



Australian Government
Australian Sports Commission

Submission to the NSW Law Reform Commission- Cheating and Gambling

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Table of contents

Overview	3
Introduction	3
The Importance of Sport in Australia.....	3
The Importance of Integrity in Sport.....	4
Key Issues- Response to the Review	5
1. The existing landscape	5
2. UK cheating at gambling legislation	6
3. Recommendation.....	6

Overview

Introduction

The Australian Sports Commission (**ASC**) is pleased to provide a submission to the New South Wales Law Reform Commission (**NSWLRC**) review of the law in relation to cheating in gambling. It provides this submission on the basis of its key objectives.

The ASC has identified key objectives of:

- **increased participation in sport;** and
- **increased international sporting success.**

These are accompanied by 3 other objectives:

- **a cohesive and effective national sports system;**
- **sustainable sports (valued and viable);** and
- enhanced ASC capability to lead, partner and support.

The ASC objectives highlighted above in bold are those related to the scope of this review.

The Importance of Sport in Australia

Sport is integral to Australia's way of life, our view of ourselves and how we are viewed by the rest of the world. It helps build the social cohesion that binds families, communities, regions and the nation. Sport is important for more than just reasons of national pride, or even as a way of building a fitter, more vibrant nation. Sport reaches across our society in ways which are not always apparent, and involves those who profess no love of sport.

Sport and recreation are major components of the national economy, be it through employment in the sport and recreation industry (75,155 people in 2006), sales of goods and services both domestically and internationally and small business development. In 2004-05, the total income generated by the sport and recreation industry in Australia was estimated at \$8.82 billion. The income reported by sports and physical recreation clubs, teams and sports professionals was \$1.88 billion and sports and physical recreation administrative organisations was \$1.52 billion. These figures will have only increased in the time since.

Sport and physical activity is considered an integral part of the preventative health agenda in Australia. The potential direct gross healthcare savings for Australia from a reduction in physical inactivity through sport are around \$1.49 billion per year.

Sport is also a powerful tool for international engagement as well as being important for tourism, aid and trade. Australia has developed an international reputation for sporting excellence, through our national team performances, the staging of major international events including the Olympic and Paralympic Games, 2003 Rugby World Cup, 2006 Commonwealth Games and annual major events such as the Australian Tennis Open.

Major international sporting events yield opportunities in tourism. Such activities attract people to Australia's rural and regional areas as well as major cities generating income

and employment for local economies. Further, it can be said that major events attract sizeable global television audiences, providing significant opportunities to promote Australia as a tourism destination.

At a local level, involvement in sport builds families as well as communities. Active parents provide positive role models for children for engaging in sport and for maintaining lifelong activity. As importantly, the parents who are involved in their children's sport through coaching, umpiring and general volunteering send a powerful message about the importance they place on sharing and valuing the efforts and interests of their children.

Sport has a range of benefits at both the community and individual level. At the community level, sport brings people together, breaks down barriers and unites those who may have nothing else in common. Sport has a unique ability to transcend race, religion, gender and creed. It is truly a tool of social cohesion.

For sport to be able to continue to be able to provide these and other benefits to the Australian community it needs to be safeguarded against those that would seek to damage its integrity for their own personal gain. Specifically, sport needs protection from the manipulation of outcomes by those seeking to cheat at sports betting.

The Importance of Integrity in Sport

The importance of maintaining the integrity of sport is a critical issue. Gambling, or any other issue that could undermine the integrity of sport, must be taken seriously.

Cheating in betting on sport has become an issue of increasing importance in recent times, with a number of incidents globally. Of particular note is the ongoing "spot fixing" investigation into three Pakistani cricketers alleged to have received money in exchange for bowling deliberate no-balls at specified times in a 2010 Test Match,

This has been followed domestically by the ongoing investigation into an alleged attempt at spot fixing in an NRL match between North Queensland and the Bulldogs last year.

This type of corruption represents a significant risk as it involves betting on only minor aspects of a sporting event that do not directly affect the outcome. Spot fixing is not only more difficult to detect, but also easier for fixers to convince athletes to engage in.

Compounding the issue is that many jurisdictions do not have adequate legislation in place to take criminal action against all involved in a spot fixing scheme.

While Australian sport has so far been free of any major incident, the on-going investigation into the North Queensland v Canterbury NRL match demonstrates the risks present.

Corruption of this kind in Australian sport will tarnish sport's reputation and in turn discourage involvement and interest by participants and spectators. One of the great principles of competitive sport is the element of contest; the knowledge that the combatants are competing to their utmost.

When fans doubt the integrity of the contest, the product is damaged.

Further, this will affect the commercial value of sport as a product and diminish its value in the eyes of commercial partners; a partnership is not sustainable where one partner's reputation is damaging the other's by association.

A loss of interest from both the public and commercial partners would greatly diminish the resources available for sport to invest in grass roots programs. This would negatively impact on the opportunities for participation.

Ultimately, integrity is an essential component of a healthy sports framework; without it sport cannot operate to its potential.

