

Regulatory Impact Statement

BOXING CONTROL REGULATION 2016

Subordinate Law No SL2016-34

**Prepared in accordance with the
Legislation Act 2001, section 34**

**Circulated by authority of
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Overview

This regulatory impact statement relates to the *Boxing Control Regulation 2016* (the proposed law).

The proposed law is required to address an urgent situation and afford procedural fairness to the promoter of a combat sports event in Canberra on 17 December 2016.

Problem

Historically, the *Boxing Control Act 1993* (the Act) was applied narrowly to boxing and kickboxing in the ACT, owing to the intention at the time the Act was created.

The Act relies in part on the NSW regulatory framework for combat sports, with the principal Act being the *Combat Sports Act 2013* (NSW). The NSW framework includes a wide range of combat sports, subject to certain exclusions under the *Combat Sports Regulation 2014* (NSW).

As part of the *Policy Position Paper: Combat Sports*, the Government announced in September 2016 that a new regulatory framework would be developed for combat sports in the ACT over the next 12 months. In working to develop this framework, a revised interpretation of the Act has now been adopted.

Under this interpretation, the full range of combat sports regulated in NSW are now considered to be within the coverage of the ACT's Act, including a previously-scheduled muay thai event on 17 December 2016 ('World Fight Australia' event). Full compliance with the Act will not be possible by the time of the event, and as such, the promoter, contestants and officials may be committing offences should it proceed as scheduled. Alternatively, the event would need to be rescheduled or cancelled, incurring costs for those involved.

In order to provide procedural fairness, the proposed law exempts persons associated with the World Fight Australia event on 17 December 2016 from the application of the Act, subject to certain conditions.

The exemption provided under the proposed law will be limited to the single specified event, and will not have wider application.

Information required by section 35 of the *Legislation Act 2001*

This regulatory impact statement complies with the requirements for a subordinate law as set out in Part 5.2 of the *Legislation Act 2001*. In particular this regulatory impact statement meets the content requirements set out in section 35 of the *Legislation Act 2001*.

(a) The authorising law

The Act is the authorising law for the proposed law. Section 22 of the Act provides a regulation-making power and subsection 22(2) specifically provides that a regulation may exempt people from the application of the provisions of the Act.

(b) Policy objectives of the proposed law

The proposed law has been developed to address an urgent and exceptional circumstance. It seeks to ensure that the promoter, contestants and officials participating in the World Fight Australia event on 17 December 2016 at AIS arena are exempted from the application of the Act.

The proposed law recognises that the World Fight Australia event was scheduled prior to the adoption of the wider interpretation of the Act. Under the historical, narrow interpretation, the promoter and other participants were not required to comply with the Act as it is a muay thai event.

The proposed law provides that the people participating in the event are not committing offences by proceeding with the event as scheduled.

The conditions included in the proposed law provide for minimum safety standards. Prior to the event, the promoter must provide evidence demonstrating the experience and capacity of the promoter and other participants; insurance provisions; statements of fitness for contestants (including serological clearances); accreditation for timekeepers, judges and referees; the engagement of doctor/s; the rules of the contest; and the sanctioning body for the event.

The exemption provided under the proposed law is to apply to the single event on 17 December 2016.

(c) Achieving the policy objectives

The proposed law achieves the policy objectives by providing a person is exempt from the application of the Act, in relation to the person's involvement in World Fight Australia, subject to specified conditions.

The proposed law has been drafted to apply only to the World Fight Australia event on 17 December 2016 at the AIS arena. Further, it expires on 18 December 2016.

(d) Consistency of the proposed law with the authorising law

The relevant section of the authorising law is identified at part (a) on page 3 of this Regulatory Impact Statement. The proposed law is consistent with the regulation-making power granted to the Executive under the authorising law.

(e) The proposed law is not inconsistent with the policy objectives of another Territory law

The proposed law is not inconsistent with the policy objectives of any other Territory law. No other Territory law regulates combat sports. Human rights implications of the proposed law and the intersection with the *Discrimination Act 1991* are addressed at (h) below.

(f) Reasonable alternatives to the proposed law

The proposed law is necessary to address an urgent and exceptional circumstance that has arisen as a result of a wider interpretation of the Act being adopted.

The promoter and participants are unable to comply with the Act's provisions given the short notice of the application of the Act to the event.

There is no reasonable alternative to making the proposed law in achieving the identified policy objective. Without the proposed law, offences under the Act may apply if it proceeds as scheduled. Alternatively, the event would need to be rescheduled or cancelled, resulting in costs to the promoter and participants.

