



Australian Government
Department of Health

DEPUTY SECRETARY

Mr Jason McNamara
Executive Director
Office of Best Practice Regulation
Department of Prime Minister and Cabinet
One National Circuit
BARTON ACT 2600

Dear Mr McNamara

Options-stage Regulation Impact Statement

I am writing in relation to the attached options-stage Regulation Impact Statement (RIS) prepared by the Office for Sport, Department of Health for the Major Sporting Events (Indicia and Images) Protection Bill 2014 (the Bill).

I am satisfied that the options-stage RIS meets the Government's best practice regulation requirement, including that:

- all seven elements have been addressed (problem, objectives, options, impact analysis, consultation, conclusion, recommendation, implementation and review);
- there is no identified regulatory burden impact and cost associated with the proposed introduction of new major sporting events legislation, as presented in the Regulatory Burden and Cost Offset Estimate table; and
- a range of feasible options, including a regulatory option, a non-regulatory or light-handed regulatory option and a do nothing option, have been considered.

I submit the certified RIS to the Office of Best Practice Regulation for publication on its website following announcement of a decision being made. I understand that the Office for Sport will be informed prior to its publication.

Yours sincerely

A handwritten signature in black ink, appearing to read 'DL', with a long horizontal flourish extending to the right.

David Learmonth
Deputy Secretary

14 February 2014



MAJOR SPORTING EVENTS (INDICIA AND IMAGES) PROTECTION BILL 2014

REGULATION IMPACT STATEMENT

Background

The Asian Football Confederation (AFC) Asian Cup 2015, the International Cricket Council (ICC) Cricket World Cup 2015 and the Gold Coast 2018 Commonwealth Games (the 'Events') will be significant international sporting events to showcase Australia. As a condition of being awarded the right to host these events, the Australian Government provided written undertakings to protect the unauthorized commercial use of certain indicia and images associated with each of the Events, commensurate with the support provided to the Melbourne 2006 Commonwealth Games, and enact any required legislation by early 2014.

Traditionally event owners rely on sponsorship revenue to stage their events, reducing the reliance on government financial support. In return for their event sponsorship, sponsors can publicise their support by using event indicia and images. However, businesses that do not sponsor the events may seek to capitalise on the event by using event indicia or images, suggesting a sponsorship arrangement with the event. This is called 'ambush marketing by association'.

Precedent for major sporting events legislation has been established by the *Sydney 2000 Games (Indicia and Images) Protection Act 1996* and the *Melbourne 2006 Commonwealth Games (Indicia and Images) Protection Act 2005*. These were enacted to provide legislative protection to event owners for certain event insignia as existing legislative mechanisms were deemed inadequate to prevent incidents of obvious ambush marketing. Both these Acts have since been repealed.

Problem or Issue Identification

Event owners and the AFC Asian Cup Local Organising Committee, the ICC Cricket World Cup Local Organising Committee, and the Gold Coast 2018 Commonwealth Games Corporation (the 'Event Organisers') have sought a commitment from the government to protect against the unauthorized use of certain indicia and images associated with the respective events to help them secure event sponsorship.

If sponsors do not have certainty that they are the only businesses that can directly benefit from association with the Events, they may withdraw their sponsorship or decide not to support the Events. A decrease in sponsorship revenue could increase the need for financial assistance from the Australian Government and/or state and territory governments to stage the events.

An analysis was undertaken by the Major Events Taskforce in the Office for Sport and relevant government agencies of the existing legislation and the commitments provided by the Australian Government. The analysis identified that:

- The existing Acts do not provide the level of protection committed to. In particular, not all Event indicia can be trademarked as the *Trade Mark Act 1995* and the *Copyright Act 1968* do not extend to the protection of common words, titles and short expressions.
- Customs powers in the *Trade Marks Act 1995* and the *Copyright Act 1968* have been strengthened in the Intellectual Property Laws Amendment (Raising the Bar) Act 2012

since Melbourne 2006 and these should be utilized in the major sporting events legislation to avoid confusion for business, consumers and those administering the measures.

- Limited legislation exists at the state/territory government level to support ambush marketing with no consistent approach.

The results of a review of the two previous major events legislation undertaken by Frontier Economics in 2007 noted that:

- the effectiveness of these Acts was due to their deterrence and signaling effects and the enhanced ability of the event organisers to enforce their rights by threatening to take action under the legislation thus limiting the number of breaches; and
- greater clarity regarding the existence and scope of property rights enhances competition.

Specification of the Desired Objectives

The primary objective of the proposed major sporting events indicia and images protection legislation is to support the Events.

