



New South Wales
Law Reform Commission

Consultation
paper

12

Cheating at gambling



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**March 2011
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Make a submission

We seek your views on the issues raised in this paper and on any other matters you think are relevant to the review.

To tell us your views you can send your submission by:

- **Post:** GPO Box 5199, Sydney NSW 2001;
- **DX:** DX 1227 Sydney; or
- **Email:** nsw_lrc@agd.nsw.gov.au.

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For more information about us, and our processes, see our website:

www.lawlink.nsw.gov.au/lrc

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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.

[Received 5 January 2011.]

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0.1 This Consultation Paper (“CP”) deals with cheating in relation to:

- betting on racing, sporting and other events; and
- gaming in its several forms, including gambling at the Casino, the use of gaming machines and participating in lotteries and other games of chance.

0.2 Sports and event betting, which is the primary focus of this CP, is:

- the fastest growing form of betting nationally and internationally; and
- possible on an ever-expanding list of sports events and contingencies, including special and exotic bets.

0.3 Betting occurs on-line and by telephone across State, Territory and national boundaries, and is available in a number of forms including betting with bookmakers, totalizator betting, and betting exchanges. It also includes spot betting, spread betting and fixed-odds betting.

Regulation of gambling

0.4 Gambling is regulated by a variety of statutes in NSW and the administration and enforcement of the various provisions fall to a number of bodies, depending on the area of regulation, including the Casino, Liquor and Gaming Control Authority, the Minister for Gaming and Racing, the Office of Liquor, Gaming and Racing, Racing NSW, the Police, and the Inspectors appointed under the various statutes.

Sports and event betting

0.5 The forms of cheating that can occur in relation to sports and event betting can involve the manipulation of an outcome or contingency by competitors, teams, sports agents, support staff, referees and officials, and venue staff. Such conduct includes:

- the deliberate fixing of the result of a contest, or of an occurrence within the contest, or of a points spread;

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- deliberate underperformance;
 - withdrawal (tanking);
 - an official's deliberate misapplication of the rules of the contest;
 - interference with the play or playing surfaces by venue staff; and
 - abuse of insider information to support a bet placed by any of the above or placed by a gambler who has recruited such people to manipulate an outcome or contingency.
- 0.6 This area of conduct is governed by State and Territory legislation which differs significantly in its reach. The manner in which the relevant gambling legislation is regulated also differs from jurisdiction to jurisdiction. Together this complicates the development of any co-ordinated strategy to combat cheating in relation to gambling.
- 0.7 Although sports controlling bodies and licensed betting agencies also have a role in ensuring and promoting the integrity of sporting events, free from manipulation through cheating associated with betting, there is no consistency of approach between codes; nor is there any central sports integrity unit within Australia.

Gaming

- 0.8 A wide range of gaming is permitted in NSW, which is subject to regulatory regimes, including cheating and other fraud offences, established by specific pieces of legislation. Each of these Acts provides for a different regulatory regime.

The criminal law concerned with cheating and other forms of fraud

Sports and event betting

- 0.9 There are a number of offences in NSW that might possibly be invoked to respond to cheating, none of which is specific to sports and event betting, and each of which presents difficulties in their application to this form of conduct, as analysed in this CP:
- the common law offence of cheating [*para 5.10-5.20*];
 - the common law offence of conspiracy to defraud [*para 5.21-5.47*];
 - the statutory offence of cheating under s 18 of the *Unlawful Gambling Act 1998* (NSW) [*para 5.48-5.75*];
 - the statutory offence of fraud by deception under s 192E of the *Crimes Act 1900* (NSW) [*para 5.76-5.100*];
 - the statutory secret commissions offence under s 249B of the *Crimes Act 1900* (NSW). [*para 5.101-5.155*]

Gaming

- 0.10 In addition to the offences outlined in relation to sports and event betting, there are a number of context-specific offences concerned with cheating, fraud or bribery that relate to gaming activities arising under the specific statutes that apply to those activities. The relevant provisions in NSW are not consistent with each other, or with similar offences in other Australian jurisdictions, and there are some potential gaps in coverage. [para 5.159-5.186]

Revision of the criminal law

Offence of cheating in relation to sports and event betting

- 0.11 In Chapter 6 we analyse the issues of relevance to the development of a specific cheating offence in relation to sports and event betting, and formulate a possible offence for the purposes of consultation:

- (1) An offence is committed where:
 - (a) a person, directly or indirectly, with intent:
 - (i) to obtain a **benefit** for himself or herself or for any other person; or
 - (ii) to cause a loss or disadvantage to any other person,
dishonestly induces or attempts to induce a **participant**, or makes an offer to such a **participant**:
 - (iii) to engage in any act or omission which constitutes a threat to or which undermines the integrity of any **sporting or other event**, including:
 - (A) deliberately under-performing or withdrawing from such event; or
 - (B) in any way fixing or influencing the outcome of such event, or of any contingency that may occur during it,
being an event, outcome or contingency upon which the person or any other person stands to lose or gain any money or monies worth, whether as a **participant**, or by betting on such outcome or contingency; or
 - (iv) not to bring to the attention of a member of the Police Force, or other appropriate authority such as a sports controlling body, any such offer or inducement or attempted inducement in relation to a scheme or arrangement of the kind contemplated by sub-paragraph (1)(a)(iii); or
 - (b) a **participant** dishonestly offers or agrees to carry into effect, or carries into effect, any scheme or arrangement of the kind contemplated by sub-paragraph (1)(a)(iii).
- (2) It shall also be an offence where an **insider** possesses information in relation to a **sporting or other event** or contingency that he or she knows or ought reasonably to know is **insider information**, and with that knowledge,

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- (a) **dishonestly** places a bet directly or indirectly on the outcome of that event or contingency, or
 - (b) directly or indirectly **dishonestly** communicates the information or causes that information to be communicated to a third party who the **insider** knows or ought reasonably to know would or would be likely to place a bet on that event or contingency; or
 - (c) procures a third party to place a bet directly or indirectly on the outcome of that event or contingency
- (3) It shall also be an offence where a third party, to whom information is disclosed by an **insider**:
- (a) knows or ought reasonably to know that the information is **insider information**; and
 - (b) with that knowledge, **dishonestly** places directly or indirectly a bet or accepts a bet on the outcome of the event or contingency to which the **insider information** relates.
- (4) For the purpose of these provisions no offence is committed unless the relevant act or omission was intentional or reckless.
- (5) It is not necessary for proof of any of the offences contained in this section that the act or omission results in a win or gain, or in the securing of any advantage, or the causing of any disadvantage.
- (6) The maximum penalty available for any such offence shall be imprisonment for 10 years.

“**benefit**” includes any money or monies worth, any release or forbearance in relation to any pre-existing, or future obligation, any avoidance of a loss or punishment, and any other favour or service, or valuable consideration of any kind.

“**contingency**” means any incident or happening that may occur during the course of a sporting event, including those that relate to the run of play or that constitute something that may be done or achieved by a participant or team in the course of the contest or series of contests.

“**dishonest**” means dishonest according to the standards of ordinary people and known by the defendant to be dishonest according to these standards.

“**insider**”, for the purposes of sub-sections (2) and (3), means a **participant** who possesses **insider information**.

“**insider information**” is information that:

- (a) is not generally available in relation to a pending sporting or other event, including:
 - (i) information concerning any arrangement of the kind referred to in sub-paragraph (1)(a)(iii); or
 - (ii) concerning any injury to a player or team tactics; and
- (b) if it were generally available, a reasonable person would expect it to have a material effect on the betting on that event, or on a contingency occurring within it.

“**other event**” means any non-sporting event that is a declared betting event within the meaning of the *Racing Administration Act 1998* (NSW), or an event upon which bets can be placed under the laws of any other State or Territory.

“**participant**” means a person competing or taking part in a **sporting or other event**; his or her agent; any person who is a member, or coach, manager, official or a person providing services of any kind for a team or club that is involved in such an event; any person who acts as a judge, referee or official of any kind in relation to such an event; and any person who is engaged as a curator or official at any venue where the event is to take place.

“**sporting event**” means any contest between individuals or teams, or that involves a thoroughbred, harness or greyhound race, that is usually attended by the public, and that is governed by rules which include the Constitution, Code of Conduct or Rules for the contest, of the Sports Controlling Body that stages the event, or of the regulatory agency under whose Constitution, Code of Conduct or Rules it is conducted.

Form of the provisions in relation to sports and event betting and gaming

- 0.12 We also consider whether there should be a codification and consolidation of the offences concerned with cheating or fraudulent conduct in relation to sports and event betting and gaming activities; or, alternatively, whether there should be a core set of provisions expressed in similar terms to be included in the individual gambling Acts. [para 6.2-6.18]

Penalties and investigative powers

- 0.13 We also note the ranges of penalties available in NSW, and in other jurisdictions in relation to comparable offences [para 6.8]; and draw attention to the differences in NSW concerning the powers of Inspectors authorised to carry out investigations and other functions under the gaming laws in NSW. [para 6.59]

Related issues

- 0.14 There are a number of matters within the wider landscape in which gambling and gaming takes place that should be considered but which are not a part of this review, including:
- the possible establishment of a single Gambling Commission or Authority in NSW [para 7.3-7.14];
 - the procedures for the approval of betting events and gaming activities [para 7.23-7.33]; and
 - the roles of the sports controlling bodies and integrity units, and of the betting agencies, in securing the integrity of sporting and other events and of gaming. [para 7.34-7.44]

Questions

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6.2	<p>(1) Should an offence or offences to the effect of the proposed draft provision in paragraph 6.36, or some variation of it, be adopted?</p> <p>(2) If so, should it be inserted as part of the <i>Crimes Act 1900</i> (NSW) or added to some other Act or Acts?</p> <p>(3) Should it co-exist with the statutory fraud and secret commissions provisions contained in the <i>Crimes Act 1900</i> (NSW)?</p> <p>(4) Are the proposed definitions for the provision in paragraph 6.39 sufficiently wide or too wide?</p> <p>(5) What should be the available maximum penalty?</p>	123
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Terms of reference

- 1.1 This reference is concerned with the adequacy of the NSW criminal laws to deal with cheating at gambling. It arises as a result of concerns expressed in Australia, and overseas, in relation to the incidence of match fixing. It takes its place in the context of our Report on the laws concerned with complicity in criminal offences,¹ and in the light of several initiatives which have been directed to achieving greater integrity in connection with sports betting.²
- 1.2 Although we are principally concentrating on betting in relation to the sports events and other events of a non-sporting kind, in respect of which wagers can be made lawfully with licensed betting agencies in Australia, the terms of reference apply in relation to cheating at gambling generally.
- 1.3 Although we are not concerned with social or private gambling between friends, it is recognised that there is an organised unlawful gambling market that operates locally and internationally, the operations of which can affect those engaged in the lawful market. This arises from the circumstance that cheating in relation to a sports or other event which is designed to secure an advantage in relation to wagers placed in the unlawful market, can impact on gamblers and betting agencies placing or accepting wagers on the same event in the lawful market.
- 1.4 As we note later, this has a particular relevance for the cheating provision contained in the *Unlawful Gambling Act 1998* (NSW)³ since it has application only in relation to lawful gambling.
- 1.5 In order to gain an appreciation of the opportunities which are available to obtain a fraudulent benefit from cheating, we identify, in this Consultation Paper, the several forms of gambling that exist. In summary, we identify and discuss gambling that includes:
- betting with licensed bookmakers, and operators of totalizators, on racing (both on-course and off-course) and on sporting and other events;
 - gaming involving the recognised table or card games of chance or of mixed skill and chance that are available for example at the Star City Casino, such as

1. NSW Law Reform Commission, *Complicity*, Report 129 (2010).

2. For example, R Parry, *Report of the Sports Betting Integrity Panel* (UK Gambling Commission, 2010); the Review of Sports Betting Regulation announced by the Minister for Gaming (Vic); and the Review of Sports Betting and Match Fixing conducted by the Coalition of Major Professional and Participation Sports (COMPPS).

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

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poker in its several manifestations, blackjack, pontoon, pai gow, baccarat, and roulette;

- gambling employing the recently introduced Trackside electronic simulated horse racing game;
- playing gaming machines in licensed clubs and hotels;
- purchasing tickets entitling the holder to participate in a lottery, art union, raffle or the like; and
- participating in public lotteries, including Keno, Lotto, Oz Lotto and Powerball draws.

