

PROFESSIONAL COMBAT SPORTS AMENDMENT BILL 2009

EXPLANATORY MEMORANDUM

FINAL

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With CPI Inclusion

EXPLANATORY MEMORANDUM

General Outline

This Bill seeks to amend the Professional Combat Sports Act 1987 to:

- Implement a number of changes identified during a review of the Act conducted in 2005 by a combat sports working group, members of the Professional Combat Sports Commission and members of the industry;
- Increase harm minimisation in combat sports contests by placing the same health and safety requirements on amateur contests as are currently enforced at the professional level;
- Provide the Minister with the ability to approve or deny rules for combat sports contests held in Western Australia; and
- Redraft a number of sections contained in the 1987 Act to simplify or clarify them and to broaden and clarify the provisions surrounding sham contests.

Clause 1	Names the amending Act.
Clause 2	Sets the commencement dates based on Royal Assent and proclamation dependent on different provisions.
Clause 3	Names the principal Act as the <i>Professional Combat Sports Act 1987</i> .
Clause 4	Amends the long title of the Act to remove the word ' <i>professional</i> ' therefore allowing the Act to encompass all levels of combat sports contests, thereby providing opportunity to ensure a high level of health and safety checks for all combat sports contests participants.
Clause 5	Amends section 1 of the Act by removing the word ' <i>professional</i> '.

Clause 6

Amends section 3 of the Act by:

- clarifying the definition of ‘*contest*’ to include all combat sports contests – including those using weapons – unless they are prescribed as exempt (this definition previously only related to ‘professional’ contests);
- amending the definition of the term ‘*contestant*’ to include both paid and unpaid contestants;
- amending the definition of the term ‘*industry participant*’ to allow the Regulations to prescribe those roles that require registration under the Act, including:
 - promoters;
 - referees;
 - judges; and
 - timekeepers.

These roles can have the greatest effect on the health, safety and fairness of a contest.

- adding a definition of a ‘*medical practitioner*’ to reflect changes in *Health Practitioner Regulation National Law*.
- deleting ‘*professional combat sport*’ as this term is being abolished and replaced with ‘*combat sport*’;
- extending the definition of a ‘*sham contest*’ to encompass the full range of conduct that can constitute a ‘sham’ or ‘fixed contest’ and;
- defining the word ‘*capacity*’ to ensure that it is clear that this term refers to the various roles played by industry participants and prescribed within the Regulations (as mentioned above); and
- including the definition of ‘*prescribed*’ to identify items required to be contained within the Regulations – this may include reference to serology (blood) tests, fitness certificates, training courses etc.

Clause 7 Delete '*Professional*' from the heading of Part II, causing it to read:

Part II – Combat Sports Commission.

Clause 8 Amends section 4 by:

- removing the word '*Professional*' from s.4(1) and inserting a reference to the previous incarnations of the Commission, namely the 'Professional Combat Sports Commission' and the 'WA Boxing Commission' to indicate that this is a continuance of those bodies – not a new Commission;
- amending the number of Commissioners' in s.4(2) from '8' to '9' to reflect the increased number of members required and provide scope for including a person with knowledge of 'mixed martial arts';
- changing the number of Minister appointed roles in paragraph (a) from '7' to '8' – again to reflect the additional industry member - and amending the paragraph to read succinctly by removing the word '*and*'; and
- removing the requirement for the AMA to nominate a representative to the Commission and allowing the Minister to appoint from a larger pool of medical practitioners '*with knowledge of injuries suffered by contestants*';
- inserting a new clause to identify the additional position is required to have knowledge of mixed martial arts – namely the sport that requires participants to be proficiently skilled in boxing, kickboxing and jiu jitsu as contests involve the ability to use all aspects of these martial arts.

Clause 9A Changes section 5(1)(e) replacing the Governor with the Minister as the person with the authority to remove a Commissioner. As the Minister appoints the Commissioners it makes sense that they also have the power to remove them. This also allows the Minister to quickly remove a Commissioner in the event of misconduct.

