



New South Wales
Law Reform Commission

Report
130

Cheating at gambling

August 2011
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Level 31, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Attorney

Cheating at gambling

We make this report pursuant to the reference to this Commission received 5 January 2011.

The Hon James Wood AO QC
Chairperson
August 2011

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Terms of reference

Pursuant to section 10 of the *Law Reform Commission Act 1967*, the Law Reform Commission is to review the coverage of the criminal law in relation to cheating at gambling. In undertaking this inquiry, the Commission should have regard to:

- The common law offence of conspiracy to cheat and defraud and its possible repeal;
- The scope of Part 4AA of the *Crimes Act 1900* and s 18 of the *Unlawful Gambling Act 1998*;
- Provisions in other jurisdictions, including the *Gambling Act 2005* (UK);
- Conduct directed at fixing results or individual events in the course of sporting and other activities which may be the subject of spot or spread betting; and
- Any other related matter.

[Reference received 5 January 2011]

Executive summary

- 0.1 This Report follows on from our consultation paper, *Cheating at Gambling (CP12)*, in which we identified the inadequacy of existing criminal laws to deal with cheating at gambling.
- 0.2 Since the release of CP12, there has been a remarkable number of instances of match-fixing internationally. There has also arisen an acceptance of the need for an urgent and unified response to the problem.
- 0.3 Most relevantly, in Australia, the Coalition of Major Professional and Participation Sports (COMPPS) has released the Report of its Anti-Corruption Working Party; a *National Policy on Match-Fixing in Sport* was announced following a meeting of the Australian Sports Ministers; and the Standing Committee of Attorneys-General has agreed to establish a Standing Council of Law and Justice working group to develop a proposal and timetable for a nationally consistent approach to criminal offences relating to match-fixing.

Sports and event betting

- 0.4 Sports betting has become a major industry in Australia. Cheating at sports betting, including by match-fixing, undermines the integrity of the sports in question, can involve significant fraud, and has the potential to cause disruption to a significant economic activity.
- 0.5 There is, therefore, an imperative to preserve a safe and lawful market for sports and event betting that is transparent and subject to appropriate supervision by regulatory authorities, with the assistance of sports controlling bodies and betting agencies.
- 0.6 It is essential that there be appropriate criminal offences available to cater for those cases where cheating or other forms of corruption, including abuse of inside information, occur.
- 0.7 New offences should, therefore, be introduced, and added to a new Part in the *Crimes Act 1900 (NSW)* in the form set out in Appendix A to this Report.

Offences of corrupting the betting outcome of an event

- 0.8 The first set of recommended offences proscribe various forms of conduct that corrupt the betting outcome of an event or a contingency connected with it, including:
- engaging in such conduct (cl 193M, para 2.49-2.52);
 - offering to engage in such conduct (cl 193N(1), para 2.67);
 - encouraging another person (including by various forms of incitement and coercion) to engage in such conduct (cl 193N(2), para 2.68) and
 - entering into an agreement that results in such conduct (cl 193N(3), para 2.69); and

- encouraging a person to conceal, from the relevant authorities, conduct or an agreement that corrupts a betting outcome. (cl 193O, para 2.72-2.77)
- 0.9 Some general qualifications have been included in order to avoid criminalising actions that involve the breaking of the rules of a sport, or making tactical decisions for reasons other than affecting betting:
- the relevant conduct must be contrary to the standards of integrity that a reasonable person would expect of a person who was in a position to affect the outcome of any type of betting on the event (cl 193H, para 2.28-2.30); and
 - the person must act with the intention of obtaining a financial advantage for him or herself or for another person, or of causing a financial disadvantage to another person, as a result of any betting on the event (para 2.58-2.65); and
 - the person must know or be reckless as to whether the relevant conduct corrupts a betting outcome of the event. (para 2.51-2.57)

Offence of using inside information about an event for betting purposes

- 0.10 The final provision makes it an offence for a person to use inside information about an event to:
- bet on that event (cl 193P(1)(a));
 - encourage another person to bet on that event in a particular way (cl 193P(1)(b)); or
 - communicate the information to another person who would be likely to bet on that event. (cl 193P(1)(c)).
- 0.11 The reach of the proposed provision is limited by the requirement that the inside information must not be "generally available" and that it must be information that would affect the decision of a person, who commonly bets on such events, whether or not to bet on that event. (para 2.78-2.101)

Penalties

- 0.12 The offences recommended should each carry a maximum penalty of imprisonment for 10 years. This is in line with the penalty available for the general fraud offence, and is justified by the potentially seriously fraudulent nature of the conduct involved, its consequences for a potentially wide group of people, and the need for a strong deterrent.

Gaming

- 0.13 There is little need for any substantial legislative reform in respect of gaming as there appears to be limited potential for cheating at gaming occurring outside the reach of the criminal laws that are currently in force in NSW.
- 0.14 The focus in Chapter 3 has accordingly been placed on encouraging the introduction of a more rational and co-ordinated set of gaming laws; and, in the

longer term, on the possible creation of a central gambling commission or authority for NSW.

0.15 We have recommended a review of the legislation for the regulation of gaming and wagering in NSW to consider:

- the enactment of a new general cheating offence to be contained in the *Crimes Act 1900* (NSW) to replace s 18 of the *Unlawful Gambling Act 1998* (NSW) accompanied by amendment of the cheating provisions in the other gaming legislation to ensure consistency with the new offence; and
- the rationalisation and potential consolidation of the provisions relating to the appointment of Inspectors, their powers, and the penalties available for the obstruction of Inspectors in the course of their duties.

Regulatory structure

0.16 In Chapter 4, we note some of the issues concerning the possibility of establishing a revised regulatory or supervisory structure in relation to gambling, in its separate aspects of wagering on sporting and other events, and of gaming. These issues include:

- the desirability of a national uniform approach (para 4.2-4.4);
- the role of sports controlling bodies in detecting and in responding to cheating (para 4.5-4.18);
- the adoption of sporting codes of conduct that govern relevant conduct (para 4.19-4.27);
- the need to establish anti-corruption education programs (para 4.28-4.29);
- the role of betting providers in detecting and reporting suspicious betting trends (para 4.30-4.37);
- the need for a clearer and more comprehensive consultative process for identifying approved betting events within the States and Territories (para 4.38-4.51);
- the need for international collaboration between sports controlling bodies, betting agencies, and law enforcement agencies (para 4.52-4.56); and
- the potential formation of a national sports betting integrity unit to perform a policy and liaison role within a national regulatory framework (para 4.57-4.61).

0.17 There is a need to review the current NSW regulatory arrangements that are shared between the Office of Liquor, Gaming and Racing (OLGR) and the Casino, Liquor and Gaming Control Authority (CLAGCA). They are seen to be unduly complex and out of line with the approach adopted in other States and Territories. We accordingly recommend that consideration be given to the possible establishment in NSW of a central gambling authority, in place of OLGR and CLAGCA, with specific powers in relation to the regulation of gaming and sports and other event betting. (para 4.64-4.85)

Recommendations

| Chapter 2 – Cheating at gambling – new criminal offences | | page |
|--|---|------|
| 2.1 | (1) That an offence be added to the <i>Crimes Act 1900</i> (NSW) in accordance with the draft bill in Appendix A. | 33 |
| | (2) That it be made clear that the new provisions do not limit the operation of any offence under that Act or any other Act. | |
| Chapter 3 – Gaming in NSW | | page |
| 3.1 | (1) There should be a review of the legislation for the regulation of gaming and wagering in NSW to consider: <ul style="list-style-type: none"> (a) the enactment of a new general cheating offence to be contained in the <i>Crimes Act 1900</i> (NSW) to replace s 18 of the <i>Unlawful Gambling Act 1998</i> (NSW) accompanied by amendment of the cheating provisions in s 87(1) of the <i>Casino Control Act 1992</i> (NSW) and s 80(4) of the <i>Gaming Machines Act 2007</i> (NSW) to ensure consistency with the new offence; and (b) the rationalisation and potential consolidation of the provisions contained in the <i>Lotteries and Art Unions Act 1901</i> (NSW), the <i>Casino, Liquor and Gaming Control Authority Act 2007</i> (NSW), the <i>Public Lotteries Act 1996</i> (NSW), and the <i>Gambling (Two-up) Act 1998</i> (NSW) relating to the appointment of Inspectors, their powers, and the penalties available for the obstruction of Inspectors in the course of their duties. | 48 |
| | (2) In the longer term, subject to the establishment of a single gambling authority, consideration should be given to the enactment of an omnibus gambling Act to regulate gaming and wagering in NSW. | |
| Chapter 4 – Regulatory structure | | page |
| 4.1 | That consideration be given to the introduction of an Act that would: <ul style="list-style-type: none"> (a) provide for the establishment of a central gambling and liquor authority to take over the regulatory and other functions and powers of the Office of Liquor, Gaming and Racing and of the Casino, Liquor and Gaming Control Authority in relation to the supply of liquor and gambling services in NSW, including sports and event betting; and (b) provide for all matters incidental and necessary for the administration and regulation of the liquor and gambling laws of NSW. | 70 |

1. Introduction

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Say it ain't so, Joe. Just say it ain't so.

Reassurance sought by a small boy from "Shoeless" Joe Jackson, the Chicago White Sox baseball player, after a grand jury investigation into the throwing of the 1919 World Series, at the instance of mobster Arnold Rothstein and associates.

This review

- 1.1 In our consultation paper *Cheating at Gambling* (CP12),¹ we gave consideration to the adequacy of existing criminal laws to deal with cheating at gambling. We examined this question, first, in relation to conduct involving the fixing of the outcome of sporting or other events, and of contingencies within them, where that occurs in support of wagering activities. We also gave consideration to the misuse of insider information concerning such events, again where that occurred in support of wagering.
- 1.2 We gave separate consideration to the adequacy of existing laws in relation to the possible interference with, or manipulation of, the playing of games of chance, gaming machines, lotteries and the like.
- 1.3 We noted the size and growth of these markets, and the extent to which, and the manner in which, they are currently monitored, or controlled, by regulatory and law enforcement authorities, sports controlling bodies, and betting agencies.
- 1.4 In each context, we identified the issues that we saw as relevant to our terms of reference, for the purpose of inviting submissions, and of providing a basis for the consultation process that would follow the release of CP12.
- 1.5 In response to CP12, we received a number of submissions,² and engaged in several consultations,³ which have helped us to formulate the recommendations for the reform of the laws concerning cheating at gambling, that are outlined in Chapters 2 and 3 of this Report.
- 1.6 It became apparent to us, in the course of preparing CP12, that more is required in this context than the enactment of criminal offences. This was confirmed by the submissions and consultations. Criminal offences are necessary as a safety net, to

1. NSW Law Reform Commission, *Cheating at Gambling*, Consultation Paper 12 (2011) ("CP12").
2. See Appendix B.
3. See Appendix C.

deter and to punish those who do engage in cheating at gambling in its several forms. Of equal if not more importance, in a practical sense, however, is the need for sports controlling agencies, and for gaming and betting agencies and authorities, to adopt appropriate systems, through codes of conduct, educational programs, and the like, to discourage misconduct in this area, and to provide an effective means of detecting and dealing with it. This aspect of the problem is addressed in Chapter 4 of our Report.

Developments since the release of CP12

- 1.7 As noted in CP12, sports fixing in aid of gambling is not a new occurrence.⁴ The year to date has, however, been remarkable for the number of instances of match-fixing that have emerged internationally and for the acceptance of the need for an urgent and unified response to the problem.
- 1.8 Since this forms part of the background and rationale for our recommendations, we briefly note, in this section, some of the relevant events that have occurred since the release of CP12.

Sports-fixing events

- 1.9 A brief sampling of the cases, where allegations and investigations of match-fixing have arisen, include those that have been reported in relation to:
- the **Greek** Football League, leading to the arrest of players, club owners, and match officials following UEFA's detection of irregular betting patterns in first and second division club matches;⁵
 - the **South Korean** football K-League, where several players and bookmakers have been charged in relation to bribes intended to influence the outcome of games;⁶
 - **Italy**, where 16 people (including some players) were arrested in May 2011 on suspicion of fixing matches to gain a benefit in betting, following an incident in November 2010 in a Lega Pro third division match between Cremonese and Paganese where several players were allegedly fed sedatives;⁷
 - the Confederation of North, Central American and Caribbean Association Football (CONCACAF) Gold Cup, where three matches in group play are under investigation;⁸
 - **South Africa**, where an individual has been charged with corruption following an attempt to fix a match between Mpumalanga's Sivutsa Stars and Garankuwa

4. CP12 [3.8]-[3.14]. For a review of the history of match-fixing see D Hill, *The Fix: Soccer and Organised Crime* (2008).

5. K Hope, "Football fixing scandal rocks Greek elite", *Financial Times* (24 June 2011).

6. "Korean players indicted over match-fixing scandal", *Sydney Morning Herald* (2 June 2011).

7. M Ogden, "Giuseppe Signori among 16 arrested in Italian match-fixing scandal", *The Telegraph* (London) (1 June 2011).

8. "No evidence of match-fixing at Gold Cup, says CONCACAF", Reuters (25 June 2011).

United in the South African Football Association's Vodacom Promotional League play-offs;⁹

- **Finland**, where players from Zambia and Georgia have been placed on trial, along with a Singaporean national accused of bribing them, in relation to match-fixing;¹⁰
- **Malaysia**, where charges of bribery have been laid against a bookmaker in relation to match-fixing during the President's Cup;¹¹
- **Hungary**, where a number of football players and referees have been arrested as part of a probe into match-fixing in international games;¹²
- the **United States**, where a number of basketball players and others were indicted in April 2011 with conspiracy to commit bribery in relation to College basketball games, and additionally with conspiracy to engage in an illegal sports brokerage service and to distribute marihuana;¹³
- **Pakistan**, where three players were given lengthy playing bans by the Anti-Corruption Tribunal of the International Cricket Council in February 2011 for conspiring with bookmakers to take part in spot-fixing;¹⁴
- **Germany**, where six men have been convicted and sentenced for fixing a number of football matches involving Switzerland, Belgium and Turkey following inquiries by investigators in Bochum into the operations of a betting syndicate;¹⁵
- **Japan**, where a group of sumo wrestlers and associates have confessed to match-fixing, not for betting purposes but in order to preserve their status in the upper divisions of the sport, so as to maintain their salaries and benefits;¹⁶
- **Turkey**, where a large group of players and officials were detained, in July 2011, for questioning in relation to allegations of match-fixing in that country's first division football league;¹⁷ and
- **Taiwan**, where a group of former professional baseball players and a politician have been jailed for match-fixing.¹⁸

1.10 In addition, a tennis player, Daniel Koellerer was banned for life in June 2011 for attempting to fix matches;¹⁹ investigations were initiated in relation to a "friendly"

9. L Seale, "Match-fixing accused out on bail", *The Cape Times* (10 June 2011).

10. "Trial of 10 men accused of rigging football matches begins in Finland", *The Guardian* (10 June 2011) Sport Section 4.

11. "Malaysia charges Singaporean with match-fixing", *The West Australian* (15 June 2011).

12. "Police detain 7 in Hungarian match-fixing probe", *Sports Illustrated* (29 June 2011) <sportsillustrated.cnn.com>.

13. US, Department of Justice, *Media Release* (11 April 2011).

14. P Lalor, "ICC fails to get tough with Pakistan trio: Anger as fixers dodge life bans", *The Australian* (7 February 2011) 33; R Ali "Cricket Cheats: ICC judge suggests change to code", *The Advertiser* (7 February 2011) 61.

15. D Millward, "Match fixing: Marijo Cvrtak admits making cash on a host of fixed matches around the world", *The Telegraph* (7 May 2011), "Croat gets 5 years for huge match-fixing scandal" (19 May 2011) <www.cbsnews.com>.

16. R Wallace, "The fat men have sung and it's over: match-fixing is rife in sumo world", *The Australian* (4 February 2011) 11.

17. "New arrests in Turkey match-fix", <theage.com.au> (12 July 2011).

18. "Game-fixing jail sentences a step in the right direction", *The China Post* (4 July 2011).

football match between Nigeria and Argentina, held in June 2011, following the detection of suspicious betting activities,²⁰ and the Court of Arbitration for Sport upheld a lifetime ban that had been imposed on a football referee, who failed to report that he had been the subject of an approach to manipulate the outcome of a UEFA Europa League fixture.²¹

- 1.11 These are but a sample of the cases that have come to notice this year, with allegations continuing to emerge in relation, amongst other sports, to cricket, cycling, snooker, and boxing. In addition, FIFPro (the World Football Players Union) has drawn attention to its concerns relating to the vulnerability of players to objectionable pressure placed on them by criminal organisations involved in bribery scandals.²²
- 1.12 We note in passing, without commenting on the accuracy of the claims made, that there are services now available on the Internet that, for a fee, provide tips on football matches that are said to be based either on advance information that the match is fixed, or on inside information.²³ It is not surprising that such services should arise in light of the circumstances described above.

International responses

- 1.13 In May 2011, the Fédération Internationale de Football Association (FIFA) announced a plan to deliver €20,000,000 over 10 years to fund a dedicated FIFA anti-corruption training and prevention unit, to be based in Singapore, and, additionally, to create an international betting integrity investigation task force.²⁴
- 1.14 In 2007, FIFA established a company, Early Warning System GmbH, to have the responsibility of detecting suspicious betting activity in relation to football matches.²⁵ This service was extended to the 2008 Olympic games and it is to be available for future Olympic games.²⁶
- 1.15 FIFA's companion body, UEFA, has also established a Betting Fraud Detection System to monitor football betting across Europe.²⁷
- 1.16 In parallel with these developments, have been further initiatives of the European Sports Security Association, a body that was established in 2005 following the 2005 football match-fixing scandal involving the German referee Robert Hoyzer, and that

19. S Douglas "Austrian protests life ban", *The Daily Telegraph* (2 June 2011) 68.

20. D White and P Kelso, "FIFA investigating unusual betting patterns in international between Nigeria and Argentina", *The Telegraph* (London) (3 June 2011); P Kelso, "Match fixing: FIFA's early warning system suggests Argentina's defeat to Nigeria was fixed", *The Telegraph* (London) (8 June 2011).

21. "CAS upholds lifetime ban on referee Oleh Orekhov" (19 January 2011) <www.uefa.com>.

22. "FIFPro fights players' abuse in Eastern Europe" (12 April 2011) <www.fifpro.org/news/news_details/1519>.

23. See, eg, <<http://soccer-picks.org>>; <<http://riggedsoccer.blog.com>>; <<http://www.fixedsoccermatches.com>>.

24. FIFA, Media Release, "FIFA's historic contribution to INTERPOL in fight against match-fixing" (9 May 2011).

25. FIFA, Media Release, "FIFA extends early warning system for monitoring sports betting" (16 August 2007).

26. "FIFA's Early Warning System to monitor betting for IOC" (2009) 7(10) *World Sports Law Report*.

27. UEFA, Media release, "Call for action on corruption" (24 February 2010).

now comprises a number of European online sports betting agencies.²⁸ Its members monitor and share information on irregular betting patterns and possible misuse of inside information. It has entered into a memorandum of understanding with some 20 or more international sporting bodies to give effect to its operations. More recently, it has been advocating the formation of an international policing agency to target corruption in relation to sports betting.²⁹

- 1.17 Further possibilities for intervention arise in relation to the work of the World and European Lotteries Association. Members have entered into a memorandum of association with SportAccord, a body uniting a large number of international sporting federations. In April 2011, a Sports Betting Integrity Education Program was launched by these bodies.³⁰ In June 2011, the European Lotteries Association announced the expansion of its European Lotteries Monitoring System (ELMS) into a global monitoring system for sports bets, as well as plans for the promotion of legislation against money laundering through sports fraud and conflicts of interest. It has argued for regulation to restrict or prohibit bets that pose a high risk to the integrity of sporting contests.³¹ Additionally, it has released the European Lotteries Code of Conduct on Sports Betting which states its objectives are, amongst other things:

to implement actual mechanisms to fight corruption in sport and money laundering, and to promote responsible gambling.³²

- 1.18 The English Football Association has commenced a tender process to engage a private sector firm to conduct an anti-corruption education program for clubs in the Premier League and the Football League.³³
- 1.19 These developments have taken place in the context of a series of international conferences which have focussed on the need to target match-fixing and to preserve the integrity of sporting contests. They include the meeting, in March 2011, of the International Olympic Committee on Irregular and Illegal Sports Betting held in Lausanne; and the Sports Funding, Sponsoring, and Sports Betting Congress, organised by the Early Warning System GmbH, also in March 2011.
- 1.20 The Bulgarian Parliament has responded to concerns about match-fixing in Bulgaria by recently amending Bulgaria's Penal Code to outlaw match-fixing and impose sentences of up to six years for those who illegally influence the outcome of sporting events by, for example, violence, fraud or intimidation. A maximum penalty of six years is also now available to anyone offering or giving a benefit to fix a sporting event.³⁴
- 1.21 Two other developments have been of some importance in this respect. The first concerns the statement of the Director General of the World Anti-Doping Agency,

28. European Sports Security Association, "About us" <<http://www.eu-ssa.org/Aboutus/tabid/55/Default.aspx>>.

29. European Sports Security Association, Press Release, "Urgent need for global body to tackle" (22 September 2009).

30. SportAccord, Media Release, "SportAccord, World and European Lotteries launch Sports Betting Integrity Education Programme" (8 April 2011).

31. European Lotteries, Media Release, "Europe's state lotteries commit to comprehensive action plan for preserving the integrity of sport" (8 June 2011).

32. European Lotteries, *EL Code of Conduct on Sports Betting*, 4.

33. A Miller, "English FA to hire anti-corruption experts to cope with match-fix threat", *Sportingintelligence* (21 June 2011) <www.sportingintelligence.com>.

34. "Bulgaria's Parliament outlaws match-fixing", *The Sofia Echo* (21 July 2011).

following the European Union Sports Forum in Budapest, Hungary, that it had been briefed by global law enforcement agencies concerning the move by those elements of organised crime that have been involved in money laundering and corruption, into the trafficking of steroids among sportspeople as well as into doping and match-fixing.³⁵

- 1.22 Secondly, was the adoption, in May 2011, by the Council of the European Union of a three-year Work Plan on Sport which defined sports integrity and the financing of grass roots sport as two of its top three priorities. Concerns were expressed about the “invasion of illegal betting sites”, and the increase of match-fixing incidents and other manipulations of sport competitions associated with betting.³⁶

Australian responses

- 1.23 In parallel with these developments, much has occurred in Australia.
- 1.24 In May 2011, the NSW Minister for Tourism, Major Events, Hospitality and Racing, George Souris, expressed concern in relation to negative exotic bets on sporting events, such as a bet that a player will not kick more than three goals in a match, and raised the possibility of the introduction of a ban on that kind of wager.³⁷
- 1.25 On 2 June 2011, the NRL took action, in conjunction with betting agencies, to exclude certain forms of exotic bets, specifically bets on the first scoring play of the second half of a Rugby League match, the last scoring play in the second half, and whether or not there will be a field goal in the game. It has also advised betting agencies that it will not approve bets on the outcome of matters under NRL investigation, bet types that unduly focus on refereeing and off field official decisions, and other matters related to injuries, suspensions, contract terminations and the like. Guidelines or directions have also been promulgated in relation to the permissible arrangements between NRL clubs and betting operators, as well as in relation to the advertising and promotion of wagering, including the restriction on the publication of online updates of odds and betting market fluctuations.³⁸
- 1.26 The NRL response, in relation to unacceptable exotic bets, mirrors that taken by the AFL earlier in 2011 when it arranged for a ban to be placed on bets as to whether a coach would be dismissed before the end of the season.³⁹
- 1.27 State and Federal governments have announced plans to ban or phase out the promotion of live odds during the coverage of professional sporting events, dependent on whether the industry is prepared to self-regulate in this respect.⁴⁰
- 1.28 The Australian Olympic Committee (AOC) has indicated its intention to insert a standard clause in its athletes’ contracts, that would prohibit the use of “confidential information of the AOC and of any team member or official for [their] own personal

35. World Anti-Doping Agency, "Statement from WADA Director General following the European Union Sports Forum" (24 February 2011) <www.wada-ama.org>.

36. European Lotteries, Media Release, "EU sports ministers put lotteries' priorities at the top of new 3-year agenda" (21 May 2011).

37. S Nicholls, "NSW backs crackdown on negative betting", *Sydney Morning Herald* (5 May 2011).

38. "NRL bans exotic bets to protect integrity", *AAP Sports News Wire* (2 Jun 2011).

39. J Pierick, "Bookies banned from betting on first coaching casualty", *Sydney Morning Herald* (24 January 2011) Sports Day 19.

40. Council of Australian Government Select Council on Gambling Reform, *Communiqué* (27 May 2011).

gain or to disclose it to a third party including related to any betting or gambling on sports".⁴¹ This will be in addition to the existing provision that bans athletes from betting on themselves, or on any other athletes, in relation to Olympic games events.⁴²

- 1.29 The Coalition of Major Professional and Participation Sports (COMPPS) has released the Report of its Anti-Corruption Working Party. It constitutes a comprehensive review of the problem, and it contains a set of recommendations encompassing the adoption of codes of conduct, the introduction of a specific criminal offence dealing with sports corruption, education of participants, intelligence gathering, investigation and enforcement.⁴³ Further reference is made, later in this Report,⁴⁴ to the COMPPS document which is in line with the views that we provisionally expressed in CP12.
- 1.30 On 10 June 2011, a National Policy on Match-Fixing in Sport was announced following a meeting of the Australian Sports Ministers, to which we also refer in more detail later in this Report.⁴⁵ In summary, it accepted the "major obligation" of all Australian governments "to address the threat of match-fixing and the corruption that flows from it",⁴⁶ as well as their agreement to "support Australian participation in international debate and initiatives to protect the integrity of sport globally".⁴⁷
- 1.31 In July 2011, the Standing Committee of Attorneys-General, in response to a request from the Australian Sports Ministers, agreed to establish a Standing Council of Law and Justice working group to develop a proposal and timetable for a nationally consistent approach to criminal offences relating to match-fixing.⁴⁸

Regulation of sports betting

- 1.32 We are convinced, in the light of the incidence of match-fixing internationally, and the failure of any prohibition model (for example, those in the US, India, Pakistan, and in several other Asian countries) to prevent its occurrence, that there is an imperative to preserve a safe and lawful market for sports and event betting. It is essential that such a market be transparent and subject to appropriate supervision by regulatory authorities, with the assistance of sports controlling bodies and betting agencies. It is equally essential, in our view, that there be appropriate criminal offences available to cater for those cases where cheating or other forms of corruption, including abuse of inside information, occur, and that there be means available to guard against sports betting being used for money laundering purposes.
- 1.33 It is with this objective in mind that we recommend the introduction of the offences which are identified and discussed in Chapter 2 of this Report.

