

Australian Capital Territory

# **Controlled Sports Bill**

## **REVISED EXPLANATORY STATEMENT**

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This explanatory statement relates to the Controlled Sports Bill (“the Bill”). It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Legislative Assembly. The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

## OUTLINE

In September 2016, the ACT Government announced its intention to develop a new legislative framework to regulate combat sports in the ACT, as the existing approach no longer reflects the diverse forms of combat sports within the industry.

The development of this Bill has been undertaken with extensive consultation with a range of stakeholders, including industry participants and experts, sports scientists and academic researchers, medical practitioners, law enforcement, and sporting integrity experts, as well as relevant agencies across government.

The Bill updates the regulation of combat sports contests, and other prescribed sports as required, in the ACT. It allows for an expanded scope of sports or related activities to be better regulated under the Bill if the need arises. This Bill replaces the *Boxing Control Act 1993*.

The Bill provides for the regulation of combat sports events in the ACT, and sets clear expectations for industry regarding the conduct of events, with a particular emphasis on the safety of contestants, and the integrity of the activities in general.

The objects of the Bill relate specifically to these target areas, and are made under the following principles:

- Regulating certain combat sports events and other high-risk sports or activities;
- Promoting the health and safety of controlled sports contests;
- Promoting the integrity of controlled sports contests and events; and
- Regulating on a harm minimisation basis, recognising that some elements of the sector have a proven track record of successful self and co-regulation.

The design of the regulatory regime for controlled sports is the first of its kind in Australia. It provides scope for Government to quickly respond to instances where regulation of sports is warranted due to safety and/ or integrity matters, such as the management of concussion in high-risk sports or other dangerous activities.

In terms of combat sports, the Bill clearly defines the techniques typically used in combat sports that warranted coverage under this Bill due to the safety risk they impose on contestants. This was done as an alternative to listing particular sporting styles, where regulation could soon become outdated and need review. For instance, during the development of the Bill, other jurisdictions advised that they were receiving event applications for several new combat sports styles, such as bare-knuckle boxing, that would be covered under the technique definition within this Bill and could therefore be immediately considered under the regulatory framework.

Further, it allows for the regulation of certain events that may encounter integrity issues, such as those where large prize money is available, a sizable crowd is present, there is organised gambling present, and events that are primarily run for a commercial purpose.

Specifically, the Bill includes arrangements for the registration of participants in defined events, minimum standards for the conduct of events (through the development of a code of practice and age requirements), and compliance and enforcement functions (including medical supervision and the establishment of inspectorate functions within the ACT). These arrangements reflect community and industry expectations for managing these types of activities in the ACT.

The Bill is designed for sustainability, regulating combat sports through techniques rather than listing individual combat sports. This allows for the legislation to cover these sporting styles as they evolve, and implement standards that meet the objects of the Bill. This is different to the Boxing Control Act in that it accommodates for the evolution of combat sports, recognising that new styles and adapted rules are being introduced in the industry on a regular basis. Under the Boxing Control Act, a number of combat sports styles are exempted by virtue of the legislative link to the New South Wales *Combat Sports Act 2013*. This Bill will eliminate the discrepancy created by that legislative link where some combat sports such as judo or taekwondo have been exempted from the requirements in instances where similar techniques are used. It will allow government to regulate or prohibit events quickly, through a risk-based assessment process that applies clear and consistent requirements based on combat sports techniques. This creates a fairer regulatory landscape for industry stakeholders.

The scope of the Bill also provides for many sporting organisations to continue managing their own combat sports events and contests, whilst making clear the safety and wellbeing expectations of Government.

### ***Revisions to this Explanatory Statement***

This Explanatory Statement was revised to specifically address comments made by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (Scrutiny Committee) – Scrutiny Committee Report 26. Revisions have been made to the following content:

- Subordinate legislation
- Human rights considerations
  - strict liability offences
  - right to a fair trial
  - entry and seizure powers (new addition)
- Section 153 – Transitional Regulations

### ***Government amendments***

Government amendments have been made to a number of sections to provide further clarity on intended operation. Amendments have been made to:

- Section 9 – definition of a controlled sports event. This section was updated to specifically exclude training and provide a clear definition of what is considered training for the purposes of the Act.

- Section 18 (4) – decision on registration of controlled sports official – clauses now include an internal review process and a time period for this review.
- Section 22 (6) controlled sports official registration – renewal - clauses now include an internal review process and a time period for this review.
- Section 23 (3) (b) – suspension or cancellation of controlled sports official registration – extension of time period from 10 working days to 20 working days for official to provide reasons why registration should not be cancelled or suspended.
- Section 27 (4) – decision on registration of controlled sports contestant - clauses now include an internal review process and a time period for this review.
- Section 31 (6) – controlled sports contestant registration – renewal - clauses now include an internal review process and a time period for this review.
- Section 32 (4) - suspension or cancellation of controlled sports contestant registration – extension of time period from 10 working days to 20 working days for contestant to provide reasons why registration should not be cancelled or suspended.

### ***Subordinate Legislation***

The Bill provides for a number of pieces of subordinate legislation that will be developed in the transition period in consultation with industry stakeholders. These include:

- Minister may exempt light contact combat sports (section 8)
- Controlled sports official registration and renewal (Division 3.2);
- Controlled sports contestants conditions of registration, renewal of registration, and medical requirements (Division 3.3);
- Application for a registered controlled sports event (Division 3.4);
- Controlled sports register (Division 3.5);
- Code of practice (Division 4.1);
- Age requirements (sections 37 and 66);
- Registered medical practitioner – duties (reporting requirements) (section 57);
- Declaration of authorised controlled sports body, and matters that must be considered by Minister to make declaration (section 63);
- Advisory committee (section 86); and
- Fees (section 89).

The Scrutiny Committee requested justification as to why offences could be created through regulations. The Bill limits the ability of these offences to be minor in nature and of no more than 20 penalty units. The Bill also extensively details where regulations may be made with regard to the conduct of controlled sports events and the conduct and responsibilities of officials and contestants at controlled sports events (as outlined in the list above). For instance, where a regulation sets a minimum age for contestants for participation in events (Sections 37 and 66 respectively), it will be important to consider whether offences for failure to comply are appropriate given the safety implications for contestants. This is a key object of the legislation. All regulations proposed under the Bill seek to meet these objectives and it is therefore considered necessary to allow for the creation of minor offences under regulation.

Further information on regulations are detailed in the relevant parts of this Explanatory Statement.

In addition, the rapidly evolving nature of combat sports means that there may be instances where safety and integrity is compromised and not provided for in the Bill. These implications mean that the Government must respond quickly. For instance, prohibiting a particular style of combat sport event, or restricting use of a particular technique, with an appropriate penalty attached.

### ***Human Rights Considerations***

This Bill is in accordance with the Scrutiny of Bills Committee's Terms of Reference as set out below:

- a) The Bill is in accord with the general objects outlined in the Bill at section 6. These objects clearly define the intention to regulate for safety and integrity purposes.
- b) The Bill does not unduly trespass on rights previously established by law. The Bill determines the requirements for the regulation of controlled sports (combat sports in the first instance), which replaces the Boxing Control Act. Where there are human rights considerations, these matters are addressed under the relevant sections of this Explanatory Statement, and are outlined in brief below.
- c) The Bill does not make rights, liberties and/or obligations unduly dependant on non-reviewable decisions. The reviewable decisions listed in Schedule 1 allow a person to appeal decisions relating to, for example, refusal of registration, imposing conditions on registration, suspension or cancellation of registration, and refusal to register an event.
- d) The Bill deals with matters which should be properly dealt with in an Act of the Legislative Assembly and has been presented as such.

In its Scrutiny Report 26, the Scrutiny Committee made comments on several clauses requiring further explanation in this Explanatory Statement relating to human rights limitations. These are detailed in the particular sub-sections below.

The impact on human rights has been carefully considered in the development of this Bill, and been balanced with the risks associated with participation in combat sports for contestants, officials and the public. The Bill imposes some limitations on human rights set out in the *Human Rights Act 2004* as stated below:

#### *Screening and offence requirements potential limitations to section 8 of the HRA – Right to equality before the law, and section 12 – Privacy and reputation*

There is the potential for section 8: right to equality before the law, to be engaged as screening requirements may prevent a person being registered, or from registering an event. Prior offences and law enforcement intelligence will be considered as part of a [reviewable] decision of whether it is in the public interest for a person to hold the position in which they apply. Similar screening applies for many in the ACT that are

subject to pre-employment police screening, suitability criteria to gain a licence under the *Security Industry Act 2003*, and for the provision of Working with Vulnerable People registration, and is considered necessary in providing a safe environment. This Bill places similar limitations on these same rights.

