



Australian Government

GOVERNMENT LEGAL STATEMENT

(A) NATIONAL CONSTITUTIONAL LAW

1. Australia's Constitution establishes a federal system of government with powers distributed between the Commonwealth and the six States. It also confers the legislative, executive and judicial powers of the Commonwealth on three different arms of government established by the Constitution - the Parliament, the Executive Government (including officials and Ministers) and the Judicature (in particular, the High Court of Australia and other federal courts created by Parliament). In addition to the Australian Constitution, each of the States has its own Constitution.

Federal division of powers under the Australian Constitution

2. The powers and responsibilities of the Commonwealth Government are set out in the Australian Constitution. The Constitution does not invest in the Commonwealth Parliament a plenary power to make laws on all subjects. Rather, it lists specific subjects about which the Commonwealth Parliament can make laws. Most of these subjects appear in ss 51 and 52 of the Constitution. They include defence; external affairs; territories, interstate and international trade; taxation; foreign, trading and financial corporations; marriage and divorce; immigration; bankruptcy and conciliation and arbitration of interstate industrial disputes.
3. The powers and responsibilities of the States are not delimited in this way under the Constitution. A State Parliament can make laws on any subject of relevance to that particular State (with the exception of a few powers which are reserved exclusively for the Commonwealth under the Australian Constitution). That is, in contrast to the Commonwealth Parliament, the legislative power of a State Parliament extends to essentially all subject matters. However, under s 109 of the Australian Constitution, if a valid Commonwealth law is inconsistent with a State law, the Commonwealth law operates and the State law is invalid to the extent of that inconsistency.
4. There are also two internal territories within Australia (the Australian Capital Territory and the Northern Territory) which have similarly broad powers to the States under legislation enacted by the Commonwealth Parliament (called 'self-government Acts'), subject to the exclusion of a small number of matters. Similarly to the position in respect of State laws, Commonwealth laws will prevail over Territory laws

to the extent that there is any inconsistency. In addition, the Commonwealth retains the power to disallow laws of the Territories under the self-government Acts.

5. There is another tier of government in Australia ('local government') which, unlike the Commonwealth and State/Territory governments, is not recognised in the Australian Constitution. Local governments are purely a creation of the States. That is, local government bodies (which have a range of names including 'shire councils' and 'municipalities') are established by, and derive their specific functions and powers from, legislation enacted by the States (often known as 'local government Acts'). Although the functions of local governments vary, typical functions currently allocated to local governments by the States include issuing approvals to carry on certain activities relating to matters such as trading in public places, building, planning and development, water supply and waste management.

Commonwealth arms of government

Commonwealth Parliament

6. The Australian Constitution establishes a Federal Parliament comprising the Queen (represented by the Governor-General), a House of Representatives and a Senate. The members of Parliament are directly chosen by the people, and the Constitution requires regular elections for the House of Representatives and the Senate.
7. The people of each of the States elect the same number of senators. In the House of Representatives, the number of seats from each State depends on the State's population (although each State is guaranteed at least five seats). The people of the Northern Territory and the people of the Australian Capital Territory currently have two members in the House of Representatives, and each have two senators.
8. Both the House of Representatives and the Senate must pass a proposed law (known as a Bill) before it can become an Act of Parliament. A Bill becomes an Act when it receives the assent of the Governor-General.
9. The principle of Parliamentary sovereignty is fundamental to Australian constitutional law. An important aspect of this principle is that the Commonwealth Parliament may enact any legislation it wishes, provided that the legislation deals with a subject about which the Parliament may make laws and that the Australian Constitution does not otherwise restrict the Parliament's ability to enact the legislation. The sovereignty of Parliament cannot be fettered by the Executive Government (which includes Ministers and officials), or by the Parliament itself. This means that the Parliament will always be free to enact, or not to enact, particular laws in the future, regardless of any undertaking on the part of the Executive Government or the Parliament itself to the contrary.
10. A further, related principle that flows from the fundamental principle of Parliamentary sovereignty in Australia is that the Executive Government cannot fetter the exercise of discretionary powers conferred on Ministers or officials by legislation enacted by

the Parliament. Generally, where legislation confers on a particular person a power to make a decision, that decision must be made by that person (or by a person to whom the power has been validly delegated in accordance with the legislation), personally and independently through the application of his or her own judgement, and taking all relevant considerations into account. Consistently with this, a discretionary decision-making power conferred by the Parliament on a specified person generally cannot be exercised by, or at the behest of, someone else.

Executive Government of the Commonwealth

11. Australia is a constitutional monarchy and Chapter II of the Constitution vests the executive power of the Commonwealth in the Queen (currently Queen Elizabeth II). The power is exercisable on a day-to-day basis by the Governor-General as her representative. The Governor-General normally acts in accordance with the advice of Australian Government Ministers. The appointment of ministers and the creation of Australian Government departments of State are referred to in the Australian Constitution, which also provides that ministers must be, or become, members of Parliament.
12. In practice, ministers are also members of the parliamentary party or coalition of parties that holds a majority of seats in the House of Representatives. Ministers may either be senators or members of the House of Representatives, although the Prime Minister is (in all but exceptional circumstances) a member of the House of Representatives. Neither the Prime Minister nor the Cabinet, which is made up of senior government ministers, is mentioned in the Constitution, though as a matter of convention they are central to the executive government.

Federal Judicature

13. Chapter III of the Constitution establishes of the High Court of Australia. The High Court decides disputes about the meaning of the Constitution and is also the final court of appeal within Australia in all other types of cases, even those dealing with purely State matters.
14. Chapter III also gives the Commonwealth Parliament power to create other federal courts. The Parliament has exercised this power to establish several federal courts in addition to the High Court, including the Federal Court of Australia, the Family Court of Australia and the Federal Magistrates Court, and to vest federal judicial power in such federal courts. The Constitution also empowers the Parliament to vest federal judicial power in courts of the States and the Parliament has done so.