41. N Jeffery, "Odds against Olympic athletes gambling", *The Australian* (16 May 2011).

42. R Guinness, "Coates steps up the fight against illegal gambling", *Sun Herald* (15 May 2011) 67.

43. Coalition of Major Professional and Participation Sports, *Anti-Corruption Working Party Report to the Chief Executives* (2011).

44. Para 4.20, 4.29, 4.35, 4.60.

45. Chapter 4.

46. Australia, *National Policy on Match-Fixing in Sport* (as agreed by Australian governments on 10 June 2011) ("National Policy") [3.1].

47. National Policy [8.1].

48. Australia, Standing Committee of Attorneys-General, *Communiqué* (21 and 22 July 2011) 5.

- 1.34 We observe that our attention has principally been directed at wagering in connection with betting on sporting events. As noted in CP12, the conduct of the racing industry, and betting in that market, are subject to close and effective supervisory control. However, the provision which we have proposed would be equally capable of application to those who attempt to fix, or do fix, thoroughbred, harness and greyhound racing events. It is also intended to apply in relation to the fixing of non-sporting events which were discussed in CP12 and which are free of any form of independent regulatory supervision.

Regulation of gaming

- 1.35 Of lesser concern, for this Report, is the potential for cheating at gaming occurring outside the reach of the criminal laws that are currently in force in NSW.⁴⁹
- 1.36 The technological advances and the regulatory controls that have accompanied the establishment of Star City Casino, and the legalisation of poker machines, have limited the opportunities for cheating in relation to gaming. This has meant that there is little need for any substantial legislative reform in this respect. Our focus in Chapter 3 has accordingly been placed on encouraging the introduction of a more rational and co-ordinated set of gaming laws; and on the possible creation of a central gambling commission or authority for NSW.

49. See Chapter 3.

2. Cheating at gambling – new criminal offences

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Background

- 2.1 Sports betting has a long history in NSW and elsewhere within Australia, although not always in a legal form. Initially, the lawful forms of such betting were confined to betting on horse racing conducted at racecourses with private licensed bookmakers and, later, on the totalizator.¹ Its introduction did not, however, prevent the proliferation of illegal starting price (SP) bookmaking,² nor the popular but unlawful activity of mechanical coursing which became the subject of the 1932 Royal Commission on Greyhound Racing and Fruit Machines.³
- 2.2 Sports betting, outside of racing, became lawful in NSW, as recently as 1996, following the passage of the *Gaming and Betting Amendment (Betting Auditoriums) Act 1996* (NSW). It permitted the establishment of betting auditoriums, and made provision for the Minister to authorise licensed bookmakers to accept bets on those

1. See *Gaming and Betting Act 1906* (NSW) s 20 which banned betting or wagering on any sports ground that was not a licensed racecourse; and *Totalizator Act 1916* (NSW) s 5.

2. S Pinto and P Wilson, *Gambling in Australia*, Trends and Issues in Crime and Criminal Justice No 24 (Australian Institute of Criminology, 1990) 5-6.

3. NSW, *Report of Royal Commission on Greyhound Racing and Fruit Machines* (1932).

events that were approved by the Minister, subject to such terms and conditions as the Minister may impose.⁴

2.3 In the second reading speech, the Minister for Gaming and Racing observed:

Concerns have been expressed by some quarters that the introduction of sports betting could damage the image of the sports involved. It has been argued that betting on sports could lead to allegations of corruption or a perception of corruption.

Honourable members would no doubt appreciate that, in view of the fact that sports betting is already conducted in all other States and Territories, it would be difficult to support the contention that the legalisation of such betting in New South Wales would increase the likelihood of corruption in the sports involved. In addition, a significant number of events on which sports betting will take place will be conducted outside of New South Wales and even outside of Australia. Nevertheless, the bill includes a provision that will enable the Minister to direct that bookmakers make available to the appropriate sports administrators in this State details of betting on their sports. This is a measure that could clear up concerns held by the sports. The introduction of sports betting in New South Wales will not only arrest the flow of investments out of the State but also assist the bookmaking industry.⁵

2.4 There are now some 53 sporting and other events which have been approved for betting in NSW and, in respect of each event, bets can be accepted on a number of different contingencies.⁶

2.5 Approval of these events, and of the forms of betting that are permitted in relation to them, is given pursuant to the provisions of the *Racing Administration Act 1998* (NSW).⁷ As a result, bookmakers in NSW can frame a market and accept bets on a wide range of events of a sporting and non-sporting kind, including Nobel Peace Prizes, movements in official interest rates, reality television shows as well as the traditional sporting contests. Some of these relate to events held overseas, while others are located in different States and Territories. In some instances, betting is approved in relation to the position of teams in a premiership/series or on a competition ladder,⁸ in which case the odds, and the success or otherwise, of the bet will depend on matches held in separate States and Territories over the duration of a season.

2.6 New South Wales residents can also place bets online, or by phone, with bookmakers licensed in other States or Territories, some of whom offer betting opportunities or methods, that are not approved or available in this State.⁹

2.7 This does give rise to the issues discussed in Chapter 4, concerning the desirability and possible ways of achieving some uniformity across Australia, in relation to the events and forms of betting which should be allowed.

4. The provisions, originally contained in *Gaming and Betting Act 1912* (NSW) s 57EA-57EF, are now contained in *Racing Administration Act 1998* (NSW) s 8-23.

5. NSW, *Parliamentary Debates (Hansard)*, Legislative Assembly, 5 June 1996, 2550.

6. See NSW Law Reform Commission, *Cheating at Gambling*, Consultation Paper 12 (2011) ("CP12") Appendix C.

7. *Racing Administration Act 1998* (NSW) s 18 and s 20.

8. For example, Cricket, Rugby League and Rugby Union.

9. For example, that which is provided through the Betting Exchange operated by Betfair in Tasmania.

- 2.8 In the Consultation Paper we identified the offences that are currently available, in NSW and in other States and Territories, in relation to fraudulent and corrupt conduct, and identified the difficulties or limitations that exist in their application to the fixing, for gain, of the outcome of sporting or other events, including contingencies or micro events. We noted that, while racing authorities and sports controlling bodies have an important role to play in overseeing the integrity of events conducted under their Rules, no such authority or supervisory model exists in relation to the non sporting events on which bets can be placed. It is potentially of concern that the outcome of some of these events may be determined by a public voting process that would be amenable to manipulation, but will not be subject to scrutiny by any regulatory agency. It is equally of concern that a participant might agree to underperform for some benefit, again, with little in the way of regulatory supervision. This raises a question as to the care needed before these events are approved for betting purposes.
- 2.9 We drew attention to the absence of any consistent national legislative response, and to the concerns that consequently arise in relation to the integrity of sporting and other contests where the opportunity exists for their manipulation in aid of betting. We also noted the absence of any offence related to the release or use of insider information, in connection with betting on these events.
- 2.10 In this Report, we do not intend to revisit that analysis, since its sufficiency has not been questioned in the consultations and submissions that followed the release of CP12. Rather, in this chapter, we review the observations that were received in relation to the draft provision in CP12,¹⁰ and outline the provisions that we now recommend, in the light of those consultations and submissions.
- 2.11 It is clear, from the consultations and final submissions, that there is widespread support from the sports and betting industries, and from the regulatory and enforcement agencies, for the introduction of a specific offence that would strengthen the existing anti-cheating laws, as well as for the enactment of an insider dealing offence, that would, in each case, be clear and easy to understand and apply, and that would carry an appropriate criminal sanction.¹¹
- 2.12 Among other considerations, the existence of such offences would:
- remove the current uncertainties that exist in relation to the prosecution of those involved in dishonest practices in this context;
 - raise an awareness, within the community, of the proper boundaries of legitimate sporting activities and event related gambling; and
 - function as a deterrent to those who might consider engaging in such practices.
- 2.13 In this respect, we acknowledge the importance of transparency and accountability in achieving integrity in sports and event betting. As was observed in CP12, and as has been stated time and again by leaders of the major international sporting organisations,¹² cheating and manipulation in aid of betting on sporting contests is highly deleterious to the reputation and well-being of sport as a whole. It threatens

10. CP12 [6.36] and [6.37].

11. Law Institute of Victoria, *Submission CG7*, 3; Tabcorp, *Submission CG12*, 1; Australia, Office for Sport, *Submission CG13*, 2.

12. See, eg, J Rogge, IOC President, Speech to the First World Olympic Sport Convention, Acapulco (23 October 2010); G Korporaal, "Coates calls for betting reform", *The Australian*, (4 September 2010).

the livelihood of its participants, it undermines its popularity and its value in promoting healthy lifestyles, and it destroys public confidence in the management of these contests.

2.14 As the Special Advisor to the United Nations Secretary General on Sport observed:

Sport will lose its significance if match fixing robs it of the core values which make it so popular and unique. It turns sport into an economic plaything.¹³

2.15 Such an outcome is one that the authorities have warned makes sport particularly vulnerable to the operations of organised crime, both nationally and internationally, with all the adverse consequences that this entails.¹⁴ Similar considerations apply in relation to the release or use of insider information in connection with sporting events, since it can be used to obtain a dishonest advantage in betting on those events, and to occasion a disadvantage to those who do not possess that information.

2.16 Sports betting has become a major industry in Australia. It has been estimated that Australians will spend \$611m in 2011 on online sports betting.¹⁵ This represents only part of the betting on sporting and other events, and on racing, further details of which were set out in CP12.¹⁶ Cheating at sports betting, including by match-fixing, can be a significant fraud, and has the potential to cause disruption to this significant economic activity.

2.17 An important consideration, in the Australian context, is whether the response to the problem requires the introduction, by each State and Territory, of a uniform criminal offence, or whether it should be left to the Commonwealth to enact an appropriate provision, by way of amendment of the *Criminal Code* (Cth).

2.18 A possible version of a Commonwealth offence is contained in the *Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011* (Cth), a private member's bill introduced by Senator Xenophon, and read for a first time on 20 June 2011.

2.19 Although different views were identified, in this respect, in the submissions and consultations,¹⁷ the weight of the opinion seems to favour the enactment of a uniform offence by each State and Territory, subject to the recognition, that if this does not occur, then Commonwealth intervention will be required.

2.20 The reasons for preferring a State and Territory based approach relate largely to the practicalities of investigation and enforcement, which will depend on co-operation between betting providers, local sports controlling bodies and State and Territory Police Forces. However, as is noted later, this does not exclude national sports

13. W Lemke, Speech to the Sports Funding, Sponsoring and Sports Betting Congress, Zurich, Switzerland (March 2011).

14. Observations of Interpol Secretary General, Randal A Koble and of World Bank, Vice President of Integrity, Leonard McCarthy in response to the announcement of FIFA and Interpol on 9 May 2011, of FIFA's grant of €20 million to establish an anti corruption training wing within the Interpol Global Complex in Singapore; statement by WADA Director General, David Howman following the European Union Sports Forum, Budapest, Hungary (24 February 2011).

15. S Gainsbury, *Submission to the Joint Select Committee on Gambling Reform* (27 June 2011) 8.

16. CP12 [1.14]-[1.20].

17. Australia, Office for Sport, *Submission CG13*, 1-2; E B Maher, *Submission CG2*, 2, Australian Athletes' Alliance, *Submission CG4*, 2; Law Institute of Victoria, *Submission CG7*, 6; Sportsbet, *Submission CG10*, 4; Tabcorp, *Submission CG12*, 1; NSW Police Force, *Submission CG15*, 1.

controlling bodies, and federal agencies such as the Australian Crime Commission and AUSTRAC playing a very significant role, in encouraging the adoption of suitable codes of conduct and education programs, and in the collection and dissemination of intelligence concerning suspicious activities.

- 2.21 Irrespective of the foregoing, we are mindful of the terms of our reference, which relate to the need for us to consider whether New South Wales should introduce a specific offence to deal with cheating in relation to gaming which, in the context of this chapter, is concerned with betting on sporting and other events. In taking this course, we also acknowledge the support that has been given, in the consultation phase, to the introduction of uniform legislation, and to the need for other States to give consideration to the provision that we propose as a suitable model for adoption.¹⁸
- 2.22 We also recognise that the *Interactive Gambling Act 2001* (Cth) is of some relevance since it gives rise to some limitations on the wagers that can be placed online, on sporting and other events. A number of submissions have called for its review, and/or for the introduction of some nationally coordinated system for the identification, and approval, of events and contingencies that can be the subject of betting with licensed Australian betting agencies, whether online or otherwise.
- 2.23 The several issues that arise in this context, along with those that relate to the creation of a sound environment, in which sports controlling bodies and betting agencies can cooperate in managing the risks that arise in this context, are dealt with in Chapter 4.

The new offences

- 2.24 It is our view that new offences should be introduced, and added to the *Crimes Act 1900* (NSW), in a new Part to follow the fraud and money-laundering offences, in the form set out in Appendix A to this Report.
- 2.25 In this part, we provide a commentary on the proposed Bill which has been drafted by the Office of the Parliamentary Counsel in consultation with us.

Corrupting betting outcomes of an event

193H Corrupting betting outcomes of event

- (1) For the purposes of this Part, conduct corrupts a betting outcome of an event if the conduct:
- (a) affects or, if engaged in, would or would be likely to affect the outcome of any type of betting on the event, and
 - (b) is contrary to the standards of integrity that a reasonable person would expect of persons in a position to affect the outcome of any type of betting on the event.

18. Australia, *National Policy on Match-Fixing in Sport* (as agreed by Australian governments on 10 June 2011) [3.4]; and Coalition of Major Professional and Participation Sports, *Anti-Corruption Working Party Report to the Chief Executives* (2011) Part 2; Australia, Office for Sport, *Submission CG13, 1-2; Betting providers, Consultation*.

(2) For the purposes of this Part, an agreement that corrupts a betting outcome of an event is an agreement between 2 or more persons under which a person agrees to engage in conduct that corrupts a betting outcome of an event.

(3) In this Part:

agreement includes an arrangement.

conduct means an act, an omission to perform an act or a state of affairs.

engage in conduct means:

- (a) do an act, or
- (b) omit to perform an act.

2.26 In compliance with the terms of reference, the offences involving the corruption of a betting outcome of an event (cl 193M-193O) are framed in a way that will proscribe “conduct” that affects or, if engaged in, would, or would be likely to, affect the outcome of any type of betting on an event or event contingency on which it is lawful to bet.

2.27 For “conduct” to have that effect or likely effect, it must necessarily involve something that occurs in relation to, or in the course of, the running of the event, including the overall result, as well as the occurrence of any contingency that is, in any way, connected with it.

2.28 We recognise that a definition expressed in accordance with cl 193H(1)(a), without further qualification, could potentially catch any act or omission occurring in relation to the event, including legal play and genuine attempts to achieve a win, tactical decisions, honest errors by players or officials, and even the kinds of rule breaches or foul play that give rise to penalties, all of which are part and parcel of a regularly conducted sporting contest.

2.29 In order to avoid overcriminalisation, cl 193H(1)(b) has accordingly been added to make it clear that the conduct, with which this Part of the Act is concerned, is that which is contrary to the standards of integrity that a reasonable person would expect of persons in a position to affect the outcome of any type of betting on the event.

2.30 This phrase is intended to cover activity such as

- deliberately under-performing or failing to employ best efforts in the running of, or officiating in respect of, an event;
- withdrawing from an event without proper cause;
- improperly fixing or manipulating the outcome of an event or of a contingency; or
- otherwise improperly interfering with or disrupting the normal course of an event.

2.31 The reach of the offences is limited additionally by the requirement that the person must act with the intention of obtaining a financial advantage for him or herself or for another person, or of causing a financial disadvantage to another person, as a result of any betting on the event; and, finally, by the requirement that person must

know or be reckless as to whether the relevant conduct corrupts a betting outcome of the event. As discussed below, this would not criminalise breaking the rules of a sport, or making tactical decisions for reasons other than affecting betting.¹⁹

Betting

193I Betting

(1) In this Part, to **bet** includes the following:

- (a) to place a bet or cause a bet to be placed,
- (b) to accept a bet,
- (c) to withdraw a bet.

(2) A reference in this Part to betting on an event includes a reference to betting on any event contingency.

- 2.32 The extended definition in cl 193I(1)(a) is intended to ensure that a person who engages in the proscribed conduct, cannot avoid prosecution by the simple device of causing someone else to place a bet on the relevant event.
- 2.33 The extended definition in cl 193I(1)(b) is intended to cater for the situation where the person, who engages in the proscribed conduct, does so for the purpose of obtaining a financial advantage, or of causing a financial disadvantage, as a result of *accepting* a bet on the event. In particular it would catch any attempt by a bookmaker, for example, an illegal bookmaker, improperly to influence the outcome of a betting event.
- 2.34 It has been noted that the withdrawal of bets is possible in some overseas jurisdictions, and may be allowed by some betting agencies in Australia. This definition has been included in order to cater for the situation where a person withdraws a bet, in response to the receipt of insider information that suggests that the bet is likely to be unsuccessful. In some instances the response may be to place a counter bet (by hedging), but in other instances that may not be possible. The withdrawal of a bet, in response to the receipt of insider information may have an unfair impact on the betting agency that had accepted it.

Events and event contingencies

193J Events and event contingencies

(1) In this Part, an **event** means any event (whether it takes place in this State or elsewhere) on which it is lawful to bet under a law of this State, another State or a Territory.

(2) In this Part, an **event contingency** means any contingency in any way connected with an event, being a contingency on which it is lawful to bet under a law of this State, another State or a Territory.

Events

- 2.35 This definition has been employed to cover sporting events, and other events, on which it is lawful to bet under the laws of any Australian jurisdiction. They will

19. Para 2.62-2.65.

include events held in Australia and overseas that have been approved as betting events.

- 2.36 This provision is intended to catch the wide range of events that are the subject of permitted betting options, and that are potentially vulnerable to manipulation, or to the abuse of insider information. It is acknowledged that there may be some events that are not approved betting events, yet are events that could be the subject of private wagers or of bets placed with illegal operators. They are, however, likely to be few in number. In our view, it would be impractical to extend the cheating or insider information offences to cater for such forms of betting.²⁰ The objective of the legislation is to enhance the integrity of betting on approved events, in the interests of sporting bodies and the legal betting industry generally.
- 2.37 So long as the bet is placed on an event that is an approved betting event under the laws of any Australian State or Territory, it will not matter that the event was not the subject of an approval given in NSW. This reflects the reality that interstate online betting is well-established and that s 92 of the *Constitution* (Cth) will apply to any attempt to limit such activity. In any event, the overall objective of the Bill is to prevent corrupt activities affecting sporting events on which it is lawful to place bets within Australia.
- 2.38 It does not, however, follow that this will permit NSW betting agencies to accept bets, in NSW, on events that are not approved events under NSW law. They will continue to be bound by the conditions contained in the betting authorities under which they operate.

Event contingencies

- 2.39 The phrase “event contingencies” is intended to cover those incidents, on which it is lawful to bet under the laws in force in any Australian jurisdiction, that may occur during the course of or in connection with sporting and other events, but that will not necessarily affect the overall outcome of the individual event. The need to cater for the manipulation of, and for the abuse of insider information in respect of, these events, is attributable to the ever increasing list of micro events that can be the subject of exotic bets or spot bets, and to the ease with which they can be manipulated.²¹ They include in particular point spreads, first and last scores, and any number of incidents that can occur in the course of any contest.
- 2.40 The phrase “in any way connected with an event” is intended to provide an expansive definition.

Obtaining financial advantage or causing financial disadvantage

193K Obtaining financial advantage or causing financial disadvantage

(1) In this Part, **obtain** a financial advantage includes:

- (a) obtain a financial advantage for oneself or for another person, and

20. The Australian Internet Betting Association suggested that the provision should be sufficiently wide to catch any case of match-fixing wherever held, and whether or not it is an approved betting event, so long as it had some Australian connection: Australian Internet Bookmakers Association, *Submission CG14*, 2.

21. See CP12 (2011) [3.3].

(b) induce a third person to do something that results in oneself or another person obtaining a financial advantage, and

(c) keep a financial advantage that one has,

whether the financial advantage is permanent or temporary.

(2) In this Part, **cause** a financial disadvantage means:

(a) cause a financial disadvantage to another person, or

(b) induce a third person to do something that results in another person suffering a financial disadvantage,

whether the financial disadvantage is permanent or temporary.

(3) If an offence under this Part requires a person to intend to obtain a financial advantage, or to cause a financial disadvantage, that element of the offence may also be established by proof that the person knew a financial advantage would be obtained or a financial disadvantage would be caused.

(4) It is not necessary to prove that the conduct engaged in actually resulted in the obtaining of a financial advantage or the causing of a financial disadvantage.

2.41 The definitions contained in cl 193K(1) and (2) are consistent with those provided in relation to the fraud provisions recently added to the *Crimes Act 1900* (NSW).²²

2.42 The definition given to “financial advantage” is sufficient to cover the situation where a person is encouraged to engage in the relevant conduct, or engages, or agrees to engage, in that conduct, for example, in order to obtain a release from gambling debts.

2.43 Sub-clause 193K(3) is intended to cater for the situation where a person engages in, or agrees to engage in, the relevant conduct, to avoid suffering some form of harm as a result of blackmail or some threat constituting a demand by menaces.²³ In such situations, the person may not, in fact, intend, or even wish, to procure a financial advantage for the blackmailer or the blackmailer’s associates, or to cause a financial detriment to a bookmaker, by engaging in the relevant conduct. This provision makes it possible, however, to prove the offence if the person engages in the relevant conduct, in the knowledge that it will result in another person obtaining a financial advantage, or suffering a financial disadvantage. The definition makes it clear, additionally, that the financial advantage, or disadvantage, can be either “permanent” or “temporary”, thereby catering for the situation where the financial value of the bet, to the third party, has contingently increased or decreased, as the case may be, as a result of the fix being agreed to by the party blackmailed.

2.44 We recognise, in this respect, that circumstances could conceivably exist that could give rise to a common law defence of duress.²⁴ Sufficient guidance exists in the case law concerning its availability, and it is not considered necessary to include, within the provision, a specific defence either of duress or of reasonable excuse.

22. *Crimes Act 1900* (NSW) s 192D.

23. Under *Crimes Act 1900* (NSW) s 249K.

24. *R v Abusafiah* (1991) 24 NSWLR 531.

- 2.45 One issue raised in CP12 was whether a specific offence should apply irrespective of whether or not the conduct actually resulted in a financial advantage or caused a financial disadvantage to any party.
- 2.46 Only one submission responded to this issue by suggesting that the law should apply “irrespective of whether or not the behaviour results in a winning bet”.²⁵ We accept this to be correct and cl 193K(4) is framed accordingly.

Encouraging conduct

193L Encourage

In this Part, **encourage** another person to engage in conduct includes command, request, propose, advise, incite, induce, persuade, authorise, urge, threaten or place pressure on the person to engage in conduct.

- 2.47 The term “encourage” is used in cl 193N(2), cl 193O(1) and cl 193P(1)(b).
- 2.48 We have adopted the term “encourage”, and provided an inclusive definition, since this is consistent with the recommendations that were made in our Report on Complicity.²⁶ The definition is intended to engage those forms of conduct that might otherwise have been regarded as soliciting or inciting another to engage in proscribed conduct, or as amounting to blackmail as now defined in Part 4B of the *Crimes Act 1900* (NSW).

Offence of engaging in conduct that corrupts betting outcomes

193M Engage in conduct that corrupts betting outcome of event

A person who engages in conduct that corrupts a betting outcome of an event:

- (a) knowing or being reckless as to whether the conduct corrupts a betting outcome of the event, and
- (b) with the intention of obtaining a financial advantage, or causing a financial disadvantage, as a result of any betting on the event,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

- 2.49 This provision proscribes the relevant conduct only in so far as it is connected with an intention of obtaining a financial advantage or causing a financial disadvantage as a result of any betting on an event, or any event contingency. It does not extend to conduct that might otherwise result in a gain to, or a loss suffered by, a participant in some form of sporting or other contest, since an offence cast in those terms could have an unduly wide reach, and intrude into those areas of sporting or other event performance, that are part and parcel of competitive life.

25. Sportsbet, *Submission CG10*, 6.

26. See NSW LAW REFORM COMMISSION, *Complicity*, Report 129 (2010) [3.76]-[3.79], [7.96]-[7.98].

- 2.50 In CP12 we provided a wide definition of those who might be regarded as a “participant”²⁷ and, in that capacity, become subject to the reach of this offence, and of the other proposed offences.
- 2.51 On further reflection, however, we are of the view that it is unnecessary, and potentially unduly restrictive, to attempt a definition of participant, and to frame an offence employing that term. The approach now taken ensures that any person, including those who are not connected with a competition or team, or with the officiating or running of an event, are subject to the offence provisions if they engage in any of the forms of proscribed conduct.
- 2.52 Accordingly, now brought within the reach of the relevant offences will be any person who engages in the proscribed conduct with the relevant state of mind, including any person who was previously categorised as a “participant”; anyone who encourages or agrees with a “participant” to influence an event improperly; and any third party who might seek improperly to interfere with or influence the course of a contest, for example, by dousing the stadium lights,²⁸ or by digging up the pitch, or by spiking the drinks of a competitor or a team, or by interfering with any equipment which they will use, or by delaying or preventing their arrival at the venue. Additionally, some of these forms of conduct might attract other provisions of the criminal law. However, we think it important, having regard to the extent to which those involved in corrupt sports betting activities may go, to include that conduct within this offence.

