the new nominee as a member of the Committee; and

- (d) the nominee of the Pacific Games Council shall be appointed by the Authority after it receives the nomination in writing by the Pacific Games Council, and the Pacific Games Council may at any time and entirely at its discretion replace the nominee by notice in writing of change of nominee; and on receipt of the change of nominee the Authority shall terminate the former appointment and appoint the new nominee as a member of the Committee.
- (3) Members of the Organizing Committee may also be members of the Authority.
- (4) The Organizing Committee may co-opt other persons from time to time to attend and participate in its deliberations but such persons shall not have the power to vote on any matter.

## **5 Purpose and function of the Organizing Committee**

- (1) The Organizing Committee's purpose and function is –
  - (a) the preparation, management and conduct of the 2019 Pacific Games in Tonga;
  - (b) to be responsible, along with the Chief Executive Officer, for the day to day running of the work in preparation of the Games; and
  - (c) for such tasks as are properly assigned to it by the Authority.
- (2) The Organizing Committee shall be financially autonomous and independent of any Government Department.
- (3) The Organizing Committee shall comply with any direction given to it by the Pacific Games Council which is to retain overall control of the Games, in accordance with the Host Contract.
- (4) The Organizing Committee shall in the exercise of its functions comply with the Principles of Planning, Organization and Staging set out in Part II of the Host Contract and otherwise shall comply with the terms of the Host Contract.

Provided that if it considers that strict adherence thereto is incompatible with its ability to organize and conduct the Games then it shall advise the Pacific Games Council thereof.

## **6 Powers of the Organizing Committee**

Subject to this Act, the Organizing Committee may do all things necessary to prepare for, manage and conduct the Games, including but not limited to –

- (a) acquiring, expending and using funds and other resources, including grants, loans and any other resources required by the Organizing Committee;



- (b) borrowing, mortgaging or entering into any financial arrangement deemed necessary by the Organizing Committee;
- (c) entering into any commercial arrangements deemed necessary by the Organizing Committee for the financing and sponsorship of the Games;
- (d) in co-operation with the Government Facilities Committee, constructing or causing to be constructed facilities required by the Organizing Committee;
- (e) acquiring property, both real and personal, by way of purchase, lease or any other arrangement, by agreement, and in co-operation with the Government Facilities Committee;
- (f) entering into contractual and other arrangements with Government departments and agencies and other bodies, private companies and individuals and other bodies, organizations, groups and individuals to enable the Games to be prepared and conducted;
- (g) employing staff and contracting the services of persons, companies, organizations and groups required by the Organizing Committee to prepare for and conduct the Games; and
- (h) upon completion of the Games, at the direction of Cabinet transferring assets acquired by or under the control of the Organizing Committee to Government departments or agencies or bodies or, subject to the Public Finance Management Act, to other organizations, groups or persons.

## **7 Vacancies and Procedures of the Organizing Committee**

- (1) Without prejudice to section 4(2)(a),(c) and (d) any member of the Organizing Committee, may be removed from office by the Authority for disability, inefficiency, bankruptcy, neglect of duty, misconduct or permanent departure from Tonga, or may resign his office by written notice addressed to the Chairperson.
- (2) The office of any member of the Organizing Committee shall become vacant if he dies or resigns or is removed from office, and thereupon the vacancy shall be filled in the manner in which the original appointment was made.
- (3) Meetings of the Organizing Committee shall be called by the Chairperson or on a requisition in writing from at least 3 members of the Organizing Committee.
- (4) The quorum for any meeting of the Organizing Committee shall be at least half of the members.
- (5) Every question before a meeting of the Organizing Committee shall be determined by a majority of the votes of members present at the meeting but the chairperson of that meeting shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.
- (6) Except as otherwise provided in this Act or in any regulations, the Organizing Committee may regulate its procedure as it thinks fit.