State/Territory arms of government

15. The State and Territory Governments similarly consist of legislative, executive and judicial branches of government. The principle of Parliamentary sovereignty, described above, also applies in the Australian States and Territories. This means that State and Territory Governments cannot bind their Parliaments to enact (or not

enact) particular laws. Nor can they bind their officials to take certain action, or make particular decisions, in relation to which they have a discretion under legislation.

(B) COMPETITION (ANTITRUST) LAWS

16. Commonwealth law applies in respect of anti-competitive (or potentially anti-competitive) behaviour, otherwise known in Australia as 'restrictive trade practices'. The relevant Commonwealth law is the *Trade Practices Act 1974* (the Trade Practices Act), which is aimed at procuring and maintaining competition in trade and commerce.
17. Amongst other things, Part IV of the Trade Practices Act creates criminal and civil liability for 'cartel conduct,' which is essentially an anti-competitive arrangement between competitors relating to price-fixing, market sharing, restricting capacity or output, exclusionary dealing, bid-rigging and similar conduct.
18. In addition to restricting cartel conduct, Part IV of the Act also applies civil sanctions only for certain:
 - contracts, arrangements or understandings between competitors, that have the purpose or effect of substantially lessening competition,
 - misuses of market power,
 - predatory pricing activities,
 - exclusive dealing and third line forcing, and
 - resale price maintenance.
19. The Trade Practices Act also makes provision for public benefit exemptions, or provides for immunity from prosecution, for specified conduct that may otherwise breach the restrictive trade practices provisions.
20. The Trade Practices Act is administered by the Australian Consumer and Competition Commission which is an independent statutory authority responsible for investigating and enforcing possible breaches of the Act.

(C) MEDIA, BROADCASTING AND COMMUNICATIONS LAWS

21. The Commonwealth has constitutional power to regulate telecommunications and broadcasting. The *Telecommunications Act 1997* is the primary Commonwealth Act regulating the telecommunications industry. The main Commonwealth Act regulating television and radio broadcasting is the *Broadcasting Services Act 1992*. That Act creates different categories of broadcasting services, namely national broadcasting services, commercial broadcasting services, community broadcasting

services, subscription broadcasting services, subscription narrowcasting services, open narrowcasting services and international broadcasting services. These categories determine the extent to which a service is regulated under the Act, including what licence must be obtained, licence conditions and whether the service can carry advertising. The Act confers responsibility on the Australian Communications and Media Authority (ACMA) to monitor the broadcasting industry.

22. The States can also legislate in relation to these subject matters (although Commonwealth legislation would prevail to the extent the State laws are inconsistent). For example, the Victorian *Major Sporting Events Act 2000* contains provisions allowing event organisers to authorise persons to broadcast images and sounds, or make recordings, of an event.
23. There are currently no specific laws in force in Australia regarding matters such as 'news access', 'short reporting' or 'public viewing' in relation to one-off major international sporting events.

(D) INTELLECTUAL PROPERTY LAWS

24. A number of Commonwealth laws in Australia protect intellectual property rights including the *Trade Marks Act 1995* (Trade Marks Act), *Patents Act 1990* (Patents Act), *Designs Act 2003* (Designs Act) and the *Copyright Act 1968* (Copyright Act). Remedies are also available under Australia's common law for goods or services that are 'passed off' as those of another. 'Passing off' activities may also be prohibited under the Trade Practices Act or State and Territory fair trading legislation (for example, if those activities constitute misleading and deceptive conduct under those Acts). Australia's common law will also operate to protect confidential information and trade secrets in certain circumstances.
25. IP Australia (part of the Department of Innovation, Industry, Science and Research but operating independently and reporting directly to the Minister) is the Australian Government body which administers those parts of Australia's trade marks, patents and designs systems having registration formalities including trade marks, patents and designs.

Trade Marks Act

26. The Trade Marks Act provides for the registration of trade marks (that is, signs used, or intended to be used, to distinguish goods or services dealt with or provided in the course of trade by a person from goods or services dealt with or provided by any other person) and sets out and protects the rights deriving from registration.
27. If a person makes an application to register a trade mark, the Registrar of Trade Marks will determine whether to accept the application for registration. The

Registrar must reject applications in certain circumstances (such as when the trade mark is scandalous or its use would be contrary to law).

28. If the Registrar accepts an application for registration, details of the application will be advertised publicly in the Australian Official Journal of Trade Marks and any person may oppose the registration by filing a notice of opposition. If there is no opposition to its registration, or the Registrar decides that a trade mark should be registered despite any notice of opposition, the Registrar will register details of the trade mark on the Register of Trade Marks which is maintained by IP Australia.
29. The Act provides that once a trade mark is registered, the registered owner will, subject to certain exceptions, have the exclusive right in Australia to use the trade mark and to authorise other persons to use the trade mark. The registered owner must pay certain registration fees and renewal fees under the Act.
30. Australia is a signatory to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol). The Madrid Protocol provides a trade mark owner with a mechanism to obtain trade mark protection in other Madrid Protocol countries by filing one international application through his or her national trade mark office.

Patents Act

31. The Patents Act provides for the granting of a patent in respect of an invention which is new, inventive and useful. Subject to the terms of the Patents Act, a patent will give the patentee the exclusive rights to exploit their invention in Australia and to authorise one or more other persons to exploit their invention during the term of the patent.
32. There are two types of patents available under the Patents Act:
 - a standard patent, which provides long-term protection and control over an invention for up to 20 years, and
 - an innovation patent, which provides protection and control for 8 years.
33. If a person makes an application for a patent, certain details of the application will be advertised in the Australian Official Journal of Patents. The application for a patent and accompanying specification describing the relevant invention will be assessed by the Commissioner of Patents. If an application is accepted it will be registered on the Register of Patents, which is maintained by IP Australia. Interested parties have an opportunity to oppose the granting of a patent. The patentee will need to pay certain registration fees and renewal fees which are payable under the Act.
34. Australia is a signatory to the Paris Convention for the Protection of Industrial Property (Paris Convention) and the Patent Cooperation Treaty (PCT). The PCT provides an administrative process whereby a single international patent application is recognised by the national patent offices of each of the PCT signatory countries.