The mental elements

- 2.53 Two mental elements are required on the part of the defendant:
- first, knowledge or recklessness as to whether the conduct, in which the defendant engages, corrupts a betting outcome of the event; and
 - secondly, an intention of obtaining a financial advantage for any person, or of causing a financial disadvantage to any person, as a result of any betting placed on the event.
- 2.54 Whether or not the relevant conduct does “corrupt a betting outcome of an event” will remain a matter for objective proof.

Knowledge or recklessness as to corrupting a betting outcome

- 2.55 In our view, it is appropriate to require knowledge or recklessness, on the part of the defendant as to whether the conduct corrupts a betting outcome, as a mental element. This will serve to ensure that the defendant will only be liable if he or she knew, or was reckless as to, the effect or likely effect of the relevant conduct, and that such conduct was contrary to the standards of integrity that a reasonable person would expect of people in a position to affect the outcome of any type of betting on the event.
- 2.56 The expression “dishonestly”, that was used in the draft proposed in CP12, has been removed from the provision now recommended, as introducing an unnecessary element. Our view, on reflection, is that there is no way that a person could be considered to act honestly, if he or she knowingly or recklessly engages in

27. CP12 [6.27].

28. *R v Ong* [2001] 1 Cr App R (S) 404.

conduct that “corrupts a betting outcome of an event” (which includes knowing or being reckless as to whether the conduct was contrary to the standards of integrity test, with the intention of obtaining a financial advantage for, or causing a financial disadvantage to, any person in respect of bet placed on that event. The express inclusion of a further element of “dishonesty” could have had the effect of introducing uncertainty, or undue complexity, into the interpretation and application of the provision.

- 2.57 In accordance with current common law authority, recklessness will be established where a person was aware that it was possible that the relevant conduct would corrupt a betting outcome of the event, yet went ahead and engaged in that conduct.²⁹

Intention as to financial advantage

- 2.58 We consider that the offence should also be linked to an intention to obtain a financial advantage, or to cause a financial disadvantage (as defined), in relation to a betting outcome.

- 2.59 In CP12 we gave consideration to whether the offence should be available in relation to any interference with, or manipulation of, a sporting event or contingency, irrespective of the motive. We noted that such conduct could have the potential of undermining the expectation of the public that the relevant event will involve a fair contest, being one that is conducted according to the rules of the game, in which the participants will perform to the best of their ability.

- 2.60 In this respect we drew attention to the fact that the comparable provision in the *Prevention and Combating of Corrupt Activities Act 2004* (Sth Africa) is not limited to an act or omission connected with betting. It is aimed more generally at preventing “corrupt activities relating to sporting events”.³⁰

- 2.61 However, on reflection, we are of the view that this would constitute an overreach in potentially catching conduct that is not criminal.

- 2.62 In coming to this conclusion, we observe that there are many reasons, other than obtaining an advantage or causing a disadvantage as a result of betting, why a participant, or some other person, may engage in conduct that could influence the outcome of a match or of a contingency within it. They include:

- desire to maintain a pre-eminent position in a sporting competition;³¹
- patriotism to secure a win for a national team;
- desire to secure a favoured position in a qualifying round; or

29. See *Blackwell v R* [2011] NSWCCA 93 [66]-[82]. This differs, to some degree, from the definition given to the expression in the *Criminal Code* (Cth). This is a factor to be taken into account if the Commonwealth enacts a cheating offence. Note *Crimes Act 1900* (NSW) s 4A provides that, if an element of an offence is recklessness, then it may also be established by proof of intention or knowledge.

30. *Prevention and Combating of Corrupt Activities Act 2004* (Sth Africa) s 15.

31. See, eg, the 2006 scandal in Italian football involving Juventus and Milan which influenced the appointment of “friendly” referees for their games in order to secure a better chance of winning: T Boeri, and B Severgnini, “The Italian Job: Match Rigging, Career Concerns and Media Concentration in ‘Serie A’”, IZA Discussion Paper No 3745 (2008).

- preservation of a team or player’s position on a competition ladder, in order to avoid relegation, loss of selection, or loss of automatic entry in events in the next season (as in golf), particularly in a “soft” contest, or “dead rubber” in which the overall result of the match may otherwise have little in the way of consequences.
- 2.63 One submission suggested that no case had been made out for including an offence in the criminal law as broad as that initially proposed, especially one that would potentially attract a maximum penalty of imprisonment for 10 years.³² Another submission³³ suggested that such an offence could potentially catch the conduct, for example, of a competitor sledging an opposing competitor contrary to the code of the relevant sport, with the intention of gaining an advantage for his or her own team.
- 2.64 We accept that it is necessary to exclude from the reach of the offence, some act or omission, in the course of a contest that did impact on the result, but that was explicable by reference to a tactical decision, or that amounted to an honest error by a competitor, or a referee or other official, that cost a team the game, or that led to some occurrence that, as a contingency, became the subject of a successful bet.
- 2.65 It is, in our view, important to preserve a clear distinction between deliberate cheating aimed at affecting betting activities, and the kinds of rule-breaking or error by a player or official that will inevitably occur in any kind of sporting contest but are not related to betting. Although conduct of the latter kind can affect the outcome of a game, it needs to remain the province for match officials and sports disciplinary rules, rather than the criminal law, a point that was made in a number of submissions.³⁴

Offences of facilitating conduct that corrupts betting outcomes

193N Facilitate conduct that corrupts betting outcome of event

- (1) A person who offers to engage in conduct that corrupts a betting outcome of an event:
- (a) knowing or being reckless as to whether the conduct corrupts a betting outcome of the event, and
 - (b) with the intention of obtaining a financial advantage, or causing a financial disadvantage, as a result of any betting on the event,
- is guilty of an offence.
- Maximum penalty: Imprisonment for 10 years.
- (2) A person who encourages another person to engage in conduct that corrupts a betting outcome of an event:
- (a) knowing or being reckless as to whether the conduct corrupts a betting outcome of the event, and

32. Australian Athletes’ Alliance, *Submission CG4*, 3-4.

33. Wesley Community Legal Service, *Submission CG9*, 2-3.

34. Law Institute of Victoria, *Submission CG7*, 4; Wesley Community Legal Service, *Submission CG9*, 2-3.

- (b) with the intention of obtaining a financial advantage, or causing a financial disadvantage, as a result of any betting on the event,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

- (3) A person who enters into an agreement that corrupts a betting outcome of an event:

- (a) knowing or being reckless as to whether the conduct the subject of the agreement corrupts a betting outcome of the event, and

- (b) with the intention of obtaining a financial advantage, or causing a financial disadvantage, as a result of any betting on the event,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

2.66 Clause 193N creates a series of inchoate offences directed at conduct that is designed to facilitate the corruption of a betting outcome of an event.

2.67 First, cl 193N(1) deals with the case where a person, with the necessary intention and state of mind, makes an offer to another person to engage in conduct that, if engaged in would, or would be likely to affect a betting outcome of the event. That conduct must be contrary to the standards of integrity a reasonable person would expect of those who were in a position to affect the outcome of any type of betting on the event. It will extend to an offer, made by a player, or match official, to a gambler or to an illegal bookmaker, to do something, in relation to that event, that would, or would be likely to, affect the result of that event, or of any contingency associated with it, and that would, as a consequence, affect the outcome of a bet placed on that event or contingency.

2.68 Secondly, cl 193(N)(2) deals with the case where a person, with the necessary intention, encourages (in accordance with the extended definition given to the term in cl 193L) another person to engage in the proscribed conduct. It would extend to the act of a gambler or illegal bookmaker in encouraging a player, or match official, or any other person, to do something that would affect, or be likely to affect, the result of an event or of any contingency in associated with it, and that would, as a consequence, affect the outcome of a bet placed on that event or contingency.

2.69 Thirdly, cl 193N(3) caters for the situation where any person, with the necessary intention and state of mind, enters into an agreement or arrangement³⁵ to engage in conduct that would affect, or be likely to affect, the result of an event or of a contingency associated with it, and that would, as a consequence, affect the outcome of a bet placed on that event or contingency. The definition contained in cl 193H(2) makes it clear that the agreement proscribed is one under which a person agrees to engage in conduct that corrupts a betting outcome of an event.

2.70 Similar considerations apply, concerning the mental elements that are required for the cl 193N offences, to those outlined in relation to cl 193M.

35. Proposed cl 193H(3) defines agreement to include an arrangement.

- 2.71 In each case, the offence will be complete whether or not the offer or encouragement or agreement or arrangement proceeds to fruition, in the sense of something being done that actually affects the result of the event or an event contingency and, similarly, whether or not a financial advantage or disadvantage accrues from the proscribed conduct.

Offence of encouraging the concealment of conduct that corrupts a betting outcome

1930 Concealing conduct or agreement that corrupts betting outcome of event

- (1) A person who encourages another person to conceal from a relevant authority conduct that corrupts a betting outcome of an event:

- (a) knowing or being reckless as to whether the conduct corrupts a betting outcome of the event, and
- (b) with the intention of obtaining a financial advantage, or causing a financial disadvantage, as a result of any betting on the event,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

- (2) A person who encourages another person to conceal from a relevant authority an agreement that corrupts a betting outcome of an event:

- (a) knowing or being reckless as to whether the conduct the subject of the agreement corrupts a betting outcome of the event, and
- (b) with the intention of obtaining a financial advantage, or causing a financial disadvantage, as a result of any betting on the event,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

- (3) In this section, the **relevant authority** means:

- (a) a police officer, or
- (b) a body that has the official function of controlling, regulating or supervising the event, or
- (c) any other appropriate authority.

- 2.72 This provision is aimed at penalising those who seek to encourage a person who is involved in, or aware of, the existence of conduct, of the kind proscribed by cl 193M and cl 193N, to conceal its existence from a “relevant authority”, as defined in cl 193O(3).

- 2.73 It is noted that the *Prevention and Combating of Corrupt Activities Act 2004* (Sth Africa) makes it an offence for a person to gain a benefit for himself or herself, or for

any other person, in return for not reporting to the appropriate authorities an act which "constitutes a threat to or undermines the integrity of any sporting event".³⁶

- 2.74 We do not consider it necessary to introduce an offence in these terms, for two reasons. First, a person who was aware of the existence of conduct, of the kind proscribed by cl 193M and cl 193N, and who concealed that fact, or who accepted or sought a benefit for concealing that fact, would be amenable to prosecution under s 316 of the *Crimes Act 1900* (NSW) for the offence of concealing a serious indictable offence.³⁷
- 2.75 Otherwise, it will normally be appropriate to deal with reporting failures, on the part of those who breach relevant codes of conduct or contractual requirements, through internal disciplinary measures.
- 2.76 The conduct that we consider should be criminalised and that, as a consequence, is catered for by this offence, is that of a person, who was in some way associated with the corrupt conduct or who stood to gain from it, and who either places pressure on, or otherwise encourages a person who was party to a proscribed agreement or arrangement, or who otherwise came to have knowledge of the fix, to conceal its existence from a relevant authority. The offence will similarly require proof that the relevant encouragement was given by the offender with the intention of obtaining a financial advantage, or of causing a financial disadvantage, as a result of a bet placed on the event that was the subject of the proscribed agreement.
- 2.77 Unless an offence of this kind is included, there will be an incentive for the gambler or any other person, who has organised, or is in some way connected with, a fix, to place pressure, either by himself or through an intermediary, on those who are party to, or involved in, any such arrangement, to conceal its existence, so as to ensure that any bet that has been placed is not voided, or so as to avoid prosecution. In our view, conduct of this kind is potentially more serious than that which would constitute a s 316 offence. Moreover, it involves a separate form of criminality to that which is involved in the cl 193M and cl 193N offences, and justifies a separate penalty.

Offence of using inside information about an event for betting purposes

193P Use of inside information about event for betting purposes

- (1) A person who possesses information in connection with an event that is inside information, and who knows or is reckless as to whether the information is inside information, is guilty of an offence if the person:
- (a) bets on the event, or
 - (b) encourages another person to bet on the event in a particular way, or
 - (c) communicates the information to another person who the first person knows or ought reasonably to know would or would be likely to bet on the event.

Maximum penalty: Imprisonment for 10 years.

36. *Prevention and Combating of Corrupt Activities Act 2004* (Sth Africa) s 15(b)(i).

37. The cl 193N(3) offence would qualify as such since it carries a maximum sentence of imprisonment that is not less than 5 years.

- (2) Information in connection with an event is **inside information** if the information:
 - (a) is not generally available, and
 - (b) if it were generally available, would, or would be likely to, influence persons who commonly bet on the event in deciding whether or not to bet on the event or making any other betting decision.
- (3) Information is **generally available** if:
 - (a) it consists of matter that is readily observable by the public, or
 - (b) it has been made known in a manner that would, or would be likely to, bring it to the attention of the public, or
 - (c) it consists of deductions, conclusions or inferences made or drawn from information referred to in paragraph (a) or (b).
- (4) In proceedings for an offence against subsection (1) (b) or (c), it is not necessary to prove that the person encouraged to bet, or to whom inside information was communicated, actually bet on the event concerned.
- (5) A reference in this section to communicating information includes a reference to causing information to be communicated.

2.78 This provision is aimed at those who abuse “inside information”, in connection with an event, in one or other of the ways proscribed, so long as they know or are reckless as to whether it is “inside information”, as defined. The alternative mental elements are knowledge or recklessness.

2.79 For similar reasons to those discussed in relation to the offences in cl 193M-193O, we have substituted knowledge or recklessness as the relevant mental elements, in the place of the element of dishonesty, that was included in the provision proposed in CP12. This is designed to achieve consistency, and also to address the concerns that were identified in several submissions, as to the likely difficulties in proving an element of dishonesty in this context.³⁸

2.80 It is recognised that there can be a fine line between dishonesty, and the legitimate use by a gambler or bookmaker of rumours, or of the kind of “mail” on which those involved in gambling have traditionally relied. One submission was “not entirely satisfied that the public policy rationale was equivalent to that for insider trading” in financial markets, suggesting that the policy goals of proper and competitive allocation of capital through financial markets does not, “on serious consideration”, apply to gambling. This submission suggested that insider information in gambling ought to be left to the “very effective internal oversight powers and mechanisms” of the individual sports, that are in place to ensure their own integrity.³⁹

2.81 Such an argument, however, does not take into account other considerations, such as the fact that inside information, in relation to sports, can be of considerable importance to those criminal syndicates that employ sports betting in support of money laundering, or the fact that very large sums of money can sometimes be involved in both the legal and illegal gambling markets. Nor does it take into account

38. A Hii, *Submission CG1*, 7; J Overland, *Submission CG5*, 4.

39. NSW Young Lawyers Criminal Law Committee, *Submission CG11*, 6-7.

the fact that the person who abuses the inside information may not be amenable to the disciplinary powers of the sports controlling body.

- 2.82 There has been some past experience, in other countries, of competitors providing information to gamblers or bookmakers in respect of events that have been fixed.⁴⁰ The availability of opportunities to engage in such activities is evidenced by the apparent existence of the websites mentioned earlier,⁴¹ that offer to the public such information in return for a subscription.
- 2.83 There was, in fact, considerable support for the inclusion of an insider dealing offence in the preliminary submissions, and also in the submissions received in response to CP12.⁴² We remain of the view that this form of conduct should be the subject of a criminal sanction. The opportunity for the misuse of such information, to gain an unfair advantage, is such that it calls for a more serious response than that which might be available on a disciplinary basis.
- 2.84 It is noted that several of the existing codes of conduct adopted by the sports controlling bodies already prohibit the provision of inside information,⁴³ and that the COMPPS report and the National Policy supported the inclusion of such conduct as an offence, under these codes.⁴⁴
- 2.85 The introduction of such an offence will make it desirable for the various sporting bodies to develop information management protocols, of the kind that have been in place within the racing industry for some years.⁴⁵
- 2.86 An offence of this kind has an added relevance now that bets can be placed and accepted on events that occur in the financial markets, for example, on interest rate movements, oil indices, and, possibly, on stock market movements, although this has become a grey area since any such wager could arguably be considered an investment in a "financial product", and hence governed by ASIC under the provisions of the *Corporations Act 2001* (Cth).⁴⁶

Insiders and third parties

- 2.87 In CP12 we proposed two provisions. The first related to the improper use of inside information by an "insider", and the second related to the improper use of inside information by a person who obtained it from an "insider".

40. See, eg, FBI, Media release "Detroit Businessmen Indicted Along with Former Professional Thoroughbred Jockey" (6 May 2009).

41. Para 1.12.

42. Racing NSW, *Submission CG8*; Australian Internet Bookmakers Association, *Submission CG14*, 2-3; A Hii, *Submission CG1*, 3-6; NSW Office of the Director of Public Prosecutions, *Submission CG3*, 2; Australian Athletes' Alliance, *Submission CG4*, 6; J Overland, *Submission CG5*; Law Institute of Victoria, *Submission CG7*, 4.

43. *AFL Players Code of Conduct* (2008) cl 2.8 (confidentiality of club information); Athletics Australia, Member Protection Policy, Part D6 cl 8.2; Cricket Australia, *Code of Behaviour*, cl 8(f); Australian Rugby Union, *Code of Conduct By-Laws* (2005) cl 3(a)(ii); National Rugby League, *Code of Conduct* (2007) cl 21(2).

44. Coalition of Major Professional and Participation Sports, *Anti-Corruption Working Party Report to the Chief Executives* (2011) 6; Australia, *National Policy on Match-Fixing in Sport* (as agreed by Australian governments on 10 June 2011) [4.5](e).

45. Betting Providers, *Consultation*.

46. *Corporations Act 2001* (Cth) s 798F and s 798G.

2.88 Several submissions queried this approach, suggesting, in essence, that there was no real difference in the culpability of Person A placing a bet on the basis of information received from an insider, and that of Person B placing a bet on the basis of information received from an intermediary, or from some person who was not an insider, but who was complicit in fixing the event.⁴⁷ To similar effect was the concern of one submission that the provision proposed in CP12 meant that:

non-participants would be prohibited from placing or accepting bets if they possess “insider information”, but would not be prohibited from communicating the information to others, or procuring others to place bets.⁴⁸

2.89 The same submission observed that the offence as proposed:

may be difficult to prove, particularly if there is more than one possible source of the information. If a person possesses information which they know to be insider information, why should it matter from whom the information was obtained, for the purpose of determining whether the prohibition on insider gambling applies to that person?⁴⁹

2.90 The provision that we now recommend, which applies where a person uses information which he or she knows, or is reckless as to whether it is inside information, in one or other of the ways identified, regardless of its source, answers the concerns raised in these submissions.

2.91 This approach is also consistent with that now taken by Commonwealth insider trading laws, which have eliminated the distinction between “primary” insiders (such as shareholders, directors, and employees) and “secondary” insiders (that is, those with no particular connection to the relevant company but who knowingly received the inside information from a primary insider). It is now an offence for a person to deal in relevant financial products if that person possesses inside information and knows, or ought reasonably to know that the information is inside information, regardless of his or her status and regardless of how he or she came to possess the information.⁵⁰

2.92 This approach, known as the “information connection” approach, was recommended by the 1989 Griffiths Report which concluded:

The existing prohibition requiring a person to be connected to the corporation which is the subject of the information unnecessarily complicates the issue. It is the use of information, rather than the connection between a person and a corporation, which should be the basis for determining whether insider trading has occurred.⁵¹

2.93 This was confirmed in the 2003 report of the Corporations and Markets Advisory Committee which concluded that the “information connection” approach is:

more conceptually straightforward than the ‘person connection’ approach. It therefore assists market participants to understand the insider trading laws,

47. Law Institute of Victoria, *Submission CG7*, 4; A Hii, *Submission CG1*, 4-5; NSW Office of the Director of Public Prosecutions, *Submission CG3*, 2; J Overland, *Submission CG5*, 2-3.

48. J Overland, *Submission CG5*, 2.

49. J Overland, *Submission CG5*, 2-3.

50. *Corporations Act 2001* (Cth) s 1043A. See J Overland, *Submission CG5*, 2-3; A Hii, *Submission CG1*, 4-5.

51. Australia, House of Representatives Standing Committee on Legal and Constitutional Affairs, *Fair Shares for All: Insider Trading in Australia* (1989) 22-23.

while avoiding many of the complexities, uncertainties and gaps in coverage that can arise under the additional 'person connection' approach.⁵²

- 2.94 Any concerns about the width of a provision that extends to the use of inside information by third parties,⁵³ should be allayed by the twin requirements that the information in connection with the event is not generally available, and that, if it were generally available, it would, or would be likely to, influence those who commonly bet on such event in deciding whether or not to bet on it, or in making any other betting decision. One submission noted that:

the source of information may have a direct impact on the reliability and materiality of that information, and this has long been recognised in insider trading cases. That is, information which is received from a reliable source is more likely to be material than information which is not. As information will not amount to insider information unless it is material ... the same principles will be relevant to the offence of insider gambling. This means that information which is received from a participant may be more likely to be material than information which is not (which means it is more likely to be regarded as being insider information).⁵⁴

- 2.95 This recognises the factual issue that will arise in this kind of case, and should prevent unsubstantiated rumour or mere gossip from qualifying as inside information.

Definitions relating to inside information

- 2.96 The definitions employed in this clause are substantially based on those used for the insider dealing offences under the *Corporations Act 2001* (Cth),⁵⁵ that have been the subject of judicial interpretation. This will help ensure consistent application and certainty.⁵⁶
- 2.97 The definition of "inside information" is stated to be "in connection with an event", so that it extends to information in connection with an event that is pending or under way, as well as a completed event where the result is unknown,⁵⁷ for example, where it is subject to some form of appeal.
- 2.98 The expression "information in connection with an event" is intended to cover non-public information concerning, for example:
- any injury to a player;
 - player selection and team composition;
 - the likely performance of a team or participant;
 - tactics to be employed by a team or participant;

52. Australia, Corporations and Markets Advisory Committee, *Insider Trading Report* (2003) 29-30.

53. NSW Office of the Director of Public Prosecutions, *Submission CG3*, 3.

54. J Overland, *Submission CG5*, 3.

55. *Corporations Act 2001* (Cth) s 1042A, s 1042C.

56. J Overland, *Submission CG5*, 3.

57. A Hii, *Submission CG1*, 5.

- the existence of any agreement or arrangement or conduct that may corrupt a betting outcome of the event, for example, knowledge of the blackmailing⁵⁸ of a sporting participant,⁵⁹ or of the existence of an agreement to fix the event; or
 - matter that is subject to confidentiality restrictions under a code of conduct, or contract, entered into by a person who might be regarded as an insider.⁶⁰
- 2.99 The definition of "generally available" information means that the offence will not apply to information that consists of matter readily observable by the public, or to information that has been made known in a manner that would or would be likely to bring it to the attention of the public, or to information arising from deductions, conclusions or inferences made or drawn from the above. For example, an awareness of changes in the odds in a betting market⁶¹ would not of itself qualify as inside information, nor would information announced to or reported in the media.
- 2.100 Finally, it is observed that the definition provided makes it clear that the "influence" contemplated extends to that which may affect a person when making a decision whether or not to bet on the event, as well as that which may affect such a person when "making any other betting decision". This is intended to cater for the situation where a person intended to place a bet on the event but, as a result of being in possession of the information, changes the amount, or nature of the bet, or changes the way in which the bet is placed.

Other provisions

- 2.101 Additionally, it is not necessary, for proof of the offence, to show that a person who was encouraged to bet or to whom the information was communicated, actually placed a bet on the event. Further, the provision makes it clear that the communication offence (cl 193P(1)(c)) includes causing the information to be communicated. This is intended to ensure that a person, who possesses inside information, will not escape prosecution by arranging for it to be passed through an intermediary, to someone who the former knows or ought reasonably to know would, or would be likely to, bet on the event.

Penalties for the new offences

- 2.102 Earlier in this report we noted the wide range of penalties available for cheating offences in NSW. A comparison with the laws in force in the other States and Territories, and in some overseas jurisdictions, similarly reveals that there is a marked disparity between the penalties available for like offences.
- 2.103 In our view, it is desirable that there be a higher maximum penalty for corrupting betting outcomes than that arising under the cheating provision that is contained in s 18 of the *Unlawful Gambling Act 1998* (NSW). By reason of the seriously fraudulent nature of the conduct involved, its consequences for a potentially wide

58. Which is contrary to *Crimes Act 1900* (NSW) s 249K.

59. A Hii, *Submission CG1*, 5-6.

60. NSW Office of the Director of Public Prosecutions, *Submission CG3*, 2. For example, clauses of the type recently proposed by the Australian Olympic Committee that they "not use any confidential information of the AOC or any team member or official for [their] own personal gain or disclose it to any third party including related to any betting or gambling on sports": N Jeffery, "Odds against Olympic athletes gambling", *The Australian* (16 May 2011) 39.

61. A Hii, *Submission CG1*, 5.

group of people, and the need for a strong deterrent, we consider that the offences proposed should each carry a maximum penalty, that is in line with that which is available for the general fraud offence under s 192E of the *Crimes Act 1900* (NSW), namely imprisonment for 10 years.

