

NSW Law Reform Commission *Consultation Paper 12: Cheating at gambling*

NSW Police Force comment

Reference	Question	NSW Police Force (NSWPF) response
6.1	<p>(1) Should consideration be given to the introduction of a Gaming and Wagering Act that would consolidate, within the one Act, the relevant provisions for the regulation of all forms of gambling, and that would provide for a general offence of cheating and fraud, in relation to gambling, along with specific offences of direct relevance for each of the several specific activities including those concerned with wagering, gaming (including the Casino) and lotteries?</p> <p>(2) Alternatively, should the <i>Crimes Act 1900</i> (NSW) be amended, so as to incorporate within it a specific set of offences concerned with cheating and fraud in the context of gambling in the place of those currently found in the <i>Unlawful Gambling Act 1998</i> (NSW), and in the associated gaming and racing legislation?</p>	<p>NSWPF prefers alternative (2) whereby the <i>Crimes Act 1900</i> is amended so as to incorporate a specific set of offences concerned with cheating and fraud in the context of gambling.</p> <p>At present investigators would use section 192E Fraud in these matters. Whilst section 192E is fairly broad in its interpretation, an explicit offence or offences in relation to knowingly betting on a fixed outcome would be preferable.</p> <p>NSWPF suggests that consideration also be given to developing an offence or offences applicable to those who engineer the outcomes, such as players or jockeys. At present, they may be captured by a fraud offence or a common law conspiracy to cheat and defraud. However, this course of action requires evidence to prove a conspiracy which can prove difficult where a number of discrete conspiracies occur between a number of people.</p>
6.2	<p>(1) Should an offence or offences to the effect of the proposed draft provision in paragraph 6.36, or some variation of it, be adopted.</p>	<p>NSWPF does not object to the possible draft provision found at paragraph 6.36 of the Consultation Paper.</p>
	<p>(2) If so, should it be inserted as part of the <i>Crimes Act 1900</i> (NSW) or added to some other Act or Acts?</p>	<p>NSWPF recommends that any such offence be incorporated into the <i>Crimes Act 1900</i>.</p>
	<p>(3) Should it co-exist with the statutory fraud and secret commissions provisions contained in the <i>Crimes Act 1900</i> (NSW)?</p>	<p>NSWPF recommends that any new offence co-exist with the current statutory fraud and secret commissions provisions.</p>

	(4)	Are the proposed definitions for the provision in paragraph 6.39 sufficiently wide or too wide?	NSWPF is of the view that whilst the definitions in paragraph 6.36 are wide, the reasoning outlined in the consultation paper is sound and does not appear to raise any issues.
	(5)	What should be the available maximum penalty?	Any proposed offence must be one which attracts a sanction sufficient to place it in a category where electronic evidence gathering is permissible.
6.3	(1)	Are there any limitations arising from the jurisdictional reach of the <i>Crimes Act 1900</i> (NSW) or the <i>Unlawful Gambling Act 1998</i> (NSW) or of the common law offences of cheating and conspiracy to defraud, that would limit or inhibit the prosecution of cheating in the context of sporting events?	Jurisdictional issues can make determining where the offence occurred problematic and further difficulties are encountered when acts that may amount to a criminal act in NSW do not attract a criminal sanction in another state or country. The jurisdictional reach of NSW legislation can limit the commencement of criminal proceedings and it is therefore vital that investigators determine whether to commence criminal proceedings against individuals, or refer the investigation to other jurisdictions.
	(2)	If so, what is the solution?	NSWPF recommends that uniform legislation, or the enactment of Federal legislation, may alleviate limitations arising from the jurisdictional reach of State legislation. However, the implementation of uniform legislation has at times proven problematic at the practitioner level. For example, the uniformity of the Australian Road Rules (ARR) was hampered due to staggered commencement dates in different jurisdictions.
6.4	(1)	Are there any forms of dishonesty or cheating in connection with gaming that fall outside the reach of the current legislation that regulates gaming?	The jurisdictional reach of legislation remains a significant obstacle in these investigations as outlined at 6.40 of the Consultation Paper and discussed above.
	(2)	If so, what are they?	
6.5		Should there be, in relation to cheating with respect to lawful forms of gaming: (a) an overarching offence of cheating included in either the <i>Crimes Act</i> or the <i>Unlawful Gambling Act</i> , or (b) a series of cheating offences expressed in consistent terms to be included in the individual Acts concerned with gaming?	As outlined above in 6.1, an overarching offence would cover unpredictable cheating scams and assist police in submitting sufficient briefs of evidence. NSWPF recommends that an overarching offence is the best approach to cheating and gambling matters. Broad legislation that fits many circumstances best suits operational policing requirements.

6.6	(1)	Should the maximum penalties for cheating at gaming be made consistent?	No comment.
	(2)	What should the maximum penalties for cheating at gaming be?	The maximum penalty should be more than 3 years to trigger the application of electronic evidence use within investigations.
6.7		Should the Inspectors under the several Acts concerned with gaming: (a) be given a common suite of investigative powers (b) be subject to the same integrity standards and probity checking?	If investigative powers and responsibilities were given to Inspectors, it would be necessary for those individuals to be subject to probity and/or integrity controls. The nature of rigging outcomes on "exotic options" (eg. who will score first points in the game and how) can be both very difficult to detect and difficult to understand for those who are unfamiliar with sports betting and racing industries generally. For example, without a thorough knowledge, it can be difficult to distinguish a criminal "fix" from an apparently lawful manipulation of the odds through betting large sums in the final minutes before a race. Consequently, it may be beneficial to have experts in the field investigate these matters rather than the police, in the same way that the Australian Securities and Investments Commission deals with the investigation and prosecution of company directors and other officers who default on their duties under corporations legislation.
6.8		Are there additional powers that should be conferred on Inspectors or Police under the context of specific Acts mentioned or under a consolidated Act, and if so, what should they comprise?	No comment.
6.9		Should the powers of racing stewards to investigate and penalise breaches of the rules, or cheating in the context of thoroughbred, harness and greyhound racing, be amended to apply to non-licensed people?	No comment.