1.6 We note that a person can engage in gambling, in these several forms, in person at a racetrack, casino, club, TAB outlet and the like, or online. In the case of internet wagering, the internet provides the necessary communication channel between the gambler and wagering agency. In the case of internet gaming, the internet delivers the outcome of either a simulated gaming machine or table game, the action of a “live dealer”, or participation in internet poker against either “live players” or a computer. In this respect it provides both the product and the delivery mechanism.⁴

1.7 We also identify, in relation to “wagering”, the generic types of bets or wagers that exist, and the individual events or possibilities on which a gambler may place a bet, and which may be amenable to some form of “fixing” or cheating.

Some definitions

1.8 As indicated above we have taken the expression “gambling”, in the reference, to include the several ways in which a player or gambler can stake money on a chance, in the hope of achieving a monetary or other benefit.

1.9 In this respect, we define:

- “wagering” to mean betting on the outcome of a future externally controlled event or contingency, the opportunity for which is provided through bookmakers, the TABs and betting exchanges;
- “gaming” to mean playing a game of chance for money or something of value (including chips), where the outcome is governed by chance but is under the control of the gambling provider (in the case of gaming machines, for example, it is governed by a random number generator);
- “lotteries” and like activities to mean arrangements for the distribution of prizes by chance among people who have purchased tickets.

1.10 We have used the expression “to bet” as representing the placement by one party (the bettor) of a sum of money (the “stake”) with another on the contingency of a future predicted outcome; and the expression “to lay” as representing the acceptance by the other party of that bet, on the contingency that such outcome will not happen. The extent to which each party assumes a risk of success or loss

4. Australian Internet Bookmakers Association, *Submission PCG18*.

relates to the likelihood of that outcome occurring, and is reflected by the “odds” which are offered and accepted.

Regulation

- 1.11 In this Consultation Paper we provide an overview of the legislation, which regulates the several forms of gambling mentioned, and identify the provisions which are directed at cheating. In this respect, we make reference to the legislation in force in NSW and in the other States and Territories, as well as in other comparable jurisdictions.
- 1.12 Our purpose is to identify any deficiencies in the laws of this State, and to propose for consideration a set of model provisions that could be introduced and, hopefully, adopted by the other Australian States and Territories.
- 1.13 It is appropriate to note, in this regard, that bets can be placed in one State or Territory on a sporting or other event occurring in another State or Territory or overseas, and that the existing betting agencies do not necessarily exist in the same domain. As we note later, gamblers in one State or Territory can access betting facilities located in another State or Territory, as well as overseas in order to place bets that could not be placed in the home state. It is clear that sport and betting take their place on a stage that transcends State and National boundaries, and that there are constitutional impediments to State laws that seek to restrict cross-border transactions. Accordingly, it seems to be important that there be substantial uniformity in relation to any measures that are directed to securing the integrity of sporting contests and associated gambling activities.

Some statistics

- 1.14 Although it is difficult to place any reliable estimate on the size of the gambling market in Australia, some assistance is provided by the 2010 Report of the Productivity Commission on Gambling.⁵
- 1.15 This Report records that around 70 per cent of Australians participated in some form of gambling in 2009.⁶ The Australian gambling revenue in 2008/2009 was reported to be just over \$19 billion,⁷ of which 55% was attributable to gaming machines in clubs and hotels; 18.2% to casino gambling; 12% to lotteries, pools, Keno and other; and 14.8% to wagering (1.2% sports betting and 13.6% racing).
- 1.16 The Report noted that the online participation in sports wagering has grown in the 2000s:⁸
- around 424,000 online sports wagering accounts were active in 2008, a 103% increase on 2004 levels; and
 - around \$391 million was spent on online sports wagering in 2008, a 73% increase on 2004 levels.⁹

5. Australia, Productivity Commission, *Gambling*, Report 56 (2010).

6. Australia, Productivity Commission, *Gambling*, Report 56 (2010) vol 1, 5.

7. Australia, Productivity Commission, *Gambling*, Report 56 (2010) vol 1, 6.

8. Australia, Productivity Commission, *Gambling*, Report 56 (2010) vol 1, 21.

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- 1.17 NSW statistics taken from the Queensland Government Office of Economic and Statistical Research report into Australian Gambling from 1982/1983 to 2007/2008 reveal:¹⁰
- All gambling turnover for NSW¹¹ – 2000/2001: \$48.18 billion; 2007/2008: \$62.28 billion.¹² NSW Government revenue from all gambling – 2007/2008: \$1.55 billion.¹³
 - Sportsbetting turnover – 1997/1998: \$69 million; 2007/2008: \$676.94 million.¹⁴ NSW Government revenue from sportsbetting – 2007/2008: \$6.33 million.¹⁵
 - Racing turnover – 2000/2001: \$4.67 billion; 2007/2008: \$4.98 billion.¹⁶ NSW Government revenue from racing 2007/2008 – \$141.54 million.¹⁷
 - TAB total turnover – 2000/2001: \$3.91 billion; 2007/2008: \$4.18 billion.¹⁸ NSW government revenue from TAB – 2007/2008: \$141.54 million.¹⁹
 - On course bookmaker total turnover – 2000/2001: \$483.63 million; 2007/2008: \$523.83 million.²⁰
 - Casino turnover – 2000/2001: \$3.12 billion; 2007/2008: data unavailable.²¹
 - Gaming machine turnover – 2000/2001: \$38.92 billion; 2007/2008: \$55 billion.²²
 - Keno – 2000/2001: \$340.8 million; 2007/2008: \$351.5 million.²³

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9. Australia, Productivity Commission, *Gambling*, Report 56 (2010) vol 1 [2.39].
 10. Office of Economic and Statistical Research, Queensland Treasury, *Australian Gambling Statistics 1982-83 to 2007-08* (26th ed, 2010).
 11. Office of Economic and Statistical Research, Queensland Treasury, *Australian Gambling Statistics 1982-83 to 2007-08* (26th ed, 2010) Product Tables, 237.
 12. Data for 2007/2008 incomplete.
 13. Office of Economic and Statistical Research, Queensland Treasury, *Australian Gambling Statistics 1982-83 to 2007-08* (26th ed, 2010) Product Tables, 246.
 14. Office of Economic and Statistical Research, Queensland Treasury, *Australian Gambling Statistics 1982-83 to 2007-08* (26th ed, 2010) Product Tables, 223; A Cameron, *Correct Weight? A Review of Wagering and the Future Sustainability of the NSW Racing Industry: A Report for the Minister of Gaming and Racing* (2008) 55.
 15. Office of Economic and Statistical Research, Queensland Treasury, *Australian Gambling Statistics 1982-83 to 2007-08* (26th ed, 2010) Product Tables, 232.
 16. Office of Economic and Statistical Research, Queensland Treasury, *Australian Gambling Statistics 1982-83 to 2007-08* (26th ed, 2010) Table Racing 1, *Total Racing Turnover*, Product Tables, 57.
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 18. Office of Economic and Statistical Research, Queensland Treasury, *Australian Gambling Statistics 1982-83 to 2007-08* (26th ed, 2010) Product Tables, 20.
 19. Office of Economic and Statistical Research, Queensland Treasury, *Australian Gambling Statistics 1982-83 to 2007-08* (26th ed, 2010) Product Tables, 29.
 20. Office of Economic and Statistical Research, Queensland Treasury, *Australian Gambling Statistics 1982-83 to 2007-08* (26th ed, 2010) Product Tables, 34.
 21. Office of Economic and Statistical Research, Queensland Treasury, *Australian Gambling Statistics 1982-83 to 2007-08* (26th ed, 2010) Product Tables, 71.
 22. Office of Economic and Statistical Research, Queensland Treasury, *Australian Gambling Statistics 1982-83 to 2007-08* (26th ed, 2010) Product Tables, 144.
 23. Office of Economic and Statistical Research, Queensland Treasury, *Australian Gambling Statistics 1982-83 to 2007-08* (26th ed, 2010) Product Tables, 135.

- 1.18 The popularity of sports betting and the increased investment in this form of wagering was confirmed by the Cameron Report,²⁴ and by the submissions from the key agencies which we have received, one of which estimates that it now represents approximately 20% of the total NSW bookmaking turnover.²⁵
- 1.19 The NSW Office of Liquor, Gaming and Racing records that there are five authorised full-time and 39 casual bookmakers involved in sports betting in NSW with an annual turnover of \$109.8 million for the year as at 30 June 2009.²⁶
- 1.20 Of particular importance for this reference is the fact that, while betting on horse racing, harness racing and greyhound racing, and Casino gaming has always been tightly regulated, the same cannot be said for the rapidly growing sports betting industry.²⁷ This has led us to place the primary focus of this Consultation Paper on sports and non-racing event betting.

Preliminary submissions and consultations

- 1.21 We have received extensive preliminary submissions in response to the terms of reference from statutory gambling authorities, from individual wagering agencies and wagering associations, from sports controlling bodies and from individual sports agencies.²⁸ Of interest is the degree of unanimity revealed in these submissions concerning the need for a holistic, and, preferably, a national approach, to the detection and elimination of cheating in the context of wagering and gaming, and concerning the need for an enhanced specific offence or offences to deal with that form of conduct.
- 1.21 We have also engaged in preliminary consultations with the NSW statutory agencies, and the other parties noted in Appendix B, which revealed a similar acceptance of the need for a holistic response.
- 1.22 By reason of the general acceptance of the need to engage statutory gambling authorities, sports controlling bodies, individual sports agencies, and wagering authorities, in protecting the integrity of the sporting and other events that can be the subject of bets, as well as the integrity of the wagering and gaming industries, we have thought it necessary to review the wider landscape, since it provides the environment in which the provisions of the criminal law need to operate.
- 1.23 Although one submission raised a concern about the current arrangements for relaying and publishing official betting fluctuations, from racecourses to the public, and their impact on the “best fluctuation” product, that is advertised by bookmakers, we do not think that this falls within our terms of reference.

24. A Cameron, *Correct Weight? A Review of Wagering and the Future Sustainability of the NSW Racing Industry: A Report for the Minister of Gaming and Racing* (2008) 54.

25. NSW Bookmakers' Co-operative Ltd, *Submission PCG12*, and see also Wesley Community Legal Service, *Submission PCG7*, and Racing NSW, *Submission PCG7*.

26. NSW Office of Liquor, Gaming and Racing, “Statistics” <http://www.olgr.nsw.gov.au/industry_stats.asp>.

27. Racing NSW, *Submission PCG17*.

28. Appendix A.

2. Wagering on sports and special events

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- 2.1 From an analysis of the types of bets that are available through licensed betting outlets, it is clear that they include wagers on the overall outcome of a race, sporting fixture or other event; on an incident or contingency within such a race, fixture or event; and on the comparative results of individual teams or participants in the context of a single fixture or event, or over a series of fixtures (for example, a season) or events.
- 2.2 While sports betting is a popular form of wagering, similar betting opportunities exist in some States or Territories in relation to a variety of non-sporting fixtures. In some contexts they are referred to as betting on “special” or “exotic” or “novelty” events, and they include bets in relation to occurrences within the fields of politics, finance and entertainment.
- 2.3 In general, it appears that wagers can be placed prior to the commencement of the race, sporting fixture or event, and in some instances “on the run”, that is, in the course of the running of the fixture or event.
- 2.4 Wagers can be accepted over the telephone, by attendance at a racetrack or a wagering outlet (retail agency or betting auditorium) and online by the internet or through a subscription television service. As we note later, there are restrictions in relation to the use of the internet for this purpose, arising under the *Interactive Gambling Act 2001* (Cth).

Forms of wagering

- 2.5 The available forms of wagering include:
- **Single bets** – those that are placed on a team or individual competitor to win (or to place) commonly referred to as a “head to head wager”.
 - **Multi bets** – sometimes referred to as an “all up” or “parlay” bet – a combination of single bets on different sporting or other events, with a consequent multiplication in the odds, depending on the number of legs involved and the odds applicable to each leg.
 - **A simple accumulator** – a multi bet that involves a bet on a specific sporting fixture and a specified bet type within that fixture, the combined worth being defined by a multiplication of the price (odds) offered for each selection.
 - **Line or handicap bets** – those that are placed in relation to a fixture or event when one team or participant is given a handicap or start by the betting agency (on the basis that one team or competitor is, for example, six points better than the other), and which involves a wager that one side will win by either more or less than the handicap or points start set by the bookmaker.