A search report and a preliminary examination opinion are prepared for every PCT application.

Designs Act

35. The Designs Act provides for the registration or publication of a design, which is 'the overall appearance' of a product resulting from one or more visual features of the product. A design may be registrable if it is 'new and distinctive' when compared with other existing designs. If a person makes an application for a design, certain details of the application will be advertised in the Australian Official Journal of Designs.
36. An owner of a registered design can take steps to enforce their design rights in Australia. Once a registered design is examined and a certificate of examination has been issued (certified), the owner may sue for infringement if another person uses the registered design without the owner's permission. In contrast, a person who has a design 'published' under the Act, but not certified, will not have any enforceable rights under the Designs Act in respect of their design. However, once a design has been published no other person can obtain registration for the same design (which would no longer be considered new and distinctive).
37. The Registrar of Designs must register or publish a design where the application satisfies the requirements of the Design Act, and must refuse to register certain designs under the Act. Designs can be registered for a maximum of 10 years. There are certain fees payable by applicants, including renewal fees, under the Design Act.

Copyright Act

38. The Copyright Act protects copyright in original 'works' (literary, dramatic, musical and artistic works) and other subject matter (sound recordings, cinematograph films, television broadcasts and sound broadcasts and published editions of works). The Act protects copyright in works or other subject matter where there is a relevant connection with Australia. For example, copyright will subsist in an original work if the first publication of a work took place in Australia, the author of the work was an Australian citizen or a resident of Australia at the time when the work was first published, or if the author died before the work was first published but was an Australian citizen or a resident of Australia immediately before he or she died. In accordance with international agreements on copyright, Australia also gives effect to the principle of national treatment by providing copyright protection to works and other subject matter first published in convention countries or made by nationals or residents of such countries.
39. Under the Act, the copyright owner has certain exclusive rights in relation to original works and other protected subject matter. These exclusive rights vary according to the nature of the material but may include the rights to reproduce, publish, and communicate the work to the public. Subject to the operation of any relevant

defences, a third party will infringe copyright where he or she, without the licence of the copyright owner, does in Australia or authorises the doing in Australia of any act comprised in the copyright.

40. Unlike the other intellectual property laws in Australia, there is no requirement of registration before a work or other subject matter is eligible for registration. There is also no voluntary system for registering copyright.

(E) UNFAIR COMPETITION AND ANTI-AMBUSH MARKETING LEGISLATION

41. The rules in the Commonwealth Trade Practices Act which prohibit certain restrictive trade practices (outlined at item (B) above) operate to prohibit certain forms of anti-competitive conduct in Australia (such as a prohibition on a corporation from misusing its market power to eliminate or damage competitors, prevent new entrants into a market, or deter or prevent a person from engaging in competitive conduct in that or other markets). Other relevant laws which restrict entities from engaging in certain conduct which may impact on their competitors include the various Commonwealth intellectual property laws (outlined at item D above) which, in certain circumstances, will apply to prevent an entity from improperly using a competitor's intellectual property rights.
42. 'Ambush marketing,' or an entity engaging in marketing designed to 'leverage' off the goodwill surrounding an event for which it is not a sponsor, may, of itself, contravene a number of Australian laws. Ambush marketing may potentially breach the Trade Practices Act (for example, if it constitutes misleading or deceptive conduct or it constitutes a representation by a corporation that it has a sponsorship, approval or affiliation that it does not have). Such marketing activities may also breach a Commonwealth intellectual property law (in particular, the trade mark, design or copyright law) or the common law of 'passing off'.
43. In addition, the Commonwealth has previously enacted several laws in order to address ambush marketing in respect of particular events. These laws include the:
 - *Olympic Insignia Protection Act 1987* (the Olympic Act),
 - *Sydney 2000 Games (Indicia and Images) Protection Act 1996*, and
 - *Melbourne 2006 Commonwealth Games (Indicia and Images) Protection Act 2005*.
44. The Olympic Act remains operative, whilst the other two Acts were only in place for the specific events to which they related and have since been repealed. The Olympic Act was originally enacted to protect the use of the Olympic rings logo and certain other Olympic designs in Australia. The application of the Act was later extended to protect the use of certain 'protected Olympic expressions' (except in certain specific circumstances, including where a person had been granted a licence to use the expression by the Australian Olympic Committee).

(F) LAWS GOVERNING THE SALE (RESALE) AND USE OF TICKETS TO SPORTING EVENTS

45. There are no Commonwealth laws governing the sale and resale and use of tickets to sporting events. Two Australian States (Queensland and Victoria) have specific laws which relate to ticket 'scalping' (or reselling a ticket at a price far greater than its initial cost) in certain circumstances.
46. In Queensland, the *Major Sports Facilities Act 2001* makes it an offence for a person to resell tickets to a 'major sports facility' event at a price greater than 10 per cent above the original ticket price of the ticket. Certain sporting grounds are prescribed, by regulation, to be major sports facilities for the purpose of the Act.
47. In Victoria, the *Major Sporting Events Act 2009* allows for the relevant Victorian Minister to make 'sports ticketing declarations' which regulate the sale of tickets in respect of declared sports events (and can include arrangements in relation to the resale of tickets). It is an offence to sell tickets contrary to a ticketing scheme approved by the Minister. Under the Act it would, for example, be possible for the Minister to approve a ticketing scheme for a certain event to include terms and conditions that prohibit or restrict those tickets from being sold or being distributed for more than their face value without the written authorisation of the sports event organiser.
48. The other States and Territories do not currently have any laws regulating the resale of tickets, although they retain the power to enact such laws.