Section 12 (HRA), privacy and reputation, could be potentially be engaged through the registration process as an applicant will be compelled to disclose information relating to their criminal background, potentially having reputational consequences.

Consideration of public interest screening allows police to consider both criminal background and intelligence in making a decision to provide clearance to an individual. This will help to address issues where individuals without criminal records are named for applications yet have criminal connections that would otherwise be detected through a more thorough intelligence screening process. These matters may however, relate to security sensitive information that may not be revealed through a review process, which is specifically mentioned under sections 84 and 85. This is necessary to protect the integrity of police intelligence and not impact on larger intelligence operations and is therefore considered a necessary limitation on human rights.

To assess the impact of the Bill on the applicant's rights, the safety and integrity objects of the Bill must be weighed against an individual's right to participate in a regulated activity, and the rights of other individuals participating or attending such an activity. It is therefore considered essential to apply screening requirements to applicants seeking registration. The scope of this screening is clearly defined under the public interest criteria listed at section 13, which sets clear and transparent expectations for potential applicants.

Section 8 (HRA) also has the potential to be engaged through the application of offences. Careful consideration was given to the development of offences within the Bill, which appropriately affect the severity of the offence committed in relation to the objects of this Bill, and the position of the person committing the offence. Further information on particular offences is listed under the relevant sections in this Explanatory Statement. Primarily, the severity of the offence is directly related to the potential impact on the safety of all participants at events, including the potential for serious injury or fatality.

It is also recognised that combat sports can have wide ranging benefits for disenfranchised individuals and provide an effective diversionary and disciplinary activity that may reduce recidivism and/ or criminal activity. Approval requirements for individuals seeking to participate need to be carefully considered. The provisions in the Bill for screening of individuals (Divisions 3.2 and 3.3) include law enforcement and intelligence screening as part of the approval process. Specific matters that the Minister must and may consider are clearly outlined at section 13, including specific offences. This is designed to address issues with organised crime, fraud and money laundering that is known to exist within the combat sports industry. The predominant risk of allowing a person that has been convicted of such offences registration, particularly as an official, is to allow an avenue for criminal activity to occur, and poses safety risks to innocent individuals participating in or viewing events. It is for this reason that the screening of officials will be treated with more

rigour than that of contestants, given the potential influence and power these positions hold, particularly the promoter. This screening is not intended to exclude individuals based on minor offences, particularly where participation may be an effective diversionary activity. Where an application is refused, this decision is reviewable as outlined in Schedule 1.

All offences under this Bill are considered necessary. Other matters, such as disclosure of conviction or finding of guilt are managed through reporting requirements (sections 24 and 33). The Bill also provides for instances for low level offences to be dealt with through administrative sanctions such as suspension or cancellation of registration (sections 23 and 32), which are reviewable decisions through the ACT Civil and Administrative Appeals Tribunal (ACAT) and are provided with a provision of a warning before suspension or cancellation takes effect (with the exception of medical suspensions or cancellations). Offences will therefore be reserved for more serious breaches, or repeated prohibited conduct. Offences in other ACT legislation as well as comparable interjurisdictional legislation were examined for setting penalties, and those listed in the Bill are comparable.

Further detail on particular offences is dealt with under the relevant sections of this Explanatory Statement.

Industry's transition to the new requirements of this Bill will be promoted through education and support provided through Sport and Recreation Services, ACT Government. This includes information sessions, educational material and one on one support for individual events. The delayed commencement of the Bill allows for industry to prepare before the Bill commences. Education activities will be undertaken before and after commencement. Compliance monitoring through the inspectorate functions detailed in the Bill will be staged after commencement. This approach clearly indicates that the measures are designed to allow for building increased capacity in the industry for safe participation in line with the objects of the Bill.

#### *Enforcement entry and seizure powers and potential limitations to section 12 of the HRA – privacy and reputation*

The Scrutiny Committee's report (26) made reference to the entry search and seizure powers detailed under Part 5 of the Bill (Enforcement). These sections detail where an inspector can enter a premises without consent and seize items where the inspector is satisfied on reasonable grounds that the thing seized is connected with an offence against the legislation, or for the purpose of entry for which the inspector has obtained consent. The Bill details when an inspector can enter a premises without consent, which is when the area is being used for a controlled sports event or prepared for use for a controlled sports event.

At any time apart from preparation or use in a controlled sport event, an inspector must obtain consent from the occupier to enter a premises (in most instances this will be the promoter of the event). This is an important distinction in determining limitations on the right to privacy (s12 of the HRA). For example, in instances where an inspector enters an event (without consent), the event by definition under Sections 10 (registrable events) and 61 (non-registrable events), is open to the public (be it ticketed or otherwise). While the inspector may be able to enter some non-public

areas, such as training and weigh-in areas, these areas are also frequented by registered officials and support persons and consent must be obtained first in accordance with Section 74 (1)(b). This Part therefore does not place unreasonable limitations on a person's right to privacy as the entry would neither be unlawful or arbitrary, particularly given that at all other times the inspector must obtain consent where the venue is being used for private purposes. Privacy considerations for a public event are somewhat limited given the multitude of other parties that would be granted access (i.e. spectating public, officials, medical staff, contestants, owners of the venue, entertainment and so forth).

In relation to entry and seizure powers relating to times where a venue is being prepared for a controlled sports event (Section 74 (a) (ii)), this is at a time when the venue, or part of the venue is not open to the public. It is critical that an inspector can access these areas to address the safety and integrity objects of the legislation. For instance, an inspector can check the contest area is built to specifications, that essential medical equipment is on site and in the right location, or that weigh-ins are being conducted to specifications to ensure contestants are suitably matched. Expectations of privacy in these instances is similar to expectations of privacy in a commercial premises. In the history of events held in the ACT to date under the *Boxing Control Act 1993*, events have always been held on commercial premises, and never in privately occupied premises. Access to these areas, as they are not open to the public, will be by consent of the occupier. This consent will be sought from the promoter as occupier during the application for registered events (Section 34), and prescribed by regulation as a considered for decision for registration of a controlled sports event (Section 35 (1) (c)). Standard conditions will be developed that specify that the promoter does not consent to the inspector entering areas that are being used for medical treatment or examinations while treatment is occurring. In relation to non-registrable events, consent of the occupier will be obtained at the time of inspection.

Where consent is refused, the inspector does not hold any further powers to enter the premises or seize items (other than to enter the outside of the premises to obtain consent to enter), however may give a direction (Section 73) if the inspector believes on reasonable grounds that a contravention of the Act is occurring.

#### *Strict liability offences potential limitations to S21 and S22 of the HRA – Rights in criminal proceedings, Right to a Fair Trial*

Some particular offences are listed as strict liability offences, reversing the burden of proof to those charged, potentially limiting the right to presumption of innocence. These matters have been addressed in this manner as they relate directly to matters of licenced officials and contestants, whom agree to set conditions as a requirement of registration. These individuals therefore ought to meet their legal obligations relating to prohibited conduct.

The use of strict liability offences for controlled sports can be justified on the basis that the offence applies to people who choose to engage in regulated activity, or are on notice that they are operating in a regulated context. People who elect to apply for controlled sports registration choose to do so and are on notice that they must abide by the laws that govern the registration. It is on this basis that the Government believes that the use of strict liability offences contained in this Bill is relevant to the



policy objectives of integrity and contestant safety, both of which are demonstrably justifiable and reasonable.

Strict liability offences are:

- Section 40 (2) – conduct registered event in breach of condition;
- Section 41 (2 and 3) – unregistered official at registered event;
- Section 42 – official participate at registered event when given notice of intended cancellation or suspension of registration;
- Section 43 (2) – conduct registered event with unregistered official;
- Section 44 – unregistered contestant at registered event;
- Section 45 (2) – conduct registered event with unregistered contestant;
- Section 46 – participate at registered event as both official and contestant;
- Section 50 (2) – registered promoter at registered event in breach of approved code of practice;
- Section 51 (2) – registered promoter at registered event in breach of approved code of practice
- Section 52 – registered official at registered event in breach of approved code of practice;
- Section 53 – registered contestant at registered event in breach of approved code of practice;
- Section 67 – conduct non-registrable event without authorised controlled sports body approval;
- Section 68 – conduct non-registrable event without telling registrar;
- Section 69 – conduct non-registrable event in breach of approved code of practice; and
- Failure to comply with inspector directions under sections 78 and 79.

While the onus of proof for these particular offences has been placed with the defence, all are related to obvious contraventions of the Act that any individual registered under the regulatory scheme ought to know applies. In instances where minor breaches apply, administrative sanctions may be applied as an alternative to offences. Where a decision is made to proceed with prosecution, the maximum penalty set for these offences is 50 penalty units.

