



AUSTRALIAN INTERNET BOOKMAKERS ASSOCIATION

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Alexandria
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The Hon James Wood AO QC
Chairperson
New South Wales Law Reform Commission
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By email to: nsw_lrc@agd.nsw.gov.au

Dear Commissioners

Cheating and gambling

I refer to your invitation to make a submission in relation to terms of reference received by the Commission concerning the application of the criminal law to activities that might constitute cheating in the course of gambling.

This submission is made on behalf of the Australian Internet Bookmakers Association, a body representing most of the major Australian online bookmaking agencies, including Sportsbet, Centrebet and Sportingbet.

You indicated you are required to review the current law in order to determine whether it provides an adequate response, in the course of sport and spread betting (in their several forms), towards conduct directed towards fixing the result of, or any incident in the course of, a sporting or other event that may be the subject of either lawful, or unlawful, betting. The inquiry is not however confined to gambling occurring in the course of sport or event betting; it relates to cheating in all its forms in relation to gambling.

Support for an offence.

This submission will focus strictly on the issue of establishing a criminal offence in relation to cheating and gambling.

This Association supports the establishment of such an offence or offences. There is a clear need for the establishment of a specific offence of betting-related cheating in relation to sport, carrying an appropriate penalty to deter threats to the integrity of sport arising from corrupt betting.

This Association also supports the creation of a specific offence of cheating in relation to gaming, again carrying an appropriate penalty to deter corrupt play.

For the purposes of this submission, "gambling" is this taken to be either gaming or wagering.

"Wagering" (or betting), is characterised by the parties betting on "externally controlled events" – the outcomes of sporting events, horse racing, elections and so on. The betting providers are bookmakers, the TABs and betting exchanges. "Gaming" is where the outcome of the game is governed by chance and where the outcome is under the control of the gambling provider, for example in the provision of gaming machines (governed by a Random Number Generator) or table games (card/ device and casino-type games) and lotteries.

In the context of internet gambling, the internet serves two different purposes. For wagering, the internet is merely a communication channel. It serves the same purpose as a telephone, fax, or carrier pigeon.

With internet gaming, the internet delivers the outcome of either:

- the RNG (a simulated gaming machine or table game),
- the action of a "live dealer" (some casino games); or
- participation in internet poker against either "live players" or a computer.

Here the internet provides both the product and the delivery mechanism.

The UK provides a useful template for "cheating at gambling" legislation. You will be aware of the relevant provisions of the UK Act – sections 41¹ and 42². For ease of analysis, its suitability for gaming and wagering will be considered separately.

¹ Section 41 of the UK Gambling Act 2005 creates an offence of cheating at gambling by tampering with gambling software.

1) A person commits an offence if in the course of a business he manufactures, supplies, installs or adapts gambling software unless he acts in accordance with an operating licence.

(2) In this Act "gambling software"—

(a) means computer software for use in connection with remote gambling, but

(b) does not include anything for use solely in connection with a gaming machine.

(3) A person does not supply or install gambling software for the purposes of subsection (1) by reason only of the facts that—

(a) he makes facilities for remote communication or non-remote communication available to another person,

Wagering and Sports Betting

The establishment of a criminal offence is an important step and essential step in protecting the integrity of sports.

It is a missing link in the chain.

Australia has a highly regulated sports betting sector. Bookmakers and key employees are subject to probity assessment; all computer systems and recording equipment are subject to approval by a gambling regulator; all bets are recorded and auditable; in the case of online bookmakers, the identity of every customer must be verified regardless of whether the bet is \$5.00 or \$5000.

Bookmakers have entered Integrity Agreements with the major Australian sporting codes. These agreements provide for the exchange of information, prior consultation with, and the consent of, the sporting body for new bet types, and a requirement to advise of any suspicious betting patterns, among other things.

Sporting bodies are increasing their education programs to players, officials and others who, by betting on the sport, may lead to a perception of compromise. They have increased their due diligence measures, in some cases by the formation of specialised Integrity Units.

and

(b) the facilities are used by the other person to supply or install gambling software.

(4) A person guilty of an offence under this section shall be liable on summary conviction to—

- (a) imprisonment for a term not exceeding 51 weeks,
- (b) a fine not exceeding level 5 on the standard scale, or
- (c) both.

² Section 42 of the UK Gambling Act 2005 creates an offence of cheating at gambling.

Cheating

(1) A person commits an offence if he—

- (a) cheats at gambling, or
- (b) does anything for the purpose of enabling or assisting another person to cheat at gambling.

(2) For the purposes of subsection (1) it is immaterial whether a person who cheats—

- (a) improves his chances of winning anything, or
- (b) wins anything.

(3) Without prejudice to the generality of subsection (1) cheating at gambling may, in particular, consist of actual or attempted deception or interference in connection with—

- (a) the process by which gambling is conducted, or
- (b) a real or virtual game, race or other event or process to which gambling relates.

(4) A person guilty of an offence under this section shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
- (b) on summary conviction, to imprisonment for a term not exceeding 51 weeks, to a fine not exceeding the statutory maximum or to both.