(G) PUBLIC ADVERTISING LAWS

49. There are specific laws in Australia which regulate the advertisement of certain products (such as tobacco), but no specific laws which regulate advertising standards generally. However, there is an Australian Association of National Advertisers Code of Ethics which provides guidelines for Australian advertisers to ensure that advertisements are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society and a fair sense of responsibility to competitors.

Alcohol advertising

50. There are no particular laws regulating alcohol advertising in Australia. However, members of Australia's four major alcohol beverage industry associations are committed to complying with an Alcohol Beverages Advertising Code.
51. The Alcohol Beverages Advertising Code is designed to ensure that alcohol advertising will be conducted in a manner which does not conflict with or detract from the need for responsibility and moderation in liquor merchandising and

consumption, and which does not encourage consumption by underage persons. The ABAC specifically requires that advertisements must:

- present a mature, balanced and responsible approach to the consumption of alcohol,
- not have a strong or evident appeal to children or adolescents,
- not suggest that the consumption or presence of alcohol may create or contribute to a significant change in mood or environment,
- not depict any direct association between the consumption of alcohol (other than low alcohol beverages) and the operation of a motor vehicle, boat or aircraft or the engagement in any sport or potentially hazardous activity,
- not challenge or dare people to drink or sample a particular alcohol beverage (other than low alcohol beverages), not contain any inducement to prefer an alcohol beverage because of its higher alcohol content, and
- comply with the Advertiser Code of Ethics adopted by the Australian Association of National Advertisers.

52. There is generally no requirement for companies or individuals to hold an import licence to import alcohol into Australia (unless for example, the particular type of alcohol is listed as a prohibited import). However, customs duty is payable in respect of imported alcohol (under the *Customs Tariff Act 1995*), and the goods have to receive clearance from the Australian Customs and Border Protection Service (exercising powers under the *Customs Act 1901*). Individual travellers, 18 years and over, are allowed to bring into Australia up to 2.25 liters of alcoholic beverages duty free.
53. Additionally, there are restrictions on alcohol advertising for radio and television. The *Commercial Television Industry Code of Practice 2010* only allows alcohol advertisements to be broadcast during the live broadcast of sporting events on weekends and public holidays, and during M (mature), MA (mature audience) and AV (adult violence) classification periods, which begin no earlier than 8.30 pm on all evenings and between noon and 3.00 pm on schooldays.
54. The *Commercial Radio Australia Codes of Practice and Guidelines 2010* provide that commercial radio broadcasters must not broadcast matter that presents the misuse of alcohol as desirable.
55. The *Australian Subscription Television and Radio Association Subscription Broadcast Television Codes of Practice 2007* require that licensees take into account the intellectual and emotional maturity of their intended audience when scheduling advertisements for alcoholic beverages.
56. Each of the States and Territories has liquor licensing laws which place a number of conditions on the consumption of alcoholic beverages. In particular, the sale of

alcohol to persons under 18 years of age is prohibited, as well as the sale of alcohol to intoxicated persons.

Tobacco advertising

57. The Commonwealth *Tobacco Advertising Prohibition Act 1992* makes it an offence to broadcast or publish tobacco advertisements. In addition, the States and Territories have laws concerning advertising and displaying tobacco.
58. Similarly to alcohol, customs duty is payable in respect of imported tobacco, and any such goods need to receive clearance from the Australian Customs and Border Protection Service.
59. There are a range of restrictions on the sale and consumption of cigarettes under State laws. For example, cigarettes cannot be sold to persons under 18 years of age, and there are certain places where smoking is absolutely prohibited (such as indoor public areas).

Online gambling advertising

60. The provision, and advertising of, online betting is regulated in Australia by the Commonwealth under the *Interactive Gambling Act 2001* (the Interactive Gambling Act). Part VIA of the Act makes it an offence to provide, or advertise, certain interactive gambling services to people who are present in Australia.
61. The Interactive Gambling Act does not, generally speaking, prohibit online gambling services which relate to betting on a sporting event. However, it does prohibit *advertisements* about online gambling services which relate to betting on a sporting event, except in certain limited circumstances.

(H) NO-FLY ZONES

62. Each State has the plenary power to legislate on any subject of relevance to that particular State. This power would enable the States to legislate to provide for no-fly zones within a five kilometre radius above stadiums on match days. There are no particular limits on a State's power to enact laws providing for no-fly zones in that State.
63. Some States — in particular New South Wales, Queensland and Victoria — currently have legislation in place dealing with the control of airspace in relation to major events, such as major sporting events. The relevant laws are the *Major Events Act 2009* (NSW), the *Major Sports Facilities Act 2001* (Qld) and the *Major Sporting Events Act 2000* (Vic).

64. Further, special State legislation enacted in the past to facilitate the conduct of specific sporting events — the Olympics in Sydney and the Commonwealth Games in Melbourne — has provided for the control of airspace above sporting sites. For example, the *Commonwealth Games Arrangements Act 2001* (Vic) prohibited persons from displaying an advertisement in airspace within sight of a Commonwealth games venue or event without authorisation.
65. The two internal Territories also have sufficient legislative power to enact laws providing for no-fly zones above stadiums within their relevant Territory on match days. The Commonwealth also has the constitutional power to enact laws prescribing no-fly zones in the Territories (because the Commonwealth has plenary legislative power to make laws in relation to Territories).

(I) TRADE REGULATIONS AND LEGISLATION CONCERNING COMMERCE IN PUBLIC AREAS

66. The States (and Territories) have plenary power to legislate, including in relation to trade or commerce in public areas. Currently, the regulation of trade or commerce in public areas is largely dealt with at the level of local government, pursuant to powers conferred on local governments by State legislation. In some local government areas (for example, councils), there are local laws in place that require permits to be obtained by persons in order to conduct a stall or engage in trade in public places.
67. Although local governments do currently largely deal with the regulation of trade or commerce in public areas, it is important to note that local governments are subordinate to State governments and derive their functions and power from State legislation. There is, for example, nothing to prevent a State from appropriately changing or limiting the functions and powers of local governments so that the State could enact its own regulatory scheme in respect of trade or commerce in public areas. There is also nothing to prevent a State from enacting legislation which would enable the State to authorise the conduct of particular activities relating to trade or commerce in public areas despite the fact that a local government body had otherwise been conferred with functions and powers relating to those activities.