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- **Margin bets** – bets in relation to the winning margin between two teams or competitors involved in a contest.
- 2.6 Betting can involve “fixed price betting” or the use of the totalizator or *pari-mutuel* system. “Fixed price betting” involves an arrangement whereby the amount to be paid for a successful bet is agreed when the bet is accepted, comprising the stake plus a “price” or “premium”. By contrast, totalizator betting involves a pooling of all bets that are placed on a race or contingency followed by a distribution between successful gamblers at the conclusion of the event or contingency. In such a case the premium is not known until the contingency occurs or the event is concluded.
- 2.7 For the purpose of this reference, the expression “spot bet” means a bet that is placed on the occurrence of a particular incident or contingency in the course of a sporting fixture, or other contest or event, for example, in the sporting context, the giving away of a penalty, within a specific timeframe, or the timing of a first score, or whether the first ball of a cricket match will be a wide or no ball (referred to hereafter as a “contingency” or a “micro-event”).
- 2.8 The expression “spread bet” means a bet that is placed on the possibility of there being an outcome outside a spread of points or places quoted by a bookmaker. It arises in the context of a fixture or event where there is a spectrum of possible results, and it permits greater leeway than the simple “win – lose” outcome that applies to a single bet at fixed-odds. Its attraction lies in the fact that, in an event involving an obvious favourite, the odds are likely to be such that a bet on the favourite is unattractive.
- 2.9 For example, a bookmaker might quote a spread of 440 to 460 runs to be scored in a one day cricket match. A gambler can take a “sell” position that there will be fewer than 440 runs. If the total scored is 420 then the gambler taking that position stands to win the difference (440-420) multiplied by the stake (say \$10.00), resulting in a return of \$10.00 x 20 or \$200.00. Conversely, a “buy” position can be taken where the gambler assesses that more than 460 runs will be scored.
- 2.10 For the sophisticated user of this facility, which is offered by at least one Australian based operator (Sports Alive), the possibility exists of employing a sports betting arbitrage approach. This involves backing all possible outcomes of an event or betting with different bookmakers at different odds. Depending on the right proportion of the odds on offer being selected, it can theoretically assure a profit, or at least minimise the potential for a loss.
- 2.11 Spread betting is not confined to the overall result of the fixture. It is available in relation to any aspect of the event in which a bookmaker is prepared to create a market, allowing a gambler to take a buy position (positive with upside) or a sell position (positive with downside), and additionally, to trade during the contest either to minimise a loss or to lock in a profit.
- 2.12 As we note later, spread betting is also available in relation to derivatives and contracts for difference traded in the financial markets. This form of spread betting is subject to regulations applicable to trading in the financial markets and, as such, it falls outside our terms of reference. It involves a greater degree of judgement, skill and experience than that which applies to spread betting on sporting fixtures and special events, and it is less amenable to manipulation or cheating. However, for completeness, and by way of identifying a possible precedent for legislation in the

context of this reference, we do note its features and the applicable regulatory regime later in this Consultation Paper.¹

Betting exchanges

- 2.13 Betting exchanges provide an alternative betting strategy.² For a commission, the exchange matches bets between two parties, at the fixed-odds which are on offer for a specified stake on the particular event. The difference between this facility and that otherwise available is that it operates through an online marketplace, in which a participant bets at odds that are set by another participant, rather than set by a bookmaker, or determined, by reference to the totalizator. Under this system one party places a “back bet” on a race to win or a contingency to occur, while the other party places a counter “lay bet”. The exchange occupies the position of a counterparty but only where it is able to match the two bets.
- 2.14 This facility enables subsequent trading to take advantage of any fluctuating prices in the market. It has become an increasingly popular method for betting on sports and other events, particularly by reason of the ever-increasing number of contingencies for which bets can be place or layed.
- 2.15 NSW law does not permit betting exchanges, but this does not preclude gamblers in NSW placing bets through the Betfair exchange located in Tasmania.
- 2.16 Concerns have been expressed as to the potential for corrupt activity which can arise in connection with the operation of a betting exchange. This relates to the possibility of a participant in a sporting event, or a person with racing connections, backing themselves, or their own animal, to lose, and the difficulties in penetrating the layers of anonymity that can be involved, as well as the potential for misuse of insider information.³ On the other hand, it is claimed that the integrity of wagering on sporting and other events is enhanced by the systems in place for customer identity verification, for a comprehensive audit trail, and for account only betting, as well as the capacity of the exchange to identify suspicious betting activity and possible money laundering quickly.⁴

Sporting activities in Australia on which betting is possible

- 2.17 An examination of the websites of the major licensed bookmakers and betting agencies⁵ operating in Australia discloses that wagering opportunities are offered

1. See para 3.136-3.149.

2. Only offered In Australia by Betfair, under a licence from the Tasmanian Gaming Commission.

3. A Cameron, *Correct Weight? A Review of Wagering and the Future Sustainability of the NSW Racing Industry: A Report for the Minister of Gaming and Racing* (2008) 70-72.

4. Betfair, *Submission PCG11*.

5. The websites examined include those of Betfair (licensed in Tasmania, <<http://sports.betfair.com>>); SportsAlive (licensed in ACT, <<http://www.sportsalive.com>>); Sportsbet Australia (licensed in NT, <<http://www.sportsbet.com.au>>); Luxbet (licensed in NT, <<http://www.luxbet.com>>); Sportingbet Australia (licensed in NT, <<http://www.sportingbet.com.au>>); Centrebet (licensed in NT, <<http://centrebet.com>>); TAB Sportsbet (licensed in NSW and Victoria, <<http://www.tab.com.au>>); Tom Waterhouse Betting (licensed in NSW, <<http://www.tomwaterhouse.com>>); Henry Noonan (licensed in NSW, <<http://www.topodds.com.au>>); Merlehan Bookmaking (licensed in NSW, <<http://www.topsport.com.au>>).

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for almost every sporting activity that occurs in Australia, and, in many cases, overseas.

2.18 For example we have seen that bets can be placed through licensed agencies on:

- horse racing (Australia and international);
- harness racing;
- greyhound racing;
- athletics;
- AFL (Australian Rules Football);
- baseball;
- basketball (including US College basketball);
- boxing;
- chess;
- cricket;
- cycling;
- darts;
- football (Australian and international soccer);
- Gaelic sports (GAA);
- golf;
- handball;
- indoor bowls;
- ice hockey;
- mixed martial arts;
- motorsports (including NASCAR USA);
- American football;
- NRL (Rugby League);
- netball;
- Rugby Union;
- Olympic and Commonwealth games;
- snooker and pool;
- tennis;
- triathlon;

- volleyball;
- winter sports (international); and
- yachting.

2.19 Within these individual sports, there are many subcategories of bets that can be placed. Without attempting to be exhaustive, it may be noted, by way of example, that betting opportunities are offered by some agencies in relation to all or some of the following outcomes of a race or sporting fixture:

Cricket

- head to head;
- winner of toss;
- highest opening partnership;
- first batting dismissal method (that is: bowled; caught (wicket keeper or other); leg before wicket; stumped; or run out);
- team high bat (match/series);
- most wickets (match/series);
- next over runs;
- next man out;
- first over runs;
- most sixes;
- series win.

AFL

- match result;
- premiership;
- ladder placement;
- Brownlow medal and similar medals;
- first scoring play;
- first player to kick a goal;
- first team to score;
- player to kick most goals for the match/round;
- player to get most disposals; and
- man of the match.

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Rugby League

- match win;
- minor premiers;
- premiers;
- top four;
- top eight;
- first and last scorer;
- first scoring play (that is: try; penalty; or drop goal);
- man of the match;
- exact score;
- half-time result;
- number of tries; and
- total match points.

Rugby Union

- Similar to Rugby League and additionally:
 - Six Nations Championship;
 - Bledisloe Cup;
 - World Cup; and
 - Heineken Cup.

Football (soccer)

- win/draw;
- total goals;
- next goal;
- half-time score;
- full-time score;
- first goal;
- scorer; and
- corners.

Tennis

- match winner;
- first set winner;
- set sequence; and
- set scores.

Golf

- outright winner;
- match between two players or groups of players;
- scores;
- winning margins;
- eagles, etc; and
- finishing position of a player.

2.20 Betting is also possible on some non-traditional sports such as:

- futsal;
- poker;
- chess; and
- backgammon.

Special or exotic bets

2.21 Betting opportunities are also permitted by law or are offered by some Australian betting agencies, as well as by overseas agencies that can be accessed by Australian citizens, in relation to non-sporting events as diverse as the following:

Entertainment

- winner of reality shows;
- Logies, Oscars, Emmies, Tropfest etc;
- Eurovision and similar contests;
- Dancing with the Stars; and
- arts and literary prizes.

Financial

- next Reserve Bank of Australia interest rate determination, and size of the rate increase or decrease;
- stock market indexes;
- oil markets.

Politics

- elections.

Special markets

- Australian of the Year awards;
- next Papal election;
- next monarch;
- royal and celebrity weddings, relationship announcements, and births;
- Nobel Peace Prizes;
- beauty pageants;
- weather.

2.22 It can be seen that the capacity to bet on an ever increasing list of events and contingencies, in person or online, and to engage in spread betting, and to do so within NSW, or across State or national borders, and in both legal and illegal markets, is only likely to lead to an increase in the overall financial outlay of the public in this form of gambling. While this has some attractions for the revenue of the States and Territories, it does have a downside in relation to the opportunity that it provides for irresponsible gambling, and in encouraging cheating, particularly where that might involve organised crime for profit or for money laundering.

3. Regulation of sports and event betting

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- 3.1 In this chapter, we make brief reference to the experience of manipulation or cheating associated with betting on sporting or other events. We give consideration to some of the regulatory regimes that are in place to deal with such conduct and to the role that controlling sports bodies and wagering agencies can perform, in co-operation with those regimes, to minimise or to detect any untoward behaviour within their sphere of influence.
- 3.2 While the overall regulation of gambling and the responsibilities of controlling sporting organisations fall outside the direct reach of our terms of reference, some understanding of the existing framework, within which sports and event betting takes place, is necessary for an appreciation of the sufficiency or otherwise, of the applicable criminal law.

Match fixing and its consequences

- 3.3 The multiplicity of wagering opportunities that exist, particularly where they extend to betting on micro-events, or contingencies does mean that gambling in this context readily lends itself to manipulation or cheating. That can take various forms and involve players, team officials and coaches, player agents, match officials, selectors and curators or ground staff. Some of the kinds of conduct that might be undertaken to manipulate a micro-event, or an overall result, for the benefit of a gambler or bookmaker include:
- arrangements to fix the outcome of a match or to contrive the occurrence of a micro-event (contingency);
 - deliberate underperformance or withdrawal by a player midway through an event (“tanking”);
 - inappropriate use of confidential insider information (for example, information concerning team selection, player injury, or tactics);
 - deliberate making of a wrong decision by a match official;

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- deliberate interference with a pitch or playing surface by a curator;
- the provision or use of drugs or performance enhancing substances; and
- bribery or physical coercion or threat to a player or a match official or a family member to achieve a desired outcome.

3.4 It might also include such occurrences as:

- racing connections running, in connection with a planning betting coup, a horse other and better than the one officially entered, after altering its appearance (as in the case of the Fine Cotton ring-in); or
- a skilled entrant in a foot-race, such as the Stawell Gift, assuming the identity of a moderate performer, in order to gain a favourable handicap thereby aiding a planned betting coup.

3.5 An alternative opportunity for cheating in this context involves a contestant deliberately underperforming in advance of a handicap race in order to secure a favourable handicap with the intention of mounting a betting plunge on that event.

3.6 Within the range of activities mentioned, there may be several different motives for such conduct, some of which may not be associated with betting. They include:

- the direct or indirect placement of a bet by the party responsible for the manipulation for financial gain;
- entry by any one or more of the parties mentioned into an agreement with a gambler or bookmaker, to commit such an act, for monetary or other reward, or in response to blackmail, or to physical threat to the participant or their family, or some other form of coercion;
- patriotism to secure a win for a national team;
- desire to secure a favoured position in a qualifying round; or
- preservation of a team or player's the 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.

3.7 Of importance in any legislative response in this respect, however, is to preserve a clear distinction between deliberate cheating aimed at affecting wagering activities and the kinds of rule breaking that will inevitably occur in any kind of sporting contest but that are not related to gambling. Conduct involving ball tampering in cricket, illegalities surrounding scrums and rucks in Rugby Union matches, head-high tackles, and even incidents such as the Maradona "Hand of God", need to remain the province for match officials and sports disciplinary rules rather than the criminal law.

3.8 There is a long history of match and spot fixing in connection with gambling, involving both individuals and teams.¹ With the large number of international

1. P Finley, L Finley and J Fountain, *Sports Scandals* (Greenwood Press, 2008) 41-49. A very early account in relation to lawn bowls can be seen in T Dekker, *The Gulls Hornbrook and the Bellman of London* (1608) 125-129.

sporting events that exist including World Cups in several sports, and the Olympic Games, and with an unstoppable move towards professionalism in, and commercialisation of, virtually every sport, the risk of the expansion of such activities is both inevitable and significant.