The secondary objectives are to:

- provide a more secure environment in which the Event Organisers can raise sponsorship revenue;
- minimize ambush marketing of the Events sponsors; and
- balance the interests of the Event Organisers with the commercial interests of third parties.

Identification of Options

In response to the request by the Event Owners to provide Events indicia and images protection, three options for the Australian Government have been identified.

Option 1: No Legislative Action

The Australian Government would take no specific action and would rely on the market, in conjunction with existing intellectual property legislation, to address the problem of ambush marketing.

Option 2: Legislative Action with Exemptions

The Australian Government introduces major sporting events indicia and images protection legislation that would provide a range of remedies to Event Organisers for unauthorised use of event indicia and images while providing limited exemptions for some third parties from prohibitions against their use. It would include some provisions expected to clarify the scope of the legislation where the scope might otherwise be in doubt.

It is proposed that the legislation have schedules specific to each of the Events and provide protection for a range of Event indicia and images. The legislation would include sunset clauses that would cease to have effect within twelve months of the completion of the Events.

Exemptions would apply to parties providing information (including factual reporting by the

media), criticism and/or review, which did not fall within the meaning of 'use for commercial purposes'.

Option 3: Legislative Action with No Exemptions

The Australian Government introduces strict major sporting events indicia and images protection legislation that would provide a range of remedies to Event Organisers for unauthorised use of event indicia and images without exemptions for any third parties. The indicia and images protected would be the same as under Option Two, however this option would not allow the same level of flexibility.

Assessment of Impacts (Costs and Benefits) of Each Option

Impacted Group Identification

The same groups would be affected by the implementation of any one of the three options.

These groups are:

- third parties, including but not limited to Event participants, including players, athletes, coaches and other professionals associated with the Events; sporting organisations associated with the Events; institutes of sport; businesses providing goods or services for past, present and future events; and consumers purchasing goods or services associated with the Events;
- the Event Organisers; and
- the Australian Government.

There is no identified regulatory burden impact and cost associated with the proposed introduction of new major sporting events legislation.

The following qualitative analysis considers the impact of costs and benefits for the identified groups for each of these three options.

Option 1: No Legislative Action

Costs

Third parties:

- consumers may find it difficult to identify goods and services that are officially authorised by the Event Organisers; and
- Event sponsors would have limited protection and timely remedy from ambush marketing by association.

Event Organisers:

- Applications for registration of trademarks for all Event indicia and images;
- the Event Organisers may be vulnerable to ambush marketing;
- the Event Organisers' ability to gain increased levels of sponsorship may be constrained because it could not provide assurances to sponsors that they will not be subject to ambush marketing; and
- by narrowing the range of remedies to those contained in existing intellectual property legislation, the Event Organisers would have difficulty replacing any loss of revenue from

ambush marketing activities.

Australian Government:

- if the ability of the Event Organisers to raise non-government revenue was constrained, there may be greater pressure on the Government to provide additional financial assistance to the Event Organisers and state and territory governments.
- Potential loss of an Event, given the commitments made.

Benefits

Third parties:

- subject to the limitations imposed by the current legal framework (*Trade Marks Act 1995, Copyright Act 1968, Trade Practices Act 1974, Designs Act 1906, Competition and Consumer Act 2010, Schedule 2 – Australian Consumer Law, Intellectual Property Law Amendments (Raising the Bar) Act 2012 and Commonwealth Games Arrangements (Brand Protection) Amendment Act 2013*), third parties would be free to use the Events indicia and images to indicate their association or involvement with the Event Organisers and the Events generally.

Event Organisers:

- there would be no benefits to the Event Organisers in adopting this option.

Australian Government:

- the Government would not need to dedicate time and human resources to the legislative process.

Option 2: Legislative Action with Exemptions

Costs

Third parties:

- third parties including Event participants, including players, athletes, coaches and other professionals associated with the Event; sporting organisations and institutes of sport associated with the Events (and their third party sponsors) would be restricted, to a certain extent, in their use of the Event indicia and images. They would not be able to use the specified Event expressions in ways that would suggest the existence of a sponsorship arrangement with the Events without the authorisation of the Event Organisers or an authorised user; and
- third parties and their sponsors may become confused about increased regulatory requirements.

Event Organisers:

- the Event Organisers may be required to monitor compliance of its authorised users; monitor advertising in the media for ambush marketing of its sponsors; administer the register for the authorisation of insignia to sponsors; and enforce any breaches; and
- the Event Organisers may still face some level of ambush marketing as some options may remain available to third parties to promote their own activities, including their involvement with the respective Events, without using the Event expressions.