(J) CONSUMER PROTECTION LAWS

68. Commonwealth legislation (in particular, the Trade Practices Act) contains a range of measures designed to protect consumers. These measures apply to regulate the conduct of corporations.

69. For example, the Trade Practices Act contains measures in relation to the quality of goods and services. Under the Act, goods supplied to a buyer by a corporation must:
- be of merchantable quality
 - be fit for their purpose,
 - match the description given to a person, or a sample the person chose from, and
 - be sold to a buyer with clear title.
70. The Act also prohibits corporations from engaging in a range of conduct in relation to consumers, including:
- misleading and deceptive conduct,
 - false or misleading representations,
 - bait advertising,
 - harassment and coercion, and
 - unconscionable conduct.
71. The States and Territories also have fair trading legislation which protects the interests of consumers. The Australian Government has recently introduced the Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010 (ACL Bill) into the Commonwealth Parliament. The ACL Bill would replace State and Territory fair trading legislation with a single national consumer protection law. Subject to passage through both houses of the Australian Parliament, the Australian Consumer Law would commence on 1 January 2011.

(K) PERSONAL DATA PROTECTION LAWS

72. A number of Australian laws have been enacted to ensure the protection of personal information. A significant Commonwealth law is the *Privacy Act 1988*, which protects personal information held by government agencies and a range of private sector organisations. The Act contains a set of 'Information Privacy Principles' which apply to government agencies, and 'National Privacy Principles' (NPPs) which apply to most private sector organisations with an annual turnover of more than \$3 million.
73. The NPPs place particular obligations on private sector organisations in relation to the way they collect, use and disclose information. Organisations bound by the NPPs also need to ensure that information is accurate, up-to date and secure, and that they allow an individual to access and correct information about the individual in certain circumstances.

74. Other Commonwealth legislation is also relevant to the collection and handling of personal information including:
- the *Telecommunications (Interception and Access) Act 1979* (TIA Act) protects the privacy of users of the Australian telecommunications system by prohibiting interception of communications and covert access to stored communications, unless a specified exception applies. The TIA Act also provides a lawful access regime for telecommunications data,
 - the *Spam Act 2003* which places restrictions on sending unsolicited emails,
 - the *Freedom of Information Act 1982* which provides people with a right of access to documents (other than certain exempt documents) held by Commonwealth government agencies or ministers,
 - specific laws protecting the confidentiality of tax file numbers, and
 - a range of provisions imposing secrecy obligations on public servants in respect of information they receive in the course of their duties.
75. Each Australian State and Territory also regulates the handling of personal information (although not all of the States have specific privacy legislation in place). Broadly, State and Territory privacy laws apply in respect of the handling of information by the public sector and, in some jurisdictions, by those private organisations which handle health information (see, for example, the *Health Records and Information Privacy Act 2002* (NSW)). The States and Territories have also enacted laws concerning the use of surveillance and listening devices (such as the *Surveillance Devices Act 2007* (NSW)). Use of surveillance devices, such as listening, optical and tracking devices is regulated by State law. However, access regimes exist under both State and Commonwealth laws, including the *Surveillance Devices Act 2004* (Cth).

(L) HEALTH AND SAFETY LAWS

76. There are a range of different health and safety laws which apply to regulate the sale of food and beverages (including alcoholic beverages) and the sale of tobacco, as well as the sale of other goods (in stadiums and other private and public areas).

Sale of food and beverages

77. Each State or Territory has an Act which regulates the sale and supply of food. Amongst other things, these laws impose various obligations on businesses in relation to:
- safety standards in relation to the sale of food, and
 - the requirement to be registered or to hold a licence to sell food.

78. Relevant regulatory measures include the establishment of offences for the handling of food in an unsafe manner or the sale of unsafe food (see, for example, the *Food Act 2006* (NSW)).
79. Registration and licensing requirements vary between States and Territories. For example, under the Victorian *Food Act 1984*, all food premises are required to be registered. In Queensland, under the *Food Act 2006*, it is an offence for a 'licensable food business' (which will generally include cafes and restaurants, takeaway shops, and food vans, but does not include not-for-profit organisations) to sell food without a licence.
80. The States and Territories conduct audits of food businesses to ensure that they comply with relevant laws.
81. In addition to food laws, each of the States and Territories has liquor licensing laws which place a number of conditions on the sale of alcoholic beverages. In each State and Territory the sale of alcohol without a licence is prohibited (see, for example, the *Liquor Act 2007* (NSW)).
82. The liquor licensing laws also place a range of obligations on alcohol vendors. For example, alcohol vendors are prohibited from selling alcohol to a person under 18 years of age, or to persons who are intoxicated.

Sale of tobacco

83. In some States and Territories, such as South Australia, a person requires a licence to sell tobacco products (see, for example, the *Tobacco Products Regulation Act 1997* (SA)). However, not all States and Territories impose this requirement (for example, Victorian legislation does not require that a tobacco retailer must have a licence).
84. There are strict rules about the sale of tobacco products. Like the sale of alcohol, it is illegal to sell tobacco products to a minor in each of the States and Territories. There are also strict rules about the advertising and display of tobacco products (including at the point of sale). In some jurisdictions (such as Victoria and New South Wales) there are bans on the sale of tobacco products from temporary outlets. Further, sponsorship of events (such as sporting events and cultural events) by tobacco companies has been banned or strictly limited in most Australian states.
85. In addition to rules about the sale of tobacco, there are laws in each State and Territory prohibiting smoking in a range of areas (including enclosed dining areas, enclosed public places, pubs, clubs and gaming areas). All of Australia's enclosed workplaces and enclosed public places are smoke-free. Some jurisdictions have also legislated for smoke-free outdoor dining and outdoor areas.