- Clause 9 Changes to section 8(4) increases the number of members required to constitute a quorum from three (3) to five (5) members. This brings the Commission in line with good governance standards.
- Clause 10 Section 10(1)(b) & (c) and 10(2) amended to remove all references to ‘*professional*’ combat sports and in s.10(1)(b)(d) the word ‘*contests*’ is inserted to provide the Commission with the function to oversee all combat sports contests, regardless of professional or amateur status.
- The insertion of the word ‘contest’ ensures that the function of the Commission remains tailored towards overseeing ‘competitions’ of these sports without allowing it to affect small businesses involved in combat sports that include ‘sparring’ and ‘gradings’ or ‘testing’.
- Clause 11 Section 12(1) deletes the word ‘professional’ from all bank accounts related to the Commission to ensure consistency of accounting records; and inserts s.12(2A) which refers to all previous bank accounts that the Commission has utilised.
- Clause 12 s.16 title is amended to read ‘*Applying for registration*’. The entire section is replaced with a more detailed outline of what is required within a ‘contestant’ application form, and provides the Commission with the ability to prescribe medical requirements and other information necessary to determine an application.
- s.16(1) removes superfluous words to simplify the request that all contestants must apply to be registered and provides greater clarity to the industry.
- s.16(2) outlines the application requirements, namely,
- (a) an approved form;
 - (b) medical information; and
 - (c) prescribed fee.
- s.16(3) allows the Commission to ask for further information if required, for example, additional medical information if a contestant has reached a certain age.
- The addition of s.16(4) allows the Commission to refuse an application until the information it has requested has been received. Without this clause, an applicant could argue that they have furnished the Commission with the

prescribed information to complete their registration and therefore the provision of additional information should not hold up their application.

Clause 13

s.17 title is amended to read '*Registering contestant*'. The entire section is replaced with a more detailed process for registering contestants and includes the ability to prescribe age groups and place additional restrictions/conditions on an applicant's registration, if required in the interest of health and safety.

s.17 requires applicants to:

s.17(i) be fit and proper which the Commission intends will increase the integrity of the sport and remove all negative connotations regarding participants in combat sports;

s.17(ii) have reached a prescribed age, which will be outlined in the Regulations and will remove the possibility of children competing as professionals;

s.17(iii) be cleared as medically and physically fit to compete; and

s.17(iv) understand the requirements of the Act on the applicant if their application is approved. This particularly relates to maintaining their medical and contest record book.

Section 17(1)(b) instructs the Commission to register the applicant if all of the aforementioned 'checks' are completed and there are no other 'health and safety' issues that may affect the applicant or other participants.

17(2) provides the Commission with the ability to recommend to the Minister that an applicant be registered in a certain class, even though they have not reached the prescribed age. This would only occur on a rare occasion where an underage participant has the skills and experience to compete on a professional level.

17(3) provides the Commission with the ability to impose conditions or restrictions on an applicant. For example, a contestant over 35 years of age, may need a fitness check prior to each bout, instead of every 12 months.

Clause 14

Delete section 18 and replace with a clearer definition of the type of registration certificate that the Commission must issue to each registrant.

- Clause 15 Delete section 19 and replace with a more generic definition of the terms of registration and renewal for contestants and outlines the information a person is required to submit for renewal of their registration.
- This section also increases the period of registration from 12 months to three (3) years, enabling the Commission to reduce administration issues and bring registrations in line with other states of Australia.
- Clause 16 Delete section 20 and replace with a more concise process for renewing a contestant application. It also provides the Commission with the ability to impose conditions or restrictions on a contestant if required in the interest of health and safety.
- Clause 17 Delete section 21 'Health and safety' and replace with '*Commission's powers to ensure health and safety of contestants*'. This clause allows the Commission to (a) cancel or suspend a contestants registration; (b) impose conditions or restrictions; or (c) vary or cancel restrictions already imposed under the Act if it believes the health and safety of a contestant (or any contestant or participant the registrant may come in contact with) may be affected.
- Based on this clause the Commission may vary a registration based on health and safety if for example; a contestant has received a number of knockouts or is losing regularly.
- Clause 18 Repeal section 22 'Refusal to register'. This clause will be included in s.54 and will affect all forms of registration, not just contestants. This will ensure consistency across all levels of registration.
- Clause 19 Amends section 23 title to read '*Disciplinary powers against contestants*' which provides the Commission with a clear course of action if a contestant is found to have breached any part of their registration requirements or taken part in a sham contest.
- If the Commission determines the registrant is no longer a fit and proper person, has committed an offence against the Act, or has not complied with conditions or restrictions placed on them, then it has the ability to invoke 23(a) variation or cancellation of conditions or restrictions; 23(b) impose further conditions; or 23(c) cancel or suspend registration.