- 3.9 Within cricket, it has been asserted that such conduct was common in the early 19th century, particularly in the context of the single wicket game.² More recently, the inquiry into the Hansie Cronje affair,³ and the Report of the Anti-Corruption Unit of the International Cricket Council,⁴ highlight the concerns that are held as to the consequences for cricket of match or event fixing, particularly at the instance of those involved in the significant unlawful gambling industry.
- 3.10 The Condon Report, in particular, cited a number of instances of alleged match fixing, or corrupt conduct, extending over more than twenty years. It noted that, while a number of measures had been taken to eliminate this mischief, there was a “real threat” of its resurgence.⁵ In this regard, the impact of the increase in television coverage and the advent of one-day fixtures was especially mentioned, in connection with the substantial growth that has occurred internationally of betting on cricket.⁶
- 3.11 Similar concerns have been expressed in relation to tennis, leading to the 2008 inquiry panel that was commissioned by the International Tennis Federation into a number of suspect matches, in respect of some of which betting had been voided or suspended.⁷ Similarly to international cricket, this sport now has a Tennis Security Unit tasked with investigating malpractice.
- 3.12 Additionally, there have been instances of match officials, and even of ground staff,⁸ being detected or admitting to deliberate irregularities while officiating. One such case involved security staff of a stadium, where a premier league match was to be played in the UK, conspiring with illegal gamblers to extinguish the lights once a goal was scored, so as to result in abandonment of the match, thereby potentially resulting in a betting coup in the Asian market.⁹
- 3.13 An early and similarly notorious incident involving a team was the match fixing arranged by the Chicago White Sox during the 1919 World Series. Equally

2. J Pycroft, *Cricket Field: Or, the History and the Science of the Game of Cricket* (2nd ed, 1854) 99-109 and “Athletics” (1866) 3 *The Contemporary Review* 374, 379-380.

3. E King, *Commission of Inquiry into Cricket Match Fixing and Related Matters*, First Interim Report (2000); E King, *Commission of Inquiry into Cricket Match Fixing and Related Matters*, Second Interim Report (2000); E King, *Commission of Inquiry into Cricket Match Fixing and Related Matters*, Final Report (2001).

4. P Condon, *Report on Corruption in International Cricket* (2001).

5. P Condon, *Report on Corruption in International Cricket* (2001) [4]-[5].

6. P Condon, *Report on Corruption in International Cricket* (2001) [67]-[69]. The active involvement of the ICC in this respect is illustrated by the recent case in which disciplinary and police action have been taken in relation to allegations associated with a Test Match at Lords in 2010.

7. B Gunn and J Rees, *Environmental Review of Integrity in Professional Tennis* (2008).

8. For example, the cases of the German National League referee, Robert Hoyzer who was convicted of fraud in relation to match fixing in 2003 and 2004, and of Tim Donaghy, an NBA referee who admitted to gambling on games on which he officiated.

9. *R v Ong* [2001] 1 Cr App R (S) 404, in which the offenders were sentenced to imprisonment for the offence of conspiracy to commit a public nuisance.

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notorious have been multiple instances of fixed college basketball games, and of European football games.¹⁰

- 3.14 Clearly enough, the fixing of an outcome of a sporting event is easier where the contest involves individual participants competing head to head than where it involves a team contest. In the former case (for example, a boxing match or a game of tennis or snooker), each individual has control of the way in which he or she performs. Even within team events, however, it is relatively easy for a micro-event to be manipulated by one participant without the knowledge or co-operation of fellow team members.
- 3.15 In any such case, the presence of suspicious betting patterns, that is, betting inconsistent with the performance record of the competitors, should always be a cause for concern and investigation. Similarly within team sports, a sudden burst of betting on an unlikely micro-event, or one that does not normally attract volume betting, should occasion a similar response from legitimate betting agencies and sports controlling bodies.
- 3.16 Cheating or manipulation of the kind mentioned is obviously highly deleterious to the reputation and financial well-being of the relevant sport. It can threaten its popularity and growth and hence its value as a community activity. It poses a threat to the livelihood of its participants and to the interests of a legitimate sports betting industry that is increasingly becoming involved as a sports sponsor. Moreover unless properly regulated, the resulting climate is one in which organised crime is likely to be significantly involved, both through match fixing in aid of gambling and money laundering. The emergence of online technologies, and the phenomenal growth of sports betting internationally, underlines the need for consistent and co-ordinated regulation to avoid such negative impacts.
- 3.17 That this is the case has been recognised both within Australia and internationally, as can be seen from:
- the emergence of Integrity Units within some sports;
 - the public statements of the Federal Minister for Sport, Senator Mark Arbib,¹¹ of the President of the Australian Olympic Commission, John Coates,¹² and of the President of the International Olympic Committee, Jacques Rogge;¹³
 - the initiatives taken by the *Coalition of Major Professional and Participation Sports*,¹⁴ and by the Victorian Minister for Gaming, Tony Robinson when announcing, in 2010, the establishment of a Review of Sports Betting Regulation;¹⁵

10. P Finley, L Finley and J Fountain, *Sports Scandals* (Greenwood Press, 2008) 43-46; Remote Gambling Association (UK), *Sports Betting: Legal, Commercial and Integrity Issues* (2010) 95.

11. P Kogoy, "Arbib's stand on illegal betting", *The Australian*, 10 January 2011.

12. G Korporaal, "Coates calls for betting reform", *The Australian*, 4 September 2010.

13. J Rogge, IOC President, (speech delivered from the First World Olympic Sport Convention, Acapulco, 23 October 2010).

14. Coalition of Major Professional and Participation Sports, *Submission to the Senate Community Affairs Committee Inquiry into the Prevalence of Interactive and Online Gambling in Australia* (1 September 2010).

15. J Dowling, "Review To Find Ways To Stop Corruption In Sport Betting", *The Age*, 15 December 2010.

- the enactment in France in 2010 of laws designed to regulate online sports betting;¹⁶
 - the UK Gambling Commission's publication of a study "*Integrity in Sports Betting 2007*";¹⁷
 - the formation of the *European Sports Security Organisation* in 2005 to monitor irregular betting patterns, identify possible insider betting and work with sports regulators; and
 - the preliminary submissions which we have received.¹⁸
- 3.18 Most recently, at the European Sports Forum, the Director-General of the World Anti-Doping Agency called for the establishment of a global anti-corruption agency to deal with doping, illegal betting, bribery and corruption in sport:
- The key issue is that the criminal underworld is engaged in clear and serious efforts to corrupt the sporting world. Sports organisations do not have the experience, the resources or the legal jurisdiction, to deal with those issues alone. However, the money that the criminal underworld has is considerable. Thus it needs governments, sports organisations and the legitimate gambling industry to unite together to save sport.¹⁹
- 3.19 A similar response followed the Lausanne meeting at the IOC headquarters in March 2011, which agreed to the formation of a task force to develop a co-ordinated response to irregular and illegal betting on sports.
- 3.20 It is in recognition of the importance of maintaining a viable sports industry, and in securing a system that will protect those who wish to participate in sports betting, a significant industry in its own right, that we have thought it necessary to note some of the features of the structures by which these activities are regulated. In particular, we acknowledge that the development and application of suitable criminal laws remains the ultimate safety net, and that statutory agencies, sports controlling bodies and betting agencies can achieve much in the licensing and regulatory phase to limit the opportunities for manipulation (for example, by banning betting on micro-events that are particularly vulnerable to such conduct) and to detect or deal with it on a disciplinary basis.
- 3.21 Our objective in this consultation paper, within that broader environment, is to draw attention to the desirability of developing best practice criminal laws that could be adopted uniformly within Australia, that could be seen as giving rise to a strong deterrent, and that might be useful as a precedent elsewhere. In the course of the discussion that follows in this chapter, attention is also briefly drawn to the lack of uniformity between the States in relation to what is permissible in the way of betting, and to the application, in relation to lawful wagering in Australia, of the constitutional protection concerning the freedom of interstate trade and commerce.²⁰

16. LOI n° 2010-476 du 12 mai 2010 relative à l'ouverture à la concurrence et à la régulation du secteur des jeux d'argent et de hasard en ligne (1).

17. UK, Gambling Commission, *Integrity in Sports Betting*, Issues Paper (2007).

18. Australian Internet Bookmakers Association, *Submission PCG18*; NSW Bookmakers' Co-operative Ltd, *Submission PCG12*; Lander & Rogers, *Submission PCG15*; Australian Sports Commission, *Submission PCG13*.

19. N Harris, "Head of Wada calls for global anti-corruption body" *Sporting Intelligence* (23 February 2011) <<http://www.sportingintelligence.com>>.

20. *Constitution* (Cth) s 92.

Regulatory control in NSW

Approved betting

- 3.22 In NSW, the *Unlawful Gambling Act 1998* (NSW) specifies a number of forms of betting that are prohibited²¹ and that give rise to an offence.²²
- 3.23 The Act then specifies certain forms of betting that are not prohibited. They include:
- betting on a declared betting event if the betting is carried on by an authorised betting event bookmaker at a licensed racecourse in accordance with a betting authority;²³
 - betting on any event or contingency if the betting is made with or accepted by a licensed bookmaker in accordance with an authority under s 16 of the *Racing Administration Act 1998* (NSW);²⁴
 - betting on any event or contingency if the betting is made by telephone or electronically with a person who is authorised under the law of any other State or Territory, or any other jurisdiction, to carry on bookmaking activities;²⁵ and
 - betting on a horse race, harness race, greyhound race or declared betting event if the betting is made with a totalizator conducted by a licensee under the *Totalizator Act 1997* (NSW) or is otherwise authorised under that Act.²⁶
- 3.24 Under s 16 of the *Racing Administration Act 1998* (NSW), the Minister for Gaming and Racing may, amongst other things, authorise a licensed bookmaker to accept or make bets by telephone, or electronically by means of the internet, subscription TV, or such other online communication systems as may be approved by the Minister, while the bookmaker is at a licensed racecourse or on premises approved under s 16A as premises at which the bookmaker may conduct telephone or electronic betting.
- 3.25 Section 18(1) of the *Racing Administration Act 1998* (NSW) provides that:
- The Minister may, by order published in the Gazette, declare 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, to be declared betting events.
- Section 18(2) of the *Racing Administration Act 1998* (NSW) defines “event” to include a contingency.
- 3.26 The Minister can authorise a licensed bookmaker to take bets on any declared betting events specified in the authorisation at any licensed racecourse.²⁷

21. *Unlawful Gambling Act 1998* (NSW) s 8(1).

22. *Unlawful Gambling Act 1998* (NSW) s 8(2); see also s 10 in relation to placing a bet with a person where the former knows or would reasonably be expected to know that the latter was carrying on bookmaking in contravention of the Act.

23. *Unlawful Gambling Act 1998* (NSW) s 8(6)(c).

24. *Unlawful Gambling Act 1998* (NSW) s 8(6)(d).

25. *Unlawful Gambling Act 1998* (NSW) s 8(6)(d1).

26. *Unlawful Gambling Act 1998* (NSW) s 8(6)(e).

- 3.27 A betting authority granted under the Act may be subject to conditions that can include any of the following:
- (a) different requirements for different declared betting events,
 - (b) minimum bets,
 - (c) methods of betting, including arrangements for the use of telecommunications equipment,
 - (d) requirements for the giving of security by bankers for long-term bets,
 - (e) requirements for record keeping by authorised betting event bookmakers,
 - (f) audit requirements for authorised betting event bookmakers.²⁸
- 3.28 The *Totalizator Act 1997* (NSW) contains provision for the licensing of companies and racing clubs, to conduct a totalizator on course; or both on and off course in respect of betting on race meetings and also on “any declared betting event (within the meaning of the *Racing Administration Act 1998*)”.²⁹
- 3.29 The Minister for Gaming and Racing can give approval to the holder of a licence to conduct a betting activity (otherwise than by means of totalizator) on a particular event or contingency or class of events or contingencies scheduled to be held at a race meeting or on “declared betting events”.³⁰ These approvals, which currently extend to 53 categories of sporting and other events held within NSW and elsewhere, and identify the approved forms of betting for each category, are published in the *NSW Government Gazette*. Included as Appendix C to this Consultation Paper is a list of the “declared betting events” and approved forms of betting that are currently permissible in accordance with this legislation. The list was significantly expanded, on 28 February 2011, to include within the relevant categories of approved events a number of previously excluded categories such as entertainment, interest rates, literary and arts awards, and stock market indices (but not elections).³¹
- 3.30 Where a particular event is not a “declared betting event”, or a particular bet is not an “approved form of betting” for the purpose of s 18 of the Act,³² this does not preclude NSW residents from betting on that event or placing that form of wager with licensed bookmakers in other States or Territories.
- 3.31 With respect to sports betting, the NSW TAB and licensed bookmakers operate under separate but similar rules that have been approved by the Minister and published by the Office of Liquor, Gaming and Racing.³³

27. *Racing Administration Act 1998* (NSW) s 19.