As outlined previously, the implementation of this legislation will provide for industry education and support to make individuals aware of the regulatory requirements. As is currently applied under the Boxing Control Act, these messages are reinforced throughout the registration process, for example, through application forms, agreement to the code of practice, and support provided through Sport and Recreation, ACT Government, to comply with requirements.

The Scrutiny Committee also raised the matter of the right to a fair trial (S21 HRA) where the non-disclosure of security sensitive information to the applicant limits the information available at trial (either through ACAT consideration or through the courts) relating to Sections 18(5) and 27(5). While section 21(1) of the HRA is primarily concerned with an accused person's rights during criminal trials, it also encompasses rights that an individual may have under civil or administrative law.

Clauses 18(5) and 27(5) of the Bill engages section 22(1) of the HRA by limiting an applicant's right to procedural fairness, a right recognised by law by limiting an applicant's access to security sensitive information where the registrar has refused an application for registration on the basis of that information. While the registrar is still required to give the applicant reasons for the refusal, the registrar is not be required to give reasons to the extent that giving those reasons would disclose the security sensitive information. An applicant who has had their application for registration refused on the basis of security sensitive information has a right to apply to either the ACAT or court (under S83 of the Bill) to have the refusal decision reviewed.

Clauses 18(5) and 27(5) provide that, if the ACAT or court decides that reasons for the refusal of an application for a registration disclose security sensitive information, the ACAT or court must ensure that any security sensitive information is not disclosed in any reasons for the decision, and that hearings that would disclose security sensitive information must be held in private. This further engages the right to a fair and public hearing in section 22(1) of the HRA. Section 28(1) of the HRA provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28(2) of the HRA then provides that, in deciding whether a limit on a human right is reasonable, all relevant factors must be considered. Section 28(2) of the HRA further provides five factors that must be considered when determining whether a limit on human rights is considered justified. The limit that this Bill places on the right to procedural fairness is considered reasonable and justifiable in a free and democratic society, taking into account the factors enumerated in section 28(2) of the HRA, namely:

*(a) The nature of the right affected*

The right to procedural fairness has long been recognised by the common law. Clauses 18(5) and 27(5) of the Bill affect an individual's right to procedural fairness in that the registrar, as a decision-maker, is not required to disclose the basis for the registrar's decision in reasons for refusing an application for registration where to do so would reveal security sensitive information. Under administrative review of the decision to refuse registration, ACAT or the court must hold any hearing or part of a hearing that would disclose the security sensitive information in private (as detailed in Sections 84 and 85 of the Bill). ACAT or court must also ensure that security sensitive information is not disclosed in any reasons for their decision.

*(b) The importance of the purpose of the limitation*

The purpose of limiting the right to procedural fairness in this instance is to protect public safety from harm that may arise from the disclosure of security sensitive information held by a law enforcement agency. Security sensitive information is defined in the dictionary of the Bill as information held by a law enforcement agency the disclosure of which could be reasonably be expected to— (a) prejudice a criminal investigation; or (b) enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement; or (c) endanger a person's life or physical safety.

*(c) The nature and extent of the limitation*

The refusal to disclose security sensitive information when giving reasons for the refusal of an application registration limits the right to procedural fairness, contained within section 21(1) of the HRA. While the registrar is still required to give an

applicant the reasons for the refusal of the registration, the registrar need not disclose any security sensitive information on which that refusal is based. In a hearing before ACAT or court, evidence or submissions that would disclose security sensitive information must be held in private, in the absence of the public, the applicant for review, the applicant's representative and any other interested party (as detailed in Section 85 (2) (b). This limits section 22(1) of the HRA, which provides that everyone has the right to have rights and obligations recognised by law decided by an independent court or tribunal after a fair and public hearing. The ACAT or court must also ensure that security sensitive information is not disclosed in any reasons for their decision on the application for administrative review of the registrar's refusal to issue registration.

*(d) The relationship between the limitation and its purpose*

The limitation on the right to procedural fairness in Clauses 18(5) and 27(5) achieves the purpose of protecting the disclosure of security sensitive information, and ultimately thereby protecting public safety. The purpose of protecting public safety is achieved in this instance through protecting the disclosure of security sensitive information which might otherwise be misused if it were made public.

*(e) Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve*

Full disclosure of the reasons for refusing an application for registration, including any security sensitive information on which the decision was based, would mean the right to procedural fairness was not engaged. This option, however, would fail to adequately protect the public from any harm that may arise from the disclosure of the security sensitive information. Appropriate safeguards have been built into the Bill to minimise the restriction on the right to procedural fairness, including: Section 84 - decision on security sensitive information. The registrar may apply to have the information classified as security sensitive, however the ACAT or court will ultimately decide whether such classification is warranted. Section 85 – how the ACAT or court deals with security sensitive information, including (2) (b) where this information can be held in private and thus contributing to a fair decision by the ACAT or court.

The Scrutiny Committee also requested that reference be made to the defences available for strict liability offences available in the *Criminal Code 2002*. For the strict liability offences listed in the Bill and detailed in the Explanatory Statement, Section 23 of the Criminal Code applies, including the defence of mistake of fact.

*Medical requirements and potential limitations to section 8 of the HRA – Right to equality before the law*

There is the potential for a limitation on this human right based on the possible exclusion of individuals from participating, particularly as contestants, based on certain medical conditions or disability.

The medical requirements set under subordinate legislation, are justified based on the risk of personal injury or fatality in combat sports. These are established under subordinate legislation to allow for adaptations to be made as new medical and sports science research is released. Considerations include, but are not limited to:

- Medical requirements such as exclusion after head injury that are designed to protect the person from serious harm that can be caused by additional subsequent Traumatic Brain Injury;
- Careful consideration on a case-by-case basis to be given to contestant applications where medical conditions or disability exists. For example:
  - an applicant with a single kidney may be at risk of kidney failure if they were to participate in a combat sport where strikes to the kidney region were permitted; or
  - an applicant with a single eye may be at risk of permanent blindness from a detached retina in a combat sport where strikes to the head are permitted.
- Cognitive ability to provide consent to participate may also need to be a relevant consideration in some instances.

Overall, while some requirements and guidance for fitness will be provided to treating medical practitioners, granting an applicant with a Certificate of Fitness or Pre-Event Medical Clearance will be done on the authority of a registered medical practitioner due to their expertise in the field. Were an application to be refused, the decision is reviewable as outlined in Schedule 1. This will also be a function of the Advisory Committee (section 86), where complex cases require the input of expert medical advice.

In addition, the ACT's approach to serology testing as part of the 'Certificate of Fitness' requirements to be established under subordinate legislation has been carefully considered with a human rights framework in mind, balanced with the risk of transmission of blood borne viruses like HIV, Hepatitis B or C. It is for this reason that the ACT plans to take a risk-based approach to serology testing (to be prescribed under Section 25 (3) (b)), meaning that the rights of individuals with blood borne virus are protected. There is a potential risk of blood borne infections being transmitted during sports from the bleeding or exudative skin wounds of a contestant with a blood borne virus to other contestants via injured skin or mucous membranes. Although data is limited, the generally understood consensus amongst medical professionals is that the likelihood of such transmission is extremely low. Serology testing at particular intervals also poses a risk of false negatives, particularly if exposure was shortly before testing, and therefore has the potential not to pick up a blood borne virus until later rounds of testing, meaning that early treatment options may be missed and risk of exposure to other contestants increased.

A risk-based approach to serology testing in place of mandatory testing (and subsequent exclusion) allows a medical practitioner to discuss an applicant's exposure risk (for example, participation in needle sharing, having condom-less sex, prior incarceration) and manage accordingly. If the practitioner is confident that an applicant is managing the condition appropriately, then medical clearance can be given (providing all other medical requirements are met). The highest risk of communicable disease in this instance is Hepatitis B virus given its resistance to dying, including on surfaces outside of the body. With effective blood management protocols, vaccinations, and exclusion of individuals where the condition is not managed effectively, has the potential to greatly reduce the risk of transmission, including over mandatory testing at regular intervals and exclusion of an individual with a blood borne virus.

One important element of this approach, is allowing the applicant the choice of their own practitioner. While this cannot entirely eliminate the obligation on an applicant to discuss behaviours that may lead to a higher risk of contracting a blood borne virus, it provides the individual with autonomy of choice, meaning a practitioner with particular expertise in blood borne virus may be consulted by individuals with blood borne virus.

*Minimum age requirements and potential limitations to section 8 of the HRA – Right to equality before the law*

While sections 37 and 66 have the potential to limit this human right, it is similar to other matters that place restriction on children's participation in certain activities until they reach the age of majority. For example, obtaining a Medicare card, consent for sexual activity, and obtaining a driver's licence. Balancing the long term impact of injuries on developing bodies and brains with the right to equality before the law will be considered in any subordinate legislation in consultation with the relevant expertise on these matters.