- 2.104 There was considerable support in the submissions and in consultations for the proposed penalty,⁶² although it is again noted that the penalty specified is the maximum penalty that would be reserved for a case of the most serious kind, and that the sentence imposed would always depend on the objective seriousness of the conduct involved, and on the offender's subjective circumstances.
- 2.105 We have been advised that most fraud matters are prosecuted in the Local Court as Table offences, and that the Director of Public Prosecutions would not normally elect to prosecute fraud matters on indictment, unless the benefit obtained was more than \$2m. It is likely that some cheating offences will be appropriately dealt with in the Local Court, subject to the restriction on penalty that applies in that Court.⁶³ However, there may well be significant match or event fixing cases, involving gambling syndicates or organised crime, or cases of significant public interest, particularly where the conduct harms a significant sector of the community, that will justify trial on indictment. This might particularly be so where the relevant charge is associated with other serious charges, arising out of blackmail or menaces directed at a participant, or holder of insider information.
- 2.106 In CP12, we also proposed that the maximum penalty for the inside information offence should be imprisonment for 10 years.
- 2.107 One submission suggested that the culpability of those who are involved in insider dealing offences, was of a different nature, and of a lesser degree, than that of those who engage in the fixing of an event, or who encourage or agree to its fixing. It noted that:
- Unless the third party is in the business of trying to corrupt "insiders", it seems they are significantly less culpable and the behaviour perhaps could or should be characterised as opportunistic rather than criminal. If an offence in the nature of [the clause proposed] is to be created then it should be a separate offence with a lower penalty.⁶⁴
- 2.108 Another submission suggested that a pecuniary civil penalty might be more appropriate, as it would "capture the behaviour of persons conversant in insider information who were not licensed (and not susceptible to internal fines), such as stable assistants".⁶⁵

62. Law Institute of Victoria, *Submission CG7*, 8; Racing NSW, *Submission CG8*, 1; Wesley Community Legal Service, *Submission CG9*, 3-4; Australian Internet Bookmakers Association, *Submission CG14*, 4.

63. NSW Office of the Director of Public Prosecutions, *Submission CG3*, 1. Subject to certain exceptions, the maximum sentence of imprisonment that can be given is imprisonment for two years.

64. NSW Office of the Director of Public Prosecutions, *Submission CG3*, 2. On the use of inside information obtained by luck, see also S P Green, *Lying, Cheating and Stealing: A Moral Theory of White-Collar Crime* (Oxford University Press, 2006) 241-242.

65. NSW Young Lawyers Criminal Law Committee, *Submission CG11*, 9.

- 2.109 However, our general proposal of a maximum penalty of imprisonment for 10 years for this form of offence, is broadly consistent with the maximum penalty available for insider trading under the *Corporations Act 2001* (Cth).⁶⁶
- 2.110 It does not seem practicable to separate “opportunistic” offenders from those who are in the business of abusing inside information, or who employ blackmail or bribery to secure such information. The “opportunistic” offenders could be dealt with appropriately in the sentencing proceedings, by reference to the extent of the objective seriousness of their offending.
- 2.111 We have not made any suggestion in relation to the availability of a pecuniary penalty, as an additional or alternative sentencing outcome. In this respect we note that, where an offence is dealt with on indictment, then a court can impose a fine of up to 1,000 penalty units (currently \$110,000) in addition to, or instead of, any other penalty that may be imposed.⁶⁷ This would seem to be appropriate, in the case of a serious form of offending.
- 2.112 Subject to the qualifications noted in CP12,⁶⁸ the sentence of imprisonment available for each of the offences proposed would need to be sufficient to open the door to the use of telecommunications interception, and of surveillance devices, including access to stored communications data and data surveillance, the availability of which was supported in the submissions and consultations.⁶⁹
- 2.113 In relation to telecommunication interception, the threshold requirement is that the offence carry a sentence of imprisonment for at least seven years.⁷⁰

Miscellaneous issues

Withdrawal

- 2.114 In CP12 we raised the issue of the point at which the offence is to be taken to have been committed; and whether there should be a defence of withdrawal.⁷¹
- 2.115 It would seem appropriate that the offence be taken to be committed once the proscribed encouragement is given, or an offer is made or sought, or an agreement is reached, or the conduct is engaged in.
- 2.116 Denial of the availability of an offence of withdrawal to a party who, having entered into a relevant arrangement, or having engaged in relevant conduct, gets cold feet and seeks to negate that conduct, would be likely to provide further teeth to the offence, and allow a law enforcement agency to intervene, without having to wait until the event was held. The views which we expressed in our Report on *Complicity*

66. Which is 10 years and/or a fine of 4,500 penalty units, or three times the total value of the benefits obtained that are reasonably attributable to the commission of the offence: *Corporations Act 2001* (Cth) s 1043A and see Sch 3 item 310.

67. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 15.

68. CP12 [5.61].

69. Australian Internet Bookmakers Association, *Submission CG14*, 4; NSW Police Force, *Submission CG15*, 3. But see NSW Young Lawyers Criminal Law Committee, *Submission CG11*, 5.

70. *Telecommunications (Interception and Access) Act 1979* (Cth) s 46 and s 5D(2)(a).

71. CP12 [6.22], [6.33].

in this regards, excluding the availability of the defence in relation to the offence of conspiracy, apply.⁷² This would not, however, preclude withdrawal from being relevant for sentencing purposes.

- 2.117 It is recognised that, if it becomes necessary for the offence to be included in the *Criminal Code* (Cth), then this may require a different approach having regard to the availability of a defence of withdrawal under that Code.

Jurisdictional application

- 2.118 Potential questions as to jurisdiction could arise from the fact that betting can occur online, and across State and national boundaries; and from the fact that the conduct constituting the corruption of a betting outcome, or the provision of encouragement, or the entry into an agreement, and the running of the event itself, can occur in a State or Territory or country, other than that in which the bet is placed or accepted.
- 2.119 The aim is to ensure adequate jurisdictional coverage. Two options are available:
- to use or adapt the existing cross-jurisdictional provisions in NSW; or
 - to introduce Commonwealth legislation (using existing constitutional powers, or by reference from the States).
- 2.120 For offences arising under the *Crimes Act 1900* (NSW), geographic jurisdiction is determined according to the provisions contained in s 10A to s 10E of that Act. Similar provisions exist in other States and Territories, in some cases employing a less complex formula.
- 2.121 In our view, as was supported by one submission,⁷³ the geographical nexus provisions in s 10A to s 10E of the *Crimes Act 1900* (NSW) should be sufficient to engage the offences, so long as any one of the potentially relevant pieces of conduct occurs in NSW.
- 2.122 One submission suggested that it would be desirable, if the response of the States and Territories is to introduce uniform legislation, to include a provision which ensures that people cannot be prosecuted in NSW if they have already been prosecuted for the same conduct in another jurisdiction.⁷⁴ Such a situation is, however, covered in NSW by s 20 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) which provides that an offender is not liable to any penalty in respect of an offence in NSW if he or she has already been subject to a penalty for an offence in relation to the same act or omission under a law of the Commonwealth or another State or Territory.
- 2.123 It would be prudent to include a provision making it clear that the new offences co-exist with any other available offences.⁷⁵

72. NSW LAW REFORM COMMISSION, *Complicity*, Report 129 (2010) [6.194]-[6.197].

73. Law Institute of Victoria, *Submission CG7*, 7.

74. See Law Institute of Victoria, *Submission CG7*, 7-8.

75. For example, along the lines of the wording in *Unlawful Gambling Act 1998* (NSW) s 18(2), as was suggested by NSW Police Force, *Submission CG15*, 1; and Australian Internet Bookmakers Association, *Submission CG14*, 4.

Location of the provisions

- 2.124 Several submissions supported the inclusion of the cheating at betting provisions in the *Crimes Act 1900* (NSW) for the following reasons:
- They identify serious forms of cheating that warrant substantial penalties.⁷⁶
 - The *Crimes Act 1900* (NSW) is the primary legislation concerned with fraudulent conduct, and it is logical to locate the proposed provisions alongside the existing fraud provisions.⁷⁷
- 2.125 One submission, however, supported the offence being included in a stand-alone statute, on the grounds that it would be more easily identified and referred to, and would highlight its importance. Such a statute, it was suggested, would provide the best model for educating sporting participants about the law.⁷⁸
- 2.126 It is our view that it is more appropriate to include the relevant provisions, including the insider dealing offence, in the *Crimes Act 1900* (NSW).

Recommendation 2.1

- (1) That an offence be added to the *Crimes Act 1900* (NSW) in accordance with the draft bill in Appendix A.
- (2) That it be made clear that the new provisions do not limit the operation of any offence under that Act or any other Act.

76. NSW, Office of the Director of Public Prosecutions, *Submission CG3*, 1; Australian Internet Bookmakers Association, *Submission CG14*, 3.

77. NSW, Office of the Director of Public Prosecutions, *Submission CG3*, 1; NSW Police Force, *Submission CG15*, 1.

78. Law Institute of Victoria, *Submission CG7*, 9.

3. Gaming in NSW

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Background

- 3.1 It is of interest to note that, for much of the history of this State, the playing of games of chance, and the use of gaming machines, for expectation of reward, was unlawful.¹
- 3.2 Card games, roulette, gaming machines, two-up and similar gaming activities were available through the illegal casinos and private clubs that flourished during much of the last century, and that were imperfectly policed.² They were dominated by organised crime, and presented significant opportunities for corrupt conduct, including cheating and manipulation during the course of play as well as protection and debt-collection aided by stand-over tactics.
- 3.3 It was not until 1995 that a legal gaming casino, in the form of the Star City Casino, was established in NSW, under the *Casino Control Act 1992* (NSW). It remains the only legal casino in NSW, and it offers a full range of traditional casino games, and of electronic gaming machines,³ as well as the opportunity to bet on racing and sporting events and to play Keno.

1. Such forms of conduct were potentially subject to the prohibitions contained in the *Vagrancy Act 1902* (NSW); the *Lotteries and Art Unions Act 1901* (NSW); *Gaming and Betting Act 1912* (NSW) and the *Vagrancy (Amendment) Act 2005* (NSW). See also W J V Windeyer, *The Law of Wagers, Gaming and Lotteries in the Commonwealth of Australia* (Law Book Company, 1929) 1-16.

2. See E A Lusher, *Report on the Inquiry into the Legalizing of Gambling Casinos in New South Wales* (1977) [58]-[71]; L Street, *Inquiry into the Establishment and Operation of Legal Casinos in New South Wales*, Report (1991) [3.7.1]-[3.7.3]; and S Pinto and P Wilson, *Gambling in Australia*, Trends and Issues in Crime and Criminal Justice No 24 (Australian Institute of Criminology, 1990) 1-2, 4.

3. Including poker machines, roulette and video poker machines.

- 3.4 Although some scepticism persists⁴, it is considered that the Casino, which is subject to close supervisory control by the Casino, Liquor and Gaming Control Authority (“CLAGCA”), has eliminated, or at least reduced, the number of the organised illegal casinos that previously existed in NSW.
- 3.5 The potential for cheating in relation to gaming at the Casino is limited, although attempts to do so have occurred, as we noted in CP12.⁵
- 3.6 Independently of the Casino there are a significant number of licensed clubs and hotels, in NSW, that provide gambling opportunities through the use of gaming machines.
- 3.7 While the availability and use of poker machines (the forerunners of the modern gaming machines), from the 1880s, in non-proprietary or not-for-profit social clubs was illegal, there was, nevertheless, an official policy of tolerance that was respected by police until the early 1950s.⁶ The reasons for this were attributed to the social and community benefits that the clubs were seen to provide, that were, at least in part, funded by the poker machines.⁷ This was to change following the successful prosecution, in 1953, of a reputable and well-conducted golf club whose use of poker machines was found to have contravened the *Gaming and Betting Act 1912* (NSW).⁸
- 3.8 The change in policing policy in this context effectively led to the enactment of the *Gaming and Betting (Poker Machines) Act 1956* (NSW) and the *Gaming and Betting (Poker Machines) Taxation Act 1956* (NSW) that permitted the use of these machines in NSW and made provision for taxation of the income collected from them. Their use is subject to strict regulation and licensing requirements that are designed to limit their numbers. Although they can never be guaranteed to be free from the risk of manipulation, the modern technology that is employed is likely to have eliminated the forms of cheating that were once available.
- 3.9 Similarly the various forms of State lotteries that have been available since 1931,⁹ and other lotteries and art unions that have been available since the 1850s,¹⁰ are subject to tight supervision today and present few, if any, opportunities for cheating.

4. As was foreshadowed in the Lusher and Street inquiries: E A Lusher, *Report on the Inquiry into the Legalizing of Gambling Casinos in New South Wales* (1977) [102]-[108]; L Street, *Inquiry into the Establishment and Operation of Legal Casinos in New South Wales*, Report (1991) [3.7.2].

5. NSW LAW REFORM COMMISSION, *Cheating at Gambling*, Consultation Paper 12 (2011) (“CP12”) [5.166]-[5.168].

6. N Hing, “A History of Machine Gambling in the NSW Club Industry: From Community Benefit to Commercialisation” (2006) 7 *International Journal of Hospitality and Tourism Administration* 81.

7. NSW, *Parliamentary Debates (Hansard)*, Legislative Assembly, 21 August 1956, 1694. This is not to say that their illegality was ignored. For example, their unlawful use, and the potential for corruption at the hands of government officials, became the subject of the 1932 NSW Royal Commission into Greyhound Racing and Fruit Machines.

8. *R v Kearney* (1953) 70 WN (NSW) 141.

9. When the *State Lotteries Act 1930* (NSW) was proclaimed.

10. Other lotteries and art unions have been controlled since the passing of the *Art Unions Act of 1850* (NSW) (14 Vic No 13) and the *Lotteries Act of 1852* (NSW) (16 Vic No 2) later consolidated into the *Lotteries and Art Unions Act 1901* (NSW).

Current statutory framework

New South Wales

- 3.10 The Acts that currently regulate gaming in NSW comprise the:
- *Casino Control Act 1992* (NSW) (in conjunction with the *Casino, Liquor and Gaming Control Authority Act 2007* (NSW));
 - *Gaming Machines Act 2001* (NSW) (in conjunction with the *Casino, Liquor and Gaming Control Authority Act 2007* (NSW));
 - *Lotteries and Art Unions Act 1901* (NSW);
 - *Public Lotteries Act 1996* (NSW); and
 - *Gambling (Two-up) Act 1998* (NSW).
- 3.11 Gaming activities authorised by these Acts are also subject to the overarching operation of the *Unlawful Gambling Act 1998* (NSW) which, amongst other things, confirms that gaming activities carried out in compliance with, or under the authority of, the above Acts, are lawful.¹¹
- 3.12 Additionally, the *Unlawful Gambling Act 1998* (NSW) defines a number of games to be unlawful games,¹² and provides for a series of offences including organising,¹³ selling a ticket in,¹⁴ and participating in,¹⁵ any such game; as well as providing for a number of gaming-specific offences.
- 3.13 Of particular relevance is the general cheating offence which applies both to wagering and gaming.¹⁶ However that offence only applies where the relevant gambling activity is lawful.
- 3.14 The Act makes provision for an offence of possessing or using a prohibited gaming device¹⁷ as well as an offence of possessing an unlawful gambling aid or document in connection with lawful gambling.¹⁸ Of indirect relevance are the series of offences relating to the organisation or use of, or presence in, gambling premises,¹⁹ as well as those that relate to gambling with, or by, minors.²⁰
- 3.15 Some of the gaming Acts mentioned above contain offence provisions, that are specific to their area of coverage, and that address conduct that would constitute a form of cheating, bribery or other form of fraud. The relevant provisions of potential application in this respect are set out in Appendix D. In the case of the Casino,

11. *Unlawful Gambling Act 1998* (NSW) s 7.

12. *Unlawful Gambling Act 1998* (NSW) s 5.

13. *Unlawful Gambling Act 1998* (NSW) s 12.

14. *Unlawful Gambling Act 1998* (NSW) s 13.

15. *Unlawful Gambling Act 1998* (NSW) s 14.

16. *Unlawful Gambling Act 1998* (NSW) s 18.

17. *Unlawful Gambling Act 1998* (NSW) s 15. Such a device is defined in s 6.

18. *Unlawful Gambling Act 1998* (NSW) s 19.

19. *Unlawful Gambling Act 1998* (NSW) s 30-37.

20. *Unlawful Gambling Act 1998* (NSW) s 16, s 17.

additional restrictions, in relation to the permitted plays, are set out in the Rules of Casino Games as gazetted from time to time.

- 3.16 These provisions exist alongside the more general offences contained in the *Crimes Act 1900* (NSW), that might be invoked in relation to fraudulent or corrupt conduct or cheating associated with gaming, including the secret commission offence,²¹ the fraud offences²² and the computer offences.²³ In addition, in some circumstances, a common law conspiracy offence may be available.
- 3.17 There is a considerable potential for overlap between these context-specific, and more general, criminal offences. It is this area of overlap that we address in this chapter when considering the desirability of introducing a statutory “codification”, or consolidation, of the separate gaming laws of NSW into a single Gambling Act, or of their amendment to achieve a greater degree of uniformity.

Commonwealth

- 3.18 As we noted in CP12,²⁴ subject to certain exceptions, the *Interactive Gambling Act 2001* (Cth) prohibits the intentional provision of interactive gaming services to customers in Australia, whether they are supplied from within, or from outside, Australia. That Act is not designed to address the issues which potentially arise in relation to corruption or cheating in relation to sports or other event betting, or in relation to online gaming. Rather its concern is with prohibiting those forms of online gambling that would involve in-play or live betting, and casino-style gaming services of chance or mixed skill and chance, and the advertising of such services.
- 3.19 Concerns have been expressed in relation to the practical enforcement of these provisions, particularly in relation to online gaming opportunities offered by operators located overseas,²⁵ some of whom are not subject to any regulatory regime. Additionally, it is the case that while the offence provisions relate to those who offer or deliver prohibited services, it is not currently an offence for an Australian resident to use those services.
- 3.20 We recognise that the reach of this Act, and its enforcement, are matters for the Commonwealth rather than for NSW, and that the areas of concern that were drawn to our attention are primarily related to the enforcement of the prohibitions on internet gambling, rather than to the prevention of cheating. The one exception involved a submission to the effect that the prohibitions concerning in-play online betting was counterproductive. It suggested that allowing such betting to occur with regulated Australian agencies would provide greater security for Australian gamblers, would allow monitoring of those bets and would give Australian governments the opportunity of collecting additional revenue from regulated sites.²⁶
- 3.21 We also note that the Commonwealth Parliament’s Joint Select Committee on Gambling Reform is currently conducting an inquiry, among other things, in relation to the operation of this legislation.

21. *Crimes Act 1900* (NSW) s 249B.

22. *Crimes Act 1900* (NSW) s 192E.

23. *Crimes Act 1900* (NSW) s 308.

24. CP12 [4.8]-[4.11].

25. See Australia, Productivity Commission, *Gambling*, Report 56 (2010) [15.18].

26. Sportsbet, *Submission CG10*, 8.

- 3.22 For these reasons, and also for the reason that parts of the *Criminal Code* (Cth) might be engaged,²⁷ depending on the nature of the conduct involved, we do not make any recommendations in this Report in relation to the amendment of the *Interactive Gambling Act 2001* (Cth).

Codification or consolidation of the NSW gaming laws

- 3.23 There was some qualified support in the submissions²⁸ for the consolidation or codification of the gaming laws of NSW into a single Gambling Act. The suggested advantages would include ease of reference and the adoption of uniform terminology; along with a standardisation of the available offences and penalties, and of the provisions relating to the appointment of inspectors and their powers of investigation.
- 3.24 There is a precedent for such action in the form of the *Gambling Regulation Act 2003* (Vic). In addition, one submission drew attention to the partial consolidation which has already occurred in NSW, pursuant to which:
- the *Public Lotteries Act 1996* (NSW) replaced the *Lotto Act 1979* (NSW), the *Soccer Football Pools Act 1975* (NSW), and the *New South Wales Lotteries Act 1990* (NSW);
 - the *Totalizator Act 1997* (NSW) replaced the *Totalizator Act 1916* (NSW), and the *Totalizator (Off-Course Betting) Act 1964* (NSW); and
 - the *Gaming Machines Act 2001* (NSW) replaced the gaming machine provisions contained in the *Registered Clubs Act 1976* (NSW) and the *Liquor Act 1982* (NSW).²⁹
- 3.25 There was no unanimity in relation to the issue of consolidation. One submission suggested that the principal areas of lawful gambling that exist (comprising wagering on racing and sporting and other events, lotteries, casino gaming, gaming machines, as well as private or community gambling) had so little in common that incorporating them in one statute, that also made provision in relation to unlawful forms of gambling, would lead to a large, confusing and cumbersome statute.³⁰ In particular, attention was drawn to the wide range of gambling products available with respect to racing, that encompass betting on and off-course, with a bookmaker or the TAB, on simulated races, and on office sweeps (and Calcuttas), for which different degrees of complexity or need for regulation arise.³¹
- 3.26 Another submission suggested that “experience with the Victorian Act suggests that consolidation can lead to an unworkable and sometimes unclear piece of legislation” arising from the need to accommodate a variety of forms of gambling by way of qualified definitions and exceptions.³²

27. For example, pt 10.2 concerned with money laundering and pt 10.7 concerned with computer offences.

28. See Casino, Liquor and Gaming Control Authority, *Submission CG6*, 1-2; Tabcorp, *Submission CG12*, 2.

29. NSW, Casino, Liquor and Gaming Control Authority, *Submission CG6*, 1-2.

30. Wesley Community Legal Service, *Submission CG9*, 2.

31. Wesley Community Legal Service, *Submission CG9*, 3.

32. Australian Internet Bookmakers Association, *Submission CG14*, 3.

Offences

- 3.27 In relation to the possibility of achieving a codification or consolidation of the offences, it is clear, from an examination of Appendix D, that there are inconsistencies in expression, differences in the available penalties, and overlap, in relation to the several statutory offences that could be invoked in relation to cheating in the gaming context.
- 3.28 For example, although s 18 of the *Unlawful Gambling Act 1998* (NSW) and s 87 of the *Casino Control Act 1992* (NSW) similarly provide for an offence in relation to conduct that might variously be categorised as involving the use of a “trick, device, sleight of hand or representation”, or a “scheme or practice”, or the use of “equipment” or of some “instrument or article”, they differ in relation to the mental element involved. The *Unlawful Gambling Act* provision applies where the relevant conduct is “fraudulent”, whereas the *Casino Control Act* provision applies where the conduct is “dishonest”. The *Casino Control Act* provision applies where the conduct is directed to obtaining a “benefit” or causing another a “detriment”, while the *Unlawful Gambling Act* provision applies where the purpose is to obtain “any money or advantage” and is silent in relation to detriment.
- 3.29 Similar inconsistency, in relation to the mental element required, can be seen in the various context-specific offences that exist, which variously require the offending act to be committed “fraudulently”,³³ “corruptly”,³⁴ or “dishonestly”.³⁵ As we noted in CP12, the common law did not recognise a generalised offence of fraud.³⁶ It is a somewhat elusive concept, that has led to the expression “fraudulently” being replaced, in more modern legislation, by the expression “dishonestly”. That term is sometimes used in conjunction with elements involving the use of a “deception”, or the making of a “false and misleading statement”.³⁷
- 3.30 It is also obvious that much of the conduct that would constitute an offence under s 87(1)-(3) of the *Casino Control Act 1992* (NSW) would also potentially constitute an offence under s 18 or s 19 of the *Unlawful Gambling Act 1998* (NSW), giving rise to possible uncertainty as to the most appropriate charge to prefer in any given case.
- 3.31 The NSW Police Force, relevantly, suggested that an overarching cheating offence “would cover unpredictable cheating scams and assist police in submitting sufficient briefs of evidence”.³⁸
- 3.32 Next, it can be seen that there is some lack of consistency in relation to the maximum penalties for which the several Acts provide, and also in relation to whether the penalty notice scheme applies.³⁹ The range of penalties available is shown in Table 3.1.

33. *Gaming Machines Act 2001* (NSW) s 81; and *Lotteries and Art Unions Act 1901* (NSW) s 17.

34. *Casino Control Act 1992* (NSW) s 150.

35. *Gaming Machines Act 2001* (NSW) s 80(3), s 156(3), s 157.

36. CP12 [5.24].

37. For example, *Crimes Act 1900* (NSW) s 192E; and *Criminal Code* (Cth) pt 7.3.

38. NSW Police Force, *Submission CG15*, 2.

39. Under *Casino Control Regulation 2009* (NSW) cl 54, sch 7 pt 2; *Gaming Machines Regulation 2010* (NSW) cl 161, sch 3.

