

2016

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**BOXING CONTROL REGULATION 2016
SUBORDINATE LAW SL2016-34**

EXPLANATORY STATEMENT

**Circulated by the authority of
Yvette Berry MLA
Minister for Sport and Recreation**

Overview

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, to improve safety and integrity. 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 (the '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.

Section 22 of the Act provides a regulation-making power. Subsection 22(2) specifically provides that a regulation may exempt people from the application of the provisions of the Act.

In order to provide procedural fairness, the *Boxing Control Regulation 2016* (the Regulation) exempts persons associated with the World Fight Australia event on 17 December 2016 from the application of the Act, subject to conditions.

The conditions included in the Regulation 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 Regulation will be limited to the single specified event, and will not have wider application.

Human Rights Implications

The conditions of the exemption provided under the Regulation 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 of 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 Regulation 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. This requirement 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 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 Regulation 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.

Notes on clauses

Clause 1 - Name of regulation

This is a formal requirement and identifies the regulation as the *Boxing Control Regulation 2016*.

Clause 2 - Commencement

The regulation commences on the day after it is notified on the ACT Legislation Register.

Clause 3 – Notes

This is a standard clause that explains the legal status of notes in the regulation, in accordance with section 127 of the *Legislation Act 2001*.

Clause 4 –World Fight Australia exemption-Act, s 22 (2)

Clause 4 provides a person is exempt from the application of all provisions of the Act, in relation to the person's involvement in World Fight Australia, subject to conditions.

For contestants in World Fight Australia, the person must (paragraph 4(1)(a)):

- (i) have a written statement of fitness to engage in the contest from a doctor; and
- (ii) have a serological clearance.

For a timekeeper, judge or referee participating in World Fight Australia, the person must be accredited as a timekeeper, judge or referee (however described) with a combat sport governing body (paragraph 4(1)(b)).

As soon as possible and before the event begins, the promoter of World Fight Australia must provide evidence to the Director, Active Canberra in the Chief Minister, Treasury and Economic Development Directorate that the conditions for contestants, timekeepers, judges and referees are met (subparagraph 4(1)(c)(i)).

The promoter must also provide (paragraph 4(1)(c)):

- (ii) evidence to show public liability insurance, professional indemnity insurance and workers compensation insurance covering World Fight Australia, including cover for all contestants, officials, doctors engaged by the promoter and people at the Australian Institute of Sport arena for the purpose of watching World Fight Australia; and
- (iii) evidence that World Fight Australia is sanctioned by Kru Muaythai Association; and
- (iv) the rules of the contest, including evidence to show Kru Muaythai Association has confirmed the rules; and
- (v) the name and registration number of one or more doctors engaged to assess, monitor and care for each contestant's health before, during and after World Fight Australia; and

- (vi) evidence that the promoter has knowledge and capacity to arrange, promote and conduct combat sports contests at a professional level; and
- (vii) the fight card and the names of reserve contestants for World Fight Australia; and
- (viii) the name of any other official participating in World Fight Australia.

Subsection 4(2) of the regulation provides definitions of the terms *official*, *promoter*, *serological clearance* and *World Fight Australia*.

Clause 5 – Expiry

Clause 5 provides that the regulation expires on 18 December 2016, as the exemption from the provisions of the Act is limited to people associated with the World Fight Australia event on 17 December 2016.