Two areas remain for reform. The first is the creation of a specific criminal offence to deter corrupt conduct; the other is the formation of a specialised National Sports Integrity Unit, with the necessary investigative authority and forensic skills to investigate and prosecute instances of corrupt conduct. This is not the appropriate submission to argue for the latter, or to suggest reforms to licensing and integrity frameworks. This submission focuses strictly on the question of establishing a criminal offence.

A fundamental policy issue for the Commission will be the definition of what is;

- “acceptable” cheating;
- cheating that should be the subject of disciplinary action by the sporting body; and
- cheating which is the subject of a criminal offence.

“Acceptable” cheating is a crude term for that conduct which is a breach of the rules but, if undetected, gives small advantage to the player for example “diving” in soccer, or forms of “tagging” in AFL football. This is best left to the referee or umpire.

Cheating that is the subject of disciplinary action by the sporting body currently includes such things as “doping”, or unsporting conduct such as “ball-tampering” in cricket.

Criminal conduct would obviously include accepting or inciting a bribe other form of corrupt payment to alter the outcome of a game or affect particular events within it.

But it is suggested that the distinction between criminal conduct and other cheating is likely to be very difficult to define.

Firstly, should the offence only include those with a definite intention to benefit directly or indirectly from gambling? Is recklessness sufficient? If recklessness is not sufficient, Maradona’s “Hand of God” or the “Bodyline” Tests would remain a matter for the fans and not the courts, because although the actions affected the result and therefore the outcome for bookmakers, it was not intentionally committed for an unlawful purpose *linked to gambling*.

This underlines the issues with the UK Gambling Act. The penalty level is too low, and it may show that any gambling-specific legislation may inevitably face evidential problems.

The penalty level is too low. Given the deterrent objective, it is suggested a maximum of 5 years imprisonment should be available.

Possible issues with *gambling-related* offences may be evident with the current UK proceedings involving the three Pakistani cricketers and their agent. They have been charged with conspiracy to obtain and accept corrupt payments and also conspiracy to cheat. The Crown Prosecution Service noted that:

- Conspiracy to commit an offence is defined under section 1 of the Criminal Law Act 1977. Section 3 of the Act specifies that the maximum sentence for an offence also applies to a conspiracy to commit that offence.

- Obtaining and accepting corrupt payments is an offence contrary to section 1 of the Prevention of Corruption Act 1906. It carries a maximum sentence of seven years' imprisonment and/or an unlimited fine at the Crown Court.
- Cheating is an offence contrary to section 42 of the Gambling Act 2005. It carries a maximum sentence of two years' imprisonment and/or an unlimited fine at the Crown Court.

The choice of charges is significant.

It has been suggested that "obtaining and accepting corrupt payments" is the key corruption charge. This charge relates to taking money to do something corrupt *and does not specifically relate to gambling*.

It has been suggested this is because there has been no evidence presented to date that shows there was ever any intention – or ability – for the parties involved to actually "cheat at gambling" as a result of the three specific no-balls. There is no evidence that any bets were placed. (The players are not facing any criminal charge of conspiracy to defraud bookmakers as it is unclear any were defrauded). In short, they are yet to be shown to be "cheating at gambling". Hence, the reliance on a "corrupt payments" charge.

Do these kinds of circumstances point to the UK provision having similar difficulties with evidence that arise with a "conspiracy to cheat and defraud" charge?

Does it show that the offence can only be established *after* an act of gambling has occurred? If so, does this mean that corrupt conduct leading up to this act is not punishable under this provision?

If so, is the better solution to adopt a more general "corrupt payments" or "corrupt conduct" form of words? However, would that mean that forms of cheating unrelated to betting, such as "doping" would now be the subject of criminal sanction?

As an addendum to the UK provision, should an offence be described in discrete parts along the lines of (and taken from the UK's Minimum Standards for a Sporting Authority's Code of Conduct)? For example: A player or official shall not:

- offer, or attempt to offer, a payment of other benefit in order to fix or contrive a result or the progress of a match, race or other event or competition in which he or his club participates in
- receive, or seek or attempt to receive, or seek a payment of other benefit in order to fix or contrive a result or the progress of a match, race or other event or competition in which he or his club participates in.

A bet that is placed by a fixer and accomplices would be subject to the new law. If "attempts" to commit the crime are also criminal offences, would a bet that is placed by a person "knowing" the fix is on be subject to criminal action? Would a bet that is placed by a person who has heard a rumour that a fix was on be subject to criminal action?

Finally, there is the question of "insider information". In the usual course, a bet placed by a player or official would be subject to disciplinary action by the sport. If the betting coup occurred due to the release of "insider information" – eg knowing X player would not take the field – would that amount to criminally corrupt conduct?

These questions underline some of the policy questions before the Commission in framing a suitable offence, and suggest that the jurisdictional boundary between the sports and the courts will be significantly affected by how the offence is framed.