Sale of other goods

86. There are Commonwealth and State laws which regulate the sale of specific goods (such as food, alcohol, tobacco and certain dangerous goods). Other laws, such as the Trade Practices Act and the State and Territory fair trading legislation, may also be relevant to the sale of goods.
87. However, as noted at item (I) above, regulation of the sale of goods in public areas is largely (with the exception of the specific laws concerning specific types of products) dealt with at the level of local governments (such as councils). In some local government areas there are local laws in place that require permits to be obtained by persons in order to conduct a stall or engage in trade in public places. As also noted at item (I) above, there is nothing to prevent a State from enacting legislation to appropriately change or limit the functions and powers of local governments so that the State could enact its own regulatory scheme in respect of these matters, or from enacting legislation enabling the State to authorise certain activities notwithstanding that the regulation of those activities ordinarily falls within the functions and powers of local governments.

(M) SOCIAL EMPOWERMENT LAWS AND LAWS FOR THE PROTECTION OF MINORITY GROUPS

88. There are a range of laws in Australia which operate to protect members of minority groups from unlawful discrimination. Relevant Commonwealth laws protect people from discrimination on a range of grounds, including discrimination because of race, sex, disability and age. Specifically, these laws are the:
- *Racial Discrimination Act 1975*, which applies to discrimination by reason of the race, colour or national or ethnic origin of a person (or any relative or associate of the person),
 - *Sex Discrimination Act 1984*, which applies to discrimination by reason of sex, pregnancy or potential pregnancy, marital status, family responsibilities or discrimination involving sexual harassment,
 - *Disability Discrimination Act 1992*, which applies to discrimination by reason of temporary and permanent disabilities (including physical, intellectual, sensory and psychiatric disabilities; diseases or illnesses; and work related injuries) or association with a person with a disability,
 - *Age Discrimination Act 2004*, which applies to discrimination on the basis of age, and
 - *Australian Human Rights Commission Act 1986*, which establishes the Australian Human Rights Commission as an independent statutory organisation and gives the Commission certain functions. In particular, the Commission works to protect and promote human rights in Australia, with regard to

Australia's international obligations, and handles complaints and investigations about unlawful discrimination.

89. Generally speaking, discrimination may be 'direct' (for example, by treating someone less favourably because of his or her race, sex, disability or age) or 'indirect' (for example, even if a particular law or a particular policy, on its face, applied equally to all persons, it may nonetheless result in indirect discrimination if it operated to have a disproportionate and unreasonable effect on a certain group of people).
90. The States and Territories have also enacted a range of anti-discrimination laws.

(N) LABOUR AND TRADE UNION LAWS

91. The employment of approximately 96 per cent of Australian private sector employees is regulated under a national workplace relations system, which is established by the Commonwealth *Fair Work Act 2009* (the Fair Work Act) and referrals of power to the Commonwealth by the State Parliaments of Victoria, South Australia, Tasmania, Queensland and New South Wales.
92. State referrals of power allow application of the Fair Work Act in those States to employers and employees over which the Commonwealth would not otherwise have constitutional jurisdiction. However, those employers and employees remain covered by state laws in relation to anti-discrimination, occupational health and safety, workers' compensation, trading hours, public holidays and long service leave.
93. Western Australia is the only state that has not made a referral of power to the Commonwealth. As a result, the Fair Work Act only applies to employing constitutional corporations and their employees in Western Australia. All remaining private sector employers and employees in that State are covered by Western Australian labour laws.
94. State public sector employers and employees, and local government employers and employees are generally covered by State labour laws. The exceptions to this are Victoria, which has generally referred power regarding State public sector and local government employers and employees, and Tasmania, where the local government sector is already covered by Commonwealth labour law.
95. Employers and employees in the Northern Territory and the Australian Capital Territory are covered by the Fair Work Act by virtue of the Commonwealth's constitutional power to legislate with regard to the Territories.
96. The Fair Work Act creates a safety net of minimum employment terms and conditions made up of two parts - National Employment Standards, and modern awards. The National Employment Standards are a set of 10 minimum employment

conditions which cover matters such as: maximum weekly hours of work; the right to request flexible working arrangements; leave entitlements; community service leave and parental leave; and redundancy entitlements.

97. Modern awards are industry or occupation-based enforceable minimum employment standards which apply in addition to the National Employment Standards covering matters including minimum wages and penalty rates, allowances and type of employment.
98. Employees outside the national system remain covered by the respective State industrial relations laws. Employees in the two Australian territories are covered by the national system.
99. The Fair Work Act also allows for the making of enterprise agreements, which set out the conditions of employment between employees and their employer(s). Part 2-4 of the Act establishes a framework for the negotiation and approval of enterprise agreements. It expressly allows for an employee to appoint a representative (including a union) to represent his or her interests in the negotiation of an enterprise agreement. For union members, their bargaining representative is taken to be their union (if the union is entitled to represent them) unless they appoint someone else or revoke the union's status as their representative.
100. The Fair Work Act does not provide for the making of individual statutory employment agreements. However, it does enable an employee and an employer to agree to vary the effect of a modern award or an enterprise agreement (under an 'individual flexibility arrangement') in order to meet the individual needs of the employee and employer, provided that the employee will be better off overall than if he or she had not entered into the individual flexibility arrangement. Individual flexibility arrangements must be genuinely agreed to be the employee and employer; must be in writing and signed; and must be able to be terminated by either party by giving written notice of not more than 28 days.