Table 3.1 Range of penalties for gaming offences in NSW

| 200 penalty units or imprisonment for 5 years | | |
|---|--|--|
| s 14 | <i>Lotteries and Art Unions Act 1901</i> (NSW) | Fraudulent falsify records |
| s 16 | <i>Lotteries and Art Unions Act 1901</i> (NSW) | Misappropriation of funds or prizes |
| 100 penalty units or imprisonment for 2 years | | |
| s 18 | <i>Unlawful Gambling Act 1998</i> (NSW) | Cheating |
| s 87(1) | <i>Casino Control Act 1992</i> (NSW) | Cheating (<i>Penalty notice available</i>) |
| s 150 | <i>Casino Control Act 1992</i> (NSW) | Bribery (on summary conviction, but 14 years imprisonment for conviction on indictment) |
| 100 penalty units or imprisonment for 12 months | | |
| s 80 | <i>Gaming Machines Act 2001</i> (NSW) | Cheating and unlawful interference with a gaming machine |
| s 81 | <i>Gaming Machines Act 2001</i> (NSW) | Fraudulent advantage gained during manufacture, etc, of a gaming machine |
| s 78 | <i>Gaming Machines Act 2001</i> (NSW) | Modification of a gaming machine (<i>Penalty notice available</i>) |
| 50 penalty units or imprisonment of 12 months | | |
| s 19 | <i>Unlawful Gambling Act 1998</i> (NSW) | Possession of unlawful gaming aid, etc (first offence – second offence: 500 penalty units or imprisonment for 2 years) |
| s 87(2) | <i>Casino Control Act 1992</i> (NSW) | Use of card counting device (<i>Penalty notice available</i>) |
| s 87(3) | <i>Casino Control Act 1992</i> (NSW) | Possession of bogus, etc, chips, marked or loaded device, or device to facilitate cheating (<i>Penalty notice available</i>) |
| 50 penalty units or imprisonment for 6 months | | |
| s 17A | <i>Lotteries and Art Unions Act 1901</i> (NSW) | False representations as to compliance with conditions |
| 100 penalty units | | |
| s 76 | <i>Gaming Machines Act 2001</i> (NSW) | Availability of defective gaming machine (<i>Penalty notice available</i>) |
| s 80A | <i>Gaming Machines Act 2001</i> (NSW) | False claim for prizes |
| s 156 | <i>Gaming Machines Act 2001</i> (NSW) | Unlawful interference with authorised linked gaming systems |
| s 157 | <i>Gaming Machines Act 2001</i> (NSW) | Illegal advantage with respect to linked gaming systems |
| s 43D | <i>Public Lotteries Act 1996</i> (NSW) | False claims for prizes |
| 50 penalty units | | |
| s 17 | <i>Lotteries and Art Unions Act 1901</i> (NSW) | Fraudulent conduct of lotteries and games of chance |

- 3.33 It is noted that, in general, the context-specific gaming offences are unlikely to be used to prosecute serious organised criminal activity⁴⁰ and that, in some circumstances, it will be appropriate to resort to the offences in the *Crimes Act 1900* (NSW) that carry substantially higher penalties, or to a conspiracy charge. Some submissions were, therefore, not fully supportive of any substantial increase in the available penalties.⁴¹
- 3.34 We have been advised that only a small minority of offences under the *Casino Control Act 1992* (NSW) are in fact brought to court. CLAGCA has, therefore, suggested that, whatever the maximum penalty, penalty notices should remain available as an option for dealing with some offenders.⁴² Penalty notices are currently available under the cheating provision in the *Casino Control Act 1992* (NSW). They are not, however, available in relation to the “cheating” offences contained in the *Gaming Machines Act 2001* (NSW), or in the *Unlawful Gambling Act 1998* (NSW), despite the similarities in the maximum penalties available.
- 3.35 One submission suggested that a cheating at gaming provision attracting a higher maximum penalty should exist, in addition to the current cheating provisions in the *Casino Control Act 1992* (NSW) and the *Gaming Machines Act 2001* (NSW). Under this proposal, the choice of the particular offence for which a person is charged would be decided according to the seriousness of the circumstances.⁴³
- 3.36 Additionally, the NSW Police Force⁴⁴ suggested that the maximum penalty for the cheating at gaming offence should be more than three years in order to allow the issue of “stored communications warrants” under s 116 of the *Telecommunications (Interception and Access) Act 1979* (Cth).⁴⁵

Inspectors’ appointment and powers

- 3.37 It is also clear that the individual gaming Acts make separate and disparate provision in relation to the appointment of Inspectors, as well as in relation to their powers and duties and the offences that exist where they are obstructed in the performance of their duties.⁴⁶ The Table 3.2 illustrates this situation.

40. Wesley Community Legal Service, Submission CG9, 3-4.

41. Wesley Community Legal Service, Submission CG9, 3-4.

42. NSW, Casino, Liquor and Gaming Control Authority, Submission CG6, 3.

43. Australian Internet Bookmakers Association, Submission CG14, 5.

44. NSW Police Force, Submission CG15, 3.

45. See definition of “serious contravention” in s 5E(1)(b)(i).

46. *Lotteries and Art Unions Act 1901* (NSW) s 21A-21F; *Casino, Liquor and Gaming Control Authority Act 2007* (NSW) s 18-34; *Public Lotteries Act 1996* (NSW) s 69-74; *Gambling (Two-Up) Act 1998* (NSW) s 17-20.

Table 3.2 Inspectors' appointment and powers

| Provision | Lotteries and Art Unions Act 1901 | Casino, Liquor and Gaming Control Authority Act 2007 | Public Lotteries Act 1996 | Gambling (Two-up) Act 1998 |
|----------------------------------|---|--|--|--|
| Appointment of Inspectors | <p>Minister for Tourism, Major Events, Hospitality and Racing may appoint any person. (s 21A)</p> <p>Auditor-General may exercise the functions of an Inspector. (s 21F)⁴⁷</p> | <p>The relevant Division Head may appoint a member of staff to be an Inspector. (s 20(1))</p> <p>The Authority must determine that a staff member possesses the "highest standard of integrity". (s 14)</p> <p>Director General of the Department of Trade and Investment, Regional Infrastructure and Services is taken to have been appointed as an Inspector. (s 20(2))</p> | <p>Minister for Tourism, Major Events, Hospitality and Racing may appoint a public servant possessing "the highest standard of integrity" (determined by Minister after due enquiry). (s 69)</p> | <p>Minister for Tourism, Major Events, Hospitality and Racing may appoint public servant possessing "highest standard of integrity" (determined by Minister after due enquiry). (s 17)</p> |
| Police involvement | <p>Minister may authorise police officer to exercise such function of Inspector as Minister may direct or Regulations may authorise police of specified rank to exercise all or specified functions of an Inspector. (s 21A)</p> <p>Every Police officer "of or above the rank of sergeant" may exercise the functions of an Inspector. (<i>Lotteries and Art Unions Regulation 2007</i> (NSW) cl 21)</p> | <p>Provisions refer to both Inspectors and Police officers being empowered to act. (See s 21, s 24-27, s 29-31)</p> <p>Inspectors may obtain assistance from such other Inspectors and Police officers as considered necessary. (s 24)</p> | <p>Anyone acting in aid of an Inspector has the functions of an Inspector. (s 73)</p> | <p>Police officer has, while acting in aid of an inspector, the functions of an inspector. (s 19)</p> |

47. This provision would appear to be related to a State-wide inspection program aimed at ensuring that certain charitable and non-profit organisations that are authorised to conduct lotteries and games of chance under *Lotteries and Art Unions Act 1901* (NSW) s 4 and s 4A are meeting the requirements of the Act, including that the public funds raised are recorded through proper accounting methods: NSW, Department of Gaming and Racing, *Best Practice Guidelines for Charitable Organisations* (4th ed, 2002) 3.

| Provision | Lotteries and Art Unions Act 1901 | Casino, Liquor and Gaming Control Authority Act 2007 | Public Lotteries Act 1996 | Gambling (Two-up) Act 1998 |
|---|--|---|--|--|
| Investigative powers | <p>Inspector may, by written notice specifying a reasonable time for compliance, require a person to:</p> <ul style="list-style-type: none"> ▪ furnish accounts and statements in writing; ▪ provide answers in writing; ▪ verify accounts, statements and answers by statutory declaration; ▪ attend to give evidence or produce relevant documents; ▪ furnish copies or extracts from documents. (s 21C) | <p>Inspector may require:</p> <ul style="list-style-type: none"> ▪ by written notice specifying a reasonable time for compliance, a person to furnish information or records or both (s 21); ▪ a person to answer questions (s 30(1)); ▪ a corporation (by notice in writing) to provide a representative to answer questions (s 30(2)). | <p>Inspector may require a person to:</p> <ul style="list-style-type: none"> ▪ produce documents and answer questions or provide information in relation to them; ▪ produce a device or equipment used in conduct of a public lottery and assist in its inspection; ▪ attend and answer questions or provide information (by notice in writing). (s 73) | <p>Inspector may require:</p> <ul style="list-style-type: none"> ▪ a person to produce documents and answer questions or provide information in relation to them; ▪ key employees (by notice in writing) to attend and answer questions or provide information. (s 19) <p>(Note: The Minister also has a role under s 21 and s 22.)</p> |
| Powers of entry and search of premises | <p>An Inspector may:</p> <ul style="list-style-type: none"> ▪ enter premises; and ▪ require production of documents and take copies or extracts. <p>In order to do so the Inspector must:</p> <ul style="list-style-type: none"> ▪ believe on reasonable grounds that relevant documents exist; ▪ if the premises are a residence, have the permission of the occupier or a search warrant; ▪ enter at a reasonable time and with reasonable notice to occupier (unless there is a Ministerial direction); ▪ possess a certificate issued by the Minister. (s 21D) | <p>An Inspector or Police officer may:</p> <ul style="list-style-type: none"> ▪ enter premises at any time for purposes of the Act (s 24); <p>and while there, can:</p> <ul style="list-style-type: none"> ▪ examine and inspect any part of the premises or anything; ▪ make necessary examinations and inquiries; ▪ require production of, and examine and inspect, any records; ▪ copy records; ▪ seize anything connected with an offence against gaming legislation. (s 26) <p>In order to do so, the Inspector must, if the premises are a residence, have the permission of the occupier or a search warrant. (s 25)</p> | <p>An Inspector may enter premises of licensee, agent or person reasonably suspected of conducting or receiving entries in a public lottery. (s 71(1))</p> <p>In order to do so, the Inspector must:</p> <ul style="list-style-type: none"> ▪ if the premises are a residence, have the permission of the occupier or a search warrant (s 71(2)); ▪ possess an identity card issued by the Minister (s 71(3)). | <p>An Inspector may enter approved two-up premises to:</p> <ul style="list-style-type: none"> ▪ observe the conduct and playing of a game; ▪ ascertain whether the game is being properly conducted; ▪ ascertain whether relevant regulations are being complied with; or ▪ exercise his or her functions in any other respect. (s 19) |

| Provision | Lotteries and Art Unions Act 1901 | Casino, Liquor and Gaming Control Authority Act 2007 | Public Lotteries Act 1996 | Gambling (Two-up) Act 1998 |
|---------------------------------|---|---|--|---|
| Search warrant | An Inspector may apply to an authorised officer (under the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (NSW)) for a search warrant if he or she has reasonable grounds to believe relevant documents are held on premises that are a dwelling, or that are unoccupied permanently, or temporarily or the person having control of them has failed to comply with a requirement to produce. (s 21E(1)) | An Inspector may apply to an authorised officer (under the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (NSW)) for a search warrant if he or she has reasonable grounds to believe a contravention of the Act has or is taking place on premises or that there is, on the premises, a thing connected with such an offence. (s 27) | An Inspector may apply to an authorised officer (under the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (NSW)) for a search warrant if he or she has a reasonable belief that the Act or Regulations are being contravened on the premises. (s 72) | |
| Offences relating to Inspectors | It is an offence to: <ul style="list-style-type: none"> ▪ fail to comply with a notice; ▪ refuse to take an oath; ▪ hinder or obstruct the Minister or an Inspector. (s 21H) | It is an offence to: <ul style="list-style-type: none"> ▪ fail without reasonable excuse to comply with a requirement; ▪ supply false or misleading information; ▪ obstruct, delay, hinder, assault, threaten, insult or intimidate an inspector or refuse entry to premises the Inspector may lawfully enter; ▪ impersonate an inspector. (s 34) | It is an offence to: <ul style="list-style-type: none"> ▪ prevent an Inspector in exercising his or her functions; ▪ hinder or obstruct an Inspector in exercising his or her functions; ▪ fail to comply with the requirement of an Inspector; ▪ furnish false and misleading information to an Inspector. (s 74) | It is an offence to: <ul style="list-style-type: none"> ▪ hinder or obstruct an Inspector in exercising his or her functions; ▪ fail to produce any documents when required to do so; ▪ fail without reasonable excuse to attend to answer questions or supply information; ▪ provide an Inspector with false or misleading information. (s 20) |

3.38 Several submissions emphasised the need for Inspectors to have and to maintain the highest standards of integrity.⁴⁸ One submission also warned against adopting a “lowest common denominator” approach to adopting uniform standards and procedures with respect to the appointment of Inspectors.⁴⁹ It also supported the adoption of a more consistent approach concerning record-keeping, and concerning the terms of the licences that are granted in relation to gaming activities.⁵⁰

Options for reform

3.39 Several possibilities arise for potential consideration in relation to achieving a greater degree of uniformity in the gaming laws of NSW, including:

48. NSW, Casino, Liquor and Gaming Control Authority, *Submission CG6*, 4; NSW Police Force, *Submission CG15*, 3.

49. NSW, Casino, Liquor and Gaming Control Authority, *Submission CG6*, 4.

50. NSW, Casino, Liquor and Gaming Control Authority, *Submission CG6*, 2.

- (1) Consolidating within an omnibus Act (a Gambling Regulation Act or a Gaming and Wagering Act) all of the current wagering and gaming laws, including those related to wagering on racing, and on sports and other events; those relating to casino gaming, and the use of gaming machines in licensed clubs and hotels; as well as those concerning the conduct of lotteries and art unions, public lotteries, and Keno; and, finally, two-up.
- (2) Dividing the regulation of wagering, gaming and the several forms of lottery or art unions into separate overarching Acts, each of which would contain separate offences concerning conduct amounting to cheating, or other forms of dishonesty, specific to the areas regulated by such Act.
- (3) Retaining each of the existing gaming Acts and either:
 - (a) inserting in each a standard general cheating offence, along with a series of offences that would be specific to the forms of conduct, that may arise in relation to the area of gaming to which the Act applies; or
 - (b) removing the cheating offence from the *Unlawful Gambling Act 1998* (NSW) and inserting a general cheating offence in the *Crimes Act 1900* (NSW), that would sit alongside the sports and event wagering provision that we propose in Chapter 2, in a Part or Division devoted to gambling.

In the case of option (3)(b), a review would then need to be undertaken to determine which, if any, of the cheating provisions currently contained in the *Casino Control Act 1992* (NSW) and in the *Gaming Machines Act 2001* (NSW) should remain in those Acts, and be available in relation to the prosecution of less serious forms of misconduct.

- 3.40 It is acknowledged that a full consolidation of all wagering and gaming laws would involve a significant exercise, in particular if the legislation relating to racing and the licensing and regulation of bookmakers and betting agencies were to be incorporated into an omnibus Act, embracing every other aspect of gambling.
- 3.41 We see some merit in that outcome being achieved as a long-term objective. In the meantime, a more easily realisable objective would involve the retention of the existing individual Acts, subject to amendment to achieve a greater uniformity in the penalties available and in their manner of expression, including the adoption of a more modern expression of the mental element required.⁵¹ At the same time, a review of the available penalties, and consideration of the possibility of extending the penalty notice scheme, could be usefully undertaken.
- 3.42 The replacement of s 18 of the *Unlawful Gambling Act 1998* (NSW) with a general cheating at gambling offence located in the *Crimes Act 1900* (NSW), which could be used in the case of more serious offences, could also be achieved with minimal disruption.
- 3.43 This would leave the *Unlawful Gambling Act 1998* (NSW) to deal with the topic that is suggested by its title, namely the identification and criminalisation of activities that involve unlawful forms of gambling. It would also allow context-specific offences to remain in the individual gaming Acts to cater for the lesser offences and, where appropriate, to make them amenable to the penalty notice procedure. For example, the several offences concerned with the possession of devices or instruments

51. For example, along the lines of the new fraud provisions in the *Crimes Act 1900* (NSW) pt 4AA.

capable of being used for cheating, including card counting devices, marked cards or loaded dice, or bogus or counterfeit chips or coins,⁵² could remain in the context-specific Acts.

- 3.44 A relocated general cheating at gambling provision could be based on the provisions currently found in the *Unlawful Gambling Act 1998* (NSW), the *Casino Control Act 1992* (NSW) and the *Gaming Machines Act 2001* (NSW), but redrafted together with an appropriate definition of “gambling” along the following lines:

- (1) A person must not, in respect of any form of lawful gambling:
- (a) obtain, or attempt to obtain, any benefit for himself or herself or another person, or
 - (b) encourage, or attempt to encourage, a person to deliver, give or credit any benefit to him or her or another person, or
 - (c) cause, or attempt to cause, a detriment, whether financial or otherwise, to another person,
- by the dishonest use of:
- (d) any act, scheme or practice, or
 - (e) any gambling equipment or instrument of a kind normally used in relation to gambling; or
 - (f) any other thing.

Maximum penalty: Imprisonment for 3 years.

- (2) **Benefit** includes any money, chips, prize, gaming tokens, credits, tickets, advantage, valuable consideration or security.
- (3) This section does not limit the operation of any offence relating to cheating in respect of gambling under any other Act.

- 3.45 This possible model would substitute the expression “dishonest” for the expression “fraudulent”, that is currently used in the *Unlawful Gambling Act 1998* (NSW) and the *Casino Control Act 1992* (NSW). It would also remove some of the surplusage and archaic expressions used in these Acts.

Implementation

- 3.46 It is not thought appropriate to delay completion of this Report by framing specific recommendations in this respect, particularly in the absence of any substantial body of submissions identifying concerns as to the prevalence of cheating in the context of gaming. Accordingly our only recommendation in this part of the Report is that consideration be given, in the longer term, to a wholesale review of the gaming laws to achieve a consolidation and adoption of a common and more consistent framework.

52. *Unlawful Gambling Act 1998* (NSW) s 19, s 80(1)(a); *Casino Control Act 1992* (NSW) s 18(2)-(3).

Recommendation 3.1

(1) There should be a review of the legislation for the regulation of gaming and wagering in NSW to consider:

(a) the enactment of a new general cheating offence to be contained in the *Crimes Act 1900* (NSW) to replace s 18 of the *Unlawful Gambling Act 1998* (NSW) accompanied by amendment of the cheating provisions in s 87(1) of the *Casino Control Act 1992* (NSW) and s 80(4) of the *Gaming Machines Act 2001* (NSW) to ensure consistency with the new offence; and

(b) the rationalisation and potential consolidation of the provisions contained in the *Lotteries and Art Unions Act 1901* (NSW), the *Casino, Liquor and Gaming Control Authority Act 2007* (NSW), the *Public Lotteries Act 1996* (NSW), and the *Gambling (Two-up) Act 1998* (NSW) relating to the appointment of Inspectors, their powers, and the penalties available for the obstruction of Inspectors in the course of their duties.

(2) In the longer term, subject to the establishment of a single gambling authority, consideration should be given to the enactment of an omnibus gambling Act to regulate gaming and wagering in NSW.

Miscellaneous gaming opportunities

3.47 It is recognised that technological innovation is such that new forms of gaming will continue to emerge, some of which may be amenable to cheating.

Trackside

3.48 One relatively recent entrant has been the trackside animated racing game, that was introduced by Tabcorp in 2011, and that is available at TAB outlets (but not online). It offers fixed odds bets (win, place, quinella and trifecta) on virtual reality thoroughbred, harness and greyhound races. By reason of its computerised nature, it would seem improbable that it could be the subject of any form of cheating by a player. Whether it is vulnerable to some form of hacking that would impair or modify its operation, in favour of a player, is not clear to us, but if that does occur then the offences contained in Part 6 of the *Crimes Act 1900* (NSW) would be available.

Virtual reality gambling

3.49 New forms of game, which have attracted the attention of lawmakers in the United States, and which do take place online, are the Massive Multiplayer Online Role Playing Games ("MMORPGs"), such as *World of Warcraft* and *Second Life*, that allow participants to interact with each other in a virtual world. These virtual worlds involve the use of virtual money and the trading of virtual goods and services which can, in some cases, have real-currency values either through mechanisms comparable to currency exchanges, where virtual currency is bought and sold, or

through private real-world transactions, including transactions on online auction sites.⁵³

- 3.50 MMORPGs could potentially constitute virtual casinos offering a variety of virtual gambling opportunities. A question, arises as to whether any of the forms of gaming that may be made available in virtual worlds (including, potentially, wagering on player versus player contests), but which can have real-world economic consequences, should be regulated by any of the existing laws at either the State or Commonwealth level, including for example laws prohibiting participation by minors.⁵⁴
- 3.51 Some of these activities could potentially come within the reach of the *Interactive Gambling Act 2001* (Cth) in so far as they could be seen to involve a game “played for money or anything else of value”,⁵⁵ on an internet carriage service. Consequently, we consider this to be essentially a matter for Commonwealth regulation. We do, however, note in this respect that similar questions have arisen in the US in the context of the *Unlawful Internet Gambling Enforcement Act* which prohibits “the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance” but specifically exempts “participation in any game or contest in which participants do not stake or risk anything of value other than ... personal efforts of the participants in playing the game ... or ... points or credits that the sponsor of the game ... provides to participants free of charge and that can be used or redeemed only for participation in games or contests offered by the sponsor”.⁵⁶
- 3.52 Concerns have recently been raised in relation to online gambling applications that are now available on social networking websites, such as Facebook, whereby players can purchase ‘virtual currency’ in order to engage in online gaming.⁵⁷ Examples include Slotomania, which simulates gaming machines and Farkle Pro which simulates an ancient dice game.⁵⁸ However, it appears that players cannot redeem the points they win for cash, but can only use them for further play. To the extent that the points earned allow a continuation of these online games, they can be likened to the free balls that are issued when a certain score is reached in a pinball machine game. Such free balls have been held not to amount to a “valuable thing” within the meaning of s 42(2)(a) the *Gaming and Betting Act 1912* (NSW),⁵⁹ and the use of a pinball machine, accordingly, does not amount to unlawful gambling. While such games may be legal, a concern does exist that they may encourage young people to engage those forms of online gaming that do amount to unlawful gambling.

Club and hotel poker tournaments

- 3.53 In CP12 we made reference to the fact that live organised poker tournaments are held from time to time in NSW hotels and registered clubs. These tournaments are not the subject of express mention in any of the gaming regulatory Acts. Nor are

53. M Methentis, “A Tale of Two Worlds: New US Gambling Laws and the MMORPG” (2007) 11 *Gaming Law Review* 436.

54. *Unlawful Gambling Act 1998* (NSW) s 17.

55. *Interactive Gambling Act 2001* (Cth) s 4 (definition of “gambling service”).

56. 31 USC § 5362(1).

57. J Hildebrand, “Online betting aiming at kids”, *Daily Telegraph* (22 July 2011) 5.

58. <<http://www.playtika.com/index.html>>.

59. *Rochford v Bradley* (1956) 73 WN (NSW) 442.

they included in the list of lawful forms of games for which provision is made in s 7 of the *Unlawful Gambling Act 1998* (NSW).

- 3.54 Nevertheless, we are advised that their lawful status is recognised by the Office of Liquor, Gaming and Racing, so long as they do not involve the participants staking or gambling money or valuables on the outcome of the game, or using poker chips that have a monetary value. It is permissible for an entry or registration fee to be charged to participants, for poker chips to be used that indicate points won, and for prizes (including cash) to be awarded at the end of the tournament (based on points won).⁶⁰
- 3.55 Similar rules apply to poker or casino nights for charitable fundraising; and would presumably apply in relation to any other form of tournament organised on a similar basis to tournament poker.⁶¹
- 3.56 If any such tournament involved gaming for stakes, then the use of the club or hotel, in connection with that tournament, would give rise potentially to an application of the gambling premises offences arising under the *Unlawful Gambling Act 1998* (NSW).⁶²
- 3.57 To the extent that tournaments of this kind are ungoverned, and do not involve the staking or gambling of money or any valuable, or the use of chips that have a monetary value, it is arguable that any form of cheating in connection with them would attract an application of s 18 of the *Unlawful Gambling Act 1998* (NSW).
- 3.58 While it would be preferable to place this form of tournament on a more certain statutory basis, we do not consider it necessary, in this Report, to make any specific recommendation concerning its availability. It is, however, a matter that could be usefully addressed in the event of there being a general ‘codification’ of the gambling laws.
- 3.59 It is noted that, in the case of standard poker games between individuals, that are not held in a registered club or hotel, money or valuables can be lawfully gambled or staked on the outcome of a game.⁶³ The s 18 cheating offence would appear to be available. As these games are essentially of a private nature, no further regulation is necessary.

60. NSW Office of Liquor, Gaming and Racing, *Poker Tournaments in NSW*, Information Sheet (March 2008).

61. It is, however, noted that while Blackjack Tournaments were once held they appear to no longer be available.

62. *Unlawful Gambling Act 1998* (NSW) pt 3.

63. Such games are lawful so long as they do not involve a non participant dealer, or a non participant who receives a payment or other benefit; and additionally so long as they do not charge a fee to participate in the game, or to enter the premises where the game is played – otherwise *Unlawful Gambling Act 1998* (NSW) s 5(1)(h) would be engaged to render the game unlawful, and the s 18 cheating offence would not be available.

4. Regulatory structure

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- 4.1 In this chapter, we note some of the issues that have arisen out of the submissions and consultations, concerning the possibility of establishing a revised regulatory or supervisory structure in relation to gambling, in its separate aspects of wagering on sporting and other events, and of gaming. Although these issues strictly fall outside our terms of reference, they are potentially relevant for the provision of a comprehensive response to cheating in the context of gambling, as has been recognised in the *National Policy on Match-Fixing in Sport* (“National Policy”).¹

Wagering on sporting and other events

A national approach

- 4.2 As noted earlier, our recommendation for a cheating offence, in relation to wagering on sporting and other events, assumes that it would be added to the *Crimes Act 1900* (NSW), and that it might then become a model for adoption by the other States and Territories.²
- 4.3 This reflects the thrust of the submissions received which generally supported a national uniform approach to the problem.³ Reasons offered for such an approach include:
- Professional sports are generally administered at a national level and education programs, in particular, would benefit from having a set of uniform provisions that apply to all Australian jurisdictions.⁴

1. Australia, *National Policy on Match-Fixing in Sport* (as agreed by Australian governments on 10 June 2011) (“National Policy”).

2. Para 2.19-2.23, 2.124-2.126.

3. E B Maher, *Submission CG2*, 2; Australia, Office for Sport, *Submission CG13*, 1; Australian Athletes’ Alliance, *Submission CG4*, 2; Law Institute of Victoria, *Submission CG7*, 3, 6; Sportsbet, *Submission CG10*, 4.

4. Australian Athletes’ Alliance, *Submission CG4*, 2.

- Sports betting takes place across State and national boundaries (facilitated by the increasing ease of entering electronic transactions) and a national uniform approach will ensure consistency of coverage across Australia.⁵
- A national uniform scheme will instil public confidence in the integrity of sport in Australia,⁶ and in the legal betting industry.⁷
- A national uniform scheme will give Australia credibility in international forums established to deal with the problem of criminal activities surrounding sports wagering.⁸

4.4 A national uniform approach is also reflected in the National Policy which noted:

All Australian governments agree to pursue, through Attorneys General, a consistent approach to criminal offences, including legislation by relevant jurisdictions, in relation to match-fixing that provides an effective deterrent and sufficient penalties to reflect the seriousness of offences.⁹

It was also supported by the 2011 Report of the Anti-Corruption Working Party to the Chief Executives of the Coalition of Major Professional and Participant Sports (“COMPPS Report”).¹⁰

Sports controlling bodies

4.5 As was observed in CP12,¹¹ sports controlling bodies have a pivotal role to play in detecting and in responding to cheating, in relation to sporting events. The response of these bodies to allegations of cheating, or event fixing, will vary according to the seriousness of the conduct of those who are potentially subject to their supervisory or regulatory control. Such conduct might involve:

- acts or omissions that constitute foul play or that bring the game into disrepute, or that involve the use of performance enhancing drugs or the placing of bets on an event contrary to a relevant Code of Conduct although not related to event fixing; or
- acts or omissions that are designed to corrupt betting outcomes on an event, or competition, or a contingency related to it, such as match-fixing or the release of insider information.

