### EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Sport

*Major Sporting Events (Indicia and Images) Protection Act 2014*

***Major Sporting Events (Indicia and Images) Protection Rules 2014***

Section 58 of the *Major Sporting Events (Indicia and Images) Protection Act 2014* provides that the Minister may, by legislative instrument, make rules prescribing matters required or permitted by this Act to be prescribed by the rules or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

The Act provides protection for the unauthorised commercial use of certain indicia and images associated with the Asian Football Confederation (AFC) Asian Cup 2015, the International Cricket Council (ICC) Cricket World Cup 2015 and the Gold Coast 2018 Commonwealth Games.

The *Major Sporting Events (Indicia and Images) Protection Rules 2014* (the Rules) are intended to add further detail to the processes used when a person makes an objection to the use of protected indicia and images and for the circumstances in which goods may be seized. This will ensure there is consistency with the enforcement processes at the border –under provisions within the *Trade Marks Act 1995* and the *Copyright Act 1968* for the Australian Customs and Border Protection Service (ACBPS).

The Rules commence on 1 July 2014, the same day as the Act commences or if registered on or after the day on which the Act commences, on the date the Rules are registered.

**Consultation**

The Major Events Taskforce in the Office for Sport at the Department of Health has consulted with Australian Government agencies and state and territory governments to develop the Act and also to meet the requirements of existing practices in the drafting of these Rules. Consultation was undertaken with:

* Attorney-General’s Department;
* Australian Customs and Border Protection Service;
* Department of Communications;
* Department of Prime Minister and Cabinet;
* Australian Federal Police;
* IP Australia;
* The Treasury; and the
* Governments of New South Wales, Victoria and Queensland.

All parties were supportive of the draft Rules provided they were consistent with existing practices of the ACBPS in relation to existing intellectual property legislation.

The Office of Best Practice Regulation has advised that a Regulation Impact Statement (RIS) is not required for these Rules, as they are machinery to the Act (for which a RIS was prepared).

**DETAILS OF THE *MAJOR SPORTING EVENTS (INDICIA AND IMAGES) PROTECTION RULES 2014***

1. **Name of Rules**

Rule 1 provides for the Rules to be referred to as the *Major Sporting Events (Indicia and Images) Protection Rules 2014.*

1. **Commencement**

Rule 2 provides for the Rules to commence on 1 July 2014, the same day as the Act commences or if registered on or after the day on which the Act commences, on the date that the Rules are registered.

1. **Definitions**

Rule 3 defines specific terms used in the Rules.

1. **Dictionary**

Rule 4 specifies the timeframes for the following periods in relation to the particular seized goods:

1. Action period – 10 working days
2. Claim period – 10 working days

The Rules provide the Customs Chief Executive Officer (Customs CEO) with timeframes for action to be taken or a claim to be made for goods seized at the border consistent with the framework under which the ACBPS would exercise its powers and functions under provisions within the *Trade Marks Act 1995* and the *Copyright Act 1968.*

1. **Claim for release of seized goods**

Rule 5 specifies the details to be provided to the Customs CEO when the designated owner of the seized goods submits a claim for release of their seized goods. The claim can be made by the designated owner, his/her agent in Australia or by a person or body other than an agent on the designated owner’s behalf. The claim requires contact details and addresses to be provided and the grounds on which the designated owner is seeking to have the seized goods released.

The Act provides the Customs CEO with the authority to release seized goods at the border –consistent with the framework under which the ACBPS Office would exercise its powers and functions under provisions within the *Trade Marks Act 1995* and the *Copyright Act 1968.*

1. **Damages or accounts of profits**

Rule 6 states that if a plaintiff has already brought an action against a person under section 62 of the *Commonwealth Games Arrangements Act 201,* in relation to the use of protected indicia and images for the Gold Coast 2018 Commonwealth Gamesthe plaintiff may not bring further action against a person under Clause 48(6) of the *Major Sporting Events (Indicia and Images) Protection Act 2014*. This will prevent the plaintiff seeking more than one award of damages or other compensation in relation to the same matter.

1. **Asian Football Confederation Asian Cup 2015**

Paragraph 4(1)(c) of Schedule 1, of the Act allows the Rules to prescribe expressions as protected indicia for the AFC Asian Cup 2015 in addition to those set out in Paragraph 4(1)(c) of Schedule 1.