More importantly from an ASC perspective, where sport's integrity is protected against those that would corrupt it, the ASC's goals of increased participation and international success are better placed for success.

Key Issues- Response to the Review

1. The existing landscape

There are existing offences under the criminal law of New South Wales (**NSW**) that may relate to cheating in sports betting. These range from statutory fraud provisions through to specific cheating at gambling legislation.

The existing legislation may not fully address all aspects of cheating as it relates to sports betting. Specifically, it is the ASC's view that the existing legislation could be enhanced to:

- provide adequate protection of the integrity of sport;
- penalise all parties involved in cheating; and
- contemplate a wider range of scenarios.

The offence of *obtaining property by deception*, as set out in Part 4AA of the *Crimes Act 1900*, does not directly address match or spot fixing. In the event that a corrupt player was not the direct beneficiary of bets placed on a sporting event, there may be uncertainty as to whether that player received property *by deception* and as such would have committed an offence.

Part 4AA also makes it an offence to *assist* another person in obtaining property by deception. It may, however, be difficult to prove this offence as it would need to be demonstrated that a player intended for their action to aid the obtaining of property by deception. It may not be sufficient where the player had merely been reckless and asked no questions as to the outcome of their conduct for an offence to have been committed.

Cheating at gambling offences exist in NSW, as they do in all other Australian jurisdictions. Section 18 of the *Unlawful Gambling Act 1998* provides:-

A person who is engaged in any form of gambling (other than a form of gambling that is prohibited by or under this Act) must not by a fraudulent trick, device, sleight of hand or representation, or... by a fraudulent scheme or practice...obtain, or attempt to obtain, any money or advantage for himself or herself or any other person.

The *Unlawful Gambling Act* may not fully contemplate the scenarios particular to match and spot fixing.

This is illustrated in NSW (as it is in other Australian states) by the fact that a person must be involved in gambling for an offence to arise. This would be unlikely to capture a player receiving a payment for providing information or performing an act.

Furthermore the legislation does not apply to gambling that is prohibited under the Act. It is therefore seemingly not an offence in NSW to engage in match or spot fixing where a bet has been placed with an illegal betting operator.

2. UK cheating at gambling legislation

Cheating at gambling is an offence in the UK under section 42 of the *Gambling Act 2005 (UK)* (the **UK Act**), which provides that:

- (1) *A person commits an offence if he*
 - (a) *cheats at gambling, or*
 - (b) *does anything for the purpose of enabling or assisting another person to cheat at gambling.*

- (2) *For the purposes of subsection (1) it is immaterial whether a person who cheats*
 - (a) *improves his chances of winning anything; or*
 - (b) *wins anything*

- (3) *Without prejudice to the generality of subsection (1) cheating at gambling may, in particular, consist of actual or attempted deception or interference in connection with*
 - (a) *the process by which gambling is conducted, or*
 - (b) *a real or virtual game, race, or other event or process to which gambling relates*

The UK Act addresses a wider range of scenarios than the current legislation in NSW (and other Australian states) in that it is clear that:

- a player who enables or assists a person to cheat at gambling is captured;
- no proof is required that any benefit was in fact gained by cheating; and
- cheating includes deception in connection with an event to which gambling relates.

Although the UK Act is more specifically designed to contemplate sports betting scenarios, the ASC recognises that one of the fundamental recommendations contained in the 2010 *Review of the Sports Betting Integrity Panel* was for the UK government to review and clarify section 42 of the UK Act. This has not been done to date.

3. Recommendation

Given the above issues, the ASC is of the view that the current NSW laws relating to cheating at gambling may not provide an adequate response, in the course of spot betting, to conduct directed towards fixing the result of, or an incident in the course of, a sporting or other event that may be the subject of either lawful, or unlawful betting.

The ASC would view any attempts to safeguard the integrity of sport favourably. To this end the ASC supports the position that new legislative provisions relating to *cheating in connection with sports wagering* should be introduced in NSW.

In particular, the following issues should be considered to provide adequate protection to the integrity of sport:

- Any new provisions should address those features specific to match and spot fixing and make cheating in connection with sports wagering an offence.
- A wide range of scenarios should be contemplated.
- All parties involved in cheating should be penalised.
- Any act that enables or assists another person to cheat in connection with sports wagering should be an offence, along with attempts at cheating.
- It should be immaterial whether a wager is placed with a legal or illegal betting operator.
- It should be immaterial whether a cheat wins a wager or improves his chances of winning a wager.
- The UK Act would seemingly be a good starting point for any new legislation, with attention to be paid to any future review.
- While understanding the NSWLRC review is limited to the law as it applies in NSW, the ASC believes a nationally consistent approach should be adopted in relation to this legislation. This could be achieved through either federal legislation (pursuant to available Constitutional basis), or through each of the States and Territories adopting uniform legislation under agreement.

In this regard, the ASC welcomes the outcome of the SRMC meeting of 11 February 2011 where the Commonwealth and State Ministers agreed to develop a National Framework to address match-fixing in sport, which included support for a nationally-consistent approach to legislation relating to the criminality of match-fixing.