- Clause 20 Amends section 24 by inserting a new section 24A *‘Cancelling registration on a contestant’s request’* that requires the Commission to cancel a registration at the request of the contestant (retirement etc.)
- Clause 21 Increases the penalty under section 24 from \$1,000 to \$6,000. As it is an offence to participate as a contestant in a contest if unregistered, the penalty needed to be increased to provide a greater deterrent.
- Clause 22 Inserts section 25A *‘Commission may vary or cancel conditions and restrictions’* to allow the Commission to vary or cancel any restrictions or conditions imposed on a contestant’s registration. Additional wording has also been added to clarify that the Commission can add additional restrictions or conditions to the registration of a contestant at anytime.
- Clause 23 Section 25 is deleted. The ability to prescribe classes of industry participants is included within s.3.
- Clause 24 Section 26 is amended to provide greater definition of the information required to be recorded by the Commission upon registering an industry participant, and again provides for the ability to prescribe within the Regulations the capacity in which a participant is registered (promoter, referee, judge etc.)
- Clause 25 Delete sections 27 and 28 and insert an amended section 27 *‘Registration of industry participants’* which outlines the application process that an industry participant must adhere to. This section also provides greater clarity for the industry regarding the information required to complete an application including:
- s.27(3)(a) completed registration form;
 - s.27(3)(b) fee;
 - s.27(4) any other information the Commission requires.
- And
- s.28(1)(a) is a fit and proper person; and
 - s.28(1)(b) understanding of the Act and duties imposed on the applicant.
- Amendments to this section also allow the Commission to impose further conditions and restrictions on the applicant.

- Clause 26 Delete section 29 and replace with a detailed description of the information that must be included on an applicant's registration certificate, including the capacity they are registered in, the date of expiry and any conditions placed on their registration.
- Clause 27 Amend section 30 to reflect that the '*Term of registration*' is now three (3) years from the date of registration, not 12 months.
- Clause 28 Amend section 31(1) by removing the prescribed dates for registration renewal, therefore allowing the applicant to apply to renew their registration at any time.
- Clause 29 Delete section 32(1) and insert a concise definition of an applicant's requirements for a successful registration renewal, including all of the items referred to in s.27 and s.28.
- Clause 30 Insert section 33A '*Disciplinary powers*' which identifies the criteria that may cause the Commission to impose disciplinary action on a registered industry participant.
- Insert section 33B which provides the Commission with the ability to vary or cancel a condition or restriction; impose further conditions or restrictions; or cancel or suspend a participant's registration if a participant is found to have breached any part of their registration requirements or been involved in a sham contest. This provides the Commission with a clear course of action if any of the aforementioned offences occur.
- If the Commission determines the registrant is no longer a fit and proper person, has committed an offence against the Act or has not complied with conditions or restrictions placed on them, then it has the ability to invoke any of s.33B.
- Clause 31 Delete section 33 and replace with a more defined description of what constitutes an offence to participate if unregistered as an industry participant. Amend fines to include:
- first offence \$2,000; and
 - subsequent offence \$10,000.

The penalties are greater for industry participants because they directly affect the outcome of a contest. For example, an unlicensed referee may not be competently trained which may result in serious injury or death of a contestant.

Clause 32 Insert section 34A which allows the Commission to vary or cancel any conditions and restrictions on a registered industry participant. Additional wording has also been added to clarify that the Commission can add additional restrictions or conditions to the registration of an industry participant at anytime.

Clause 33 Delete Part V which provides all persons aggrieved by a decision of the Commission or Minister, to apply to the State Administrative Tribunal for a review of that decision.

This review process is now included under Part VIII A.

Clause 34 Amend the heading of Part VI to reflect the change in name of the record books:

Part VI – Contestant record books

This more accurately reflects the information recorded in these books.

Clause 35 Delete section 35 and replace with a more concise definition of the process of issuing a record book to all first time contestants.

This section also describes the information that must be contained within the record book and any further information that may be prescribed within the Regulations.

These books contain a contestant’s history of competition, fitness and serology reports. They are an important document to maintain particularly when a person competes interstate or overseas.

Section 35(2) also dictates the process to follow if a person requires a replacement record book for any reason.

