

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Major Sporting Events (Indicia and Images) Protection Act 2014

Major Sporting Events (Indicia and Images) Protection Amendment Rules 2014 (No.1)

Section 58 of the *Major Sporting Events (Indicia and Images) Protection Act 2014* (the Act) 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 commenced on 1 July 2014 and provides protection in relation to the use of protected indicia and images for commercial purposes in connection 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 Principal Rules) commenced on 1 July 2014 to support the commencement of the Act. The *Major Sporting Events (Indicia and Images) Protection Amendment Rules 2014 (No. 1)* (the Amendment Rules) amend the Principal Rules to:

- Prescribe provisions of State and Territory major events legislation for the purposes of subsection 48(6) of the Act. Sections 48(6),(7)&(8) of the Act are intended to reduce the likelihood of a plaintiff double dipping by seeking damages or an account of profits under both the Commonwealth and any State and Territory legislation;
- Prescribe a document for the purposes of subsection 23(3) of the Act that must accompany a notice of objection to the importation of goods that use protected indicia and images. The document prescribed is a Deed of Undertaking that must be provided that the Undertaker Giver undertakes to pay the Commonwealth the expenses of seizing any goods; and
- Prescribe additional protected indicia for the purposes of Schedule 1 of the Act which relates to the AFC Asian Cup 2015. The additional protected indicia are a result of finalising event marketing campaigns.

The Amendment Rules commence on 1 January 2015.

Consultation

The Major Events Taskforce in the Office for Sport, Department of Health, has consulted with Australian Government agencies and state and territory governments to develop the Amendment Rules:

- Attorney-General's Department;
- IP Australia;
- Australian Customs and Border Protection Service (ACBPS);
- Australian Federal Police;

- State and Territory Governments; and
- Event Organising Committees.

All parties were supportive of the Amendment Rules.

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 Amendment Rules 2014 (No.1)

The *Major Sporting Events (Indicia and Images) Protection Amendment Rules 2014 (No.1)* 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 Amendment Rules 2014 (No.1)

The *Major Sporting Events (Indicia and Images) Protection Amendment Rules 2014 (No.1)* (the Amendment 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 relevant State and Territory Acts, give effect to technical requirements of the Act and append the AFC Asian Cup expressions to the list of protected indicia.

Human rights implications

Fair trial and fair hearing rights

The Amendment Rules, Part 5 Remedies, engage the fair trial and fair hearing rights in Article 14(1) of the International Covenant on Civil and Political Rights. The Amendment Rules prescribe provisions of State and Territory legislation for the purposes of paragraph 48(6)(b) of the Act: section 63 of the *Major Events Act 2009 (NSW)* ('the NSW Act') in relation to the Asian Football Confederation Asian Cup 2015 (AC2015), and the International Cricket Council Cricket World Cup 2015 (CWC2015) section 48 of the *Major Sporting Events Act 2009 (Vic)* in relation to AC2015 and CWC2015, and section 14 of the *Major Events (Aerial Advertising) Act 2009* ('the WA Act') in relation to the International Cricket Council Cricket World Cup 2015 (CWC2015) (collectively referred to as 'the State Acts'). Section 46(6) of the Act has the effect of preventing an official user for a major sporting event 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 under both the Act and a provision of a State or Territory Act as specified in the Amendment Rules. This engages but does not limit or promote the right to a fair trial or fair hearing.

The right to enjoy and benefit from culture

Article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights (ICESR) recognises the right of everyone to take part in cultural life. According to the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR), 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 Amendment Rules benefit the Australian public, as it will provide them with greater access to such events as well as provide opportunities for Australian sportspeople to compete in top-level international tournaments in front of their home crowds.

The list of protected indicia provides clarity around what indicia may or may not be used by non-authorized users and will act as a deterrent and guide for potential infringers. Clarity around the authorized usage of the protected indicia and images will in turn help to ensure that sufficient revenue can be raised to stage the events.

By operationalising the processes to reflect the existing arrangements of 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*, the Amendment Rules advance the protection of human rights through promoting the right of individuals to enjoy and benefit from participating in cultural life.

Conclusion

The Amendment Rules are 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 limits human rights, those limitations are reasonable, necessary and proportionate.

The Hon Peter Dutton MP
Minister for Health