(O) IMMIGRATION POLICIES (ENTRY AND EXIT PERMITS)

101. Under Australia's universal visa system, all non-residents entering Australia for a holiday or for business purposes must have a valid visa to travel to and enter Australia (other than New Zealand and Norfolk Island passport holders, who are able to apply for a visa on arrival in Australia unless there are character or health concerns). There are a range of different visas available to travellers, which are set out in the Commonwealth *Migration Regulations 1994*.
102. Examples of some different visas suitable for holiday or business purposes, include:
 - a tourist (Subclass 676) visa;

- an 'electronic travel authority' (ETA) Visitor (Subclass 976) (an ETA is an electronic authority which is available to passport holders from a number of specified countries);
 - an eVisitor (Subclass 651) (an eVisitor is an electronic authority which is available to passport holders from a number of European Union countries);
 - an 'electronic travel authority' (ETA) Business Entrant (Subclass 977 and 956) (an ETA is an electronic authority which is available to passport holders from a number of specified countries);
 - a business (short stay) (Subclass 456) visa;
 - a temporary business entry long stay (Subclass 457) visa; or
 - a Working Holiday Maker (Subclass 417 or Subclass 462) visa (available to passport holders of countries with which Australia has a reciprocal arrangement in place).
103. Anyone wishing to work as an employee in Australia or to conduct business in Australia must ensure that they obtain a visa which permits them to do so.
104. There is no requirement for a visitor to Australia to obtain an 'exit permit' to leave the country.

(P) WORK PERMIT REGULATIONS AND EMPLOYEE PROTECTION LAWS

105. As discussed above at item (O), a person wishing to work or conduct business in Australia must obtain a visa which permits them to work or conduct business whilst they are in Australia (such as a work and holiday visa, or a short stay or long stay business visa).
106. There are a range of laws in Australia which protect employees. For example, as noted above at item (N), the Commonwealth Fair Work Act sets out certain minimum employment standards for employees covered by the Act (such as a minimum wage and leave entitlements).
107. Other relevant laws which protect employees include laws concerning occupational health and safety (OH&S) in the workplace. Employers are obliged to comply with relevant State and Territory laws about OH&S in the workplace. These laws impose a range of duties on employers including the duty to provide safe premises, safe systems of work, and appropriate training and supervision. They involve a range of criminal penalties and are enforced by various State and Territory bodies (such as the Victorian Workcover Authority and the Workcover Authority of New South Wales). Australia is currently working to harmonise workplace safety laws across the States and Territories. There is also a Commonwealth OH&S law which applies in respect of Commonwealth employees.

108. Employers are also required by law to make superannuation contributions (of at least 9 per cent of an employee's ordinary time earnings) on behalf of their employees. Any employer who fails to make superannuation contributions of 9 per cent will become liable to pay a superannuation guarantee charge to the Australian Taxation Office. A professional sportsperson participating in sporting activities will generally be an employee for the purposes of the Act (which means that his or her employer will be required to make superannuation contributions on his or her behalf). However, if the employee is a resident of a country which Australia has a 'bilateral social security agreement' with, then the person's employer may not be subject to the superannuation guarantee legislation. Australia currently has agreements with 18 countries.
109. Another relevant obligation of employers is to withhold amounts in respect of income tax from payments to employees (and, in some cases, from payments made to contractors), and to remit the amounts withheld to the Australian Taxation Office.
110. Employers in Australia are not under any specific obligation to assist employees to obtain health care or to provide them with health care.

(Q) TAX SYSTEM

111. In Australia, taxes are imposed by the Commonwealth as well as by the States and Territories. Significant taxes and other duties and charges imposed by the Commonwealth include income tax (for individuals and for companies), capital gains tax (CGT), goods and services tax (GST), withholding tax, fringe benefits tax, excise duties and customs duties.
112. The head of the Australian Taxation Office, the Commissioner of Taxation, has the general administration of Commonwealth taxation laws. The Australian Taxation Office publicly issues a range of documents, such as 'public rulings,' explaining how the tax laws will be applied in certain circumstances.
113. The States and Territories impose a range of taxes, including payroll taxes and stamp duties. There is a revenue office in each State and Territory which administers these taxes.

Income tax

114. Individuals and companies are subject to income tax under the *Income Tax Assessment Act 1997* and the *Income Tax Assessment Act 1936*.
115. Australian residents pay, as a general rule, tax on their Australian source income and any foreign income. People who are non-residents for tax purposes are generally subject to tax on their Australian source income.

116. A person's taxable income (that is, the amount which he or she will pay income tax on) is calculated as his or her assessable income, less any allowable deductions. Assessable income for this purpose includes salary and wage income, allowances, dividends, interest, capital gains, business income, pensions, rents, royalties, partnership income and distributions from trusts. Deductions are generally permitted for losses and outgoings to the extent that they are incurred in gaining or producing assessable income or necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income (including, for example, certain work-related expenses).
117. Amounts earned by an individual in a financial year will attract income tax at progressive rates. Currently, the highest tax rate of tax for residents and non-residents (45 per cent) applies in respect of any amounts earned over \$180,000. There is currently a tax-free threshold of \$6,000 for Australian residents, however, there is no tax-free threshold for non-residents.
118. Company income tax (for resident and non-resident companies) is levied at a rate of 30 per cent.
119. Australia's income tax regime features a CGT on any capital gains made as a result of a number of specified 'capital gains tax events' in relation to assets acquired on or after 20 September 1985. The most common CGT event is the disposal of an asset. There are a range of concessions and exemptions from CGT under the income tax laws, and non-residents are only required to pay income tax on capital gains in limited circumstances.

GST

120. GST is a 'value added tax' on most goods and services consumed in Australia. It applies at a uniform rate of 10 per cent to the supply or importation of taxable goods and services. There are a range of exemptions from GST for certain categories of goods and services (including some health supplies, education, and basic food).
121. GST is levied on businesses at all stages of the production process, and businesses can generally claim a credit for GST they pay on business inputs. That is, businesses include GST in the price of sales to their customers, and claim credits for the GST included in the price of their business purchases.
122. A business must register for GST if its GST turnover is greater than the 'GST turnover threshold' (currently \$75,000 per annum or \$150,000 per annum for non-profit organisations). A business with a lower turnover can decide whether or not to register for GST. Businesses that are registered for GST must complete a regular business activity statement in order to report and pay GST on their sales, and claim GST credits for GST included in the price of business purchases.