28. *Racing Administration Act 1998* (NSW) s 20.

29. *Totalizator Act 1997* (NSW) s 12 and s 15; Tabcorp, which acquired TAB Ltd in 2004, has exclusivity in relation to off course betting and in relation to betting on simulated racing events: s 14 and s 15AA. Tabcorp also owns the sports betting agencies TAB Sportsbet and Luxbet, in addition to other gaming and casino operations.

30. *Totalizator Act 1997* (NSW) s 13.

31. NSW, *Government Gazette*, 4 March 2011, 1739.

32. *Racing Administration Act 1998* (NSW) s 18.

33. TAB Limited Sports Betting Rules, *Totalizator Act 1997* (NSW), gazetted 15 September 2000 with amendments gazetted on 21 February 2003, 10 October 2003, October 2005, July 2006 and November 2009; and Bookmaker Sports Betting Rules, *Racing Administration Act 1998* (NSW),

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- 3.32 These rules contain detailed provisions in relation to the manner in which bets can be placed and the circumstances (specific to the several sports on which bets can be placed) that will determine the result of a bet, including those in which a bet may be voided. They also recognise the right of a bookmaker, or the holder of a licence under the *Totalizator Act 1997* (NSW) to cease or suspend betting on a sports event.

Administrative control

- 3.33 The *Unlawful Gambling Act 1998* (NSW) and the *Racing Administration Act 1998* (NSW) are administered by the NSW Office of Liquor, Gaming and Racing, which has the additional responsibility of administering the following Acts:

- *Australian Jockey Club Act 1873* (NSW);
- *Casino Control Act 1992* (NSW);
- *Casino, Liquor and Gaming Control Authority Act 2007* (NSW);
- *Charitable Fundraising Act 1991* (NSW);
- *Gambling (Two-up) Act 1998* (NSW);
- *Gaming Machine Tax Act 2001* (NSW);
- *Gaming Machines Act 2001* (NSW);
- *Greyhound and Harness Racing Administration Act 2004* (NSW);
- *Greyhound Racing Act 2009* (NSW);
- *Harness Racing Act 2009* (NSW);
- *Hawkesbury Racecourse Act 1996* (NSW);
- *Innkeepers Act 1968* (NSW);
- *Liquor Act 2007* (NSW);
- *Lotteries and Art Unions Act 1901* (NSW);
- *NSW Lotteries Corporatisation Act 1996* (NSW);
- *Public Lotteries Act 1996* (NSW);
- *Racing Appeals Tribunal Act 1983* (NSW);
- *Registered Clubs Act 1976* (NSW);
- *Sydney Turf Club Act 1943* (NSW);
- *Thoroughbred Racing Act 1996* (NSW);

gazetted 15 September 2000 with amendments gazetted 22 August 2003, 10 October 2003, 19 October 2005 and July 2006.

- *Totalizator Act 1997* (NSW); and
- *Wagga Wagga Racecourse Act 1993* (NSW).

The Minister for Gaming and Racing is the responsible minister in respect of each of these Acts.

- 3.34 The NSW Office of Liquor, Gaming and Racing is a Division of Communities NSW. Its role includes overall policy direction and advice in relation to all of the activities regulated under the legislation mentioned, early interventions, education activities and co-ordination of licensing, compliance and enforcement functions.³⁴ Inspectors are appointed by the Minister for Gaming and Racing to carry out various functions under the relevant Acts. The Office also supplies secretarial and administrative support to the Casino, Liquor and Gaming Control Authority.
- 3.35 The Casino, Liquor and Gaming Control Authority, which was established in July 2008 under the *Casino, Liquor and Gaming Control Authority Act 2007* (NSW), is the body responsible for the regulation of gaming and liquor at the Star City Casino.³⁵ It also has licensing and approval functions (but not compliance functions) in relation to liquor, gaming machines and registered clubs, predominantly under the *Casino Control Act 1992* (NSW); the *Liquor Act 2007* (NSW); the *Registered Clubs Act 1976* (NSW); and the *Gaming Machines Act 2001* (NSW). The responsible minister is the Minister for Gaming and Racing.
- 3.36 Each of the NSW agencies acts in conjunction with the NSW Police Force, and, in particular, with the Casino, Gaming and Racing Investigation Unit (which is part of the Firearms and Organised Crime Squad, within the State Crime Command) as well as with the NSW Crime Commission in relation to the investigation and prosecution of offences arising under the Acts mentioned above.

Cross-jurisdictional betting

- 3.37 In relation to racing, when a bet is placed by telephone or online, the question of where the betting contract is made for regulatory purposes is settled in NSW by s 16(9) of the *Racing Administration Act 1998* (NSW) which provides that:
- A bet made or accepted by a bookmaker by telephone or electronically is taken to have been made or accepted at the place where the bookmaker is located when the bet is made or accepted.³⁶
- 3.38 A resident of NSW can place bets with wagering operators that are licensed in another State or Territory, including the Betfair Betting Exchange, on events or contingencies for which NSW operators could not accept bets. This is recognised in the *Unlawful Gambling Act 1998* (NSW).³⁷ Residents of other States and Territories have a similar capacity to engage in cross-border betting and can, accordingly, place bets on events or contingencies that could not be accepted by bookmakers in their home state.

34. NSW Office of Liquor, Gaming and Racing, http://www.olgr.nsw.gov.au/about_us_home.asp

35. The Authority's additional functions in relation to the Casino are listed in *Casino Control Act 1992* (NSW) pt 10.

36. Note that this section was inserted by the *Wagering Legislation Amendment Act 2010* (NSW) sch 1 cl 4.

37. *Unlawful Gambling Act 1998* (NSW) s 8(6)(d1).

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- 3.39 This is an area of trade and commerce to which s 92 of the *Constitution* (Cth) has potential application, as appears from the decision of the High Court in *Betfair Pty Ltd v Western Australia*.³⁸ In that case provisions of the *Betting Control Act 1954* (WA) were held to be invalid to the extent that they would apply to a person betting through the Betfair Betting Exchange licensed in Tasmania, by telephone or internet connection from WA (giving rise to an offence). They were also invalid to the extent that they would apply to Betfair's conduct in making WA racefield information available in connection with betting through the Exchange.
- 3.40 The reach of s 92 of the *Constitution* (Cth) has also arisen for consideration in relation to NSW's legislative imposition of a fee for the use of NSW racefield information by wagering operators, wherever located.³⁹
- 3.41 As a consequence, interstate TABs and licensed bookmakers in other States and Territories participate in laying bets placed by NSW residents. The financial ramifications for NSW in terms of leakage of revenue to the other States or Territories has been of concern.⁴⁰
- 3.42 The Commonwealth regulates the provision of internet gambling services and their advertisement by way of the *Interactive Gambling Act 2001* (Cth). In general terms, it prohibits interactive gambling services from being provided to customers in Australia,⁴¹ and also prohibits Australian based interactive gambling services from being provided to customers in designated countries.⁴² It also gives rise to restrictions on the publication, broadcasting or datacasting of gambling service advertisements in Australia.⁴³ There are, however, exceptions or exclusions⁴⁴ in relation to:
- telephone betting services;
 - excluded wagering services, including services relating to betting on one or a series of horse races, harness races, greyhound races, sporting events, or other events or contingencies, but not where the bet is made after the beginning of the event;⁴⁵
 - excluded gaming services, being services for the conduct of a game provided to customers who are in a public place;⁴⁶
 - services that have a designated broadcasting link, that is, services expressly and exclusively associated with a particular program or series of programs on a broadcasting or a datacasting service, where the sole purpose of the gambling service is to promote goods or services advertised on that service;⁴⁷

38. *Betfair Pty Ltd v Western Australia* (2008) 234 CLR 418.

39. *Betfair Pty Ltd v Racing NSW* [2010] FCAFC 133, a decision of the Full Court of the Federal Court that is currently subject to an appeal to the High Court: *Betfair Pty Ltd v Racing NSW* [2011] HCATrans 53 (11 March 2011).

40. A Cameron, *Correct Weight? A Review of Wagering and the Future Sustainability of the NSW Racing Industry: A Report for the Minister of Gaming and Racing* (2008).

41. *Interactive Gambling Act 2001* (Cth) s 15.

42. *Interactive Gambling Act 2001* (Cth) s 15A.

43. *Interactive Gambling Act 2001* (Cth) s 61EA and s 61DA.

44. *Interactive Gambling Act 2001* (Cth) s 5(3).

45. *Interactive Gambling Act 2001* (Cth) s 8A.

46. *Interactive Gambling Act 2001* (Cth) s 8B.

47. *Interactive Gambling Act 2001* (Cth) s 8C.

- services that relate to the entering into of contracts that are financial products within Chapter 7 of the *Corporations Act 2001* (Cth);⁴⁸ and
 - excluded lottery services.⁴⁹
- 3.43 It should be noted that, while the provision of an internet gambling service on the run (that is, in respect of a bet placed after the beginning of the event),⁵⁰ is prohibited, such bets can still be lawfully placed by telephone with licensed or authorised betting agencies.
- 3.44 Under the *Interactive Gambling Act 2001* (Cth), the Australian Communications and Media Authority (ACMA) has the responsibility for registering industry codes of practice dealing with interactive gambling, and for investigating complaints in relation to prohibited internet gambling content.⁵¹ ACMA carries out these functions in conjunction with the Australian Federal Police (AFP) where the content is hosted in Australia or in a country of interest to the AFP.⁵² Where the content is hosted outside Australia, ACMA can notify the content to the AFP, and to internet service providers so that they can deal with the site, for example, through filtering software.
- 3.45 The Internet Industry Association has developed an industry code for co-regulation of internet gambling content and has registered it with ACMA.⁵³
- 3.46 ACMA can also investigate complaints about compliance with the 2010 Commercial Television Industry Code of Practice regarding the permitted times for the broadcasting of general gambling and betting advertisements that are not otherwise prohibited.⁵⁴

Placing bets overseas

- 3.47 The position in relation to the legality of NSW residents placing bets with bookmakers located overseas, and of bookmakers accepting those bets, is not entirely clear, and may depend on the laws in force in the country where the bookmaker is located. It may, however, be important because the cheating provision in the *Unlawful Gambling Act 1998* (NSW) only applies to forms of gambling that are not “prohibited by or under [the] Act”.⁵⁵
- 3.48 There is no specific prohibition under NSW laws against NSW residents placing bets on any event or contingency with bookmakers who are licensed overseas.⁵⁶
- 3.49 Australians are, in practice, able to place bets online (irrespective of the legality involved) on sporting and other events with some overseas bookmakers. Poker and casino gaming online provided through overseas services is, in practice, also

48. *Corporations Act 2001* (Cth) s 5(3)(b).

49. *Interactive Gambling Act 2001* (Cth) s 8D.

50. *Interactive Gambling Act 2001* (Cth) s 8A(2)(a).

51. *Interactive Gambling Act 2001* (Cth) pt 3.

52. *Interactive Gambling Act 2001* (Cth) pt 2 and Australian Communications and Media Authority (ACMA) website <http://www.acma.gov.au>.

53. A code for industry co-regulation in the area of internet gambling content pursuant to the requirements of the *Interactive Gambling Act 2001* (Cth) – 2001 Internet Industry Association (IIA); ABA NR 108/2001.

54. Australian Communications and Media Authority, *Submission PCG2*.

55. *Unlawful Gambling Act 1998* (NSW) s 18(1).

56. *Unlawful Gambling Act 1998* (NSW) s 8(6)(d1).