- (7) The Organizing Committee is properly established before a Chief Executive Officer is appointed and for the purposes of meetings of the Organizing Committee before the Chief Executive Officer is appointed shall be chaired by the Solicitor General.

## **8 Remuneration of Organizing Committee Members**

Subject to section 9, the members of the Organizing Committee may be paid such fees and allowances as are approved by the Authority in consultation with the Remuneration Authority.

## **9 Chief Executive Officer**

- (1) The Organizing Committee shall, after consultation with the Pacific Games Council, appoint a Chief Executive Officer upon such contractual terms and conditions as the Organizing Committee determines with the consent of the Authority in consultation with the Remuneration Authority.

Provided that notwithstanding any other contractual condition or law, the Organizing Committee may at any time and entirely at its discretion and without assigning any reason, terminate the employment of the Chief Executive Officer with immediate effect, subject to any rights of compensation that may be specified in the employment contract.

- (2) The duties of the Chief Executive Officer are –
- (a) to be the Chairperson of Organizing Committee;
  - (b) to be the Secretary of Authority;
  - (c) to carry out work that the Organizing Committee has decided and to supervise that work whether others are mainly responsible or there is a committee working on it;
  - (d) to control all the various activities that the Organizing Committee has required, and keep a list of these and report on any problems at the next Organizing Committee meeting;
  - (e) to call emergency meetings of the Authority if required; and
  - (f) to report to the Prime Minister every 6 months on progress and problems.

## **10 Regular meetings**

- (1) The Organizing Committee and Chief Executive Officer shall meet at least monthly to co-ordinate and organize their work and within the 2 years before the games are held they shall meet weekly.
- (2) The Organizing Committee and Chief Executive Officer shall formulate a monthly work plan and refer to its progress at every meeting and report to the

Authority if there is a problem getting the games sites developed so that the venue is completed at least 6 months from the start of the Games.

## 11 Sub-Committees

There shall be such sub-committees of the Organizing Committee, including the –

- (a) Aid procuring committee;
- (b) Acquisitions committee;
- (c) Marketing committee,

and so forth as decided and necessary for the purposes of ensuring that the work of the Organizing Committee is completed.

## 12 Corporate Plan

- (1) Subject to subsection (3), the Organizing Committee is required to prepare and provide to the Authority, at least 3 months before the beginning of each financial year, a draft corporate plan for the financial year.
- (2) The Organizing Committee shall –
  - (a) consider any comments on the draft corporate plan that are made by the Authority within 2 months after the draft plan is delivered to the Authority; and
  - (b) deliver the completed corporate plan to the Authority before the beginning of the financial year concerned.
- (3) In its first year of operation the Organizing Committee shall prepare a draft corporate plan and submit it to the Authority within 3 months of the commencement of this Act and the provisions of subsection (2) shall apply, with such adaptation as may be required.
- (4) The Organizing Committee shall, as far as practicable, exercise its function and powers in accordance with the relevant corporate plan.
- (5) A corporate plan shall specify –
  - (a) the objectives of the activities of the Organizing Committee for the financial year concerned and for such future financial years as the Authority directs;
  - (b) the strategies, policies and budgets for achieving those objectives; and
  - (c) targets and criteria for assessing the performance of the Organizing Committee.
- (6) The financial year of the Organizing Committee is the year commencing on 1 July.

### 13 Liability

A matter or thing done or omitted by –

- (a) the Organizing Committee;
- (b) members of the Organizing Committee;
- (c) staff of the Organizing Committee;
- (d) any person acting under the direction of the Organizing Committee,

does not subject the Organizing Committee, member or person so acting to any action, liability, claim or demand, if the matter or thing was done or omitted in good faith for the purposes of executing this or any other Act.