## **BACKGROUND**

Combat sports include sports or activities involving the intent of striking, hitting, grappling, throwing or punching of another person.

A legal review in December 2016 resulted in a wider interpretation of the existing Act being applied due to the ACT's linkage with NSW legislation (the *Combat Sports Act 2013 (NSW)*). This extended the operation of the Act from boxing and kickboxing to combat sports including Muay Thai, Mixed Martial Arts (MMA). In 2017, the ACT processed applications for 16 events, totalling around 160 contestants under the new interpretation. At the time of writing, the number of 2018 events was not yet finalised, but is expected to reflect similar statistics.

A number of combat sports have emerged in the last 15 years and are now the focus of increasingly popular commercial combat sports events with varying levels of risk. This expanded range of combat sport styles was not envisaged nor intended to be covered when the Boxing Control Act was drafted in the early 1990's. Specifically, the Boxing Control Act does not have effective oversight of the safety and integrity aspects of combat sports events operating within the ACT. The arrangements under the Boxing Control Act provide only for a number of pre-contest conditions to be met. The rules of the combat sport listed in an approval, including appropriate safety and medical protocols, and integrity measures, are currently without compliance and enforcement arrangements.

Combat sports present a number of public safety risks, from physical harm to contestants through to public safety in the conduct of events and the potential for exploitation given the value of rewards being offered for particular contests and revenue generated through the event. Consultation and research have highlighted the potential for criminal associations within some parts of the industry.

Regimes of other Australian jurisdictions and internationally have also been examined in the development of this Bill. In Australia, each regulating jurisdiction approaches the regulation of combat sports differently. Where possible, the approach in the Bill is consistent with other Australian approaches, particularly New South Wales given the ACT's geographic location.

## **SECTION NOTES**

### **Part 1 Preliminary**

#### **Section 1 Name of Act**

This section provides for the name of the Act.

#### **Section 2 Commencement**

This section allows for the Act to commence six months after its notification day. This allows for an industry transition period, and to set in place the subordinate legislation under the Act, such as those listed under outline.

#### **Section 3 Dictionary**

This section refers to the dictionary that defines commonly used terms in the Act.

#### **Section 4 Notes**

This section makes it clear that the notes in the Act are explanatory only and do not form part of the substantive provisions of the legislation.

#### **Section 5 Offences against Act— application of Criminal Code etc**

This section makes it clear that other legislation is referred to in relation to offences against this Act.

### **Part 2 Objects and important concepts**

#### **Section 6 Objects of Act**

These objects make clear that the Government's intentions for this Act are to focus on the safety and integrity aspects of controlled sports.

#### **Section 7 Meaning of *controlled sport***

This section defines controlled sports subject to the intensity of techniques used and risks involved in combat sports (as defined in the Dictionary). It is also to provide coverage for prescribed sports to allow for the inclusion of new sports as they develop. This allows Government to respond quickly in such instances, without the requirement to amend legislation.

#### **Section 8 Minister may exempt light contact combat sports**

This section describes how a person may apply to have a light contact combat sport exempted by declaration. It describes the matters the Minister must consider in making this determination. In order to allow for flexibility, this particular section allows the Minister to consider particular styles and/or techniques used in combat sports in making this determination. This will accommodate combat sports that have a

range of styles and techniques used in different contests or exhibitions. For example, a promoter running an event with a combat sport style that has no forceful contact elements, but other varieties of movement that ordinarily are combat contact, could apply to have particular styles exempted from regulation.

## **Section 9      Meaning of controlled sports event**

This section defines what events are captured under the Act. To avoid doubt, this part stipulates that training is not considered a controlled sports event. Training is defined so as to clarify activities excluded from the definition of controlled sports event.

## **Section 10      Meaning of registrable event**

This section defines events that require registration. It is designed to capture events that are commercial in nature as they relate directly to meeting integrity objectives. For example, events that are held in a casino, have organised gambling (sports bookmaking), and where contestants compete for a valuable reward are captured by this definition.

Subsections 2, 3 and 4 relate to instances where a declaration may be made that an event is not a registrable controlled sports event. Declarations under these sub-sections would be outside the normal course of operations. An instance of where an event may be declared as not a registrable controlled sports event is where an international combat sporting organisation seeks to undertake a promotion within the ACT, but cannot meet the specific requirements for registration of officials and contestants. Where the Minister is satisfied that the officials and contestants have met similar international requirements in order to participate in the event, the Minister may make such a declaration.

The term ‘commercial purpose’ has been specifically outlined under this section to provide clarity to industry regarding what events are captured by this concept. The definition discusses ‘holding an event as part of a business’ to clearly delineate this concept from organisations that are registered as not-for-profit for taxation purposes that would otherwise be captured by this definition.

The concept of commercial purpose is not designed to capture events where a sporting organisation charges a cost recovering entry fee for the event and uses any small residual amount from these fees exclusively for the sporting organisation. This is often the nature of club competitions for not-for-profit sporting entities. The term commercial purpose instead covers operations that are designed to generate revenue for an individual or organisation. Further guidance on commercial purpose will be drafted as part of the code of practice (Division 4.1) that is specific to the industry. This may include a threshold limit to define when an event becomes a registrable event.

The concept of monetary or valuable reward includes an example of instances that may be considered under this subsection. This does not include instances where a promoter or organisation pays for travel and/ or accommodation for a contestant or official to participate in the specific event (as opposed to this being part of the prize package). It is recognised that this is an essential component of attracting participants



to events that are unable to fund themselves. While grading is considered a valuable reward in some combat sports, it is not considered a valuable reward under this Act.

## **Section 11      Meaning of *controlled sports official***

This section defines the types of officials that require registration under the Act.

## **Part 3              Controlled Sports Registration**

### **Division 3.1   Preliminary**

## **Section 12      Controlled sports registrar**

This section creates the position of a controlled sports registrar to undertake a number of decision-based functions within the Act. This includes matters such as decisions on registrations and considerations of public interest, registered event approvals, and considerations on suspension or cancellation of registration. The registrar may defer to the Advisory Committee for advice (section 86) for complex decisions.

This section details the term of appointment of a registrar, and arrangements the Minister can make in relation to the appointment of the registrar.

## **Section 13      Consideration of public interest**

This section defines requirements must and may be considered by the registrar in determining if it is in the public interest to grant registration to a person under sections 18 and 27.

The registrar must consider certain matters in the public interest when registering both officials and contestants. These matters are relevant to the combat sports industry and are similar in applicant to pre-employment screening, or licence registrations for employment in the ACT, for example, a security industry licence. This helps to address the integrity objects of the Act.

Matters relating to convictions or findings of guilt relating to cheating at gambling, money laundering, organised fraud and unlawful gambling are included to ensure that controlled sports events are not used as a means of illegal monetary activity, and protects the safety of contestants. Safety is at issue where these individuals are concerned due to risks of increased likelihood of behaviour such as unsuitably matched opponents, deliberate losses of bouts, excessive weight cutting to ensure inclusion in certain organised bouts and so forth. Matters relating to assault and violence, firearms, and controlled substances are utilised to protect the safety of other participants and spectating public from potentially dangerous persons through the registration system.

The registrar may also consider other matters in registering an applicant. This includes Class B offences (for example dishonesty of theft), as well as any other relevant matter, including law enforcement intelligence. A similar standard applies in other pieces of ACT legislation such as the *Security Industry Act 2003*, *Firearms Act 1996*, and *Working with Vulnerable Persons (Background Checking) Act 2011*.

Differing levels of rigour will be applied to the registration process depending on the position that the person is applying for. For instance, a person seeking to be registered as a promoter will have more scrutiny applied to their application given the relative power this position holds. A promoter has the ultimate say in the event proceedings, including the selection of officials (including judges), and the matching of contestants. This means that there is a risk of fraudulent activity were an unscrupulous operator granted a promoter's registration. A contestant on the other end of the spectrum, has less power in this situation to make decisions regarding events and particular bouts, and therefore considerations relating to their registration will be more lenient. This ensures that an applicant that has prior offences but is utilising controlled sports as an effective diversionary activity is not unnecessarily excluded from competing. The requirements in this section do however, clearly highlight what is considered an appropriate standing for a controlled sports official or contestant and allow the Minister to make guidelines that set out matters to be considered as part of a risk assessment.

Registration decisions are reviewable.

### **Division 3.2 Registration of Controlled Sports Officials**

#### **Section 14 Application for registration as controlled sports official**

This section defines the requirements for registration for controlled sports officials.