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accessible to Australians⁵⁷ notwithstanding the prohibition on the conduct of such gaming in the *Interactive Gambling Act 2001* (Cth).⁵⁸

- 3.50 The *Interactive Gambling Act 2001* (Cth) allows wagering, as well as other selected gambling services, so long as it does not involve in-play or continuous betting. This is achieved by excluding wagering and other selected gambling services from the definition of “prohibited internet gambling services”, so long as the bets are not “placed, made, received or accepted after the beginning of the event”.⁵⁹ Despite this, it appears that some overseas bookmakers will not take bets from Australian residents on events within Australia. It is unclear why this is so, and whether it is due to a misinterpretation of the current law.⁶⁰ One UK bookmaking site,⁶¹ still offers a wagering service to Australians, but does not allow Australian based players to participate in continuous betting, a restriction which is consistent with the requirements of the *Interactive Gambling Act 2001* (Cth).⁶²
- 3.51 It is possible that the reluctance of some overseas betting agencies to provide online wagering services to Australian residents is due to a perception that any betting contract entered into will be unenforceable. This issue could potentially deter banks, credit card operators and gambling services providers, as well as the gamblers themselves, from engaging in gambling overseas⁶³ and could accordingly be a reason for that reluctance.
- 3.52 It appears to us that there is no offence for licensed bookmakers overseas to provide wagering services online to Australian Residents, provided they do not allow in-play or continuous betting, or other services prohibited by the *Interactive Gambling Act 2001* (Cth).⁶⁴
- 3.53 At the Commonwealth level, there is no offence for Australian residents betting with any internet gambling service, whether prohibited or not. However, it is an offence for NSW residents to bet by telephone or electronically on a thoroughbred, greyhound or harness race held anywhere in Australia with a bookmaker whom they know or would be reasonably expected to know is not a legal bookmaker, or with a person who is not authorised under a State or Territory law to conduct totalizator betting.⁶⁵ This provision imposes criminal liability on the person making the bet, not the bookmaker,⁶⁶ and it also extends to situations where a person places a bet while in the State with a person who is outside the State (including overseas).⁶⁷

57. For more details see: Australia, Department of Broadband, Communications and the Digital Economy, *Review of the Operation of the Interactive Gambling Act 2001* (2004).

58. *Interactive Gambling Act 2001* (Cth) s 15.

59. See *Interactive Gambling Act 2001* (Cth) s 6.

60. Ladbrokes bookmakers customer care division stated that: “the restriction has been put in place due to legislation passed by the Australian government and not one that we have applied”: e-mail to the NSWLRC, 9 February 2011.

61. <<http://www.bet365.com>>.

62. Allens Consulting Group, Commissioned by the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, ‘What is Interactive Gambling’ *Review of Current and Future Trends in Interactive Gambling Activity and Regulation* (June 2009) 1.2.

63. See: Australia, Department of Broadband, Communications and the Digital Economy, *Review of the Operation of the Interactive Gambling Act 2001* (2004).

64. *Interactive Gambling Act 2001* (Cth) s 8A(2)(a).

65. *Unlawful Gambling Act 1998* (NSW) s 8(3)(b).

66. *Unlawful Gambling Act 1998* (NSW) s 8(5).

67. *Unlawful Gambling Act 1998* (NSW) s 8(4A). The offence penalty is: 50 penalty units or imprisonment for 12 months (or both).

- 3.54 What is not so clear is whether it is an offence, under the *Unlawful Gambling Act 1998* (NSW) or any other Act, for a NSW resident to place a bet online, or by telephone, with an illegal bookmaker who is located overseas, in relation to an event that is held either in Australia or overseas.⁶⁸

Other jurisdictions

Victoria

- 3.55 By way of comparison with NSW, we note the initiatives which have been taken in Victoria in relation to sports betting as a result of amendments to the *Gambling Regulation Act 2003* (Vic).⁶⁹
- 3.56 In summary, the Act makes provision for:
- the Minister to approve betting competitions on an event or contingency, or class of events or contingencies of or relating to a horse race, harness race or greyhound race;⁷⁰ and
 - the Victorian Commission for Gambling Regulation to approve other events or classes of events for betting purposes and to approve a betting competition on that event or class of events.⁷¹

Each such approval may be given subject to conditions.⁷²

- 3.57 When approving a new racing event or class of event for betting purposes, the Commission is required to have regard to:
- (a) whether the event or class is exposed to unmanageable integrity risks; and
 - (b) whether the event or class is administered by an organisation that is capable of administering and enforcing rules or codes of conduct designed to ensure the integrity of the event or class; and
 - (c) whether betting on the event or class is—
 - (i) offensive; or
 - (ii) contrary to the public interest; and
 - (d) except in the case of a sporting event or class of sporting event, whether the approval would represent an unreasonable extension of the scope of gambling in Victoria.⁷³

68. Unless it falls within the jurisdictional reach of the *Unlawful Gambling Act 1998* (NSW) s 8(1) or (3) or s 10, as a legislative instrument of NSW, which might depend on where the bet is taken to have been placed.

69. *Gambling and Racing Legislation Amendment (Sports Betting) Act 2007* (Vic).

70. *Gambling Regulation Act 2003* (Vic) s 4.5.3.

71. *Gambling Regulation Act 2003* (Vic) s 4.5.6, 4.5.3 and 4.5.11A.

72. *Gambling Regulation Act 2003* (Vic) s 4.5.3(4), s 4.5.6(3) and s 4.5.11A(2).

73. *Gambling Regulation Act 2003* (Vic) s 4.5.8.

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- 3.58 The Commission must determine whether any approved betting event is a “sports betting event” for the purposes of the *Gambling Regulation Act 2003* (Vic) and designate any such event accordingly in the instrument of approval.⁷⁴
- 3.59 The Commission may, on application by a sports controlling body, approve such an organisation as a sports controlling body for a sports betting event.⁷⁵
- 3.60 The criteria to be taken into account in determining whether an applicant should be approved as a sports controlling body for the purposes of the Act include the following:
- (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
 - (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.⁷⁶
- 3.61 The Act provides that a sports controlling body for a sports betting event may enter into an agreement with a sports betting provider for that provider to offer a betting service on the event, which must:
- (a) provide for the sharing of information between the parties for the purposes of protecting and supporting integrity in sports and sports betting; and
 - (b) state –
 - (i) whether or not a fee is payable by the sports betting provider to the sports controlling body in respect of betting on the sports betting event; and

74. *Gambling Regulation Act 2003* (Vic) s 4.5.9.

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

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

- (ii) if a fee is payable, what the fee is or how it is calculated.⁷⁷
- 3.62 Provision is made for the Commission to make a determination that the sports betting provider can offer a betting service on a sports betting event, where the sports betting provider and the sports controlling body have been unable to reach an agreement between themselves.⁷⁸
- 3.63 The Act makes it an offence for a sports betting provider, in Victoria or elsewhere, to offer a betting service on a “sports betting event” unless an agreement is in effect between the sports controlling body for that event and the sports betting provider; or unless a determination of the Commission is in effect for the sports betting provider to offer a betting service on that event.⁷⁹ This does not apply where a sports betting event is held wholly outside Victoria, or where there is no sports controlling body for the event.⁸⁰
- 3.64 The Commission can also prohibit betting on a contingency relating to an event, or class of event, approved for betting purposes and held wholly or partly in Victoria, when it considers that to allow betting on that contingency:
- (a) may expose the relevant event or class of event to unmanageable integrity risks; or
 - (b) is offensive; or
 - (c) is contrary to the public interest; or
 - (d) is unfair to investors; or
 - (e) should be prohibited for any other reason.⁸¹
- 3.65 It is an offence to accept or make an offer or invitation to a person to place a bet on a prohibited contingency, and to facilitate the placement of such a bet.⁸² However the person placing the bet in such a case is not liable as an accessory to the offence of the sports betting provider.⁸³
- 3.66 It is understood that 21 types of sports events have been approved for fixed-odds betting and two for totalizator odds betting as follows:⁸⁴

Fixed-odds betting

- **American Football** - matches controlled and regulated by national or international authorities.
- **Athletics** - meetings controlled and regulated by national or international authorities.

77. *Gambling Regulation Act 2003* (Vic) s 4.5.23.

78. *Gambling Regulation Act 2003* (Vic) s 4.5.24-4.5.26.

79. *Gambling Regulation Act 2003* (Vic) s 4.5.22(1)(b).

80. *Gambling Regulation Act 2003* (Vic) s 4.5.22(2)(a) and (c).

81. *Gambling Regulation Act 2003* (Vic) s 4.5.29.

82. *Gambling Regulation Act 2003* (Vic) s 4.5.31.

83. *Gambling Regulation Act 2003* (Vic) s 4.5.31(2).

84. Victorian Commission for Gambling Regulation, “Approved Events” <<http://www.vcgr.vic.gov.au/>>.

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- **Australian Rules Football** - games that form part of the Australian Football League and Victorian Football League competitions including the State of Origin series and the Brownlow Medal vote count.
- **Baseball** - matches controlled and regulated by national or international authorities.
- **Basketball** - matches controlled and regulated by national or international authorities.
- **Boxing** - contests controlled and regulated by national or international authorities (subject to the condition that separate individual approval of boxing contests taking place in Australia be sought except if the contest is an officially sanctioned national and international boxing title fight).
- **Cricket** - matches controlled and regulated by national or international authorities.
- **Cycling** - events controlled and regulated by national or international authorities.
- **Darts** - events controlled and regulated by the World Darts Federation or the Professional Darts Corporation.
- **Golf** - events controlled and regulated by national or international authorities.
- **Ice Hockey** - matches controlled and regulated by the USA National Ice Hockey League.
- **Ironman** - events controlled and regulated by national or international authorities.
- **Motor Sport** - races controlled and regulated by national or international authorities.
- **Netball** - matches controlled and regulated by national or international authorities.
- **Olympic and Commonwealth Games** - contingencies of, or relating to, events at Olympic and Commonwealth Games.
- **Rugby** - matches controlled and regulated by national or international authorities.
- **Soccer** - matches controlled and regulated by national or international authorities.
- **Surfing** - events controlled and regulated by national or international authorities.
- **Tennis** - tournaments controlled and regulated by State, national or international authorities.
- **Triathlon** - events controlled and regulated by national or international authorities.
- **Yachting** - events controlled and regulated by national or international authorities.

Totalizator betting

- **Australian Rules Football** - games that form part of the Australian Football League competition, including the State of Origin series.
 - **Motor Sport** - races controlled and regulated by national or international authorities.
- 3.67 It is understood that six sports organisations have been approved as sports controlling bodies:⁸⁵
- Australian Football League;
 - Australian Rugby Union;
 - Cricket Australia;
 - National Rugby League;
 - Professional Golfers Association (PGA) of Australia; and
 - Tennis Australia.
- 3.68 It is also understood that the contractual arrangements between the sports controlling bodies and the wagering operators who are authorised to offer betting on approved events, provide for funding of the sports controlling body by the wagering operator, as well as measures to suspend or otherwise disallow betting on events in respect of which integrity concerns are entertained.⁸⁶
- 3.69 Unlike the somewhat complex legislative structure in force in NSW, under which gambling is regulated by more than twenty separate Acts, the *Gambling Regulation Act 2003* (Vic) effectively codifies, within the one piece of legislation, the regulation of all forms of gambling within the State, including wagering, gaming, gaming machines, lotteries, club Keno, bingo, and commercial raffles.
- 3.70 Again, unlike the position in NSW, the Act provides for the creation of a single authority, the Victorian Commission for Gambling Regulation, and confers upon it the multiple functions and powers necessary for the administration of the Act, including the detection of offences, and making determinations in respect of sports betting.⁸⁷ Those powers extend to the holding of inquiries⁸⁸ and to the investigation of possible contraventions of the Act.⁸⁹
- 3.71 There is a review currently on foot in relation to the effectiveness of the regulation of sports betting in Victoria which is due to report by 31 March 2011.⁹⁰

85. Victorian Commission for Gambling Regulation, "Approved Events" <<http://www.vcgr.vic.gov.au>>.

86. Victorian Commission for Gambling Regulation, *Submission PCG21*.

87. *Gambling Regulation Act 2003* (Vic) s 10.1.4-10.1.5.

88. *Gambling Regulation Act 2003* (Vic) s 10.1.20.

89. *Gambling Regulation Act 2003* (Vic) s 10.4.8-10.4.11.

90. Victorian Commission for Gambling Regulation, *Submission PCG21*.

South Australia and other Australian jurisdictions

- 3.72 It is noted that gambling commissions or authorities also exist in Western Australia,⁹¹ South Australia,⁹² Tasmania⁹³ and in the ACT,⁹⁴ each with regulatory functions and powers. It is noted, for example, that one of the functions of the Independent Gambling Authority of South Australia is the approval of betting contingencies related to races or events within or outside Australia, for all forms of lawful wagering in that State.⁹⁵
- 3.73 Similarly to Victoria, the South Australian Authority is required, before approving a contingency, 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 ...⁹⁶

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.⁹⁷

- 3.74 It is noticeable that in both Victoria and South Australia there is legislative direction that is lacking in NSW concerning the process by which events or contingencies can be approved for betting purposes.

United Kingdom

- 3.75 In the United Kingdom there is similarly a stand-alone Gambling Commission, that was established under the *Gambling Act 2005* (UK) to regulate commercial gambling (other than the National Lottery and Spread Betting).
- 3.76 Its powers extend to the investigation of relevant offences including those cases where a person cheats at gambling or does anything for the purposes of enabling or assisting another person to cheat at gambling.⁹⁸

91. *Gaming and Wagering Commission Act 1987* (WA).

92. *Independent Gambling Authority Act 1995* (SA).