4.6 The former will need to remain a matter for disciplinary sanction by the club or sports controlling body, of the kind that is amenable to review by a sports arbitration commission or by some internal appellate body; or in the case of racing, by the stewards subject to the review procedure available through an Appeals Panel

5. Law Institute of Victoria, *Submission CG7*, 3; Australia, Office for Sport, *Submission CG13*, 1; CG10, 4.

6. Australia, Office for Sport, *Submission CG13*, 1.

7. Tabcorp, *Submission CG12*, 1.

8. Australia, Office for Sport, *Submission CG13*, 1.

9. National Policy [3.4].

10. Coalition of Major Professional and Participation Sports, *Anti-Corruption Working Party Report to the Chief Executives* (2011) (“COMPPS Report”) Part 2, 9-13.

11. NSW LAW REFORM COMMISSION, *Cheating at Gambling*, Consultation Paper 12 (2011) (“CP12”) [3.91]-[3.112], [7.33]-[7.42].

established under the *Thoroughbred Racing Act 1996 (NSW)*¹² and the Racing Appeals Tribunal constituted by the *Racing Appeals Tribunal Act 1983 (NSW)*.¹³

- 4.7 Acts or omissions that are designed to corrupt betting outcomes will require a criminal justice response and, as such, will involve the relevant sports controlling body in providing assistance to law enforcement agencies, in the investigation and prosecution of such conduct.
- 4.8 The need for a careful distinction to be maintained between these alternatives was recognised in a number of submissions, which expressed concerns about over-criminalising certain forms of conduct, in the sporting context, that should remain matters for internal management and discipline.¹⁴
- 4.9 The desirability of formalising, and enhancing, the role of sports controlling bodies, was accepted in the National Policy, which recorded the agreement of all Australian bodies to “pursue nationally consistent” legislation that requires:
- (a) a ‘Sport Controlling Body’ for each sport or competition to be identified and registered by an appropriate regulator, for example, a state or territory gaming commission, and be recognised in each jurisdiction;
 - (b) the Sport Controlling Body to deal with betting agencies, licensed in any state or territory, on behalf of their sport; and
 - (c) the Sport Controlling Body to register all events subject to betting with the relevant regulator.¹⁵
- 4.10 The specific provisions for legislation that would address subparagraphs (b) and (c) were identified in the National Policy as covering the following:
- (a) definitions of sports betting, sports betting events, sports betting providers, a betting service, sport controlling body and an appropriate regulator;
 - (b) requirements for the sporting organisation to provide the betting agency with information regarding their members (players, staff) and relevant competition/event details;
 - (c) provision for information to be referred to the appropriate regulator or law enforcement agency in the event of an incident;
 - (d) facilitation of international information sharing where appropriate (eg in trans-Tasman sporting competitions);
 - (e) approval of events and competitions of any kind for sports betting purposes, and of bet types relating to those events and competitions, by an appropriate regulator (with the exception of horse, harness or greyhound racing);
 - (f) provision for the appropriate regulator to have the right to seek information it thinks fit from betting agencies and the relevant sporting organisation to assess sports betting applications;

12. *Thoroughbred Racing Act 1996 (NSW)* s 42.

13. *Racing Appeals Tribunal Act 1983 (NSW)* s 5.

14. Law Institute of Victoria, *Submission CG7*, 4; *Sporting Bodies Consultation*.

15. National Policy [3.5].

- (g) provision for the appropriate regulator to have the right to impose any conditions it thinks fit to provide approval of an event at the time of giving the approval or at any later time;
- (h) approvals that will be controlled by the appropriate regulator including approval conditions, variation and revocation of approvals, application process, determination of applications and duration and surrender of approvals, costs of investigating applications, and mechanisms to manage objections, disputes and tribunals;
- (i) the range of matters the appropriate regulator will consider when assessing events for sports betting eg integrity risks, the sport organisation's capacity to administer and enforce rules or codes of conduct to ensure the integrity of the event or competition;
- (j) specification of reporting and publication requirements of the appropriate regulator to government, the public and other agencies as required;
- (k) provision that the Sport Controlling Body may make an agreement with a betting agency for the betting agency to offer a betting service on the event and under the agreement the parties will:
 - i. provide for the sharing of information between a sport controlling body and a betting agency for the purposes of protecting and supporting integrity in sport and sport betting; and
 - ii. state whether or not a fee is payable by the betting agency to the sport controlling body in respect of betting on the sports betting event and if a fee is payable, what the fee is or how it is calculated.
- (l) a betting agency must not accept, offer to accept, or invite a person to place, a bet; or facilitate the placing of a bet on a contingency that is the subject of a prohibition.¹⁶

4.11 Otherwise, the National Policy envisaged sports controlling bodies being expected to:

- (a) adopt an anti-match-fixing/anti-corruption code of conduct which aligns with nationally agreed principles ;
- (b) apply the code of conduct to all players, player agents, support personnel, officials and staff;
- (c) apply a disciplinary framework within the code of conduct including sanctions and appropriate investigative processes with minimum and meaningful sanctions;
- (d) develop and enter into national integrity agreements with betting organisations in relation to the provision of betting and information sharing on the sport involved by July 2012;
- (e) provide appropriate information to betting agencies to support preventative and investigative measures in a timely manner;
- (f) provide appropriate education of players, player agents, support personnel, officials and staff on their responsibilities under the code of conduct and to provide information on match-fixing to assist with

16. National Policy [3.8].

prevention, detection and disciplinary actions in accordance with this policy;

- (g) liaise with and report to the relevant government agencies including the over-sighting/coordinating agency; and
- (h) provide and exchange information on suspected match-fixing or corrupt activities with the over-sighting/coordinating agency, betting agencies, and law enforcement agencies.¹⁷

4.12 We note that several of the larger sports controlling bodies have already entered into integrity agreements with betting agencies and that, through these agreements, they have some capacity to influence the types of events and contingencies that can become the subject of authorised betting.

4.13 Clearly, the smaller sports would require assistance to meet the requirements of the proposed legislation and of any proposed integrity agreement. This was similarly recognised in the National Policy,¹⁸ which also proposed that any ongoing or new funding provided by governments to sporting organisations be conditional on those organisations “developing and implementing appropriate anti-match-fixing, and anti-corruption policies and practices, including codes of conduct and sanctions regimes”.¹⁹

Jurisdiction over non-participants

4.14 One particular problem with the disciplinary powers of sports controlling bodies is that they can only apply to those who have agreed to be bound by the codes of conduct or contractual terms and, therefore, cannot adequately deal with the involvement of people who do not fall within their jurisdiction.

4.15 In this regard, we draw attention to a proposal of Racing NSW that the law, presumably the *Thoroughbred Racing Act 1996* (NSW), should be amended to clarify that Racing NSW, and its stewards, are permitted to exercise their powers under the Rules of Racing against “non-licensed” people, in particular, to compel their participation in inquiries.²⁰

4.16 In substance, Racing NSW’s concern was that it, and the Police, require additional coercive powers because of the serious risk that illicit conduct poses to the integrity of racing. It argued that the warning-off power is not sufficient to deal with non-licensed people who may be involved, individually or in association with licensed people, in such conduct. Racing NSW also recommended that a specific offence should be created for a person who does not comply with a direction given by Racing NSW, or by Stewards, to participate in any inquiry conducted under the Act or the Rules of Racing.

4.17 There was not, however, unanimity in this respect²¹ and, in the time available, we have not had the opportunity to consult with the Australian racing and wagering community as to the necessity for, or the ramifications of, any such amendment. It is

17. National Policy [4.2].

18. National Policy [3.9], [3.12], [4.3].

19. National Policy [3.14].

20. Racing NSW, *Submission CG8*, 2. The existence of some uncertainty as to the current availability of this power was noted in CP12 [3.135].

21. For example, Australian Internet Bookmakers Association, *Submission CG14*, 5 opposed this proposal.

a matter that would be equally relevant for the harness and greyhound racing industries and it falls outside our terms of reference.

- 4.18 It is, however, a matter of some importance that, in our view, warrants further consideration by the Minister for Tourism, Major Events, Hospitality and Racing. Otherwise, the existence of an appropriate criminal offence, along the lines proposed, will assist to fill the gap that exists in relation to those who are not subject to sports controlling bodies.

Codes of conduct

- 4.19 In CP12, we noted the importance of sports controlling bodies adopting Codes of Conduct through contract or otherwise.²²
- 4.20 The COMPPS Report provided strong support for each of these objectives.²³ It recommended that those who are covered should comprise “any person who can influence any part of the outcome of a match or who has access to valuable inside information”. It also recommended that there be included, in the Code, the processes for determining allegations of breach, as well as details of the penalties and appeal procedures available.
- 4.21 Several submissions argued that it was impractical to expect, or to require, the adoption across all sports of a uniform Code of Conduct, having regard to the differences in their financial and organisational strengths.²⁴ This is accepted. Nevertheless we listed in CP12 those restrictions or requirements that we considered to be ineluctable or core provisions of any such code.²⁵ Support was evident, in some submissions, for the development of a high quality model Code of Conduct, which could be adapted to the needs and circumstances of individual sports.²⁶
- 4.22 The National Policy has similarly recommended the incorporation, within a code for each sport, of a set of provisions that would:

restrict players, player agents, support personnel, officials and staff, directly or indirectly, engaging in the following conduct:

- (a) betting, gambling or entering into any other form of financial speculation on any match or on any event connected with the sport involved;
- (b) inducing or encouraging any other person to bet, gamble or enter into any other form of financial speculation on any match or event or to offer the facility for such bets to be placed on the sport involved;
- (c) ‘tanking’ (including, in particular, owing to an arrangement relating to betting on the outcome of any match or event) other than for legitimate tactical reasons in line within the rules of the respective sport;

22. CP12 [7.34].

23. COMPPS Report, Part 1, 5-8.

24. Law Institute of Victoria, *Submission CG7*, 5-6; Australian Athletes’ Alliance, *Submission CG4*, 2.

25. CP12 [3.99]-[3.102].

26. Law Institute of Victoria, *Submission CG7*, 6; Australia, Office for Sport, *Submission CG13*, 1; Australian Internet Bookmakers Association, *Submission CG14*, 8.

- (d) inducing or encouraging any player to 'tank' (including, in particular, owing to an arrangement relating to betting on the outcome of any match or event) other than for legitimate tactical reasons within the rules of the respective sport;
- (e) for money, benefit or other reward (whether for the player him or herself or any other person and whether financial or otherwise), providing insider information that is considered to be information not publicly known such as team or its members configuration (including, without limitation, the team's actual or likely composition, the form of individual players or tactics) other than in connection with bona fide media interviews and commitments;
- (f) any other form of corrupt conduct in relation to any match or event connected with the respective sport;
- (g) failing to promptly disclose to the sporting organisations or Sport Controlling Bodies that he or she has received an approach from another person to engage in conduct such as that described in paragraphs (a) – (f) above;
- (h) failing to promptly disclose to the sporting organisations or Sport Controlling Bodies that he or she knows or reasonably suspects that any current or former player or official or any other person has engaged in conduct, or been approached to engage in conduct, such as that described in paragraphs (a) – (f) above;
- (i) failing to promptly disclose to the sporting organisations or Sport Controlling Bodies that he or she has received, or is aware or reasonably suspects that another player or official or any other person has received, actual or implied threats of any nature in relation to past or proposed conduct such as that described in paragraphs (a) – (f) above; or
- (j) conduct that relates directly or indirectly to any of the conduct described in paragraphs (a) – (i) above and is prejudicial to the interests of the sport or which bring him or her or the sport into disrepute.²⁷

4.23 We would suggest adding to this list a requirement for participants to co-operate with law enforcement agencies, and sports controlling bodies, in any investigation of suspected match-fixing or other corrupt conduct in relation to a sporting event, including the provision of financial and phone records and any other documents of relevance for such an inquiry.

4.24 Provisions along the lines of those proposed in the National Policy can be found in many existing codes of conduct. For example, the FIFA Code of Ethics (2009), which extends to players, players' agents, match agents and officials, forbids them:

from taking part, either directly or indirectly, in betting, gambling, lotteries and similar events or transactions connected with football matches. They are forbidden from having stakes, either actively or passively, in companies, concerns, organisations, etc that promote, broker, arrange or conduct such events or transactions.²⁸

27. National Policy [4.5].

28. *FIFA Code of Ethics* (2009) art 13.

and requires them to "report any evidence of violations of conduct to the FIFA Secretary General, who shall report it to the competent body".²⁹

- 4.25 The world tennis governing bodies have established a Uniform Tennis Anti-Corruption Program the purpose of which is to:
- (i) maintain the integrity of tennis,
 - (ii) protect against any efforts to impact improperly the results of any match and
 - (iii) establish a uniform rule and consistent scheme of enforcement and sanctions applicable to all professional tennis Events and to all Governing Bodies.³⁰
- 4.26 It covers all players, tournament support personnel, and "related persons" (including "any coach, trainer, therapist, physician, management representative, agent, family member, tournament guest, business associate or other affiliate or associate of any Player, or any other person who receives accreditation at an event at the request of the Player or any other Related Person"³¹); and prohibits wagering, contriving the outcome or any other aspect of an event, giving or accepting bribes and dealing in inside information.³² It also imposes reporting obligations.³³
- 4.27 Similar codes have been adopted nationally, for example, by the Australian Rugby Union, Cricket Australia, and the National Rugby League.³⁴ Similar obligations also arise, for example, under the Australian Football League's standard playing contract.³⁵

Anti-corruption education programs

- 4.28 We noted, in CP12, the need for sports controlling bodies to establish appropriate education programs that are aimed at informing participants of the risks involved in sports fixing, and to adopt anti-corruption strategies. This, we suggested, should include the introduction of a line of communication and support for those who report relevant misconduct, the formulation of a strategy to assist those who may have financial or similar problems that may make them vulnerable to corrupt approaches, as well as the adoption of accreditation and security measures to prevent access by potential fixers to participants at sporting venues, hotels and the like.³⁶
- 4.29 Strong support for the introduction of education and anti-corruption programs appears in the COMPPS Report, which noted the desirability of there being a greater focus on match-fixing and related integrity issues, as well as on the provision of whistleblower procedures, and on a comprehensive auditing procedure to ensure the effective delivery of such programs.³⁷ We agree with the thrust of the

29. *FIFA Code of Ethics* (2009) art 14.

30. *Uniform Tennis Anti-Corruption Program* (2011) art A.

31. *Uniform Tennis Anti-Corruption Program* (2011) art B(21).

32. *Uniform Tennis Anti-Corruption Program* (2011) art D(1).

33. *Uniform Tennis Anti-Corruption Program* (2011) art D(2).

34. Australian Rugby Union, *Code of Conduct*, by-law 3; Cricket Australia, *Code of Behaviour*, cl 8; and National Rugby League, *Code of Behaviour*, cl 21, 22 and 27.

35. Australian Football League, *Standard Playing Contract*, cl 9.

36. CP12 [3.103]-[3.104].

37. COMPPS Report, Part 3, 14-17.

COMPPS Report, in this respect, and note that the National Policy similarly recognises the need for sports controlling bodies to develop appropriate education programs.

Betting agencies and exchange of information

- 4.30 It was similarly recognised, in the submissions and consultations, that the betting agencies have a significant role to play in detecting and reporting the suspicious betting trends that will become apparent to them, in the course of their day to day business.³⁸ In this regard, most agencies have the technology in place to monitor such trends, and to identify, for example, attempts by overseas gamblers to circumvent laws prohibiting sports betting, that may be in place within their country of residence.
- 4.31 In Europe, the co-operation between betting agencies and sports controlling bodies has been formalised, through agreements or memoranda of understanding, that provide for the exchange of information concerning irregular betting activities, and through the establishment of early warning systems that are tasked with monitoring sports betting.³⁹
- 4.32 The National Policy addressed this issue by noting the agreement of all Australian governments to work with betting agencies in the implementation of the policy. In this respect the National Policy envisaged betting agencies being asked to:
- (a) adopt an industry standard for information exchange and information provision requirements with sports, governments and law enforcement agencies by July 2012;
 - (b) develop and enter into national integrity agreements with sporting organisations in relation to the provision of betting and information sharing on the sport involved by July 2012;
 - (c) guarantee confidentiality of information provided by sports to the betting agencies;
 - (d) collaborate with sports and law enforcement agencies and the appropriate regulator on the provision of information to assist detection and investigation of suspicious activity or breaches of the relevant code of conduct for that sport; and
 - (e) provide a share of revenue to implement this policy, including to sports.⁴⁰
- 4.33 It is essential that there be a clear role for the involvement of the betting agencies in securing the integrity of sports betting and of the events that underline such activity. This will need to cater, amongst other things, for the lawful collection and exchange of information and intelligence, in relation to suspicious betting events and potential match-fixing that, amongst other things, does not breach privacy laws. It is our

38. Sportsbet, *Submission CG10*, 4-5; Law Institute of Victoria, *Submission CG7*, 5; Australia, Office for Sport, *Submission CG13*, 1, Betting providers, *Consultation*; and in CP12 [3.91]-[3.112].

39. Examples include the formation of Early Warning System Gmbh at the instance of FIFA; the Betting Fraud Detection system established by VEFA; the work of the European Sports Security Association; and the European Lotteries Monitoring System founded by the World and European Lotteries Association.

40. National Policy [5.2].

understanding that consultations have recently taken place at a federal level in this respect.

- 4.34 In general, there was support in the submissions,⁴¹ and consultations, for the formalisation of arrangements of this kind. It could occur through legislation, or through the development of a model code or memorandum of understanding.
- 4.35 Support for a strategy of this kind, was also provided by the COMPPS Report although its recommendation was to adopt the Victorian approach.⁴²
- 4.36 In our view, there is a strong case to be made for formalising the capacity for information sharing,⁴³ that would ensure compliance with privacy laws, and that would also provide suitable safeguards as to the way in which information should be managed and kept secure.
- 4.37 It is recognised that issues do arise in relation to the possible introduction of a requirement that sports betting be confined to a system involving account-based betting that requires proof of identity. The desirability of requiring betting to be account-based was raised in the submission of Sportsbet,⁴⁴ although contrary views were expressed by one other betting agency.⁴⁵ We are not in a position to express any concluded view in relation to this issue, which is, in any event, outside our terms of reference. However, we do acknowledge that any system which requires proof of identity for sports betting would aid investigation of suspected match-fixing.

Approval of betting events

- 4.38 Currently there is no uniform national system for the approval of betting events or of forms of betting. Few of the current regimes expressly specify the criteria against which a proposed betting event can be assessed or expressly contain provision for a formal process of consultation with relevant stakeholders. The identity of the person or agency responsible, in the several States and Territories, for approval of betting events, and the legislation under which that occurs, is noted in the following table.

Table 4.1 Approval of betting events

| Jurisdiction | Approving authority | Eligible events | Notes |
|-----------------|--|--|---|
| New South Wales | Minister for Tourism, Major Events, Hospitality and Racing | Any sporting event (other than horse racing, harness racing or greyhound racing) or other event, or class of sporting or other events, whether held in New South Wales or elsewhere. "Event", in this context, is defined to include a contingency. | [<i>Racing Administration Act 1998</i> (NSW) s 18(1).] |

41. Sportsbet, *Submission CG10*, 4-5; Australia, Office for Sport, *Submission CG13*, 1; Law Institute of Victoria, *Submission CG7*, 6-7.

42. COMPPS Report, Parts 4-7, 18-28.

43. As supported by the Australian Athletes' Alliance, *Submission CG4*, 11.

44. Sportsbet, *Submission CG10*, 5-6.

45. Betting providers, *Consultation*.

| Jurisdiction | Approving authority | Eligible events | Notes |
|------------------------------|---|--|--|
| Australian Capital Territory | ACT Gambling and Racing Commission | Sporting or other event. | [<i>Race and Sports Bookmaking Act 2001</i> (ACT) s 20.] |
| Northern Territory | Racing Commission | Event or contingency. | [<i>Racing and Betting Act</i> (NT) s 4(2).] |
| Queensland | N/A | A "sporting event or contingency (whether in Australia or elsewhere)". | UNITAB is the only licensee authorised to conduct sports wagering. |
| | Responsible Minister | "Another event or contingency". | On application by the licensee. [<i>Wagering Act 1998</i> (Qld) s 7, s 56, s 57.] |
| South Australia | Independent Gambling Authority of South Australia | (a) contingencies related to races within or outside Australia (other than races held by licensed racing clubs); or (b) contingencies related to sporting or other events within or outside Australia; or (c) other contingencies. | Before approving a contingency, the Authority is required to have regard to criteria set out in <i>Authorised Betting Operations Act 2000</i> (SA) s 4(3)(a)(i)-(v). The Authority's approvals are subject to the possibility that the responsible Minister may give the Authority binding directions preventing or restricting the approval of certain contingencies. [<i>Authorised Betting Operations Act 2000</i> (SA) s 4.] |
| Tasmania | Tasmanian Gaming Commission | A sports event, or a sports event of a class specified in the Gazette notice | At the request of a licensed provider or "on its own discretion". [<i>Gaming Control Act 1993</i> (Tas) s 3(8).] |
| Victoria | A sports controlling body and a betting operator by agreement | An approved betting event determined by the Victorian Commission for Gambling Regulation having regard to certain specified criteria set out in <i>Gambling Regulation Act 2003</i> (Vic) s 4.5.8. | The sports controlling body must be approved by the Commission as a "sports controlling body for a sports betting event" subject to criteria set out in <i>Gambling Regulation Act 2003</i> (Vic) s 4.5.14. The Commission can also prohibit betting on a contingency relating to an approved betting event, or class of event, that is held wholly or partly in Victoria, in certain specified circumstances under <i>Gambling Regulation Act 2003</i> (Vic) s 4.5.29. |
| | Victorian Commission for Gambling Regulation | An approved betting event determined by the Victorian Commission for Gambling Regulation having regard to certain specified criteria set out in <i>Gambling Regulation Act 2003</i> (Vic) s 4.5.8. | Only where the sports betting provider and the sports controlling body have been unable to reach an agreement between themselves. |
| Western Australia | Gaming and Wagering Commission | Any sporting event or "a specific contingency of, or relating to, such a sporting event". | [<i>Betting Control Act 1954</i> (WA) s 4B.] |

- 4.39 The events or contingencies that are approved differ from jurisdiction to jurisdiction. In some States, the list of approved betting events is relatively small, while in other jurisdictions it is much more extensive.⁴⁶ As noted elsewhere in this Report, a resident in a jurisdiction that does not authorise a particular form of bet may place that bet, by telephone or internet, in another jurisdiction where it is approved. In this regard, it is also relevant to note that it is only in Tasmania that a betting exchange option is offered that allows, amongst other things, the opportunity of betting on a competitor to lose a sporting contest.
- 4.40 This lack of uniformity has direct implications for the extent to which betting on events or contingencies, that are particularly vulnerable to manipulation, can be eliminated or otherwise subjected to controls. It also has implications for the revenue recoverable by each jurisdiction from betting taxes, since there will be a natural tendency for the betting agencies to locate their operations in the jurisdiction that permits the maximum range of betting opportunities.
- 4.41 The need for greater transparency in the identification of approved betting methods and events is unarguable, and it is addressed to some extent in the actions proposed by the National Policy noted above.⁴⁷ That proposal is based, at least in part, on the Victorian model which relates, however, only to sporting events held in that State.⁴⁸
- 4.42 What appears to be envisaged by the National Policy, is the creation of a regulatory power, to be exercised by the appropriate Minister, in relation to the specification of approved betting events, that would follow upon consultations with sports controlling bodies and betting agencies, and in accordance with a legislated list of matters that are to be taken into account before a betting event is approved.⁴⁹
- 4.43 This would provide greater scope for the involvement of sports controlling bodies than is possible under the Victorian model. Under that model, a sports controlling body may only be involved in identifying sports betting events if it has applied, and been approved by, the Victorian Commission for Gambling Regulation as a “sports controlling body for a sports betting event”.⁵⁰ The Commission’s approval is subject to a set of integrity factors that must be satisfied, including:
- (a) whether the applicant—
 - (i) has control of the event; or
 - (ii) organises or administers the event; and
 - (b) whether the applicant has adequate policies, rules, codes of conduct or other mechanisms designed to ensure the integrity of the event; and

46. See, eg: the 53 categories of sporting and other events listed in NSW, *Government Gazette*, 4 March 2011, 1739; the “sports events” that may be “offered as fixed odds betting markets” listed in *Race and Sports Bookmaking (Rules for Sports Bookmaking) Determination 2009 (No 1)* (ACT); Tasmania, Department of Treasury and Finance, Liquor and Gaming Division, “Approved Sports Events” (June 2009); Northern Territory, Department of Justice, *Schedule of Declared Sporting Events* (current as at 3 June 2010).

47. Para 4.10.

48. *Gambling Regulation Act 2003* (Vic) s 4.5.22(2)(a).

49. See subclauses (e)-(j) of the policy set out in para 4.10 above.

50. *Gambling Regulation Act 2003* (Vic) s 4.5.12.

- (c) whether the applicant supports compliance with relevant international codes and conventions applicable to the event that relate to integrity in sport; and
- (d) whether the applicant has the expertise, resources and authority necessary to administer, monitor and enforce the integrity systems; and
- (e) whether the applicant has clear policies on the provision of information that may be relevant to the betting market; and
- (f) whether the applicant has clear processes for reporting the results of the event and hearing appeals and protests regarding those results; and
- (g) whether the applicant has clear policies for the sharing of information with sports betting providers for the purpose of investigating suspicious betting activity; and
- (h) whether the applicant is the most appropriate body to be approved as the approved sports controlling body for the event; and
- (i) whether the approval of the applicant is in the public interest.⁵¹

So far, only six sports organisations have been approved under these criteria as sports controlling bodies.⁵² Several submissions received suggested that the Victorian process is cumbersome, inflexible, time-consuming and expensive,⁵³ and that, as a consequence, there is an incentive for a betting agency to establish its services in another jurisdiction.