Clause 36 Amends section 36 to define that it is an offence for anyone who is not authorised to do so, to enter or alter any information in the contestant record books.

Amend the penalty for altering a record book from \$2,000 to \$6,000.

Clause 37 Delete section 37 as this now falls under section 38 – *Damaging a contestant record book etc.*

Clause 38 Amends section 38 to redefine the penalty for damaging a record book – increase fine from \$1,000 to \$6,000.

Clause 39 Delete section 39 and replace with an amended section that describes the process for surrendering a record book upon suspension or cancellation of a registration.

Penalty for not surrendering the book is \$500.

Clause 40 Delete ‘medical record book’ from section 40 and replace with the new title ‘contestant’s contestant record book’. This more accurately describes the information contained in these books.

Clause 41 Delete section 41 and replace with a new process for the issue of additional record books.

Clause 42 Delete section 42 and replace with a new process for providing a replacement or ‘duplicate’ record book.

Clause 43 Amend section 44 to provide a concise process for applying for a permit to conduct a contest.

This amendment includes reference to the information that must be provided on the application form.

The application period has been increased from 21 days prior to the contest to 42 days before the contest will take place. This will provide the Commission with more time to process the application and ensure that all requirements can be adhered to.

This section also outlines a more concise description of the information that must be included on a permit issued by the Commission, as well as the process followed prior to issuing the permit.

Clause 44 Delete section 45 and replace with a clause compelling the Commission to issue a permit if it is satisfied all requirements are met.

The section also outlines the information required to be included on the permit:

- s.45(3)(a) The date, time and place of the contest;
- s.45(3)(b) Name of each person to be involved – this will reduce the number of last minute ‘changes’ to match-ups and lessen the probability of mis-matches occurring; and
- s.45(3)(c) Any conditions or restrictions the promoter will need to adhere to.

This section also allows the Commission to refuse a permit in the interest of health and safety.

Clause 45

Insert section 47AA – this new inclusion gives the Commission the ability to request additional information from a promoter, contestant or anyone else involved in the running of the contest after a permit has been issued for the purposes of assessing whether that permit should be suspended or cancelled. A person who receives a notice under this section must obey it.

Insert section 47A – this new inclusion gives the Commission the ability to cancel or suspend a promotion permit at any time if there is a breach of any condition or restriction; if it is in the interest of health and safety; or if the Commission is satisfied that the contest is or will be a sham.

In the interest of natural justice, the Commission must give a permit holder a reasonable opportunity to be heard unless the health or safety of an contestant is at risk.

This clause also outlines the process the Commission must follow if it chooses to suspend or cancel a permit for any reason, including providing oral and written notice of the cancellation or suspension and the reasons for enacting this clause.

Clause 46

Delete sections 47(1) and 47(2) and replace with the following sections (1), (2A), (2B) and (2) which refer to offences committed by a person conducting a promotion:

- \$12,000 if the person does not have a permit;
- \$12,000 if a person conducts a contest where the permit has been cancelled/suspended;
- \$12,000 if a permit holder breaches any term, condition or restriction;
- \$12,000 if a person is involved in a sham contest; and

- \$12,000 fine for any referee who does not stop a contest if they believe it is a sham.

Additional wording has also been added at section 47(2) clarifying that officials should not participate in a contest they know is or will be a sham.

Additional wording has also been added at section 47(3), 47(4) and 47(5) clarifying that referees and judges who knowing a contest is a sham must not give a decision in that contest and requiring them to report any contests they believe to be a sham to the Commission.

Clause 47 Insert section 48A relating to sham contests and inquiries into sham contests and the possible prosecution of involved parties. This section outlines the standard of proof the Commission must use in determining if a sham contest has taken place and the process those found to be involved in a sham contest will need to follow regarding the payment of money associated with a sham contest. The section now clarifies that a promoter cannot pay money to a contestant where a sham contest inquiry is taking place and that permission must be sought from the Commission prior to any payment being made.

Clause 48 Delete section 48 and replace with a more detailed explanation of the process required to conduct a pre-contest weigh-in.

This section has been amended in line with other states to allow the weigh-in to take place anytime within 24 hours prior to the contest.

It also outlines the persons who are required to be present at the weigh-in, the requirements for record keeping and the need for all contestants to provide their contest record books.