Australian Government:

- providing legislative protection to a particular organisation/s might increase the likelihood of the Government receiving similar requests for legislative protection in the future; and
- the Government would need to dedicate time and human resources to the legislative process.

Benefits

Third parties:

- in accordance with the proposed exemptions, third parties would be able to use the Events expressions to indicate or publicise their factual and historical association or involvement with the Events. This would be subject to the limitations imposed by the current legal framework (*Trade Marks Act 1995, Copyright Act 1968, Trade Practices Act 1974, Designs Act 1906, Competition and Consumer Act 2010, Schedule 2 – Australian Consumer Law, and the Intellectual Property Laws Amendment (Raising the Bar) Act 2012*), and should not convey the impression of an ongoing sponsorship for or by the Event Organisers if that is incorrect;
- the providers of information (including factual reporting by the media), criticism and/or review, would be free to use the Events expressions for legitimate non-commercial purposes. The proposed major sporting events indicia protection legislation would not seek to restrict the news information flow within the public arena; and
- there would be more certainty for consumers purchasing officially licensed Events goods and services.

Event Organisers:

- the Event Organisers would be able to provide greater security for its sponsors by protecting against ambush marketeers, giving it a greater capacity to maintain its current sponsors and increase its sponsorship revenue over time; and
- the Event Organisers would have access to an expanded range of remedies to assist it in protecting its intellectual property.

Australian Government:

- there may be less risk that the Government will be asked to provide further financial assistance to the Event Organisers due to the likely increased ability of the Event Organisers to raise revenue through sponsorship.
- the Government would be honouring its commitments to the Event Organisers.

Option 3: Legislative Action with no Exemptions

Costs

Third parties:

- legislation would be standardised and inflexible and would not deal with the diverse conditions in which the Events expressions are used; and
- all third parties would be prevented from using the Events expressions for criticism, review and when making factual statements about their past involvement in, or association with, the Event Organisers and the respective Events.

Event Organisers:

- the Event Organisers may incur additional costs, as they would be required to monitor compliance of its authorised users; monitor advertising in the media for ambush marketing of its sponsors; administer the register for authorisation of insignia to sponsors; and enforce any breaches; and
- the Event Organisers may still be vulnerable to some level of ambush marketing as some

options may remain available to third parties to promote their own activities, including their involvement with the Events, without using the Event expressions.

Australian Government:

- the Government would not be providing balanced legislation as the rights of the Event Organisers to protect against ambush marketing would outweigh the rights of third parties to use Events expressions in a factual and historical context; and
- the Government would need to dedicate time and human resources to the legislative process.

Benefits

Third parties:

- sponsors of the Events would receive a higher level protection against ambush marketing.

Event Organisers:

- this option would provide the most comprehensive level of protection for the Event Organisers against ambush marketing of the three options;
- this option would maximise the Event Organisers' ability to raise non-government revenue; and
- the Event Organisers would have certainty over the protection of its sponsors from ambush marketing as provided by the legal sanctions.

Australian Government:

- by minimising the risk of ambush marketing and thus maximising the Event Organisers' ability to raise sponsorship revenue, the likelihood of the Government being asked to provide further financial assistance for the Events would be reduced relative to Option 2; and
- the Government would be honouring its commitments to the Event Organisers.

Consultation

Consultation was undertaken on the issue of protection of the Events indicia and images with the following Australian Government departments and agencies:

- Attorney-General's Department;
- Australian Customs and Border Protection Service;
- Department of Communications;
- Department of the Prime Minister and Cabinet;
- Australian Federal Police;
- Australian Government Solicitors;
- IP Australia; and
- The Treasury.

Consultation was also undertaken on the issue of protection of Event indicia and images with the following:

- State and Territory Governments;
- Event Organisers

Australian Government agencies

The Secretaries Committee on Major Sporting Events (SCMSE) recommended in February 2013 to pursue legislation, with the approach taken for the Melbourne 2006 Commonwealth Games to form the basis for negotiations. Since that time the Major Events Taskforce in the Office for Sport at the Department of Health has led extensive consultation with Australian Government agencies, the state and territory governments and the Event Organisers to develop an intellectual property and rights protection framework to underpin the proposed new legislation.

While all parties were supportive of the objectives of the proposed legislation, in the course of discussions between Australian Government agencies with responsibility for intellectual property issues the following points were made:

Constitutional Power

The Australian Government must be satisfied that any proposed legislation is supported by a constitutional head of power before it is introduced to Parliament. The Australian Government Solicitor confirmed the Australian Government has constitutional power to enact the proposed legislation.