### 14 Staff and other personnel

- (1) The Organizing Committee may employ such staff as it deems necessary on such terms and conditions as the Organizing Committee determines with the approval of the Authority in consultation with the Remuneration Authority.
- (2) The Organizing Committee may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a Government department, agency or body. For the purposes of the Act, a person whose services are made use of under this subsection, is a member of the staff of the Organizing Committee.
- (3) The Organizing Committee may engage consultants or other persons to undertake any task or work for or on behalf of the Organizing Committee.

## PART III

### AUDIT AND GOVERNANCE AUTHORITY

### 15 Authority established

- (1) The Audit and Governance Authority is hereby established.
- (2) The Audit and Governance Authority shall consist of no more than 8 persons all appointed after consultation with the Pacific Games Council as follows –
  - (a) 4 representatives of the Government of Tonga (including the Chairperson);
  - (b) 3 representatives of TASNOC (including the Deputy Chairperson); and
  - (c) one representative of the Pacific Games Council.
- (3) Members of the Authority shall be appointed as follows –
  - (a) the Government Representatives shall be appointed by the Minister with the consent of Cabinet and the Minister may at any time and

- entirely at his discretion, with the consent of Cabinet, alter those representatives by notice in writing of termination and appointment and on presentation of such notice to the Chairperson or Deputy Chairperson, the Authority shall be composed accordingly;
- (b) the 3 TASNOC representatives shall be appointed in writing by TASNOC, which may at any time and entirely at its discretion alter its representatives by notice in writing of termination and appointment and on presentation of such notice to the Chairperson or Deputy Chairperson, the Authority shall be composed accordingly; and
  - (c) the representative of the Pacific Games Council shall be appointed in writing by the Pacific Games Council, which may at any time and entirely at its discretion alter its representative by notice in writing of termination and appointment and on presentation of such notice to the Chairperson, the Authority shall be composed accordingly.
- (4) Members of the Authority may be also members of the Organizing Committee and they may be paid such sums as may be decided by the Authority in consultation with the Remuneration Authority.

## **16 Role and procedure of Authority**

- (1) The principal role of the Authority is to –
  - (a) appoint members of the Organizing Committee in accordance with this Act;
  - (b) oversee the good governance, accountability and transparency of the Organizing Committee;
  - (c) make sure that the Organizing Committee plans and works properly to prepare for and conduct the Games; and
  - (d) report to the Minister and the Pacific Games Council Executive Board.
- (2) The Chairperson shall call and preside over meetings of the Authority when appropriate and at least once in every 3 months.  
Provided that he shall convene a meeting forthwith if so required in writing by at least 3 members.
- (3) Subject to subsection (2) the Authority shall meet as and when it decides and shall regulate its proceedings as it sees fit.

## **PART IV**

### **FINANCES, ANNUAL REPORT AND AUDIT**

#### **17 Funds of the Organizing Committee**

- (1) The funds available for the purpose of enabling the Organizing Committee to perform its function under the Act consist of -
  - (a) all moneys from time to time appropriated by the Legislative Assembly for the purpose;
  - (b) all moneys received by the Organizing Committee for goods or services or under any contract or agreement;
  - (c) all moneys received by the Organizing Committee by way of grant or donation;
  - (d) all moneys borrowed by the Organizing Committee; and
  - (e) any other moneys received by, or made available to the Organizing Committee under or for the purpose of the Act.
- (2) The Government of the Kingdom shall ensure that, as a funder of last resort, the Organizing Committee receives sufficient funds to enable it to generally organize and conduct the Games.

#### **18 Accounts and Annual Report of the Organizing Committee**

- (1) The Organizing Committee shall cause to be kept proper accounts and records of the transactions and affairs of the Organizing Committee and shall do all things necessary to ensure that all funds received are brought to account, all payments out of its funds are correctly made and properly authorized and that adequate control is maintained over its property and over the incurring of liabilities of the Organizing Committee.
- (2) The Organizing Committee shall comply with the accounting and fiscal requirements of the Public Finance Management Act and all rules, regulations and other subsidiary legislation made thereunder.
- (3) The Organizing Committee shall cause to be prepared and submitted to the Minister, within 3 months of the end of the financial year of the Organizing Committee, an annual report containing -
  - (a) audited financial statements for the financial year;
  - (b) performance indicators and such information as may be directed by the Minister of Finance;
  - (c) a report on the operations of the Organizing Committee during the preceding financial year;
  - (d) a summary of the corporate plan; and
  - (e) such other information as Cabinet may require.