Withholding tax

123. Investments in Australia by non-residents are primarily subject to Australian tax through company income tax. However, unfranked dividends paid to a non-resident which are not 'conduit foreign income' are subject to a final withholding tax upon distribution to the non-resident.
124. Final withholding taxes are also levied on interest, royalties and certain distributions to non-residents from Australian managed investment trusts. These taxes are generally levied on distributions at a flat rate that varies depending on the type of income and whether a tax treaty applies (the amount of tax is generally reduced where a tax treaty applies).
125. Income which is subject to a final withholding tax is excluded from assessable income for the purposes of Australian income tax.

Fringe benefits tax

126. Australia separately levies a fringe benefits tax. This is a tax on most non-cash benefits provided to employees by an employer in respect of the employee's employment. Fringe benefits tax is levied on employers at the top personal income rate plus the Medicare levy (currently 46.5 per cent).
127. A range of fringe benefits are exempt from fringe benefits tax including minor benefits (which are currently defined as benefits less than \$300), certain membership fees and subscriptions, certain work-related items, and certain taxi travel to or from the workplace.

Excise and customs duties

128. Excise duty is payable on certain types of goods produced or manufactured in Australia (including alcohol, tobacco and fuels and oils). The duty is imposed per stick for cigarettes, and by the overall weight of tobacco content for most other products. Beer and spirits are taxed on alcohol volume, and there are different rates of excise for different types of alcohol (for example, spirits are subject to a higher rate of excise than beer). Excise duty is not payable for wine. Wine equalisation tax is applicable for wine consumed in Australia.
129. Unlike excise duties, which apply in respect of goods manufactured in Australia, customs duties are applied to imports and are collected at the border. Different rates of customs duties apply in respect of different products, and goods originating from certain countries attract a preferential rate of duty.

Payroll tax

130. Each of the States and Territories have laws imposing a payroll tax on employers that have total payments for employee wages and salaries exceeding specified tax-

free thresholds (which vary between the States and Territories). Some organisations are generally exempt from payroll tax (such as religious institutions).

Stamp duties

131. Each State and Territory levies stamp duties on the transfer of property. The duty is usually paid by the purchaser based on the sale price of the property (or its market value if higher).

(R) CIVIL AND ADMINISTRATIVE PROCEDURAL LAWS TO ENFORCE CLAIMS

132. Contracts entered into by the Commonwealth can be enforced against the Commonwealth in the same way as contracts can be enforced against any other party to a contract. The Commonwealth *Judiciary Act 1903* (the Judiciary Act) specifically provides that, in a suit to which the Commonwealth is a party, the rights of the parties shall as nearly as possible be the same, and judgment may be given and costs awarded on either side, as in a suit between subject and subject. A person making a claim against the Commonwealth, whether in contract or in tort, may bring a suit against the Commonwealth in the High Court of Australia or a relevant State or Territory court.
133. The Judiciary Act also specifically provides that injunctions can be issued against the Commonwealth. The High Court of Australia and the Federal Court of Australia both have jurisdiction in relation to matters in which an injunction is sought against an officer of the Commonwealth.
134. State and Territory legislation similarly confers jurisdiction on competent courts to hear proceedings brought against the States and Territories. These proceedings may be conducted in the same way as proceedings against any other subject (see, for example, the *Crown Proceedings Act 1988* (NSW)).

Administrative law

135. At the Commonwealth level, certain administrative decisions are reviewable by the Administrative Appeals Tribunal, which is responsible for providing independent review of the merits of such decisions. Further, under the *Administrative Decisions (Judicial Review) Act 1977* (Cth), a person aggrieved by an administrative decision made under an enactment (including an Act or regulations) can apply to the Federal Court of Australia or the Federal Magistrates Court for judicial review of the decision on one or more of a number of grounds. These grounds include that a breach of the rules of natural justice occurred in connection with the making of the decision or that the making of the decision was an improper exercise of the power conferred on the decision-maker (for example, due to failure to take into account a relevant consideration in making the decision). Actions or decisions of Commonwealth

officials are also subject to common law judicial review (under s 75(v) of the Constitution and s 39B of the Judiciary Act).

136. Review of government decisions at the State and Territory level is also provided for in various State and Territory Acts.

Independence of courts

137. Courts in Australia perform their judicial functions independently and impartially. The Australian Constitution requires a strict separation of the judicial power of the Commonwealth from the executive and legislative powers of the Commonwealth. State and Territory courts are also required to perform their functions independently and impartially.

(S) OTHER RELEVANT LAWS

138. Australia has a National Anti-Doping Scheme which is established under the *Australian Sports Anti-Doping Authority Act 2006* and the *Australian Sports Anti-Doping Authority Regulations 2006* (the Anti-Doping Act). The Scheme is implemented by the Australian Sports Anti-Doping Authority, which is established under the Anti-Doping Act.
139. The Scheme sets out a range of anti-doping rules and provides for the Australian Sports Anti-Doping Authority to take samples and conduct investigations in order to implement Australia's international obligations under the General Anti-Doping Convention, and the UNESCO Anti-Doping Convention (including the specific obligation under that Convention for parties to adopt appropriate measures consistent with the principles of the World Anti-Doping Code).
140. Australia also has a national Australian Sports Commission (established under the *Australian Sports Commission Act 1989*) which has a central leadership role in the development of the Australian sports system, administering and funding innovative sport programs and providing leadership, coordination and support for the sports sector. One of its specific objects under the Act is to foster cooperation in sport between Australia and other countries through the provision of access to resources, services and facilities related to sport. The Commission incorporates the Australian Institute of Sport which delivers world leading high performance programs for key Australian sports.
141. The Australian Government is not aware of any other current laws which are relevant for the hosting and staging of the competition.

FURTHER MATTERS

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