Subsection (4) (b) relates to instances where officials (for example, international officials) may not be able to meet the conditions of registration and the registrar is satisfied that other integrity measures have dealt with those requirements, for example immigration clearance upon entry to Australia.

#### **Section 15 Application requirements--individuals**

This section defines the application requirements for individuals to register as an official.

Obtaining consent for background checking under subsection (2) (d) will allow the registrar to determine if the applicant is suitable to hold registration as an official, in addition to any other matters defined in section 18. Considerations involve that of expertise for the role and character of the individual and are made using the consideration of public interest at section 13.

Registrations will be considered in consultation with ACT Policing. Refusal to register an applicant is reviewable.

#### **Section 16 Application requirements--corporations**

This section outlines the application requirements for corporations to be listed as officials, specifically promoters. In addition to the requirements for individuals that form part of the registration (section 15), this section outlines specific business

governance requirements that help the registrar determine whether the corporation can facilitate the effective management of controlled sports events in the ACT.

### **Section 17 Request for further information to decide application**

This section details instances where the registrar may request further information in writing in order to assist in the decision regarding the application.

### **Section 18 Decision on registration of controlled sports official**

This section relates to the decision made on registration of a controlled sports official and the factors that the registrar must consider in relation to this decision. Matters to be considered are further discussed under application requirements for individuals and corporations (sections 15 and 16). This includes the considerations of public interest at section 13, and any additional information provided under section 17. A decision on registration is reviewable. Applicants may also apply for an internal review of the decision, with the provision of additional information, prior to applying for a reviewable decision. Alternatively, applicants can proceed straight to reviewable decision if they choose or are unable to provide additional information for internal review purposes. Time periods for requesting internal review and for consideration of additional information apply.

Security sensitive information may be withheld were the applicant to request a review of the decision as per sections 84 and 85.

### **Section 19 Person registered or licenced under corresponding law taken to be registered controlled sports official**

To reduce the administrative burden on applicants, this section details the mutual recognition of officials' registration in other regulating jurisdictions in Australia. This section does not apply to promoters, given the power this position holds.

Corresponding laws that will be recognised will be detailed under subordinate legislation to allow for simple updates to be made if corresponding laws change or other, previously unregulated jurisdictions, introduce corresponding legislation.

As at November 2018, Queensland and the Northern Territory did not have registration schemes in place for combat sports events.

### **Section 20 Controlled sports official registration--conditions**

This section relates to the conditions of registration for controlled sports officials and includes the ability for the registrar to impose additional conditions on officials at the time of registration or at any other time. Instances where this may occur may involve additional monitoring of the official, such as where an official may need additional supervision to ensure they possess adequate skills to perform their role.

## **Section 21      Controlled sports official registration—term**

This section provides that the term of registration for controlled sports officials is limited to three years.

## **Section 22      Controlled sports official registration renewal**

This section relates to the process for applying for renewal of controlled sports official registration, including consideration that may be prescribed by regulation. A decision on registration renewal is reviewable. Applicants may also apply for an internal review of the decision, with the provision of additional information, prior to applying for a reviewable decision. Alternatively, applicants can proceed straight to reviewable decision if they choose or are unable to provide additional information for internal review purposes. Time periods for requesting internal review and for consideration of additional information apply.

Security sensitive information may be withheld were the applicant to request a review of the decision as per sections 84 and 85.

## **Section 23      Suspension or cancellation of controlled sports official registration**

This section relates to the circumstances in which the registration of a controlled sports official may be suspended or cancelled.

Declaring a conviction or finding of guilt will not automatically de-register an official, rather it will allow for the person's ongoing registration to be reconsidered under new circumstances. Written notice must be given of a proposed suspension or cancellation. Parties will have 20 working days to submit reasons to the registrar why such action should not occur. The registrar after consideration of those reasons and being satisfied that that reasonable grounds exist must suspend or cancel the official's registration and notify them.

This is a reviewable decision in accordance with human rights principles and is designed as an integrity and safety objective. It can be used as an administrative sanction instead of an offence where breaches are considered minor.

## **Section 24      Registered controlled sports official must tell registrar about convictions etc.**

This section details the requirement for registered officials to disclose certain convictions or findings of guilt in accordance with section 13. This requirement is designed to protect the integrity of controlled sports in the ACT, by ensuring that registrations (and their continued approval) are considered with all facts presented.

In order to accommodate persons that may not regularly participate in controlled sports events as an official, notifications must be made prior to the person participating as an official at an event, with no time requirement specified. This will prompt the official to re-check the condition of the official's registration.

### **Division 3.3 Registration of controlled sports contestants**

#### **Section 25 Application for registration as controlled sports contestant**

This section details the requirements for registration as a controlled sports contestant in the ACT. It details the basic requirements for registration as well as a requirement to provide a police certificate.

Subsection (3) (c) is intended as an integrity measure to ensure that events are operated in a safe manner that poses no risk to other contestants, officials or the spectating public. The sub-section is not intended to prohibit those with criminal backgrounds from participating in controlled sports as contestants, as it is widely recognised that sports, such as combat sports, can be very useful in terms of diversionary activities that may reduce recidivism. As such, these matters will be considered as part of the registration process in terms of their relevance to section 13 (public interest considerations), including any risk assessment framework developed as part of subordinate legislation; their seriousness, how recent they were, and if there is a pattern or repetitive nature that may demonstrate a lack of commitment to participating in controlled sports as a contestant with the utmost integrity.

The decision not to grant contestant registration is reviewable (see section 27).

#### **Section 26 Request for further information to decide application**

This section details instances where the registrar may request further information in writing in order to assist in the decision regarding the application.

#### **Section 27 Decision on registration of controlled sports contestant**

This section relates to the registrar's decision on the registration of a controlled sports contestant. It details the information that must be considered when granting or refusing registration. Aspects include the prospective contestant's skills, experience, medical fitness and character.

This decision is reviewable. Applicants may also apply for an internal review of the decision, with the provision of additional information, prior to applying for a reviewable decision. Alternatively, applicants can proceed straight to reviewable decision if they choose or are unable to provide additional information for internal review purposes. Time periods for requesting internal review and for consideration of additional information apply.

#### **Section 28 Person registered or licenced under corresponding law taken to be registered controlled sports contestant**

To reduce the administrative burden on applicants, this section details the mutual recognition of contestant's registration in other regulating jurisdictions in Australia.

Corresponding laws that will be recognised will be detailed under subordinate legislation to allow for simple updates to be made if corresponding laws change or other, previously unregulated jurisdictions, introduce corresponding legislation.

As at November 2018, Queensland and the Northern Territory did not have registration schemes in place for combat sports events, including contestants.

### **Section 29      Controlled sports contestant registration--conditions**

This section relates to the conditions of registration for controlled sports contestants. It includes specific medical requirements to ensure that contestants are fit to participate, and compliance with the approved code of practice (see Division 4.1). It provides Ministerial powers to make regulations stipulating conditions, recognising that these may evolve over time as new research is released (for instance, the evolving medical literature on the treatment and management of concussion in sports), as well as the provision for the registrar to impose conditions for specific contestants. These may be necessary in instances where a contestant has previously breached prescribed conditions, or where a condition specifying specific medical arrangements may apply.

These measures are included to ensure that contestants are as safe as possible to compete in events. Additional conditions are reviewable.

### **Section 30      Controlled sports contestant registration--term**

This section sets out the term of registration for controlled sports contestants is limited to three years consistent with officials.

### **Section 31      Controlled sports contestant registration--renewal**

This section sets out the arrangements for the registrar to renew registration of a controlled sports contestant. Matters to be considered include any contraventions of the Act or those prescribed in regulations.

A decision on registration renewal is reviewable. Applicants may also apply for an internal review of the decision, with the provision of additional information, prior to applying for a reviewable decision. Alternatively, applicants can proceed straight to reviewable decision if they choose or are unable to provide additional information for internal review purposes. Time periods for requesting internal review and for consideration of additional information apply.

Security sensitive information may be withheld were the applicant to request a review of the decision as per sections 84 and 85.

### **Section 32      Suspension or cancellation of controlled sports contestant registration**

This section details the circumstances under which a controlled sports contestant's registration may be suspended or cancelled.

This section is intended as an integrity measure to ensure that events are operating in a safe manner that poses a low risk to other contestants, officials or the spectating public. These matters will be considered as part of the ongoing registration of

contestants in terms of their seriousness, how recent they were, and if there is a pattern or repetitive nature that may demonstrate a lack of commitment to participating in controlled sports as a contestant that is consistent with promoting the integrity of the sport.