Rule 7 prescribes the following expression as protected indicia under Paragraph 4(1)(c) of Schedule 1: Asian Football Confederation

This additional expression recognises the written name for the event owner. The agreed wording has been included following consultation with IP Australia.

**Authority:** Section 58 of the *Major Sporting Events (Indicia and Images) Protection Act 2014*

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Major Sporting Events (Indicia and Images) Protection Rules 2014**

The Major Sporting Events (Indicia and Images) Protection Rules 2014 is compatible with the human rights and freedoms recognised or declared in the
international instruments listed in section 3 of the *Human Rights
(Parliamentary Scrutiny) Act 2011*.

**Overview of the Major Sporting Events (Indicia and Images) Protection Rules 2014**

The *Major Sporting Events (Indicia and Images) Protection Rules 2014* (‘the Rules’) operationalise the processes to reflect the existing arrangements of the *Major Sporting Events (Indicia and Images) Protection Act 2014* (‘the Act’) to ensure there is consistency between the Act and enforcement processes at the border under the *Trade Marks Act 1995* and the *Copyright Act 1968*.

**Human rights implications**

*The right to enjoy and benefit from culture*

Article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right of everyone to take part in cultural life. According to the United Nations Committee on Economic, Social and Cultural Rights, the right to culture includes sports and games. This right encompasses access to culture, which includes the availability of a cultural infrastructure, such as places for recreation and sports.

The Act benefits the Australian public, as it will provide them with greater access to such events as well as providing opportunities for Australian sportspeople to compete in top-level international tournaments in front of their home crowds. The Rules detail the processes to reflect the existing arrangements of the Act ensuring consistency between the Act and enforcement processes at the border under the *Trade Marks Act 1995* and the *Copyright Act 1968*. The Rules advance the protection of human rights through promoting the right of individuals to enjoy and benefit from participating in cultural life.

*Right to protection against arbitrary and unlawful interferences with privacy*

The Rules engage the right to privacy through the collection, use, storage and sharing of personal information. The Rule provides that in order to claim for the release of seized goods, the full name, home or business address, address for service, and the telephone number of either the designated owner, or the designated owner’s Australian based agent, or another person or body on the designated owner’s behalf, must be provided with the claim.

The Act will permit this information to be shared in relation to the protected indicia and images. As such, it limits the right to protection from arbitrary and unlawful interference with privacy in Article 17 of the International Covenant on Civil and Political Rights (ICCPR). However, the limitation is proportionate to achieving the legitimate objective of the Act. This is because intellectual property rights owners need access to this personal information to allow them the opportunity to enforce their rights to a fair trial and fair hearing.

Without such information the intellectual property rights owner is deprived of the ability to enforce its legal rights regarding protection of their Event indicia and images. Failure to offer this mechanism of protection may result in insufficient revenue being raised, thus jeopardising the ability to stage the respective events. This, in turn, may result in limiting the right to enjoy and benefit from participating in cultural life, as described above.

The limitations associated with the right to protection against arbitrary and unlawful interferences with privacy through the collection, use, storage and sharing of personal information are reasonable, necessary and proportionate to achieving the objective of promoting fair trial and fair hearing rights.

*Fair trial and fair hearing rights*

The Rules engage the fair trial and fair hearing rights (Article 14(1) of ICCPR) through Part 5 Remedies, which prescribes section 62 of the *Commonwealth Games Arrangements Act 2011 (Qld)* (‘the QLD Act’) in relation to the Gold Coast 2018 Commonwealth Games. The Rule does this to prevent the authorising bodies from seeking to recover an amount for loss or damage as a result of unauthorised use of event indicia and images by an individual or organisation through both the Act and the QLD Act. This safeguard engages but does not limit or promote the right to a fair trial or fair hearing.

**Conclusion**

The Major Sporting Events (Indicia and Images) Protection Rules 2014 is compatible with human rights because it advances the protection of human rights through promoting the right of individuals to enjoy and benefit from participating in cultural life, and to the extent that it also limits human rights, those limitations are reasonable, necessary and proportionate.

**The Hon Peter Dutton MP**

**Minister for Sport**