- (4) The financial statements referred to in subsection (3)(a) shall be prepared on a proper accounting basis and shall consist of -
  - (a) a statement of financial transactions of the Organizing Committee for the financial year;
  - (b) a statement of the financial position of the Organizing Committee at the end of the financial year; and
  - (c) proper and adequate notes to the financial statements.
- (5) The financial statements referred to in subsection (3)(a) shall -
  - (a) present fairly the financial transactions of the Organizing Committee during the financial year to which they relate; and
  - (b) present fairly the financial position of the Organizing Committee at the end of the financial year.
- (6) The Organizing Committee shall, within 1 month after the end of the financial year of the Organizing Committee, cause to be submitted to the Auditor General or to a recognised external auditor for audit the financial statements and other information referred to in subsection (3) together with a copy of the corporate plan for that financial year.
- (7) The Minister shall cause copies of each annual report of the Organizing Committee, together with the audit report, to be laid before the Legislative Assembly within 14 sitting days of receiving the audit report.

## **PART V**

### **PROTECTION OF MEDIA RIGHTS AND INTELLECTUAL PROPERTY RIGHTS**

#### **19 Media rights held by the Pacific Games Council**

- (1) Notwithstanding the provisions of any law, but subject to Part V of the Host Contract, the Pacific Games Council holds the media rights to the Games.
- (2) The Organizing Committee may, subject to Part V of the Host Contract grant a licence or other right, in writing, to a part or the whole of the media rights held by the Pacific Games Council to any person on such terms as the Organizing Committee, with the consent of the Pacific Games Council, may determine.

#### **20 Breach of media rights**

- (1) Any person who knowingly infringes the media rights of the Pacific Games Council or the Organizing Committee commits an offence.

- (2) Any person who knowingly aids or abets another person or counsels or procures another person to commit an offence under subsection (1) commits an offence.
- (3) Any person convicted of an offence under subsections (1) or (2) shall be liable to a fine not exceeding \$10,000, or imprisonment for a term not exceeding one year or both..

## **21 Seizure of unlawful media materials**

- (1) A police officer, acting on a written request from the Organizing Committee, may -
  - (a) seize any document, photograph, recording, electronic record, film or other material from any person where such document, photograph, recording, electronic record, film or other material is believed on reasonable grounds to have been created or brought into existence as part of or as a consequence of a person committing an offence under section 20; or
  - (b) seize any camera, recording device, computer, microphone or any piece of equipment from any person where such camera, recording device, computer, microphone or piece of equipment is believed on reasonable grounds to have been used or involved with the commission of an offence under section 20.
- (2) Any item or object seized under this section shall be held in safe keeping by the Commissioner of Police and shall be disposed of in accordance with subsection (4).
- (3) Any item or object seized under this section may be used in connection with a prosecution for an offence under section 20.
- (4) Any item or object seized under this section which is found by the Court to have been used or involved with the commission of an offence under section 20 or to have been created or brought into existence as part of or as a consequence of a person committing an offence under section 20 shall be forfeited to the Crown and in all other cases such item or object shall be made available by the Commissioner of Police for collection by the person from whom the item or object was seized and in the event that no person claims such item or object within one month after any court proceedings have been concluded or within one month after determination by the Attorney General that no charge shall be laid or prosecuted under section 20, whichever event applies, such item or object shall be forfeited to the Crown.

## **22 Intellectual property rights held by the Pacific Games Council**

- (1) The Pacific Games Council holds the intellectual property rights to the Games subject to the rights and licences granted to the Organizing Committee by the Host Contract.