Written notice must be given of a proposed suspension or cancellation. Parties will have 20 working days to submit reasons to the registrar why such action should not occur. The registrar after consideration of those reasons and being satisfied that that reasonable grounds exist must suspend or cancel the contestant's registration and notify them (including any conditions).

The matters listed in this section do not automatically mean a contestant's registration will be suspended or cancelled, rather taken into consideration noting other factors and the contestant's submissions. The registrar's decision is reviewable.

### **Section 33     Registered controlled sports contestant must tell registrar about convictions etc.**

This section details the requirement for registered contestants to disclose certain convictions or findings of guilt in accordance with section 12. This requirement is designed to protect the integrity of controlled sports in the ACT, by ensuring that registrations (and their continued approval) are considered with all facts presented.

In order to accommodate persons that may not regularly participate in controlled sports events as a contestant, declarations must be made prior to the person participating at an event, with no specific time requirement specified. This will prompt a re-check of the contestant's registration. If registration were subsequently suspended or cancelled due to this information, the decision is reviewable under section 31.

## **Division 3.4   Registered events**

### **Section 34     Application to register controlled sports event**

This Section provides the information requirements that must be supplied by registered promoters when applying for approval of a registered event. This includes details of the applicant, the event and participants (officials and contestants).

The registrar may seek additional information via written request.

### **Section 35     Decision on application for registration of controlled sports event**

This section details the matters that the registrar will consider when deciding whether to grant approval for a registered event.

Certain matters may be prescribed by regulation as per sub-section (1) (c). Examples of matters that may be prescribed include – the registered controlled sports event runs under recognised rules for the particular style of combat sport, and the number of medical practitioners by ratio of number of contestants.

## **Section 36      Conditions of registered events**

This section details when and how the registrar can impose a condition on a registered event. Instances where this may occur include when there is a known issue with the event, officials or contestants that requires an additional condition be imposed, such as that an inexperienced official must shadow a more experienced official. A decision to impose conditions is reviewable.

## **Section 37      Minimum age for contestants**

This section states the minimum age for contestants to compete in controlled sports events may be prescribed in regulations.

## **Section 38      Suspension or cancellation of registration of controlled sports event**

This section details when the registrar may decide to suspend or cancel registration of a registered controlled sports event, relating to contraventions of the Act or promoter registration conditions. The registrar must provide written of the suspension or cancellation including reasons and timing. This decision is reviewable.

## **Section 39      Offence—conduct registrable event without registration**

This section details the offence of conducting a registrable controlled sports event without registration.

The registration process of events deals directly with the objects of this Act – to promote safety and integrity in controlled sports, and to regulate on a harm minimisation basis. Failure to register an event potentially puts the lives of contestants in danger as the event may not run with the stringent conditions presented under this Act that are designed to keep contestants as safe as possible. Further, failure to register may indicate a number of integrity issues with particular events, or their personnel, that need to be managed in terms of an offence provision.

This offence is not intended to target events that have not been previously captured under the Boxing Control Act prior to educating these new promoters of their requirements.

The maximum penalty reflects instances where there is a deliberate disregard for the requirements of the Act, and need only be applied in such instances.

## **Section 40      Offences—conduct registered event in breach of condition**

This section details the offences of conducting a registered event in breach of condition. Conditions can be applied at any time, but are most commonly applied at the time of receiving event approval. Other times this may apply is when the registrar becomes aware of an issue and a condition is therefore required to be imposed.

These offences have been made in a two-tiered structure to allow prosecutors the discretion on deciding on the seriousness of the breach and which offence to apply.



For example, sub-section (1) – an example of where this section may be used in includes instances where a promoter has deliberate disregard for a condition imposed, and this directly puts the life or health of a person such as a contestant at risk, or has directly contributed to this harm. It may be also used where a promoter has repeat offences under this Section that warrant higher penalties.

Sub-section (2) is a strict liability offence set at the maximum of 50 penalty units as the promoter ought to know that a condition was imposed on an event as it directly forms part of the event registration process and is a condition of approval. Under this, the condition is therefore taken to be agreed upon which time the promoter is notified or else the promoter will withdraw their application to conduct a registered controlled sports event.

#### **Section 41      Offences—unregistered official at registered event**

This section details the offences relating to unregistered officials, distinguishing between the role of promoters and other officials.

The safety of contestants directly at risk as unregistered officials may not have agreed to the standards of registration or passed appropriate medical, integrity and experience checks. These offences are therefore tiered to reflect the level of responsibility of various officials being registered as an official. The most serious of these offences is where the promoter is reckless about whether they are registered as a promoter and conducts, or promotes the future conduct of, a registered event. Given the role of the promoter to ensure that all safety and integrity matters are met for an event to proceed, this offence is likely to highlight other safety or integrity issues with the event.

Instances where an official other than the promoter participates in a controlled sports event without registration is still serious as it directly puts the safety and integrity of the event at risk as those checking mechanisms of the Act have not been adequately adhered to. While the onus is on the promoter to ensure that all officials are registered, individual officials must also ensure that they comply with conditions of this Act. When operating under the provision of a registered event, an official ought to know these requirements as a condition of their participation.

#### **Section 42      Offence—official participate at registered event when given notice of intended cancellation or suspension of registration**

This offence relates to instances where an official has been provided with notice of the registrar's intention to suspend or cancel their registration, and they participate in a controlled sports event as an official during the notice period. This offence is a strict liability offence as the official ought to know the conditions of the notice of suspension or cancellation as supplied to them in writing at the time the notice is applied.

#### **Section 43      Offences—conduct registered event with unregistered official**

This section provides for the responsibility of ensuring all officials are registered is placed with the promoter of the controlled sports event, which is agreed at the time of

applying to conduct a registered controlled sports event. The safety of contestants directly at risk as unregistered officials may not have agreed to the standards of registration or passed appropriate medical, integrity and experience checks.

The offences are tiered to reflect the type of offence conducted. The promoter is made aware of the status of registration of their officials after administrative checks are conducted by the registrar. Were certain officials not listed on documentation, substituted with other officials, or deliberately circumvented, then the seriousness of offence sub-section (1) would apply.

#### **Section 44      Offence—unregistered contestant at registered event**

This section details the offence for controlled sports contestants participating in a controlled sports event without registration.

The safety of the person and other contestants is directly put at risk, as unregistered contestants may not have agreed to the standards of registration or passed appropriate medical, integrity and experience checks.

The onus of ensuring a contestant is registered and meets all conditions of that registration is with the individual whom seeks to undertake this role (as well as the promoter as detailed in offences below).

This offence is a strict liability offence as it is a condition of contestant registration to comply with these conditions, and individuals undertaking these activities ought to know the regulatory requirements.

#### **Section 44      Offences—conduct registered event with unregistered contestant**

This section details the offences of a promotor conducting a controlled sports event with an unregistered contestant.

The safety of contestants is directly put at risk as unregistered contestants may not have agreed to the standards of registration or passed appropriate medical, integrity and experience checks.

The responsibility of ensuring all contestants are registered is placed with the promoter of the controlled sports event, and thus these offences relate to the promoter only.

Offences are two-tiered to allow the prosecution to determine the appropriate level of seriousness of the breach. Instances where sub-section (1) may be used are where there is evidence that the promoter was made aware that a contestant was unregistered, or did not undertake adequate checks, and allowed them to compete.

The offence under sub-section (2) relates to instances where the promoter ought to have known a contestant was unregistered, but did not ensure to a point of certainty

this was the case. This is a strict liability offence as the promoter ought to have conducted such checks as a condition of their registration for the event, and forms part of their conditions for registration as a promoter in the ACT.

#### **Section 46      Offences—participate at registered event as both official and contestant**

This section details the offences for participating in a registered event as both an official and contestant.

This is both a safety and integrity measure as it prevents individuals competing in the event as a contestant, and then acting as an official where their judgement or cognitive function may be impaired as a result of their contest (for example, following multiple strikes to the head). It also prohibits on the basis that participating as both an official and contestant presents a potential conflict of interest, particularly where a promoter or matchmaker may be making decisions directly relating to an event in which they are participating. This means that regardless of the order of participation dual roles is prohibited.

Offence sub-section (1) relates to the individual participating as both official and contestant, and offence sub-section (2) relates to the promoter only, as the onus is on the promoter to ensure that the event is run safely and with integrity. These offences are set as strict liability as they relate to conditions of registration agreed upon at time of registration for both officials and contestants, as well as the events, and will be specified in the code of practice (Division 4.1).

### **Division 3.5    Controlled sports register**

#### **Section 47      Register**

This section details the requirements of the register that the registrar must maintain. Keeping a register allows for effective monitoring of those participating in registered events and allows for information sharing between jurisdictions on matters such as medical or other suspensions or cancellations, ensuring the safety and integrity of events. The particulars of the register are detailed in this section. Sub-section (2) (b) states that the register may include any further information set by regulation.