4.44 In South Australia, before approving a contingency, the Independent Gambling Authority is required to have regard to:

- (i) the standards of probity applying in relation to the contingencies; and
- (ii) available evidence of the past conduct of events to which the contingencies relate (if any); and
- (iii) the likely nature and scale of betting operations in relation to the contingencies; and
- (iv) whether betting operations in relation to the contingencies are lawful in another State or a Territory of the Commonwealth; and
- (v) the appropriateness in other respects of the contingencies for the conduct of betting operations generally or the particular betting operations concerned ...⁵⁴

4.45 The Authority has advised that, where appropriate, it consults sports controlling bodies about proposed betting types and also seeks assurance from wagering agencies about how it will settle disputes.⁵⁵ The Authority's approvals are, however,

51. *Gambling Regulation Act 2003 (Vic)* s 4.5.14.

52. Australian Football League, Australian Rugby Union, Cricket Australia, National Rugby League, Professional Golfers Association (PGA) of Australia, and Tennis Australia: Victorian Commission for Gambling Regulation, "Approved Events" <<http://www.vcgr.vic.gov.au>>.

53. Tabcorp, *Submission CG12*, 2-3; Australian Internet Bookmakers Association, *Submission CG14*, 6; Betting Providers, *Consultation*.

54. *Authorised Betting Operations Act 2000 (SA)* s 4(3)(a)(i)-(v).

55. SA, Independent Gambling Authority, *Submission PCG20*.

subject to the possibility that the responsible Minister may give the Authority binding directions preventing or restricting the approval of certain contingencies.⁵⁶

- 4.46 It is noted that, under the *Racing Act 2003* (NZ), the New Zealand Racing Board is given the function of conducting betting in relation to sporting events, whether held in New Zealand or overseas.⁵⁷ The Board is required to seek the approval, in writing, of the appropriate “New Zealand national sporting organisation”, before conducting betting on that sport.⁵⁸ Provision is made for a share of the revenue from betting to be provided to the relevant national sporting organisations.⁵⁹
- 4.47 There was clear support in submissions⁶⁰ for the establishment of a unified process for the identification of approved betting events, in consultation with the sports controlling bodies and betting agencies, and which would also be the subject of cross-jurisdictional consultation.
- 4.48 There was also some support for the identification of a common set of factors to be taken into account, for example, along the lines of those in place in Victoria or South Australia; although the view was also offered that it was unnecessary to formalise the process to this extent, as the other jurisdictions already take considerations of this kind into account.
- 4.49 In our view there would be merit in the identification of uniformly approved betting events, and in providing for greater transparency in the approval process, through the kinds of consultations proposed, and through the development of a clear statement of the factors to be taken into account.
- 4.50 It has been brought to our attention that significant concerns exist in relation to the ability of Australian residents to place sports bets online with gambling agencies located overseas, with the inevitable risks that arise when those agencies are not licensed under State laws, are unregulated in their place of operation, are in a position to offer bets on events that are not approved in Australia, and are not required to adhere to identification or information-sharing requirements.
- 4.51 This remains a matter primarily for regulation under the *Interactive Gambling Act 2001* (Cth) rather than NSW laws and, as a consequence, needs to be considered in the context of the current review of that Act. Unless steps are taken to discourage that form of betting, either through the prosecution of those who use those services, or through prohibiting the transfer of funds to or from such overseas agencies, there will always be a risk of illegal operators overseas engaging, and attempting to engage, in the fixing of events that will affect betting outcomes of those events.

Cross-border collaboration

- 4.52 Of equal importance, given the increase globally of irregular and fraudulent sports betting, and the potential reach of organised crime that is not constrained by national borders, is the need for international collaboration between sports controlling bodies, betting agencies, and law enforcement agencies.

56. *Authorised Betting Operations Act 2000* (SA) s 4(4).

57. *Racing Act 2003* (NZ) s 9(1)(c).

58. *Racing Act 2003* (NZ) s 55(1).

59. *Racing Act 2003* (NZ) s 55(2), s 57(1)(d).

60. Australian Internet Bookmakers Association, *Submission CG14*, 7; Tabcorp, *Submission CG12*, 2-3; and Sportsbet, *Consultation*.

- 4.53 To some extent, the basis for such a framework is in place, having regard to the existence of international controlling bodies for a number of sports, and the increased attention given to this area of activity for example, by Interpol,⁶¹ and by the FBI which has a specific Sports Bribery Program.⁶²
- 4.54 This is also recognised in the National Policy, which notes the “emerging push for an international information-sharing, monitoring, investigation and enforcement agency,” and records that “Australia is actively working with other like-minded nations to ensure that international measures are developed and put in place that further safeguard Australian sport from international criminal activity”.⁶³
- 4.55 In this respect, the National Policy notes that Australian governments have agreed to support international arrangements that provide:
- (a) monitoring of irregular sports betting on international events (such as Olympics Games and world championships) through the IOC and international sporting federations;
 - (b) the development of formal information sharing arrangement through the proposed over-sighting/coordinating agency; and
 - (c) the development of agreements between sports betting agencies and international sporting federations relating to return of revenue for international events.⁶⁴
- 4.56 This approach appears to be sound. International co-operation in information-sharing, and monitoring of sports fixing and irregular conduct, is obviously valuable. Less obvious, and probably not feasible, is the suggestion that has been made, in some quarters,⁶⁵ for the establishment of an International Pan Sports Anti-Corruption Agency.

A national sports betting integrity unit

- 4.57 Of potential value in driving the implementation of the National Policy would be the formation of a National Sports Betting Integrity Unit, of the kind that was identified in some of the submissions and consultations.⁶⁶
- 4.58 A National Sports Betting Integrity Unit could perform functions as a national clearing-house, and policy advisory body, that could liaise with sports controlling bodies, betting agencies and Australian governments, in the development of uniform legislation and in assisting sports controlling bodies to perform the functions proposed.

61. Interpol, Media release, "FIFA makes historic contribution to INTERPOL in long-term fight against match-fixing" (9 May 2011).

62. US, Federal Bureau of Investigation, "Sports Bribery Program" <<http://www2.fbi.gov/hq/cid/orgcrime/lcn/sports.htm>>.

63. National Policy [1.7].

64. National Policy [8.2].

65. N Harris, "Head of Wada calls for global anti-corruption body", *Sporting Intelligence* (23 February 2011) <<http://www.sportingintelligence.com>>; Council of Europe, *18th Council of Europe Informal Conference of Ministers responsible for Sport (Baku, 22 September 2010)*, Report by the Secretary General, 15-22.

66. Sportsbet, *Submission CG10*, 4; Australian Internet Bookmakers Association, *Submission CG14*, 8; Sporting organisations, *Consultation*; Sportsbet, *Consultation*.

- 4.59 In the longer term, it could possibly perform functions similar to those of the Sports Betting Intelligence Unit (“SBIU”), that was established by, and is located at, the UK Gambling Commission. The SBIU has intelligence gathering and monitoring functions, as well as preliminary investigative responsibilities in support of action that might subsequently be taken by sports controlling bodies or by law enforcement agencies.⁶⁷
- 4.60 A further precedent of potential interest in relation to any move to establish an Independent Integrity Unit, as was supported in the COMPPS Report,⁶⁸ would be the Office of Racing Integrity Commissioner that has now been established in Victoria under the *Racing Act 1958* (Vic), with jurisdiction over the three racing codes.
- 4.61 Key for the successful prosecution of corrupt activity in this area, is the need for early engagement by law enforcement, and for the existence of sufficient powers to gain the information necessary for a prosecution. As noted earlier, enlargement of the maximum available penalty in relation to the sports betting offence, which we propose, provides a basis for the use of covert powers. Otherwise, the assistance of the Australian Crime Commission in its role of processing and disseminating criminal intelligence, along with the contribution that could be provided by AUSTRAC and CrimTrac, and by the establishment of sports gambling expertise within specialised policing units, will be important parts of the response that is required.

Conclusion

- 4.62 The arrangements outlined above accord with the views that were provisionally expressed in CP12, and also with much of the report of the COMPPS Anti Corruption Working Party. In general, we support the implementation of the National Policy, and of the COMPPS Report, although we do not make any formal recommendation in this area, since it is strictly outside our terms of reference, and is more appropriately dealt with on an inter-governmental basis as part of the implementation of the National Policy.
- 4.63 Implementation of the National Policy will necessitate a review of the current NSW regulatory arrangements, including the possible establishment of a central gambling authority, with specific powers in relation to the regulation of sports and other event betting, of the kind considered in the following section of this Report.

Gaming

- 4.64 In CP12,⁶⁹ we drew attention to the division of responsibility, in relation to the application and enforcement of gambling laws, that arises by reason of the separate existence and functions of:

67. Its operations are summarised in *The Gambling Commission’s Betting Integrity Decision Making Framework*, December 2010 [3.4]-[3.13] and in the *Sports Betting Intelligence Unit, Terms of Reference*, June 2010. The Gambling Commission has published a number of documents concerning its operations and those of the SBIU: eg, *Betting Integrity Policy: Position Paper* (March 2009); *The Gambling Act 2005: Advice for British Police Services* (2009) and *In-running (in play) Betting: Position Paper* (2009).

68. COMPPS Report, Part 5-7, 24-27.

69. CP12 (2011) [3.33]-[3.36].

- the Office of Liquor Gaming and Racing (OLGR);
- the Casino, Liquor and Gaming Control Authority (CLAGCA); and
- the Casino, Gaming and Racing Investigation Unit of the NSW Police Force.

4.65 In various ways, these authorities or entities have responsibilities that extend to:

- gaming activities at the Star City Casino;
- the use of gaming machines in licensed clubs and hotels;
- the operations of the three racing codes;
- the authorisation of event betting;
- the conduct of lotteries and art unions, and
- the provision of policy advice;

and that also embrace the administration of the liquor and lotteries laws.

4.66 CLAGCA is constituted as an Authority under statute,⁷⁰ as are the three racing authorities, Racing NSW,⁷¹ Harness Racing NSW,⁷² and Greyhound Racing NSW.⁷³

4.67 OLGR was not created pursuant to statute. Its powers and functions are derived by way of delegation from the Minister for Tourism, Major Events, Hospitality and Racing. Its responsibilities relate to the administration of the three Racing Acts, as well as the *Totalizator Act 1997* (NSW), *Racing Administration Act 1998* (NSW), *Unlawful Gambling Act 1998* (NSW), *Public Lotteries Act 1996* (NSW),⁷⁴ *Lotteries and Art Unions Act 1901* (NSW), and the *Charitable Fundraising Act 1991* (NSW).

4.68 The licensing of bookmakers in NSW is a function reserved to the separate racing authorities. Apart from the operations of the licensed bookmakers, wagering services are supplied by TAB Limited subject to the provisions of the *Totalizator Act 1997* (NSW). That corporation is the successor to the Totalizator Agency Board which prior to enactment of the *Totalizator Agency Board Privatisation Act 1997* (NSW), was itself a statutory authority.

4.69 The range of declared betting events, upon which Tabcorp and licensed bookmakers can offer betting, is determined by the Minister for Tourism, Major Events, Hospitality and Racing under the *Racing Administration Act 1998* (NSW),⁷⁵ on the advice of OLGR.

4.70 CLAGCA is the sole body responsible for the regulation and enforcement of gaming and liquor laws, at the Star City Casino. It also has regulatory responsibilities, which it shares with the Director General, Department of Trade and Investment, Regional

70. *Casino, Liquor and Gaming Control Authority Act 2007* (NSW) s 4.

71. *Thoroughbred Racing Act 1996* (NSW) s 4.

72. *Harness Racing Act 2009* (NSW) s 4.

73. *Greyhound Racing Act 2009* (NSW) s 4.

74. Which applies to public lotteries and Keno.

75. *Racing Administration Act 1998* (NSW) s 18 and s 20.

Infrastructure and Services, in relation to the operations of gaming machines, and the supply of liquor, in registered clubs.⁷⁶

- 4.71 Prior to 1 July 2008, the responsibilities for the administration of the liquor laws, arising under the *Liquor Act 1982* (NSW) was vested in the NSW Licensing Court,⁷⁷ and in the Liquor Administration Board. Following enactment of the *Liquor Act 2007* (NSW) and repeal of the *Liquor Act 1982* (NSW), the work of the Liquor Licensing Court, and of the Liquor Administration Board, effectively passed to CLAGCA.
- 4.72 Having regard to the complexity of these arrangements, an issue was identified in CP12 concerning the possible desirability of achieving a rationalisation or co-ordination of the several functions and responsibilities involved. Possible options identified were firstly the amalgamation of OLGR and CLAGCA; and secondly the creation of a NSW Gambling Commission or Authority in place of each agency.

A new approach?

- 4.73 Although the nature of the current supervisory structure of gambling received little specific attention in the submissions received, it remains our view that it is an unduly complex structure, that is out of line with the approach adopted in the other States and Territories, where central gambling commissions or authorities exist.
- 4.74 In this regard, it is noted that while CLAGCA is established as an independent statutory authority, as are the three racing authorities, OLGR differs from that model in being an office within the Department of Trade and Investment, Regional Infrastructure and Services. It is similarly noted that, while CLAGCA has licensing and approval functions in relation to liquor and gaming machines in licensed clubs and hotels, those functions, unlike the functions exercisable by it in relation to liquor and gaming within the Casino, do not extend to compliance.
- 4.75 Of additional relevance is the fact that CLAGCA depends, for its day to day operations, on administrative and staffing support provided by OLGR.
- 4.76 Of further relevance is the fact, as noted earlier,⁷⁸ that the several gaming laws differ in relation to the provisions that are made in relation to the appointment and integrity requirements for inspectors, and in relation to their powers and duties.
- 4.77 It is accepted that historically the three racing codes are well-established and regulated industries, and that the legislative and supervisory arrangements concerning the conduct of racing, and the licensing of bookmakers to operate in relation to them, should remain separate, and continue as currently provided. Equally, there is no cause to alter the role of the NSW Police, in relation to the investigation and prosecution of offences under the gaming laws.
- 4.78 However we are of the view that consideration should be given to the review of the remainder of the regulatory system. The ideal time to achieve that would be in the context of any codification or rationalisation of the gaming laws, of the kind discussed in the previous chapter.

76. Under the *Liquor Act 2007* (NSW), *Gaming Machines Act 2001* (NSW) and the *Registered Clubs Act 1976* (NSW).

77. Abolished as from 1 July 2008.

78. Para 3.37-3.38.

- 4.79 The differences in the existing structures of OLGR and CLAGCA would seem to rule out a simple amalgamation or transfer of responsibilities. More relevant would seem to be the creation, under an Act, of a Gambling and Liquor Authority that would assume the responsibilities of each. Such an Act could then specify the functions and powers required for that authority to administer and enforce the relevant gambling and liquor laws.
- 4.80 Such an authority could take over the advisory role currently performed by OLGR, and assist the Minister in the approval of betting events and forms of betting, in accordance with the provisions of the *Racing Administration Act 1998* (NSW), following consultation with sports controlling bodies and betting agencies. It could also carry out an intelligence gathering role in relation to sports and event betting, in conjunction with the role that similar bodies in the other States and Territories might be expected to play, if the National Policy is put into effect.
- 4.81 Appendix E sets out similar authorities that exist in other Australian jurisdictions, the statutes under which they have been established, and a brief summary of the powers and responsibilities they exercise in relation to the regulation of gaming and wagering.
- 4.82 We observe that there is precedent for combining the regulatory and compliance functions concerning liquor and gaming in the one Authority. That can be found, not only in the transfer of the liquor law responsibilities to CLAGCA in 2007, but also in the fact that the regulatory responsibility for these areas of the law is combined in South Australia,⁷⁹ and in Canada.⁸⁰
- 4.83 An obvious reason for co-ordination of the two functions lies in the fact that gaming activities and liquor are both supplied in the Casino, and also in those hotels and clubs that have poker machines. Clearly there are efficiencies in combining the relevant compliance responsibilities in the inspectors whose work involves attendance at, and inspection of, those premises. Moreover there is the further fact that considerable significance is now given to the encouragement of responsible gambling, and of the responsible use of liquor, and that similar strategies apply in each case. These relate not only to education, but also to the need for there to be restrictions on the numbers of licensed outlets and of gaming machines.
- 4.84 This issue, similarly to those outlined in the first part of this chapter, strictly fall outside our terms of reference, and they have not been sufficiently addressed in the submissions received. It would, accordingly be premature for us to express any concluded view, and inappropriate to hold up delivery of this Report, so far as it is concerned with its primary focus on cheating in relation to sports gambling.
- 4.85 However, we do consider the issue to be important and worthy of longer term consideration by the Government. The presence of an effective and co-ordinated regulatory body, with a responsibility in relation to the administration and enforcement of the gambling laws, is part and parcel of any system that is designed to detect, punish, and deter, cheating in relation to all forms of gambling.

79. In the form of the Office of the Liquor and Gambling Commissioner.

80. In the form of the Alberta Gaming and Liquor Commission, and the Ontario Alcohol and Gaming Commission.

Recommendation 4.1

That consideration be given to the introduction of an Act that would:

- (a) provide for the establishment of a central gambling and liquor authority to take over the regulatory and other functions and powers of the Office of Liquor, Gaming and Racing and of the Casino, Liquor and Gaming Control Authority in relation to the supply of liquor and gambling services in NSW, including sports and event betting; and
- (b) provide for all matters incidental to, and necessary for the administration and regulation of the liquor and gambling laws of NSW.

A Crimes Amendment (Cheating at Gambling) Bill 2011

draft

Draft



New South Wales

Crimes Amendment (Cheating at Gambling) Bill 2011

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draft



New South Wales

Crimes Amendment (Cheating at Gambling) Bill 2011

No. , 2011

A Bill for

An Act to amend the *Crimes Act 1900* to prohibit cheating at gambling.

draft

Clause 1 Crimes Amendment (Cheating at Gambling) Bill 2011

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Cheating at Gambling) Act 2011*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Crimes Act 1900 No 40

Part 4ACA

Insert after Part 4AC:

Part 4ACA Cheating at gambling

Division 1 Preliminary

193H Corrupting betting outcomes of event

- (1) For the purposes of this Part, conduct corrupts a betting outcome of an event if the conduct:
 - (a) affects or, if engaged in, would or would be likely to affect the outcome of any type of betting on the event, and
 - (b) is contrary to the standards of integrity that a reasonable person would expect of persons in a position to affect the outcome of any type of betting on the event.
- (2) For the purposes of this Part, an agreement that corrupts a betting outcome of an event is an agreement between 2 or more persons under which a person agrees to engage in conduct that corrupts a betting outcome of an event.
- (3) In this Part:

agreement includes an arrangement.

conduct means an act, an omission to perform an act or a state of affairs.

engage in conduct means:

 - (a) do an act, or
 - (b) omit to perform an act.

193I Betting

- (1) In this Part, to *bet* includes the following:
 - (a) to place a bet or cause a bet to be placed,
 - (b) to accept a bet,
 - (c) to withdraw a bet.
- (2) A reference in this Part to betting on an event includes a reference to betting on any event contingency.

193J Events and event contingencies

- (1) In this Part, an *event* means any event (whether it takes place in this State or elsewhere) on which it is lawful to bet under a law of this State, another State or a Territory.
- (2) In this Part, an *event contingency* means any contingency in any way connected with an event, being a contingency on which it is lawful to bet under a law of this State, another State or a Territory.

193K Obtaining financial advantage or causing financial disadvantage

- (1) In this Part, *obtain* a financial advantage includes:
 - (a) obtain a financial advantage for oneself or for another person, and
 - (b) induce a third person to do something that results in oneself or another person obtaining a financial advantage, and
 - (c) keep a financial advantage that one has, whether the financial advantage is permanent or temporary.
- (2) In this Part, *cause* a financial disadvantage means:
 - (a) cause a financial disadvantage to another person, or
 - (b) induce a third person to do something that results in another person suffering a financial disadvantage, whether the financial disadvantage is permanent or temporary.
- (3) If an offence under this Part requires a person to intend to obtain a financial advantage, or to cause a financial disadvantage, that element of the offence may also be established by proof that the person knew a financial advantage would be obtained or a financial disadvantaged would be caused.
- (4) It is not necessary to prove that the conduct engaged in actually resulted in the obtaining of a financial advantage or the causing of a financial disadvantage.

193L Encourage

In this Part, *encourage* another person to engage in conduct includes command, request, propose, advise, incite, induce, persuade, authorise, urge, threaten or place pressure on the person to engage in conduct.

Division 2 Offences

193M Engage in conduct that corrupts betting outcome of event

A person who engages in conduct that corrupts a betting outcome of an event:

- (a) knowing or being reckless as to whether the conduct corrupts a betting outcome of the event, and
- (b) with the intention of obtaining a financial advantage, or causing a financial disadvantage, as a result of any betting on the event,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

193N Facilitate conduct that corrupts betting outcome of event

- (1) A person who offers to engage in conduct that corrupts a betting outcome of an event:

- (a) knowing or being reckless as to whether the conduct corrupts a betting outcome of the event, and
- (b) with the intention of obtaining a financial advantage, or causing a financial disadvantage, as a result of any betting on the event,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

- (2) A person who encourages another person to engage in conduct that corrupts a betting outcome of an event:

- (a) knowing or being reckless as to whether the conduct corrupts a betting outcome of the event, and
- (b) with the intention of obtaining a financial advantage, or causing a financial disadvantage, as a result of any betting on the event,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

- (3) A person who enters into an agreement that corrupts a betting outcome of an event:

- (a) knowing or being reckless as to whether the conduct the subject of the agreement corrupts a betting outcome of the event, and

- (b) with the intention of obtaining a financial advantage, or causing a financial disadvantage, as a result of any betting on the event,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

1930 Concealing conduct or agreement that corrupts betting outcome of event

- (1) A person who encourages another person to conceal from a relevant authority conduct that corrupts a betting outcome of an event:

- (a) knowing or being reckless as to whether the conduct corrupts a betting outcome of the event, and

- (b) with the intention of obtaining a financial advantage, or causing a financial disadvantage, as a result of any betting on the event,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

- (2) A person who encourages another person to conceal from a relevant authority an agreement that corrupts a betting outcome of an event:

- (a) knowing or being reckless as to whether the conduct the subject of the agreement corrupts a betting outcome of the event, and

- (b) with the intention of obtaining a financial advantage, or causing a financial disadvantage, as a result of any betting on the event,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

- (3) In this section, the *relevant authority* means:

- (a) a police officer, or

- (b) a body that has the official function of controlling, regulating or supervising the event, or

- (c) any other appropriate authority.

193P Use of inside information about event for betting purposes

- (1) A person who possesses information in connection with an event that is inside information, and who knows or is reckless as to whether the information is inside information, is guilty of an offence if the person:

draft

Crimes Amendment (Cheating at Gambling) Bill 2011

Amendment of Crimes Act 1900 No 40

Schedule 1

- (a) bets on the event, or
- (b) encourages another person to bet on the event in a particular way, or
- (c) communicates the information to another person who the first person knows or ought reasonably to know would or would be likely to bet on the event.

Maximum penalty: Imprisonment for 10 years.

- (2) Information in connection with an event is *inside information* if the information:
 - (a) is not generally available, and
 - (b) if it were generally available, would, or would be likely to, influence persons who commonly bet on the event in deciding whether or not to bet on the event or making any other betting decision.
- (3) Information is *generally available* if:
 - (a) it consists of matter that is readily observable by the public, or
 - (b) it has been made known in a manner that would, or would be likely to, bring it to the attention of the public, or
 - (c) it consists of deductions, conclusions or inferences made or drawn from information referred to in paragraph (a) or (b).
- (4) In proceedings for an offence against subsection (1) (b) or (c), it is not necessary to prove that the person encouraged to bet, or to whom inside information was communicated, actually bet on the event concerned.
- (5) A reference in this section to communicating information includes a reference to causing information to be communicated.

B Submissions

- CG1 Andrew Hii, 3 May 2011
- CG2 Emma Brooks Maher, 5 May 2011
- CG3 Office of the Director of Public Prosecutions (NSW), 5 May 2011
- CG4 Australian Athletes' Alliance, 5 May 2011
- CG5 Juliette Overland, 5 May 2011
- CG6 Casino, Liquor and Gaming Control Authority, 5 May 2011
- CG7 Law Institute of Victoria, 5 May 2011
- CG8 Racing NSW, 5 May 2011
- CG9 Wesley Community Legal Service, 5 May 2011
- CG10 Sportsbet Pty Ltd, 6 May 2011
- CG11 NSW Young Lawyers Criminal Law Committee, 16 May 2011
- CG12 Tabcorp, 16 May 2011
- CG13 Office for Sport (Australian Government), 17 May 2011
- CG14 Australian Internet Bookmakers Association, 23 May 2011
- CG15 NSW Police Force, 26 May 2011

C Consultations

Regulators and law enforcement agencies

12 April 2011

Paul De Veaux, Assistant Director, Racing, Office of Liquor, Gaming and Racing
Ray Murrphy, Chairman of Stewards, Racing NSW
Daryl Lowenthal, Consultant, Racing NSW
Ken Finch, Detective Superintendent, NSW Police Force
Robert Petherick, Manager, Compliance, Casino, Liquor and Gaming Control Authority

Sporting organisations

14 April 2011

John Coates, Australian Olympic Committee
Claudia Mackie, Australian Olympic Committee
Nicky Seaby, NRL Government Relations Manager
Shane Mattiske, NRL Director, Strategy and Special Projects
John Brady, NRL Director, Media and Communications
Malcolm Speed, Coalition of Major Professional and Participation Sports
Paul Barrett, Australian Sports Commission
Michael Johnston, Australian Sports Commission

Betting providers

26 May 2011

Anthony Waller, Sportingbet (representing the Australian Internet Bookmakers Association)
Peter Fletcher, CEO, NSW Bookmakers Co-operative
Mandy Tervit-Veasey, Tabcorp

25 July 2011

Ben Sleep, Chief Financial Officer, Sportsbet Pty Ltd
Hamish Arthur, Director, Kreab and Gavin Anderson (lobbyist)

D Cheating, fraud and bribery offences contained in NSW gaming laws

Unlawful Gambling Act 1998 (NSW)

18 Cheating

(1) 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:

- (a) by a fraudulent trick, device, sleight of hand or representation, or
- (b) by a fraudulent scheme or practice, or
- (c) by the fraudulent use of gaming equipment or any other thing, or
- (d) by the fraudulent use of an instrument or article of a type normally used in connection with gambling (or appearing to be of a type normally used in connection with gambling),

obtain, or attempt to obtain, any money or advantage for himself or herself or any other person. Maximum penalty: 100 penalty units or imprisonment for 2 years (or both).