93. Tasmanian Gaming Commission established under *Gaming Control Act 1993* (Tas) pt 7.

94. ACT Gambling and Racing Commission established under *Gambling and Racing Control Act 1999* (ACT) pt 2.

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

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

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

98. *Gambling Act 2005* (UK) s 42.

- 3.77 It also has powers to make an order voiding an individual bet accepted by or through the holder of a specific betting licence.⁹⁹
- 3.78 It is aided in these respects by the conditions of licence, under which betting operators work, that require them to share information on suspicious transactions with the Commission and with sports governing bodies.¹⁰⁰ This is supplemented by agreements with sports governing bodies to pass similar information in their possession to the Gambling Commission.¹⁰¹
- 3.79 The Sports Betting Intelligence Unit (“SBIU”) aids the Commission in its compliance functions. The SBIU was established in response to the recommendations of the Sports Betting Integrity Panel to collect information and to develop intelligence in relation to potentially corrupt betting activities involving sport.¹⁰² The Gambling Commission has published a number of documents concerning its operations and those of the SBIU.¹⁰³
- 3.80 Where some form of inappropriate gambling activity is detected, it may result in a sports governing body civil sanction or in a criminal sanction.¹⁰⁴ In the latter case, the Commission will work on the case in conjunction with the Police.¹⁰⁵
- 3.81 An important aspect of the Commission’s work has been to bring together sports governing bodies and the betting industry to achieve active co-operation in dealing with corruption in sports betting.¹⁰⁶
- 3.82 Although the Commission has the power to impose conditions on betting licences in relation to the types of bets that can be offered,¹⁰⁷ and may require that a sporting body’s rules meet its approval before it will allow betting on that sport,¹⁰⁸ to date it does not seem to have done so.¹⁰⁹ It has, however, indicated that this possibility, and the acceptability of in-play betting will be the subject of on-going monitoring. In relation to the latter, the Commission has noted that the existence of variable delays in relation to the differential feeds of events on the run, and in the technologies for placing bets, as well as in the availability of complex software packages colloquially known as “bots”, can place some gamblers at a disadvantage compared with others – particularly when they are utilising the services of a betting exchange.¹¹⁰ This is clearly of some importance for professional gamblers.

99. *Gambling Act 2005* (UK) s 336.

100. UK, Gambling Commission, *Licence Conditions and Codes of Practice* (2008) s 15.1.

101. *The Gambling Commission’s Betting Integrity Decision Making Framework*, December 2010, [1.1]-[1.3] and [3.2].

102. 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.

103. For example, *Betting Integrity Policy: Position Paper* (March 2009); *The Gambling Act 2005: Advice for British Police Services* (March 2009) and *In-running (in play) Betting: Position Paper* (March 2009).

104. As explained in *The Gambling Commission’s Betting Integrity Decision Making Framework* (December 2010) [3.8]-[3.21].

105. *The Gambling Commission’s Betting Integrity Decision Making Framework* (December 2010) [3.24]-[3.25] and [3.30]-[3.33].

106. UK, Gambling Commission, *Betting Integrity*, Policy Position Paper (2009) [1.6] and [2.2]-[2.3].

107. *Gambling Act 2005* (UK) s 75.

108. UK, Gambling Commission, *Betting Integrity*, Policy Position Paper (2009) [2.9].

109. UK, Gambling Commission, *Betting Integrity*, Policy Position Paper (2009) [3.2].

110. UK, Gambling Commission, *In-running (in play) Betting*, Position Paper (2009) [3.5]-[3.21].

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- 3.83 So far, the use of such an advantage has not been regarded as cheating. It has however been met by strategies designed to increase the public awareness that some gamblers may have early access to details of market movements and relevant events, and a capacity to enter the market earlier than others.
- 3.84 The Commission has advised us that it considers that action by the relevant sports controlling body or betting operator can be swifter and more effective than seeking a criminal sanction, with the result that substantial criminal investigation only occurs in a minority of cases. It also informed us that it lacks the full range of powers available to the Police but does not see this limitation as a detriment at this stage.¹¹¹
- 3.85 Finally, it advised that consideration is currently being given to the introduction of provisions that would require operators regulated overseas, who offer remote gambling facilities targeting the UK, to obtain a license from the Commission.

France

- 3.86 In May 2010, a legal framework was promulgated in France for online sports and horse racing betting and online “circle games”, notably poker.¹¹² Under this law, which applies only to events within France, an independent regulatory authority, *L’Autorité de Régulation des Jeux En Ligne* (ARJEL), was established to deliver licences to private companies that wish to offer this facility. Such licences are subject to strict criteria that include a condition for the imposition of a progressive taxation on the stakes held by an operator, which will be applied in the financing of sports.
- 3.87 This legislation takes its place alongside the *Code du Sport* which had previously recognised the right of sports controlling bodies to manage the commercialisation of their sports. The law permits online betting only in relation to competitions that are recognised and listed by ARJEL, and that are subject to non-exclusive agreements with sports controlling bodies.
- 3.88 Spread betting and exchange betting online remain prohibited, as are online casino games. The legislation was introduced to regulate what had previously been an illegal market and to limit the opportunities for fraud and money laundering.¹¹³
- 3.89 Provision is also made for the blocking of access to illegal sites and of bank transactions associated with such sites.
- 3.90 This law can be compared, so far as Australia is concerned, with the *Interactive Gambling Act 2001* (Cth) noted above.

111. ACT, Gambling and Racing Commission, *Submission PCG1*.

112. LOI n° 2010-476 du 12 mai 2010 relative à l’ouverture à la concurrence et à la régulation du secteur des jeux d’argent et de hasard en ligne.

113. Press Release, *The European Lotteries*, 13 May 2010 and see M Barcaroli, “On-line Gambling”, 8th European Conference on Gambling Studies and Policy Issues, Vienna, Austria, 14-17 September 2010.

The role of sports controlling bodies and the betting industry

- 3.91 As noted earlier, there has been a trend towards the increased involvement of sports controlling bodies and betting industry groups in targeting corrupt activity in relation to sports and event betting.
- 3.92 This has been given legislative force in Victoria and France (in relation to internet gambling), and it has received encouragement through the initiatives of the Coalition of Major Professional and Participation Sports (“COMPPS”) in encouraging inter-code information sharing, and in establishing an anti-corruption working party.
- 3.93 The emergence of sponsorship arrangements¹¹⁴ provides a useful basis for joint action in targeting corrupt activity in relation to sports betting. A precedent can be seen in the formation of the *European Sports Security Organisation* (“ESSO”), which was founded, in 2005, by a number of European online gaming operators. Its purpose is to establish a partnership with sports controlling bodies that will allow an exchange of information concerning irregular betting patterns or suspect insider betting.¹¹⁵ It has also adopted a Code of Conduct for its members that reinforces their participation in dealing with corruption in the sports betting industry.
- 3.94 Of considerable importance in this respect have been the reviews and reports conducted in relation to international cricket¹¹⁶ and professional tennis,¹¹⁷ as well as the reports of the Sports Betting Integrity Panel (UK)¹¹⁸ and the Remote Gambling Association (“RGA”).¹¹⁹
- 3.95 Consistently they have drawn attention to the need for a partnership between the betting industry, sports controlling bodies, Sports Players Associations, the relevant statutory regulatory agency and Police to target corrupt activity. They have also highlighted the desirability, so far as may be practicable, of achieving uniformity in rules and procedures. As we have noted earlier this has also been a consistent theme of the preliminary submissions that we have received.
- 3.96 The key elements identified so far as sports controlling bodies are concerned include:
- the adoption of a code of conduct for participants, reinforced by strong disciplinary procedures (including suspension fines and de-registration) and, where appropriate, by contractual obligations;
 - the implementation of comprehensive education and communications programs concerning sports betting integrity;

114. For example, those recent announcements between the Star City Casino, Luxbet and the South Sydney Rugby League Club; Centrebet and the Penrith Rugby League Club; and as well as those between Centrebet and the NRL, AFL and NBL respectively.

115. Exercise and Sports Science Australia (ESSA) website www.essa.org.au.

116. P Condon, *Report on Corruption in International Cricket* (2001).

117. B Gunn and J Rees, *Environmental Review of Integrity in Professional Tennis* (2008). The Grand Slams Committee, the International Tennis Federation (ITF), the Association of Tennis Professionals (ATP) and the Womens Tennis Association (WTA) have accepted the recommendations.

118. R Parry, *Report of the Sports Betting Integrity Panel* (UK Gambling Commission, 2010).

119. Remote Gambling Association (UK), *Sports Betting: Legal, Commercial and Integrity Issues* (2010).

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- the establishment of a system for capturing and analysing intelligence in relation to suspect activities, and for its dissemination to betting agencies and law enforcement agencies; and
 - the creation of an integrity unit, either within the relevant sports controlling body or as a pan-sports unit, charged with investigating suspect activity for potential disciplinary action or referral to a law enforcement agency.
- 3.97 While most, if not all, sports controlling bodies in Australia have a code of conduct and a disciplinary system, they are by no means consistent or comprehensive in their coverage of the activities that need to be regulated or prohibited.¹²⁰
- 3.98 It is recognised that there are practical difficulties in achieving uniformity between sports controlling bodies in this respect, since one size will not fit all and there may be differences between what is required of professional and amateur participants. However, the establishment of minimum standards along the lines proposed in the *Report of the Sports Betting Integrity Panel (UK)* has obvious attractions. As proposed in that Report, such standards would apply to all participants, that is, all people under the control of the relevant sports controlling body.
- 3.99 Provisions of this kind would require that those covered refrain from doing the following in relation to a match, race or other event or competition in which they, or their club, participates:
- place or attempt to place a bet or otherwise financially speculate, directly or indirectly, on the outcome of a match, race or other event or competition or contingency within it;
 - solicit or facilitate, or attempt to solicit or facilitate, another person to bet on the match, race or other event or competition;
 - offer, or attempt to offer, a bribe in order to fix or contrive a result or progress of the match, race or other event or competition or of a contingency within it;
 - receive, seek, or attempt to receive or seek, a bribe in order to fix or contrive a result or the progress of the match, race or other event or competition; and
 - throw or fix a match, attempt to throw or fix a match, or in any way influence improperly its outcome or of a contingency within it;
- 3.100 Such standards would also desirably require that the participants would:
- report any approach or other activity that contravenes, or that may contravene, the sport's rules on betting;
 - cooperate with any investigation and/or request for information including the provision of documentation (for example, telephone/betting records to sports officials and Police engaged in the investigation of suspected integrity issues in the sport in relation to betting); and
 - perform to the best of their ability in any match, race or other event in which they participate.¹²¹

120. Of the Codes examined, those of Cricket Australia, National Rugby League and Australian Rugby Union stand out as comprehensive and in conformity with best practice. In relation to Rugby Union, the ARU rules are supplemented by the regulations concerning betting that have been promulgated by the International Rugby Board.

- 3.101 There would be obvious merit in supplementing these minimum standards by rules prohibiting participants from:
- using insider information (that is, information which is not the public domain of relevance for the likely performance or involvement of a player in a contest, and which has been acquired by virtue of the participant's involvement as a player or otherwise in the sport); or
 - supplying that information to a third party, in connection with betting; or
 - using performance enhancing drugs.
- 3.102 By way of example, a comprehensive Anti-Corruption Code has been introduced for tennis, which embodies rules to the effect of those mentioned, along with other relevant rules.¹²²
- 3.103 It is similarly recognised that the adoption of appropriate education and communication strategies is essential if participants are to understand the need for compliance with the rules of conduct, the risks associated with involvement in any form of corrupt activity associated with betting, and the subtle and often patient techniques that fixers commonly employ in order to seduce a participant into corrupt activity.
- 3.104 Any greater examination of the way in which this is to be achieved, and of the internal disciplinary procedures and structures that sports controlling bodies need to have, falls outside the scope of this Consultation Paper.¹²³ We do, however, note the important role that they have to play. We specifically observe that such organisations do need to give attention to the establishment of:
- a whistleblower strategy, including a clear line of communication and a support mechanism;
 - a strategy to assist participants who have a gambling problem; and
 - procedures, through the adoption of accreditation and probity checks and security measures for controlling access by potential fixers (in person, or by telephone or email) to players and other participants at hotels, sporting grounds and the like.

They also need to ensure that their rules reach all participants that come under their control as well as player agents who have appropriate accreditation.

- 3.105 There is obviously a need for the establishment of a regulatory system for gathering and analysing intelligence, for the purpose of identifying suspect betting activity and patterns, and for the associated purpose of releasing that information for potential disciplinary or law enforcement action, but this is similarly beyond the scope of this Consultation Paper. The Parry Report comprehensively canvasses the issues which

121. For an illustration of best practice and rules see R Parry, *Report of the Sports Betting Integrity Panel* (UK Gambling Commission, 2010) 18.