#### **Section 48      Correcting register and keeping it up to date**

This section details when the registrar may update and address errors with the register of controlled sports.

### **Part 4            Conduct of controlled sports events**

#### **Division 4.1    Code of practice for controlled sports events**

#### **Section 49      Code of practice—approval**

This section provides that the Minister may approve of a code of practice for the conduct of controlled sports events. The code of practice is a disallowable instrument.

## **Section 50      Code of practice—contents**

This section details what the contents the code of practice may include.

The contents include requirements for the conduct of and preparation for controlled sports events, as the medical examinations and on-site treatments for contestants, the number and function of medical practitioners at events and safety requirements for cages or rings (including access, exits, and metres of clearance).

## **Section 51      Offences—registered promoter at registered event in breach of approved code of practice**

This section details the offence of a promoter at a registered event in breach of the approved code of practice.

A breach of the code of practice affects the safety and integrity matters which are designed to minimise harm to contestants, officials and any spectating members of the public.

While these offences relate to matters that are to be specified in subordinate legislation, they will form a condition of approval to conduct a registered event and are considered the main technical requirements for conducting registered events in the ACT. This offence applies to subordinate legislation as the intention of the code of practice is made clear in section 50.

The two-tiered style offences allows prosecution of more subjective and potentially serious breaches of the code of practice where recklessness can be identified through evidence. Matters under this section will apply to a specific part of the code of practice. Matters detailed in this component will include instances where deferral and consideration on a contestant's medical condition are subject to opinion, as opposed to circumstances that are clear and can be checked at the event (for example, a fenced enclosure must have two exits).

The offence detailed under sub-section (2) relates to clear and less serious breaches of the code of practice that cannot be dealt with through administrative sanction alone, such as failure to supply all specified medical equipment in instances where this medical equipment was not required at the event.

## **Section 52      Offence—registered official at registered event in breach of approved code of practice**

This section relates to the offence of a registered official, other than the promoter, at a registered event in breach of the approved code of practice.

While this offence relates to matters that are to be specified in subordinate legislation, they will form a condition of approval to conduct a registered event and are considered the main technical requirements for conducting registered events in the ACT (as has been the case under the existing Act). It is therefore pertinent that a registered official be aware of and comply with an approved code of practice as a

condition of their registration. It is for this reason that this offence is also made as strict liability.

### **Section 53      Offence—registered contestant at registered event in breach of approved code of practice**

This section relates to the offence of a registered contestant at a registered event in breach of an approved code of practice.

While this offence relates to matters that are to be specified in subordinate legislation, they will form a condition of approval to conduct a registered event and are considered the main technical requirements for conducting registered events in the ACT (as has been the case under the existing Act). It is therefore pertinent that a registered contestant be aware of and comply with an approved code of practice as a condition of their registration. It is for this reason that this offence is also made as strict liability.

## **Division 4.2      Conduct of registered events**

### **Subdivision 4.2.1      Referees at registered events**

#### **Section 54      Referees must act independently**

This section details the requirements for referees to act fairly and impartially when refereeing at an event.

#### **Section 55      Referee may stop a registered event**

This section details the circumstances in which a referee may stop a registered event or contest within that event.

The example details some circumstances where the referee may stop a contest in order to protect the safety of one or more contestants, or others at the event, or in circumstances of public order.

### **Division 4.2.2      Medical supervision of registered events**

#### **Section 56      Promoter duties in relation to medical supervision**

This section details the promoter's duties in relation to access to medical supervision of a registered event.

#### **Section 57      Registered medical practitioner—duties**

This section details the duties of registered medical practitioners at registered events to ensure the safety and wellbeing of the contestants involved.

## **Section 58      Registered medical practitioner may stop contestant competing in registered event**

This section details the circumstances where the attending registered medical practitioner may stop a contestant competing in a registered event.

The section also details the circumstances in which a medical practitioner can recommend the registrar cancel or suspend a contestant's registration. This decision is reviewable under section 32.

## **Section 59      Offence—conduct registered event without registered medical practitioner**

This section details the offence of a promoter conducting a registered event without a registered medical practitioner.

The penalty for this offence reflects that this conduct has the potential to directly contribute to the serious harm or death of a contestant that does not have access to immediate medical treatment when required.

## **Section 60      Offences—conduct registered event without contestant pre-event medical clearance**

Offences in this section relate to promoters conducting a registered event without contestant pre-event medical clearance.

Pre-event medical clearance is essential in determining that a contestant is fit to compete in the immediate 48 hours prior to the event, and therefore the offences listed in this section reflect the seriousness of the safety implications a failure to comply with this requirement brings. For example, a pre-event medical clearance will check for signs of recent or unrecovered head injury, severe dehydration, and/or fractures that have the potential to limit a contestant's ability to compete and defend themselves as safely as possible, as well as maintain their physical health outside of the contest environment.

The individual offences listed in this section detail the different circumstances where pre-event medical clearance is not supplied – (1) not given in the 48 hours leading up to an event, (2) where a contestant was stopped from competing in an earlier event and does not have a new Certificate of Fitness, and (3) a contestant was medically suspended and does not have a new Certificate of Fitness.

Sub-sections (2) and (3) relate to specific requirements to be detailed in the pre-event medical clearance requirements in subordinate legislation.

## **Division 4.3    Conduct of non-registerable events**

### **Section 61      Application—div 4.3**

This section details what events this division applies to.

The division does not apply to declare under sub-section 10 (2).

**Section 62      Non-registrable events must be approved by authorised controlled sports body**

This section details that a non-registrable event must not be conducted without the written approval of an authorised controlled sports body, as declared under section 63.

**Section 63      Declaration of authorised controlled sports body**

This section details what an authorised controlled sports body is and the factors the Minister must consider when declaring an authorised controlled sports body. A declaration is a notifiable instrument.

It also details the instances where a Minister may repeal a declaration.

**Section 64      Person conducting event must tell registrar about non-registrable event**

This section details the requirements for a person to notify the registrar about non-registrable events.

This ensures that the safety of all events can be monitored, and allows the registrar to ensure that events that should be registered events can be determined through this notification process.

**Section 65      Non-registrable events to be conducted under authorised controlled sports body rules and code of practice**

This section details that non-registrable events must be conducted in accordance with the authorised controlled sports body rules detailed in the notification, and the code of practice (Division 4.1).

**Section 66      Minimum age for contestants**

This section states the minimum age for contestants to compete in non-registrable events may be prescribed in regulations.

**Section 67      Offence—conduct non-registrable event without authorised controlled sports body approval**

This section details the offence of a person conducting a non-registrable event without authorised controlled sports body approval.

This is an offence as the event may not be run in accordance with the prescribed safety and integrity requirements. It is a strict liability offence as the onus is on the person conducting these events in the ACT to ensure adherence to all legislative requirements.

## **Section 68      Offence—conduct non-registrable event without telling registrar**

This section details the offence where a person conducts a non-registrable event without telling the registrar.

It is set as a strict liability offence as the person ought to be aware of the requirement to notify the registrar of a non-registrable event within the timeframe specified.

## **Section 69      Offence—conduct non-registrable event in breach of approved code of practice**

This section relates to the offence of conducting a non-registrable event in breach of an approved code of practice.

While this offence relates to matters that are to be specified in subordinate legislation (as detailed in the contents specified in Division 4.1), the code of practice is considered one of the main technical requirements for conducting events in the ACT. It is therefore pertinent that any person conducting non-registrable events be aware of and comply with an approved code of practice. Education on these matters will be further supported by clear requirements for authorised controlled sports bodies to inform non-registrable event promoters or other persons of the relevant conditions. It is for this reason that this offence is also made as strict liability.

## **Part 5 Enforcement**

Enforcement is a key part of meeting the objects of this Bill and monitoring the safety and integrity of controlled sports events in the ACT.

Powers established under this part are comparable to combat sports regulation in other Australian jurisdictions, notably New South Wales, Victoria, South Australia and Western Australia. They will permit administrators to effectively monitor compliance with the conduct of controlled sports events.

As a regulatory registration scheme, participants (including officials, contestants, or authorised controlled sports bodies) will be made aware of their responsibilities as a condition of their registration or approval, and therefore ought to know the regulatory requirements. In the interests of supporting the industry to operate in a safe environment and act with integrity, administrators will support the industry through an appropriate application of education and support, compliance and enforcement.

## **Section 70      Meaning of occupier- pt 5**

This section defines who is an occupier of premises for the purposes of Part 5.

## **Section 71      Appointment of inspectors**

This section provides that the registrar may appoint a person as an inspector.



