



SUBMISSION TO

NSW LAW REFORM COMMISSION

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CHEATING AND GAMBLING

Wesley Community Legal Service is a N.S.W. community legal centre established in 1994 that now provides a specialist gambling legal service for consumers. Our role is:

- To provide legal advice, information and support to problem gamblers, families and others affected by problem gambling;
- To provide court representation for persons charged with gambling-related crimes;
- To provide education and training to relevant service providers such as RGF-funded problem gambling services on legal issues relating to problem gambling;
- To provide advice and advocacy on regulatory issues relevant to problem gambling.

CHAPTER 6 – REVISION OF THE CRIMINAL LAW

A universal Gaming and Wagering Act?

We recommend that separate legislation apply to the 6 main areas of gambling, which are:

1. Wagering – including racing, sportsbetting and other forms of betting involving an element of skill, both for fixed odds and pari-mutuel.
2. Gaming Machines
3. Casino Gambling
4. Lotteries and lottery products such as Keno
5. Community Gambling, including bingo, two-up, poker etc.

6. Unlawful Gambling

These 6 groups of gambling have little in common and incorporating them all in one law would result in a very large document and also be confusing and cumbersome. It would be confusing because there are distinct differences in the relevant law, yet the products are often imitative. For example, gamblers can bet on real horse races at a bookmaker or the TAB, or they can bet on a simulated horse race that is actually a keno lottery, or they can play an electronic gaming machine that has model horses moving around a toy track, or they can engage in an office sweep on Melbourne Cup day. All of these examples of “horse racing” are actually very different forms of gambling with very different laws applying.

An offence of cheating would also be applied in a very different way to each of these forms of gambling.

Should gambling offences be incorporated in the Crimes Act?

This is a specialised offence, that generally will only apply to professional sportspeople and the like. The Crimes Act should not include specialised offences, but focus on those offences that are understood by the general community. So, for example, environmental offences, traffic offences, fair trading offences all have specialised laws. We believe that the proposed new gambling offence would be best incorporated into the Unlawful Gambling Act 1998 and associated gambling legislation. There are a number of novel aspects to this law and it should be dealt with as a specialised law. It should also be dealt with in the context of other gambling laws and with the intention of safeguarding the integrity of sporting competitions and other wagering activities.

A possible draft provision

The draft proposed at 6.36 is very wide in its coverage and there is a risk that it could catch a whole range of activities that go beyond the legislative intention. For example, a sportsman could make negative comments to a competitor (sledding) with the intention of demoralising the competitor and

resulting in the sportsman beating the competitor. As a result the sportsman would obtain a benefit for himself. If the making of negative comments was against the code of that sport, then it is arguable that the sportsman has committed the proposed offence.

The dob-in provision (1)(iv).

We consider that the proposal that a person can be imprisoned for 10 years for failing to report any offer or inducement is both odious and undesirable. The requirement to report a crime is already covered by s.316 Crimes Act and we refer you to the Commission's own assessment of that.

The practical effect of the "dob-in provision" will be that a number of weak and unsubstantiated allegations of offers and inducements will keep the regulator busy while the actual criminal activity will not be reported. Many law-abiding sportspeople will report trivial comments for fear of being prosecuted, while the few less reputable sportspeople would not consider making a report of the actual serious criminal activities.

Cheating at other forms of gambling

We consider that the current laws provide adequate controls in relation to cheating at casino games, and fraudulent activities in relation to gaming machines, lotteries etc. In our experience the prevalence of cheating at the casino and other fraudulent activities is quite modest and the current enforcement laws and procedures are working well. Specialised enforcement staff of CLAGA understand the details of casino and gambling activities and are active in responding to information about cheating and other criminal activities.

We do not see that there is much overlap between criminal activities in relation to casino and other forms of gaming and the regulation of wagering activities.

Maximum 10 year penalty

We support the proposal for the new offence to have a maximum penalty of 10 years imprisonment. The proposed new offence needs to provide a

sufficient deterrent to large-scale organised crime which would otherwise be tempted to engage in cheating activities. However, we do not consider that it is necessary to have a uniform maximum penalty for all cheating offences. Not all offences are equal and most of the gaming offences are unlikely to be used to prosecute large-scale organised crime.

Definition of ‘dishonest’

We agree that the definition of dishonest should be an objective one. However, there may be difficulty in establishing the second element of the definition, which is “known by the defendant to be dishonest according to these standards”. How will the prosecutor prove a defendant’s knowledge?

Powers of Inspectors

We consider that inspectors should have powers of investigation that are appropriate to the type and scale of the gambling activity. In particular, we consider that the CLAGA powers of investigation into casino activities should be greater than the powers of investigation of inspectors for some other activities. Casino gambling internationally and historically has a high level of criminal penetration and it is important that casino inspectors have a high level of power. This may not be appropriate for other areas of gambling, such as gaming machines.

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