Complementarity of State/Territory and Commonwealth Legislation

The Australian Government would need to consider the potential for overlap between Commonwealth and State legislation. For the AFC Asian Cup 2015 the Commonwealth and the States of New South Wales, Victoria and Queensland and the Australian Capital Territory co-signed the commitments to deliver intellectual property and commercial rights protections.

The Queensland Government has enacted its own *Commonwealth Games Arrangements (Brand Protection) Amendment Act 2013* to provide the Gold Coast 2018 Commonwealth Games indicia and images with further protection in Queensland. The Queensland Government is seeking complementary national legislation to provide protections against ambush marketing outside of Queensland for this event.

Complementarity of New Zealand Legislation

As New Zealand is co-hosting the Cricket World Cup 2015 the Australian Government will need to consider complementary legislation. The Cricket World Cup 2015 Organisers have lodged their application for the list of indicia and images for consideration under the *New Zealand Major Events Management Act 2007*. As both countries are hosting the Cricket World Cup 2015, the Cricket World Cup 2015 Organisers are keen to have similar processes in place for all operational aspects of the Event.

Third parties

Given that legislation is common practice for major sporting events, of the significance of the Events, including the 2000 Olympic Games and the 2006 Commonwealth Games, the Australian Government did not undertake a formal consultation process regarding the impact on affected third parties. However, it has worked extensively with government agencies, the states and territories and the Event Organisers over the past twelve months to progress the matter. The proposed framework

was agreed by all relevant Australian Government agencies in July 2013. Through this mechanism agencies provided comments in relation to the impact on affected third parties.

Conclusion and Recommended Option

Option Two is the recommended option as it strikes the most appropriate balance between the interests of the Event Organisers and any affected third parties. The clarifying provisions and exemptions would define the acceptable use of Events indicia and images, decreasing any confusion that might otherwise occur.

Third parties covered by the exemptions and clarifying provisions would be able to use the Events indicia and images for criticism and review and for the purposes of providing information without needing to obtain authorisation from the Event Organisers, and as such would not be unreasonably constrained by the proposed protection. However, third parties not covered by the exemptions and clarifying provisions would not be able to use Events indicia and images without first obtaining authorisation from the Event Organisers.

The costs to the Event Organisers of allowing the limited group of third parties to use the Events expressions for criticism or review and to provide information without its authorisation is outweighed by the benefits to those parties.

The Event Organisers would still derive significant benefit through a greater ability to raise sponsorship revenue.

Implementation and Review

The proposal would be implemented when the proposed major sporting events indicia protection legislation receives Royal Assent. An evaluation of its effectiveness and impacts would be undertaken immediately after the relevant sections of the legislation cease to have effect:

- AFC Asian Cup 2015 from 30 June 2015;
- ICC Cricket World Cup from 31 March 2016; and
- Gold Coast 2018 Commonwealth Games from 31 December 2018.

Summary Regulation Impact Statement for the Major Sporting Events (Indicia and Images) Protection Bill

The proposed major sporting events indicia protection legislation is expected to have a positive impact on business and no significant impact on families.

The key areas of the impact are:

- the Event Organisers will have a greater capacity to raise sponsorship revenue;
- sponsors of the Event Organisers will have legislative protection against ambush marketing;
- non-sponsors of the Event Organisers will have a very limited capacity to associate themselves with the Events;
- third parties covered by the exemptions and clarifying provisions will be able to use the Events indicia and images for criticism or review and for the purposes of providing information;
- the Event Organisers will receive indicia and images protection legislation consistent with that afforded to Melbourne 2006 Corporation under the *Melbourne 2006 (Indicia and Images)*

Protection Act 2005 and in line with commitments made by the Australian government when bidding to host the Events; and

- the proposed major sporting events indicia protection legislation would include a sunset clause for each of the three Events and cease to have effect as follows:
 - AFC Asian Cup on 30 June 2015;
 - ICC Cricket World Cup on 31 March 2016; and
 - Gold Coast 2018 Commonwealth Games on 31 December 2018.

Regulatory Burden and Cost Offset (RBCO) Estimate Table

Average Annual Compliance Costs (from Business as usual)				
Costs (\$m)	Business	Community Organisations	Individuals	Total Cost
Total by Sector	\$0	\$0	\$0	\$0
Cost offset (\$m)				
Cost offset (\$m)	Business	Community Organisations	Individuals	Total by Source
Agency	\$0	\$0	\$0	\$0
Within portfolio	\$0	\$0	\$0	\$0
Outside portfolio	\$0	\$0	\$0	\$0
Total by Sector	\$0	\$0	\$0	\$0
Proposal is cost neutral? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no				
Proposal is deregulatory <input checked="" type="checkbox"/> yes <input type="checkbox"/> no				
Balance of cost offsets	\$0			