## **Section 72     Identity cards for inspectors**

This section details the identity card requirements for inspectors. Appropriate identification of inspectors will support confidence in and the operation of compliance and enforcement measures.

## **Section 73     Power to give directions**

This section details the power established for inspectors to give directions.

## **Section 74     Power to enter premises**

This section establishes the power and conditions where an inspector can enter premises. It outlines the activities an inspector can undertake after entering the premises. Occupiers or anyone else at the premises will be obliged to provide reasonable assistance in carrying out these activities.

Power to enter premises is key to ensuring that the integrity of controlled sports events is monitored. It directly relates to the objects of the Bill of relating to contestant safety and integrity as it allows inspectors to undertake checks for non-compliance.

## **Section 75     Production of identity card**

This section details that an inspector must produce evidence of being an inspector when asked by the occupier.

## **Section 76     Consent to entry**

This Section details the requirements for inspectors when seeking consent to entry of a premises, including what information must be supplied to the occupier. The occupier must be told the purpose of the entry, that anything seized may be used as evidence in court, and that consent may be refused.

Entry to premises is a key integrity and safety measure as outlined in the explanation for section 77.

## **Section 77     General powers on entry to premises**

This section details an inspector's powers upon entry to premises. This includes means to collect evidence relating for a potential contravention of the Act. With regards to sub-section (1) (e), these matters are dealt with under the *Legislation Act 2001* sections 170 and 171 in relation to privilege against self-incrimination and client legal privilege.

## **Section 78     Power to require name and address**

This section details the requirement for a person to state their name and home address if the inspector suspects on reasonable grounds that the person is committing, or have

just committed an offence against the Act. It also details a person's right to request an inspector produce evidence of being an inspector.

The penalty attached to this section is a strict liability offence as it is a condition of registration, particularly as a promoter and for event registration, to allow inspectors access to the premises and provide the information listed in this section.

#### **Section 79 Power to seize things**

This Section establishes the power for inspectors to seize anything at the premises where there is a reasonable belief of contravention of the Act, or where it is consistent with the purpose of entry with the occupier's consent. Items seized may be used in evidence where prosecution for an offence against the Act is pursued.

The penalty attached to this section is a strict liability offence as it is a condition of registration, particularly as a promoter and for event registration, to allow inspectors access to the premises for the purposes listed under this Section.

#### **Section 80 Receipt for things seized**

This Section details the requirements for inspectors to provide receipt to a person for items seized, and the information required on the receipt.

### **Part 6 Notification and review of decisions**

In accordance with the Scrutiny of Bills Committee Terms of Reference, this section details the process for review of decisions.

#### **Section 81 Meaning of reviewable decision--pt 6**

This section defines what is meant by a reviewable decision.

#### **Section 82 Reviewable decision notices**

This section details the decision maker's requirement to provide reviewable decision notice when a reviewable decision is made.

#### **Section 83 Applications for review**

This section details whom may apply to ACAT for a review of a reviewable decision.

#### **Section 84 ACAT or court review--decision on security sensitive information**

This section details the matter of disclosure of security sensitive information. The registrar may apply to ACAT or the court for a decision about whether the reasons for the reviewable decision disclose security sensitive information.

## **Section 85      ACAT or court review—dealing with security sensitive information**

This section details the requirements of the ACAT or court to treat security sensitive information in a secure manner to ensure it does not disclose the security sensitive information, per the decision under section 83.

## **Part 7 Miscellaneous**

### **Section 86      Establishment of advisory committee**

This section provides the Minister with the power to establish an advisory committee to inform or advise the Minister about controlled sports. It also details the membership requirements.

### **Section 87      References to *contravention* of this Act**

This section details what a contravention means for the purposes of the Act.

### **Section 88      Protection from liability**

This section details the protections against civil liability under the Act.

### **Section 89      Determination of fees**

This section establishes the power for the Minister to determine fees through a Disallowable Instrument.

### **Section 90      Regulation making power**

This section establishes regulation making power for the matters listed, including the conduct of controlled sports events, and conduct and responsibilities of officials and contestants.

## **Part 8 Repeals**

### **Section 91**

This section repeals the Boxing Control Act and its legislative instruments upon commencement of the Act.

## **Part 15          Transitional**

### **Section 150    Meaning of commencement day – pt 15**

This section defines the term commencement day in relation to the day this Act commences under section 3.

### **Section 151 Person living in ACT registered or licenced under corresponding law taken to be registered controlled sports official**

This transitional regulation recognises that officials living in the ACT may already be registered under a corresponding law, and provides a transition period of 1 year to be registered under section 18 from commencement day.

### **Section 152 Person living in ACT registered or licenced under corresponding law taken to be registered controlled sports contestant**

This transitional regulation recognises that contestants living in the ACT may already be registered under a corresponding law, and provides a transition period of 1 year to be registered under section 27 from commencement day.

### **Section 153 Transitional regulations**

Section 153 enables the Executive to make regulations dealing with transitional matters.

The section contains two different regulation making powers.

Section 153 (1) enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of the Bill. However, the scope of the regulation must be confined to the same sphere of operation as the amended Act, be strictly ancillary to the operation of the Act and not widen the Act's purpose.

Section 153 (2) enables the making of a regulation that modifies the Act. A regulation under this section may only modify part 15 of the Act, and only if the Executive is of the opinion that the part does not adequately or appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

Section 153 (3) gives a regulation under section 153 (2) full effect according to its terms. A provision of part 15 of the Act modified by regulation will operate in the same way (in relation to another provision of the Act or any other territory law) as if it were amended by an Act, and in accordance with established principles of statutory interpretation. The section is not expressed, and does not intend, to authorise the making of a regulation limiting *future* enactments of the Legislative Assembly. Also, any modification by regulation of part 15 of the Act has no ongoing effect after the expiry of that part.

The Scrutiny Committee sought clarification for the need to include in the Bill transitional regulation making power given the extensive research and consultation undertaking to draft the Bill. The Scrutiny Committee is correct that this legislation has been developed with extensive consultation and research. There remain a number of regulatory elements for resolution through transitional regulation making power that cannot be determined until the legislation is operational and inspectors are undertaking their duties. Given the existing *Boxing Control Act 1993* does not provide

for inspectors at events, the legislation has been developed with close consultation with other Australian jurisdictions, as well as international evidence on best practice. This does not accommodate potential unforeseen unique issues that may exist within the ACT that need to be addressed within the first 12 months of operation in the context of sporting activity which is dynamic and can rapidly evolve.

#### **Section 154    Expiry—pt 15**

This section details the expiry date for transitional arrangements at 12 months following commencement.

#### **Schedule 1    Reviewable decisions**

This schedule lists the reviewable decisions mentioned under section 81.

In accordance with the Scrutiny of Bills Committee Terms of Reference, the Bill does not make rights, liberties and/or obligations unduly dependant on non-reviewable decisions as the reviewable decisions listed in this Schedule allow a person to appeal decisions relating to, for example, refusal of registration, imposing conditions on registration, suspension or cancellation of registration, and refusal to register an event.

#### **Dictionary**

The dictionary defines certain terms used and includes signpost definitions to other terms defined elsewhere.

## Comparison of offences in development of Bill

The following legislation was examined for comparability of offences presented in this Bill:

- *Combat Sports Act 2013 (NSW)* – including penalties for participation when suspended, promoter holding contest without permit, medically unfit combatant competes, failure to supply medical practitioner at event, contravene health and safety prohibition order.
- *Combat Sports Act 1987 (WA)* – including penalties for competing unregistered, promoter holding contest without permit, promoter not complying with terms and conditions, sham contest.
- *Boxing and Martial Arts Act 2000 (SA)* – including penalties for being an unlicensed promoter, failure to comply with licence condition, promoter allowing contest with unfit contestants, no pre-fight medical clearance.
- *Domestic Animals Act 2000 (ACT)* – penalty for unregistered racing greyhounds.
- *Gambling and Racing Control Act 1999 (ACT)* – penalties for failure to comply with requirement of authorised officer, failure to comply with regulations.
- *Firearms Act 1996 (ACT)* – penalties for contravention of firearm licence, failure to notify of event causing cancellation of licence, prohibited person involved in firearms dealing business
- *Racing Act 1999 (ACT)* – penalties relating to conducting race for the purpose of betting outside of authorised race meeting, race meeting not conducted in compliance with conditions.
- *Work Health and Safety Act 2011 (ACT)* – penalties relating to reckless conduct, failure to comply with health and safety duty, requirements for authorisation of workplaces and work.
- *Liquor Act 2010 (ACT)* – enforcement measures, strict liability offences in a regulatory context.
- *Security Industry Act 2003 (ACT)* – suitability criteria for licences, public interest test.