I turn now to the specific questions you asked:

- (1) *The extent to which you perceive that, in the course of commercial gaming and betting, conduct of the kind mentioned does in fact occur or is at risk of occurring it;*

History shows that sport has always been subject to corruption, including gambling-related corruption:

- The Tour de France has recently been affected by doping offences, but even the winner in 1904 was disqualified after taking a train for part of the route.
- The “winner” of the Boston Marathon in 1980 apparently started the race, diverted on to the subway, emerged near the finish and crossed the line in apparent first place.
- The Olympics have several well-known examples, including a “winner” of the marathon who covered eleven of the twenty-six miles by car, or the fencer in the Olympic pentathlon who altered his fencing epee to allow him to literally score at will by pushing a button.
- In Italy, improper influence was used to ensure certain football teams obtained relegation advantages.

As far as gambling-related corruption is concerned, instances range from baseball’s Chicago White Sox accepting bribes to lose the 1919 World Series, through to more recent match-fixing of European soccer matches, corruption in cricket and concerns around tennis.

In summary, there is always a real risk of corruption from gambling. Although Australia has a relatively clean record, it must guard against the serious threats posed by gambling-related corruption.

The threat is obvious in the case of high-profile matches, but any game or contest is at risk if there is a large betting market on it *whether legal or illegal*.

This raises the important distinction between Australian and other operators. As noted, Australia has a highly regulated betting sector. Sportsbookmakers are almost exclusively online, and so all transactions are recorded and available for review. There are controls over the bet types that may be offered, with new bet types needing the separate prior approvals of the sporting body and the gambling regulator. Australian betting providers are more likely to be the victims of the sting than a perpetrator.

The threat is usually from illegal betting syndicates operating in India, Pakistan, or Eastern Europe. Estimates of the size vary widely – it has been said the illegal gambling industry in Asia is worth as much as US\$450bn per year.

This has an important consequence, in that increased controls over the local industry *would do nothing to lessen the threat*. Instead, local betting providers are able to provide an “early-warning”

for a sport if suspicious betting patterns are detected. Indeed, the majority of high-profile investigations into betting-related sports corruption have been initiated by an online betting provider flagging concerns about betting patterns.

As indicated earlier, under our Integrity Agreements, all bet types must be approved by the relevant sport before being offered. The sports have refused to approve bet types where the result may have been improperly manipulated or where a perception of manipulation may result. Hence, calls for further bans on "exotic bets" would not address corruption concerns – if the market exists offshore, there will be a risk of corruption.

(It is useful at this point to note that even the number of *regulated* overseas-based betting providers offering markets on the NRL and AFL far exceeds the number of local providers.)

- (2) The potential cost and consequences for the gaming and betting industry if such conduct does occur and is not subject to prosecution;

The main focus is rightly on the potential cost to sport if its reputation for integrity is questioned, but the betting industry is directed affected. It is the betting industry that is the target for the sting, and fixed results can potentially cost millions of dollars. It would also suffer serious long-term damage if bettors lost faith in the integrity of sports-betting.

- (3) The adequacy of existing criminal laws to deter such conduct, or to provide a basis for the prosecution of prosperity and sporting events, gamblers and others who engage in or incite or encourage match-fixing, event manipulation, or cheating which may have an impact on the gaming and betting industry;

Current laws have admitted defects. As there is no specific gambling-related law, there is absence of awareness that this is a crime. Ideally, there would be nationally-consistent legislation criminalising corrupt such conduct.

- (4) The forms of any cheating which would be the subject of attention;

All forms of cheating must be captured, including forms not yet known.

- (5) Any reform of the existing laws which you may consider appropriate;

The existing State laws in this area need reform but in a wider policy sense, there is a need for Federal legislation, supporting a Federal law enforcement body.

- (6) The types of bets that can be made and currently accepted in Australia on the outcome of sporting and other events or in relation to individual incidents.

As mentioned above, bet types are subject to approval by both the sports and the gambling regulator. The sports have refused to approve bet types where the result may have been improperly manipulated or where a perception of manipulation may result.

At the moment, it seems the boundary between fair "exotic bets" – where the outcome is a function of good play – and improper exotics bets – which encourage a player to underperform – is about right. There is still room for discussion, for example, should a bet type be permitted if there are additional controls to mitigate the risk? And how should the sports apply their discretion to approve? However, the process is in place for those discussions to occur. At this stage, there is no need for further legislative action in this area.

I now turn to the gaming side of cheating – more clearly a case of cheating "at gambling".

Again, the question is where the boundary is to be drawn.

Casinos, for example, ban advantage play, where the player uses mental, observational or technical skills to choose when and how much to bet, but who neither interferes with the instruments of the game nor breaks any of its rules. Is this to be criminalised?

The issues become more fine in relation to internet gaming. Generally, the offence is committed where there is any attempt to tamper with software. But what if gaming continues to involve "real person" play – either online poker or, eventually, betting of the outcome of Person v Person Role Playing Games?

At this stage, a provision modelled on section 42 of the UK Gambling Act would appear to address these concerns.

In conclusion, I look forward to the next step in the consultation process around the establishment of a specific cheating offence. The Commission's policy decisions will have major impact on both the sports and the gambling industries.

Thank you for the opportunity to comment. Please do not hesitate to contact me if you would like further information or explanation.

Kind regards



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