(2) This section does not limit the operation of any offence relating to cheating under any other Act.

19 Possession of unlawful gambling aids and documents connected with unlawful gambling

(1) A person who is in possession of an article or money that may reasonably be suspected of being an unlawful gambling aid is guilty of an offence.

Maximum penalty:

- for a first offence—50 penalty units or imprisonment for 12 months (or both),
- for a second or subsequent offence—500 penalty units or imprisonment for 2 years (or both).

Casino Control Act 1992 (NSW)

87 Cheating

(1) A person must not, in a casino:

- (a) obtain or attempt to obtain any benefit for himself or herself or another person, or
- (b) induce or attempt to induce a person to deliver, give or credit any benefit to him or her or another person, or
- (c) cause, or attempt to cause, a detriment, whether financial or otherwise, to another person,

by the dishonest use of:

- (d) any trick, device, sleight of hand or representation, or

- (e) any scheme or practice, or
- (f) any object or gaming equipment, or
- (g) an instrument or article of a type normally used in connection with gaming, or appearing to be of a type normally used in connection with gaming.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

(1A) A person who obtains a benefit from:

- (a) playing a game in a casino in contravention of the game rules, or
- (b) an error or oversight in the conduct of the game,

although the benefit was not originally obtained with any dishonest intent, must not dishonestly retain the benefit.

Maximum penalty: 20 penalty units.

(2) A person must not, in a casino, use any device for the purpose of enabling the person or some other person to count or otherwise record cards dealt in the course of gaming in the casino unless the casino operator approves of its use.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(3) A person must not, in a casino or on premises of which a casino forms part, use or have in his or her possession:

- (a) chips that he or she knows are bogus, counterfeit or stolen (within the meaning of sections 188, 189 and 189A of the Crimes Act 1900), or
- (b) cards, dice or coins that he or she knows have been marked, loaded or tampered with, or
- (c) for the purpose of cheating or stealing—any equipment, device or thing that permits or facilitates cheating or stealing.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(4) Subsection (3) does not prohibit the possession in a casino of any thing referred to in subsection (3) (a) or (b) by a person in charge of the casino, an agent of the casino operator, a casino employee, an inspector or a police officer, if that thing has been seized by any of those persons from another person for use as evidence in proceedings for an offence.

(5) If, on a prosecution of a person for an offence under subsection (1), the court is not satisfied that the person is guilty of an offence under subsection (1) but the court is satisfied that the person is guilty of an offence under subsection (1A), the court may convict the person of the latter offence.

(6) In this section:

benefit includes any money, chips, prize, advantage, valuable consideration or security.

150 Bribery

- (1) A key official must not corruptly ask for, receive or obtain, or agree to receive or obtain, any money, property or benefit of any kind for himself or herself, or for another person:
- (a) to forgo or neglect his or her duty, or influence him or her, in the exercise of his or her functions as a key official,
 - (b) on account of a thing already done or omitted to be done, or to be afterwards done or omitted to be done, by him or her in the exercise of those functions, or
 - (c) to use, or take advantage of, his or her position as a key official in order improperly to gain a benefit or advantage for, or facilitate the commission of an offence by, another person.

Maximum penalty on summary conviction: 100 penalty units or imprisonment for 2 years, or both.

Maximum penalty on conviction on indictment: imprisonment for 14 years.

- (2) A person must not corruptly give to, confer upon, or procure for, or promise or offer to give to, confer upon, or procure for, or attempt to procure for, a key official, or for any other person, any money, property or benefit of any kind:
- (a) for a key official to forgo or neglect his or her duty, or to influence him or her in the exercise of his or her functions as a key official,
 - (b) on account of anything already done, or omitted to be done, by him or her in the exercise of those functions, or
 - (c) for the key official to use or take advantage of his or her position as a key official in order improperly to gain a benefit or advantage for, or facilitate the commission of an offence by, the person first referred to in this subsection.

Maximum penalty on summary conviction: 100 penalty units or imprisonment for 2 years, or both.

Maximum penalty on conviction on indictment: imprisonment for 14 years.

- (3) This section applies to or in respect of a key official only to the extent to which the key official is exercising functions under this Act or in connection with the administration of this Act.

Under s 3(1): key official means a key official within the meaning of the *Casino, Liquor and Gaming Control Authority Act 2007*. Subsection 3(1) of that Act states:

key official means any of the following:

- (a) a member of the Authority,
- (b) the relevant Division Head,
- (c) the Director-General,
- (d) a member of staff who is the subject of a current written order by the relevant Division Head that has been served on the member of staff and is

to the effect that the member is a key official for the purposes of the gaming and liquor legislation,

- (e) a consultant to the Authority who is the subject of a current written order by the Authority that has been served on the consultant and is to the effect that the consultant is a key official for the purposes of the gaming and liquor legislation,
- (f) the Commissioner of Police or a police officer who holds the position of Local Area Commander or a higher ranked or graded position but is not referred to in paragraph (g),
- (g) a member of the NSW Police Force who is the subject of a current written order by the Commissioner of Police that has been served on the member and is to the effect that the member is a key official for the purposes of the gaming and liquor legislation.

Gaming Machines Act 2001 (NSW)

76 Defective gaming machines

- (1) A hotelier or registered club is guilty of an offence if an approved gaming machine available for use in the hotel or on the premises of the club fails to function in the manner in which it was designed and approved by the Authority to function.

Maximum penalty: 100 penalty units.

76A Causing defects in gaming machines

- (1) A technician must not, in carrying out any work on an approved gaming machine, do anything that causes, or is likely to cause, the gaming machine to function in a manner other than the manner in which it was designed and approved by the Authority to function.

Maximum penalty: 100 penalty units.

- (2) It is a defence to a prosecution for an offence under subsection (1) if it is proved:
 - (a) that the operation of the approved gaming machine was for testing or maintenance purposes, or
 - (b) that the technician:
 - (i) took all reasonable precautions to ensure that the approved gaming machine was functioning properly, and
 - (ii) at the time of the alleged offence did not know, and could not reasonably be expected to have known, that the machine was not functioning properly.

78 Modification of gaming machines

- (1) A person who modifies an approved gaming machine in such a way that it is in the form of a different approved gaming machine is guilty of an offence unless:
 - (a) the person is a technician, and
 - (b) the modification does not, as provided by section 64, prevent the gaming machine from being an approved gaming machine.

- (2) A technician who modifies an approved gaming machine in such a way that it is in the form of a different approved gaming machine is guilty of an offence unless, within 14 days of the modification, there is returned to the supplier of the materials for the conversion so much of the gaming machine as ceased to form part of it after its conversion and comprised:

- (a) a meter, circuit board, read-only memory device or artwork, or
- (b) a component prescribed as a restricted component.

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

80 Cheating and unlawful interference with gaming machines

- (1) A person who:

- (a) has possession of a device made or adapted, or intended by the person to be used, for interfering with the normal operation of an approved gaming machine in a hotel or on the premises of a registered club, or
- (b) does anything calculated, or likely, to interfere with the normal operation of an approved gaming machine in a hotel or on the premises of a registered club, or
- (c) does anything calculated to render an approved gaming machine in a hotel or on the premises of a registered club incapable, even temporarily, of producing a winning combination,

is guilty of an offence.

- (2) Subsection (1) does not apply to anything done in good faith in connection with:

- (a) the installation, alteration, adjustment, maintenance or repair of an approved gaming machine by a technician, or
- (b) the exercise by a person of a function conferred or imposed by this Act on an inspector.

- (3) A person who, with intent to dishonestly obtain money or a financial advantage for himself or herself or another person, inserts in an approved gaming machine in a hotel or on the premises of a registered club anything other than:

- (a) a coin or token of the denomination or type displayed on the gaming machine as that to be used to operate the gaming machine, or
- (b) a banknote of a denomination approved by the Authority for use in order to operate the gaming machine, or
- (c) a card of a type approved by the Authority for use in order to operate the gaming machine,

is guilty of an offence.

- (4) A person who, in connection with an approved gaming machine in a hotel or on the premises of a registered club:

- (a) by any fraudulent representation, or

- (b) by a fraudulent scheme or practice, or
- (c) by the fraudulent use of the approved gaming machine or any other thing,

obtains for himself or herself or another person, or induces a person to deliver, give or credit to him or her or another person, any money, benefit, advantage, valuable consideration or security, is guilty of an offence.

- (5) A person who, without lawful excuse, uses or has in his or her possession in a hotel or on the premises of a registered club any equipment, device or thing that permits or facilitates cheating or stealing in connection with an approved gaming machine is guilty of an offence.
- (6) A person who knows of any faulty or fraudulent computer programming and as a result gains, or gains for another person, an advantage in the operation of an approved gaming machine is guilty of an offence.
- (7) A person who authorises or permits another person to act in a way that is an offence under another provision of this section is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

80A False claims for prizes

A person who claims a prize from the playing of an approved gaming machine in a hotel or on the premises of a registered club knowing that the claim is false or misleading in a material respect is guilty of an offence.

Maximum penalty: 100 penalty units.

81 Illegal advantage gained during design etc of gaming machines

- (1) A person who, during the design, manufacture, assembly, maintenance or repair of an approved gaming machine, does anything to fraudulently gain an advantage (whether or not for another person) in the operation of the gaming machine is guilty of an offence.
- (2) (Repealed)
- (3) A person who does anything to an approved gaming machine in order to conceal anything that is an offence under subsection (1) is guilty of an offence.
- (4) A person who authorises or permits another person to act in a way that is an offence under another provision of this section is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

156 Unlawful interference with authorised linked gaming systems

- (1) A person must not:
 - (a) possess any equipment that is made or adapted, or intended by the person to be used, for interfering with the normal operation of an authorised linked gaming system (including any approved gaming machine that is part of the system), or
 - (b) do anything calculated, or likely, to interfere with the normal operation of an authorised linked gaming system (including any approved gaming machine that is part of the system), or

- (c) do anything calculated to render an approved gaming machine that is part of an authorised linked gaming system incapable, even temporarily, of producing a winning combination.
- (2) Subsection (1) does not apply to or in respect of the possession of any equipment, or to anything done in good faith, in connection with the installation, alteration, adjustment, maintenance or repair of an authorised linked gaming system by:
 - (a) the licensee who is operating the authorised linked gaming system, or
 - (b) a technician, or
 - (c) any other person approved by the licensee.
 - (3) A person must not, with intent to dishonestly obtain money or a financial advantage for himself or herself or another person, insert in an approved gaming machine that is part of an authorised linked gaming system anything other than:
 - (a) a coin or token of the denomination or type displayed on the gaming machine as that to be used to operate the machine, or
 - (b) a bank note of a denomination approved by the Authority for use in order to operate the gaming machine, or
 - (c) a card of a type approved by the Authority for use in order to operate the gaming machine.
 - (4) A person must not gain, whether personally or for another person, an advantage in the operation of an approved gaming machine that is part of an authorised linked gaming system as the result of knowing about any faulty or fraudulent computer programming in relation to the system.
 - (5) A person must not authorise or permit another person to act in a way that is an offence under another provision of this section.

Maximum penalty: 100 penalty units.

157 Illegal advantage with respect to linked gaming systems

- (1) A person must not, during the design, manufacture, assembly, installation, maintenance or repair of an authorised linked gaming system, dishonestly make provision to gain an advantage (whether or not for another person) in the operation of the linked gaming system.
- (2) A person who, as a result of gross negligence during the design, manufacture, assembly, installation, maintenance or repair of an authorised linked gaming system, makes provision to gain an advantage (whether or not for another person) in the operation of the linked gaming system is guilty of an offence.
- (3) A person must not do anything to an authorised linked gaming system in order to conceal anything that is an offence under subsection (1) or (2).
- (4) A person must not authorise or permit another person to act in a way that is an offence under another provision of this section.

Maximum penalty: 100 penalty units.

Lotteries and Art Unions Act 1901 (NSW)

14 Falsification of records

A person who, with intent to defraud or deceive another person:

- (a) alters or falsifies a record relating to a lottery or game of chance conducted as authorised by section 4, 4A, 4B, 4C, 4D, 4E, 4F or 4G, or
- (b) makes or concurs in the making of a false or fraudulent entry in a record relating to such a lottery or game, or
- (c) omits or concurs in omitting a material particular from a record relating to such a lottery or game,

is guilty of an indictable offence

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

16 Misappropriation of funds or prizes

A person who is concerned in the conduct of:

- (a) a lottery for which an art union has been formed, or
- (b) a lottery or game of chance conducted as authorised by section 4, 4A, 4B, 4C, 4D, 4E, 4F or 4G,

and who converts to his or her own use any money raised by means of the lottery or game or any prizes connected with it is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

17 Fraudulent conduct of lotteries and games of chance

Any person:

- (a) who with intent to defraud conducts, or assists or participates in the conduct of, any lottery referred to in section 4, 4B or 4F, or any game of chance referred to in section 4A, 4B, 4C, 4D or 4E, not being a game partly of skill and partly of chance, in such a manner or on such conditions that all persons who have purchased tickets or shares in the lottery or have entered the game of chance have not an equal chance of winning a prize, or
- (b) who fraudulently conducts, or assists or participates in the conduct of, a game of chance referred to in section 4A, 4B, 4C, 4D, 4E, 4F or 4G, being a game partly of skill and partly of chance,

shall be liable to a penalty not exceeding 50 penalty units.

17A False representations

(1) (Repealed)

(2) A person:

- (a) who is conducting or proposing to conduct a lottery, game of chance or art union, or
- (b) who is acting on behalf of a person or an organisation that is conducting or proposing to conduct a lottery, game of chance or art union,

must not represent to an employee or agent involved in the conduct of the lottery, game of chance or art union that any thing required or permitted by this Act to be done, or any condition precedent to the conduct of a lottery, game of chance or art union to be complied with, has been done or complied with when in fact it has not.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

- (3) A person who, but for this subsection, would be liable to conviction for an offence under this section and section 14 is liable to be convicted in respect of one only of those offences.

Public Lotteries Act 1996 (NSW)

43D False claims for prizes

Any person who lodges a claim for a prize in a public lottery knowing that it is false or misleading in a material respect is guilty of an offence.

Maximum penalty: 100 penalty units.

E Authorities that regulate gambling in other Australian jurisdictions

| Jurisdiction | Organisation [Establishing statute] | Powers and responsibilities |
|-------------------|---|--|
| Victoria | <p>Victorian Commission for Gambling Regulation</p> <p>[<i>Gambling Regulation Act 2003</i> (Vic) ch 10]</p> <p>NB: The Racing Integrity Commissioner, established under <i>Racing Act 1958</i> (Vic) pt 1A, operates with respect to racing.</p> | <p>Exercise functions with respect to the regulation of</p> <ul style="list-style-type: none"> ▪ gaming machines: <i>Gambling Regulation Act 2003</i> (Vic) Ch 3; ▪ wagering and betting: <i>Gambling Regulation Act 2003</i> (Vic) Ch 4; ▪ lotteries: <i>Gambling Regulation Act 2003</i> (Vic) Ch 5; ▪ Club Keno and Keno: <i>Gambling Regulation Act 2003</i> (Vic) Ch 6 and 6A; ▪ interactive gaming: <i>Gambling Regulation Act 2003</i> (Vic) Ch 7; ▪ community and charitable gaming: <i>Gambling Regulation Act 2003</i> (Vic) Ch 8; <p>as well as licence gaming industry employees: <i>Gambling Regulation Act 2003</i> (Vic) Ch 9A; and the enforcing the Act: <i>Gambling Regulation Act 2003</i> (Vic) Ch 10.</p> |
| Western Australia | <p>Gaming and Wagering Commission</p> <p>[<i>Gaming and Wagering Commission Act 1987</i> (WA)]</p> | <ul style="list-style-type: none"> ▪ Issue licences, approvals and permits in relation to: classes of sporting events (not racing) for betting purposes; the conduct of such events; bookmakers and bookmaking: <i>Betting Control Act 1954</i> (WA) pt 2. ▪ Administer the levies on betting operators: <i>Betting Control Act 1954</i> (WA) pt 3. ▪ Authorise the use of totalizators by racing clubs: <i>Betting Control Act 1954</i> (WA) pt 3. ▪ Exercise powers of inspection and entry to certain premises and disciplinary powers over licensees: <i>Betting Control Act 1954</i> (WA) pt 4. ▪ Provide such officers as are necessary to provide administrative and other services in relation to casinos: <i>Casino Control Act 1984</i> (WA). ▪ Administer the law relating to gaming and wagering: <i>Gaming and Wagering Commission Act 1987</i> (WA). ▪ Exercise powers in relation to casino liquor licences: <i>Liquor Control Act 1988</i> (WA). ▪ Licence directors and key employees of Racing and Wagering Western Australia: <i>Racing and Wagering Western Australia Act 2003</i> (WA) pt 2. ▪ Exercise powers in relation to the operations of Racing and Wagering Western Australia: <i>Racing and Wagering Western Australia Act 2003</i> (WA). |
| South Australia | <p>Liquor and Gambling Commissioner</p> <p>[<i>Liquor Licensing Act 1997</i> (SA)]</p> | <ul style="list-style-type: none"> ▪ Grant licences in relation to on-course totalizator betting, bookmakers, agents, betting shops and 24 hour sportsbetting: <i>Authorised Betting Operations Act 2000</i> (SA) pt 3. ▪ Responsible to the Independent Gambling Authority to ensure constant scrutiny of the operations of each betting licensee: <i>Authorised Betting Operations Act</i> |

| | | |
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| | | <p>2000 (SA) pt 5.</p> <ul style="list-style-type: none"> ▪ Approve and deal with gaming machine licences: <i>Gaming Machines Act 1992</i> (SA) pt 3. ▪ Approve gaming machine managers and employees, people in a position of authority, gaming machines and games: <i>Gaming Machines Act 1992</i> (SA) pt 4. ▪ Responsible to the Independent Gambling Authority for the scrutiny of operations under all gaming machine licenses: <i>Gaming Machines Act 1992</i> (SA) pt 2 div 1. ▪ Approve racing rules, system, procedures and equipment in relation to proprietary racing businesses: <i>Racing (Proprietary Business Licensing) Act 2000</i> (SA) pt 3. ▪ Responsible to the Independent Gambling Authority to ensure constant scrutiny of the operations of proprietary racing businesses: <i>Racing (Proprietary Business Licensing) Act 2000</i> (SA) pt 4. ▪ Approve people as suitable to work at the Casino in sensitive positions or positions of responsibility: <i>Casino Act 1997</i> (SA) pt 4 div 2. ▪ Authorise games to be played at the Casino and equipment: <i>Casino Act 1997</i> (SA) pt 4 div 4. ▪ Bar individuals from the Casino: <i>Casino Act 1997</i> (SA) s 45. ▪ Responsible to the Independent Gambling Authority to ensure constant scrutiny of the operations of the Casino: <i>Casino Act 1997</i> (SA) pt 6. ▪ Exercise functions under <i>Liquor Licensing Act 1997</i> (SA). |
| <p>South Australia</p> | <p>Independent Gambling Authority <i>Independent Gambling Authority Act 1995</i> (SA)</p> | <ul style="list-style-type: none"> ▪ Approve contingencies related to sporting or other events (except events held by licensed racing clubs): <i>Authorised Betting Operations Act 2000</i> (SA) s 4. ▪ Recommend the grant of the major betting operations licence (in relation to totalizator betting on and off-course and other forms of betting on racing and approved contingencies: <i>Authorised Betting Operations Act 2000</i> (SA) pt 2. ▪ Authorises interstate betting operators: <i>Authorised Betting Operations Act 2000</i> (SA) pt 3A ▪ Has power to deal with statutory default or failure of a licensed betting operation: <i>Authorised Betting Operations Act 2000</i> (SA) pt 6. ▪ Review decisions of the Liquor and Gambling Commissioner: <i>Authorised Betting Operations Act 2000</i> (SA) pt 7. ▪ Review directions of the Liquor and Gambling Commissioner in relation to gaming machines: <i>Gaming Machines Act 1992</i> (SA) pt 6. ▪ Recommend grants of proprietary racing business licences and approve directors and executive officers: <i>Racing (Proprietary Business Licensing) Act 2000</i> (SA) pt 2. ▪ Has power to deal with statutory default or failure of a proprietary racing business: <i>Racing (Proprietary Business Licensing) Act 2000</i> (SA) pt 5. ▪ Review decisions of the Liquor and Gambling Commissioner: <i>Racing (Proprietary Business</i> |

Authorities that regulate gambling in other Australian jurisdictions Appendix E

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|------------------------------|--|---|
| | | <p><i>Licensing) Act 2000 (SA) pt 6</i></p> <ul style="list-style-type: none"> ▪ Recommend grant of casino licence and approve renewals: <i>Casino Act 1997 (SA) pt 2.</i> ▪ Has power to deal with statutory default of the Casino: <i>Casino Act 1997 (SA) pt 7.</i> ▪ Review decisions of the Liquor and Gambling Commissioner: <i>Casino Act 1997 (SA) pt 8.</i> |
| Tasmania | Tasmanian Gaming Commission <i>Gaming Control Act 1993 (Tas) pt 7</i> | <ul style="list-style-type: none"> ▪ Exercise function in relation to the licensing of casinos and gaming operations: <i>Gaming Control Act 1993 (Tas) pt 3.</i> ▪ Exercise functions in relation to licensed premises gaming licences, special employee's licences, and technician's licences: <i>Gaming Control Act 1993 (Tas) pt 4.</i> ▪ Determine applications for Tasmanian gaming licences, including sports betting, betting exchange and totalizator endorsements: <i>Gaming Control Act 1993 (Tas) pt 4A.</i> ▪ Authorise games and issue permits for minor gaming conducted for charitable purposes: <i>Gaming Control Act 1993 (Tas) pt 4B.</i> ▪ Grant permits with respect to the sale of tickets in foreign games: <i>Gaming Control Act 1993 (Tas) pt 4B.</i> ▪ Exercise functions in relation to the control of gaming, including gaming machines, Casinos, Keno: <i>Gaming Control Act 1993 (Tas) pt 5.</i> |
| Australian Capital Territory | ACT Gambling and Racing Commission <i>Gambling and Racing Control Act 1999 (ACT) pt 2</i> | <ul style="list-style-type: none"> ▪ Exercise functions with respect to the control of races for the purpose of betting, the functions of controlling bodes for thoroughbred racing, harness racing and greyhound racing, the approval of racing organisations, the approval of the use of race field information : <i>Racing Act 1999 (ACT).</i> ▪ Exercise functions with respect to the granting of licences for race bookmakers and race bookmakers' agents, the determination of sports bookmaking events and venues, issuing directions for the operation of sports bookmaking venues, the granting of licences for sports bookmakers and sports bookmakers' agents, and the disciplining of licensees: <i>Race and Sports Bookmaking Act 2001 (ACT).</i> ▪ Approve pool betting schemes, audit pool betting schemes, and supervise the conduct of pool betting: <i>Pool Betting Act 1964 (ACT).</i> ▪ Declare games to be unlawful games or exempt games and grant approvals to charitable organisations to conduct games: <i>Unlawful Gambling Act 2009 (ACT).</i> ▪ Make recommendations to the Minister about the eligibility of a corporation nominated as the proposed casino licensee, take disciplinary action against the casino licensee or casino employees, licence casino employees, issue directions in relation to casino and its operations, approve gaming equipment and chips at the casino, declare that games are authorised games for the casino and authorise rules for those games: <i>Casino Control Act 2006 (ACT).</i> ▪ Grant gaming machines licences, and exercise other functions with respect to gaming machine licences, discipline licensees, approve the centralised monitoring system with respect to gaming machines, |

| | | |
|-----------|---|---|
| | | <p>approve gaming machines, peripherals, suppliers, technicians and attendants, approve the acquisition, repossession or disposal of gaming machines: <i>Gaming Machine Act 2004</i> (ACT).</p> <ul style="list-style-type: none"> ▪ Grant approvals for the conduct of lotteries, conduct audits and supervise the conduct of lotteries: <i>Lotteries Act 1964</i> (ACT). ▪ Exercise functions with respect to the control of interactive gambling, grant and otherwise deal with interactive gambling licences, licence key persons, discipline licensees, give directions about the conduct of authorised games, approve control systems with respect to interactive gambling and arrange for the monitoring of interactive gambling operations: <i>Interactive Gambling Act 1998</i> (ACT). |
| <p>NT</p> | <p>Northern Territory Licensing Commission <i>Northern Territory Licensing Commission Act</i> (NT)</p> <p>NB: There is a Racing Commission, established under the <i>Racing and Betting Act</i> (NT) pt 2, which operates with respect to racing.</p> | <ul style="list-style-type: none"> ▪ Has, amongst other things, the function "to do such things as it considers necessary or desirable for the proper regulation and control, in the interests of the public, of gaming": <i>Gaming Control Act</i> (NT) s 13(1). ▪ Make decisions and directions in relation to gaming machines, including determine applications for gaming machine licences, and give directions in connection with the administration or enforcement of the <i>Gaming Machine Act</i>. <i>Gaming Machine Act</i> (NT). |

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