(g) Brief assessment of benefits and costs of the proposed law

The proposed law provides the benefit that the scheduled event can proceed without the promoter and participants committing offences under the Act.

Compliance with the conditions in clause 4 of the proposed law is a cost to the promoter and participants. However, this cost is less than the potential cost of rescheduling or cancelling the event should full compliance with the Act be required.

The conditions may also be seen as a benefit to the broader community through providing for minimum safety standards including that those associated with the event must have industry experience, relevant affiliations/accreditations, insurance coverage and appropriate medical clearances.

(h) Brief assessment of the consistency of the proposed law with Scrutiny of Bill Committee principles

The Standing Committee on Justice and Community Safety's (Legislative Scrutiny Role) Terms of Reference require the Committee to consider whether (among other things) a regulation:

- a) is in accord with the general objects of the Act under which it is made;
- b) unduly trespasses on rights previously established by law;
- c) makes rights, liberties and/or obligations unduly dependent upon non reviewable decisions; or

- d) contains matters which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly.

An analysis of the proposed law against each of these items follows. In addition, an Explanatory Statement for the proposed law has been prepared for tabling, with the proposed law, in the Legislative Assembly.

(a) Accordance with the general objects of the Act under which it is made
The general object of the Act is to regulate the conduct of professional and amateur boxing, and related purposes.

As indicated in the *Overview* above, historically the Act was applied narrowly to boxing and kickboxing. The Act is now being applied to a wider range of combat sports, including muay thai.

The Act provides a regulation-making power at section 22, and specifically provides under subsection 22(2) that the Executive may exempt people from the application of the provisions of the Act.

The proposed law is therefore within the object and scope of the Act.

(b) Rights previously established by law
There are several aspects in which the proposed law may be considered to trespass on previously established rights. To the extent that it does trespass, it is necessary to consider whether it does so unduly.

The conditions of the exemption provided under the proposed law engage the right to privacy and reputation, and the right to protection against discrimination under the *Human Rights Act 2004*.

The names of the contestants on the fight card, reserve contestants and of any other officials participating in World Fight Australia must be provided to the Director, Active Canberra as a condition of the exemption. While fight card information may be made available to the public as part of the event's promotion, the requirement to provide the names of reserve contestants and other officials may engage the right to privacy. The provision of this information is essential to the proposed law as there is no other practical means of identifying the 'people' to be exempted from the Act's provisions in accordance with subsection 22(2) of the Act. The information will be collected and held securely within Active Canberra.

The promoter must provide evidence of their knowledge and capacity to arrange, promote and conduct combat sports contests at a professional level. This requirement also engages the right to privacy. As the promoter has primary carriage of the conduct and safety of the event, it is important that this person can demonstrate prior knowledge and experience in carrying out this role in professional combat sports events. This information will be collected and held securely within Active Canberra.

The requirement to provide a serological clearance may result in contestants being unable to compete if they have certain blood-borne viruses. This requirement engages both the right to privacy and the right to protection against discrimination. Preventing contestants from competing on the grounds of a blood borne virus would also amount to discrimination on the basis of a disability, which is generally unlawful under the *Discrimination Act 1991*. However, an exception under section 56 of that Act allows discrimination on the basis of disability if the discrimination is necessary and reasonable to protect public health.

In the absence of other effective options (and noting that combat sports are based on individual participation, unlike team sports), the requirement for serological clearance protects contestants, participants and the public from an increased risk of contracting a blood borne virus.

Similarly, the requirement to provide a statement of fitness may result in contestants being excluded from the event if a doctor is not satisfied they are fit to compete. This condition is required in the interests of the health of the contestants, and also addresses the public interest in minimising the risks to contestants wherever possible.

The statements of fitness and serological clearances will be collected and held securely within Active Canberra.

On balance, the proposed law is considered reasonable and proportionate given that without the exemption made possible by the Act, the event could not proceed as scheduled without significant risk to the promoter and participants that they may be committing offences. The conditions strike a balance between meeting minimum safety standards while recognising the burden that full compliance would impose on the promoter at this late stage.

(c) Non-reviewable decisions

The proposed law does not create any non-reviewable decisions. While the Act does provide for a number of reviewable decisions in the ordinary course of administration, this is an exceptional circumstance and the making of a regulation is not reviewable. It is, however, subject to consideration and scrutiny by the Legislative Assembly.

(d) Matters properly dealt with in an Act of the Legislative Assembly

The Act as outlined above, expressly allows the Executive to make a regulation for the matters addressed in the proposed law. Accordingly, the proposed law is within an express power granted by the Legislative Assembly.