- (2) The Organizing Committee may grant a licence or other right, in writing, to a part or the whole of the intellectual property rights held by the Pacific Games Council to any person on such terms as the Organizing Committee may determine.

### **23 Breach of intellectual property rights**

- (1) Any person who knowingly infringes the intellectual property rights of the Pacific Games Council or the Organizing Committee commits an offence.
- (2) Any person who knowingly aids, abets, counsels or procures another person to commit an offence under subsection (1) commits an offence.
- (3) Any person convicted of an offence under this section shall be liable to a fine not exceeding \$10,000, or imprisonment for term not exceeding one year or both..

### **24 Seizure of material produced in breach of intellectual property rights**

- (1) A police officer, acting on a written request from the Organizing Committee, may seize any item or object or other material where such item, object or other material is believed on reasonable grounds to have been created or brought into existence as part of or as a consequence of a person committing an offence under section 23.
- (2) Any item, object or material seized under this section shall be held in safe keeping by the Commissioner of Police and shall be disposed of in accordance with subsection (4).
- (3) Any item, object or material seized under this section may be used in connection with the prosecution for an offence under section 23.
- (4) Any item, object or material seized under this section which is found by the Court to have been created or brought into existence as part of or as a consequence of a person committing an offence under section 23 shall be forfeited to the Crown and in all other cases such item, object or material shall be made available by the Commissioner of Police for collection by the person from whom the item, object or material was seized and in the event that no person claims such item, object or material within one month after any court proceedings have been concluded or within one month after determination by the Attorney General that no charge shall be laid or prosecuted under section 23, whichever event applies, such item, object or material shall be forfeited to the Crown.

### **25 Protection from liability**

A matter or thing done or omitted by -

- (a) the Organizing Committee, its servants or agents;

- (b) the Commissioner of Police;
- (c) any police officer; or
- (d) any person acting in an official capacity under this Act,

does not subject the Organizing Committee, its servants and agents or any person referred to in (b), (c) or (d) to any action, liability, claim or demand, if the matter or thing was done or omitted in good faith for the purpose of this Act.

## PART VI

### MISCELLANEOUS

#### **26 Power to delegate**

- (1) The Organizing Committee may delegate to any person any function or power of the Organizing Committee, other than the power of delegation.
- (2) A delegate may sub-delegate to any person any function or power delegated by the Organizing Committee if the delegate is authorized in writing to do so by the Organizing Committee.

#### **27 Disclosure and misuse of information**

- (1) A person shall not disclose any information obtained in connection with the administration or execution of this Act unless the disclosure is made -
  - (a) with the consent of the person from whom the information was obtained;
  - (b) in connection with the administration or execution of this Act;
  - (c) for the purpose of any legal proceedings arising out of this Act or of any report of any such proceedings;
  - (d) in accordance with a lawful requirement; or
  - (e) with lawful excuse.
- (2) Any person who breaches subsection (1) commits an offence and may be liable upon conviction to a fine not exceeding \$1,000.
- (3) A person shall not use, either directly or indirectly, commercial information acquired by the person in the administration or execution of this Act for the purpose of gaining either directly or indirectly any financial advantage for the person, the person's spouse or de facto partner, a relative of the person or any other associate of the person.
- (4) Any person who breaches subsection (3) commits an offence and may be liable upon conviction to a fine not exceeding \$10,000.
- (5) For the purposes of subsection (3), commercial information is information that is not generally known but if generally known might reasonably be

expected to affect the market value of any land or to influence materially any contract with or tender for a contract with the Organizing Committee.

## **28 Regulations**

The Cabinet may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act, including –

- (a) regulations to govern the accounting and fiscal practices of the Organizing Committee; or
- (b) the constitution, functions and organization of the Government Facilities Committee to be established by the Government.

Passed by the Legislative Assembly this 11<sup>th</sup> day of March 2013.