Insert section 49A which outlines the process required for pre-contest medical checks, identifies the person who needs to conduct these checks, and the information that must be recorded to comply with this section.

Penalty for not conducting pre-contest medical checks is \$12,000.

Penalty for allowing a contest to go ahead with a 'medically unfit contestant' is \$12,000.

Clause 49 Section 49(1) – delete \$2,000 and insert \$12,000. This clause ensures that the medical practitioner present at an event will notify all parties if they believe a contestant should not compete, or should not continue to compete in a contest.

Section 49(2) – delete \$2,000 and insert \$12,000. This clause ensures that the referee overseeing an event and who is informed by the medical practitioner that a contestant should not compete, or should not continue to compete in a contest – does not participate in that event.

Clause 50 Delete section 50 and insert the amended information which makes it an offence for a person to compete without weighing in and submitting to a medical check.

Penalty is \$12,000.

Clause 51 Delete section 51(1) and (2) and insert amended clauses which outline the type of offences a permit holder can commit based on:

- allowing a contest to occur without a weigh-in and medical examination;
- engaging a contestant deemed to be medically unfit;
- not permitting the required number of Commission members to be present ringside;
- not having a medical practitioner ringside at the event; and
- conducting a contest not in accordance with approved rules.

All offences incur a fine of \$12,000

Clause 52 Delete section 52 and insert the amended section which refers to the information that is required to be recorded in a contest record book for each contestant. If a contestant fails to have their book updated and signed, the penalty is \$6,000.

Section 52(2) outlines the information that the Commission is required to record for each contest.

Clause 53 Insert Part VIIIA. This Part will replace Part V – Review, and will read;

Part VIIIA - Review

Section 53A provides all persons aggrieved by a decision of the Commission or Minister, to apply to the State Administrative Tribunal for a review of that decision.

Clause 54 Delete section 53 and replace with a clause relating to the provision of false or misleading information. Any person who submits information that is proven to be untrue can be fined \$12,000.

Clause 55 Insert section 54A to provide the Commission with the ability to access information from the Western Australian Police for the purpose of defining if a person is a 'fit and proper person'.

Insert section 54B which relates to confidential police information. This section defines:

- *confidential police information* as that which is certified confidential;
- *court* including the State Administrative Tribunal; and
- *sensitive police information* as information which disclosure of could possibly prejudice investigations, enable the discovery of or identity of an information source, or endanger a persons life.

Section 54B outlines that any information such as this, used by the Commission to determine an applicants 'fit and proper person' status, must not be released to any third party other than those listed within the Act.

If the Commission chooses to deny an application based on this information, it does not need to provide a reason for its decision.

Clause 56 Delete section 54 and insert a clause defining the procedure for imposing conditions and suspending or cancelling registrations.

This section provides for the law of 'natural justice' and dictates that the Commission will not impose or vary any conditions, suspend or cancel a registration, or vary a term placed on a person or permit unless the Commission has given the person a reasonable opportunity to be heard.

Any action taken under this subsection must be provided via written notice to the person and include the reasons for it.

Clause 57 Delete section 56 as the opportunity for organisations to apply for permits or registration has been removed.

- Clause 58 Delete section 58 and amend to reflect the changes made to prescribed classes and capacity.
- Clause 59 Insert 62A which relates to rules for contests. This additional section provides the Minister power to approve rules for any combat sport contest:
- The Minister may adopt, reference or incorporate rules, codes or standards already in existence;
 - Must determine a place for copies of all rules and standards to available to the public;
 - May approve amendments to rules; and
 - May cancel any rules.
- Clause 60 Amend section 62 by deleting ‘respect to –’. Delete all references to ‘professional’ and insert reference to titles that can be awarded. This will allow the Commission to potentially ‘own’ state titles in the future, if it so desires.
- Addition of 62(3) which identifies that the Commission may prescribe within the Regulations a clause allowing persons registered with a similar government authority in another state, to be registered for the purpose of the Act.
- Addition of 62(4) which allows the Commission to prescribe within the Regulations a fee that will recover expenditure that is relevant to the Commission performing its functions under the Act.
- Addition of 62(5) which allows the Commission to make savings or transitional regulations that could be used to smooth the introduction of the Act to the industry. It is not expected that transitional regulations will be necessary however it was felt that it was best to include provision for them just in case.