

**Submission of the Australian Athletes' Alliance
to the NSW Law Reform Commission
Inquiry into the application of the criminal law to cheating in gambling**

The Australian Athletes' Alliance ("AAA") is the peak body of associations representing Australian athletes. Its members represent over 3,000 of Australia's elite athletes and currently include the

- Australian Cricketers' Association,
- AFL Players' Association,
- Australian Jockeys' Association,
- Australian Netballers' Association,
- Australian Swimmers' Association,
- Professional Footballers Australia,
- Rugby League Players' Association, and
- Rugby Union Players' Association.

As the peak body, we provide a unified voice on issues affecting Australian athletes.

By letter dated 25 January 2011, Hon James Wood AO, QC, Chairperson of the NSW Law Reform Commission, requested that we submit on six issues:

1. *any rules of conduct, or professional or contractual obligations, applicable to those who participate in the activities within your area of interest, that may apply to conduct of the kind mentioned* (referred herein as "Private Sporting Rules");
2. *the adequacy of current laws to deal with the conduct in the criminal context* (referred herein as "Current Laws");
3. *the extent to which you perceive that such conduct does occur, or is at risk of occurring within your area of interest* (referred herein as "Risk of Conduct");
4. *any reform of the current laws concerning cheating at gaming in the context of betting on sports events, (for example through the fixing of results or the manipulation of incidents in the course of a sporting event) that you would consider desirable* (referred herein as "Proposed Reforms");
5. *any difficulties that you have perceived in investigating, responding to, or prosecuting conduct of the kind mentioned* (referred herein as "Difficulties Responding to Gambling Issues"); and
6. *any other matter you consider of relevance to this reference* (referred herein as "Other Matters").

Private Sporting Rules

Governing bodies in sport have codes of conduct and rules that relate to gambling by their participants, including the punishment of participants for conduct related to cheating in gambling. We submit that so long as these rules and regulations 1) provide affected persons with natural justice and 2) are bargained collectively by the governing body and the participants covered, they should be the primary means through which gambling is addressed with respect to sports persons.

Governing bodies must retain the ability to impose their own penalties on their participants. In so doing, their objectives should include the following:

- punishment;
- deterrence of the offender;
- deterrence of the wider sporting community; and

- rehabilitation of young or first-time offenders.

We note that the most important issue arising from Private Sporting Rules is that third parties are not bound. Accordingly, a third party who initiates, participates in, or profits from cheating in gambling cannot be sanctioned by the governing bodies (apart from those third parties whose conduct is regulated by separate rules – for example, Player Agents pursuant to the rules of an Accreditation Scheme), so must be held to account through State and Commonwealth laws.

Current Laws

The current laws are inadequate in that they do not specifically address corruption in sport and are not uniform across Australia, with different rights and obligations among States.

We submit that laws on cheating in gambling should be enforced federally, through applicable Commonwealth legislation, where possible, and otherwise through uniform State criminal laws. We would suggest that the harmonised laws also incorporate the provisions of the legislation currently applicable in Victoria (*Sports Betting Act*), the thrust of which is the restriction on betting agencies from offering betting services on an event without first reaching agreement with the relevant governing body on information sharing and payment of a product fee..

Given the cultural differences among countries with respect to gambling and the difficulties in the implementation of uniform international criminal laws applicable to persons other than sporting participants, we would unreservedly and strongly oppose any suggestion that this issue should be addressed, so far as policing and investigation are concerned, on a global basis. Importantly, while an international agency (such as WADA) may be able to play a useful role in the coordination of international intelligence about corruption in sport, any jurisdiction that it may assume with respect to gambling would only be over sports participants, thus it would not be able to address the conduct of third parties, and would necessarily result in mandatory codes of conduct and penalties that would be inappropriate, and possibly inadequate, for Australian professional sport .

Risk of Conduct

As is evident from several international sporting scandals reported in the media, sportspeople are at risk of being associated with cheating in gambling. There are significant international syndicates involved in illegal gambling. Such syndicates have destroyed leagues (as in the downfall of the Chinese football league) as well as players (recently, Pakistani Cricketers on the national team). Syndicates and individuals have been known to use a variety of methods to influence sportspersons such as bribery, blackmail, threats of violence (including to sportspersons' families), trickery (such as through sexual seduction). While we expect sportspersons to take full responsibility for their conduct, the law must recognise that some of the conduct would not have occurred but for the influence of third parties.

Proposed Reforms

We do not have specific proposals; however, we propose that legislation should meet the following conditions:

- it should be national in scope, including through uniform criminal laws (rather than state specific or international);

- it should focus on ensuring that third parties (those not covered by rules and regulations of governing bodies) are subject to investigation, prosecution, and punishment;
- government prosecution and punishment of sportspersons and others covered by rules and regulations of governing bodies should stay prosecution and punishment under the rules and regulations of the governing bodies to ensure the protection of individual rights and natural justice;
- it should not impose mandatory sentences: punishment must be proportional and must be tailored to the specific circumstances of each individual matter;
- it should oblige licensed betting agencies to provide information about anomalies in wagering;
- it should prohibit bribery, providing inside information for use in gambling, intentional under-performance (either individual or by a coach or official, etc.), and spot fixing, not only match-fixing; and
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- It should provide governing bodies with a power of veto over the types of bets that may be offered on the sports that they control and which may encourage corrupt conduct.

Difficulties Responding to Gambling Issues

The greatest difficulty appears to come from access to information. Licensed betting organisations currently provide information about betting by professional sportspersons. Some licensed betting organisations also report anomalies and cease wagering where there is cause to believe that an integrity issue may have arisen.

Legislation should provide a way in which to gather information about third parties and require all betting organisations to report anomalies without violating individual privacy rights.

Finally, measures should be implemented to protect sportspersons from being subject to intimidation and threats of physical harm and to address instances in which such threats arise in a manner that does not prejudice the sportsperson's continued participation in his/her sport.

Other Matters

We submit that the NSW Law Reform Commission should join with the law reform commissions of other States and the Commonwealth Law Reform Commission to develop a uniform approach to cheating in gambling that ensures that third parties are held accountable and that the individual rights of sportspersons are protected.