122. International Tennis Federation, *Uniform Tennis Anti-Corruption Program* (2008).

123. See the consideration of these issues and the recommendations made in R Parry, *Report of the Sports Betting Integrity Panel* (UK Gambling Commission, 2010) 29-32. See also the recommendations in P Condon, *Report on Corruption in International Cricket* (2001) section 3, Recommendations 1-5; and B Gunn and J Rees, *Environmental Review of Integrity in Professional Tennis* (2008) 35.

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arise in this respect. It notes the advantages of a systematic analysis (targeted intelligence) of a series of matches or events, and cross referencing of common elements or participants over *ad hoc* case-by-case inquiries. It also canvasses the procedures for involving a statutory regulatory authority and law enforcement in conjunction with sports controlling bodies, and for establishing information sharing arrangements.¹²⁴

- 3.106 We recognise that privacy issues arise in this context that need to be addressed; as does the possibility of the responsible sports controlling bodies adopting strategies to disrupt suspect conduct, for example, by providing warnings to the team or to any player who may be in the spotlight, before the event commences.
- 3.107 Finally, in relation to this aspect, it is important to note the necessary involvement or partnership of the licensed betting industry with sports controlling bodies in targeting corrupt betting practices. Obviously the licensed betting industry has an interest in not being defrauded by reason of the activities of illegal betting rings and of those participants in sporting contests who, for one reason or another, seek to manipulate an outcome of a match or a micro-event.
- 3.108 The licensed betting industry has the resources and capacity (by itself or in conjunction with law enforcement agencies) to monitor betting patterns and the activities of suspect players, as well as to detect possible money laundering. This can be achieved through the use of the comprehensive electronic trails that now accompany most forms of wagering, the availability of telecommunications data and identity verification procedures. The legislation in relation to data retention, cash transaction reporting and money laundering provides a critical adjunct in this respect.
- 3.109 The participation of the betting industry in agreements with the major sporting codes, which provide for information sharing protocols, and financial support that will enable sporting organisations to target integrity issues, is potentially beneficial in preventing corrupt activity although subject to appropriate funding arrangements.¹²⁵
- 3.110 The industry, or individual betting agencies, are in a position where they can reach agreement with sports controlling bodies on micro-events or contingencies that are particularly susceptible to manipulation or abuse of insider information, and that, as a result, should not be the subject of betting.¹²⁶ As noted earlier, the approval processes that exist in Victoria and South Australia give recognition to this.
- 3.111 In addition to the capacity of the betting industry to disrupt corrupt activities in relation to sports and event betting, it has the ability to void or suspend betting, where reasonable cause for suspicion arises. Again, this is a matter outside our terms of reference, but it is an important element that needs to be taken into account in the regulation of sports betting and, in particular, in the establishment of betting rules, including those relating to the settlement of disputes.

124. See R Parry, *Report of the Sports Betting Integrity Panel* (UK Gambling Commission, 2010) ch 4; P Condon, *Report on Corruption in International Cricket* (2001) section 3, Recommendations 6.14 and 18; and B Gunn and J Rees, *Environmental Review of Integrity in Professional Tennis* (2008) 22-35.

125. See the discussion in this context contained in B Gunn and J Rees, *Environmental Review of Integrity in Professional Tennis* (2008) 37-41.

126. For example, it is understood that the AFL has requested that bets not be taken on the next coach to be sacked, J Pierik, "Bookies banned from betting on first coaching casualty", *Sydney Morning Herald*, 24 January 2011, Sportsday 19.

- 3.112 In summary, it is clear that what needs to be addressed for what is now a rapidly growing global business, in which betting is an accepted legal leisure activity, are the twin objectives of detection (enforcement) and prevention (deterrence). Responsibility for the former rests primarily with the sports controlling bodies and betting agencies; for the latter it rests principally with the regulatory agencies and law enforcement. It is with the latter that this Consultation Paper is primarily concerned, so far as we give consideration to the adequacy of the criminal law in this context. However, as this chapter has made clear, each element depends on the other. One cannot do its job if the other is ineffective.

Activities the subject of specific regulation

- 3.113 In this section of the Chapter, we draw attention briefly to the racing industry and to spread betting in the financial markets, each of which is subject to separate considerations.

Regulation of the racing industry

- 3.114 The racing industry has two qualities that lead to important differences when comparing wagering on racing with wagering on sports:
- (1) Unlike sports betting, wagering is the main reason for racing to take place and provides its major source of revenue.¹²⁷
 - (2) The racing industry is highly regulated, both by legislation and industry rules.
- 3.115 The importance of wagering to the existence of racing highlights the need for careful policing of the line between promoting revenue opportunities through wagering, and maintaining the integrity of the industry. The NSW total racing turnover in 2007-08 was \$4.95 billion,¹²⁸ which was 9.13% of total gambling revenue for the State in that period.¹²⁹ The thoroughbred industry is said to provide the equivalent of full time employment for more than 16,000 people involving some 50,000 participants.¹³⁰
- 3.116 The regulatory system designed to maintain integrity in the three racing codes in NSW – thoroughbred racing, harness racing and greyhound racing – has several key aspects:
- The NSW Office of Liquor, Gaming and Racing, which is responsible for government policy on racing, wagering and associated legislation. The Minister for Gaming and Racing is the responsible Minister with respect to the governing legislation of the codes of racing,¹³¹ as well as the *Totalizator Act 1997* (NSW),

127. Australia, Productivity Commission, *Australia's Gambling Industries*, Report 10 (1999) 14.24.

128. Office of Economic and Statistical Research, Queensland Treasury, *Australian Gambling Statistics 1982-83 to 2007-08* (26th ed, 2010) Product Tables, 57.

129. Office of Economic and Statistical Research, Queensland Treasury, *Australian Gambling Statistics 1982-83 to 2007-08* (26th ed, 2010) Product Tables, 70.

130. Racing NSW, *Submission PCG17*. This submission noted that in 2009/10, a total of \$4 billion was invested on NSW thoroughbred racing events through totalizator and bookmaking systems, and that in addition NSW residents invested a significant amount on thoroughbred races in other States and Territories and overseas.

131. *Thoroughbred Racing Act 1996* (NSW), *Greyhound Racing Act 2009* (NSW), *Harness Racing Act 2009* (NSW).

the *Racing Administration Act 1998* (NSW) and the *Unlawful Gambling Act 1998* (NSW).

- The three codes of racing in NSW are governed individually through the *Thoroughbred Racing Act 1996* (NSW), the *Harness Racing Act 2009* (NSW), and the *Greyhound Racing Act 2009* (NSW). These Acts provide for the establishment of statutory corporations, independent of government,¹³² to regulate each code, within the boundaries of their statutory powers.
- A two-part wagering regulation system. Wagering on racing in NSW is conducted by TAB Ltd and licensed bookmakers. TAB Ltd is licensed under the *Totalizator Act 1997* (NSW) to conduct totalizator (pari-mutuel) and fixed-odds wagering on racing and sport. Bookmaker licensing in NSW is the responsibility of the relevant controlling bodies of racing.¹³³ However, authorities for sports betting, telephone and electronic betting are issued to licensed bookmakers by the Minister under the *Racing Administration Act 1998* (NSW),¹³⁴ and the Office of Liquor, Gaming and Racing retains the responsibility for monitoring these areas.
- A tribunal system to regulate decisions of the racing controlling bodies. The Racing Appeals Tribunal is an independent body established by the *Racing Appeals Tribunal Act 1983* (NSW) to oversee decisions of Racing NSW,¹³⁵ Harness Racing NSW,¹³⁶ Greyhound Racing NSW,¹³⁷ and the thoroughbred racing Appeals Panel.¹³⁸ Appeals also lie to the Administrative Decisions Tribunal in respect of certain decisions relating to thoroughbred racing.¹³⁹
- The racing codes are governed by institutionalised internal regulations. Each code is subject to state-based laws and locally adapted Rules of Racing, guided by national standards stemming from the peak Australian organisation of each code, and their Rules of Racing.¹⁴⁰ Stewards and other racing officials are appointed by each controlling body, pursuant to the Rules of Racing of each code, to administer the rules.¹⁴¹
- This internal regulation is facilitated by the existence of integrity bodies – the Integrity Assurance Committee for thoroughbred racing,¹⁴² and Integrity Auditors for both greyhound racing and harness Racing.¹⁴³ These bodies report to the

132. *Thoroughbred Racing Act 1996* (NSW) s 5, *Greyhound Racing Act 2009* (NSW) s 5, *Harness Racing Act 2009* (NSW) s 5.

133. Racing NSW, Greyhound Racing NSW, Harness Racing NSW: *Totalizator Act 1997* (NSW) s 6A.

134. NSW Office of Liquor, Gaming and Racing, 'Racing' <http://www.olgr.nsw.gov.au/racing_home.asp>; *Racing Administration Act 1998* (NSW) s 16, s 19.

135. *Racing Appeals Tribunal Act 1983* (NSW) s 15.

136. *Racing Appeals Tribunal Act 1983* (NSW) s 15B.

137. *Racing Appeals Tribunal Act 1983* (NSW) s 15A.

138. *Racing Appeals Tribunal Act 1983* (NSW) s 15.

139. *Thoroughbred Racing Act 1996* (NSW) s 29M(3).

140. Thoroughbred racing: peak national body is the Australian Racing Board, which administers the Australian Rules of Racing. Harness Racing: the peak national body is Harness Racing Australia, which administers the Australian Harness Racing Rules. Greyhound Racing: peak national body is Greyhound Racing Australasia, which administers the Greyhound Australasia Rules.

141. For example, see Racing NSW, *Rules of Racing of Racing NSW* (1 December 2010) AR.8(e).

142. *Thoroughbred Racing Act 1996* (NSW) s 23.

143. *Greyhound Racing Act 2009* (NSW) s 26, *Harness Racing Act 2009* (NSW) s 25.

Minister and racing controlling bodies of each code,¹⁴⁴ and have investigatory powers enshrined in legislation.¹⁴⁵

Further, the integrity of bookmakers taking bets in relation to any racing code is monitored through the *Racing Administration Act 1998* (NSW).¹⁴⁶

Regulation of thoroughbred racing

- 3.117 Thoroughbred racing, the statutory responsibility for the control and regulation of which vests in *Racing NSW* under the *Thoroughbred Racing Act 1996* (NSW), provides a useful example of the way regulation in the racing industry operates. Racing NSW has slightly different functions from those of Harness NSW and Greyhound NSW. However, for the purposes of illustrating regulation in the racing industry, and the regulation of cheating in particular, the differences are relatively unimportant.
- 3.118 Racing NSW has responsibilities and powers that include:
- controlling, supervising and regulating horse racing in NSW;¹⁴⁷
 - exercising the functions of the principal club for NSW under the Australia Rules of Racing;¹⁴⁸
 - licensing powers in relation to people associated with racing, including bookmakers;¹⁴⁹
 - imposing penalties on licensed persons for contraventions of the Rules of Racing,¹⁵⁰ and
 - inquiring into and dealing with any matter relating to racing and referring any such matter to stewards or others for investigation and report.¹⁵¹
- 3.119 **Internal system of regulation – the rules of racing, stewards and integrity bodies.** NSW Racing is informed in its decisions by the Stewards and Integrity Assurance Committee on matters relevant to cheating in racing. These authorities and the Rules of Racing provide the structure within which cheating in racing is regulated.
- 3.120 The Rules of Racing are “the Australian Rules of Racing as adopted by the Australian Conference of Principal Racing Clubs”.¹⁵² These rules are administered by the Australian Racing Board Limited, and provide a national framework for thoroughbred racing which includes the mutual adoption of penalties imposed by any State controlling body. They are recognised by the *Thoroughbred Racing Act*

144. *Thoroughbred Racing Act 1996* (NSW) s 23B(1), *Greyhound Racing Act 2009* (NSW) s 28(1), *Harness Racing Act 2009* (NSW) s 27(1).

145. *Thoroughbred Racing Act 1996* (NSW) s 23A, *Greyhound Racing Act 2009* (NSW) s 27, *Harness Racing Act 2009* (NSW) s 26.

146. *Racing Administration Act 1998* (NSW) s 26I.

147. *Thoroughbred Racing Act 1996* (NSW) s 13(1)(a).

148. *Thoroughbred Racing Act 1996* (NSW) s 13(1)(b).

149. *Thoroughbred Racing Act 1996* (NSW) s 14(2)(b).

150. *Thoroughbred Racing Act 1996* (NSW) s 14(2)(l).

151. *Thoroughbred Racing Act 1996* (NSW) s 14(2)(d).

152. *Thoroughbred Racing Act 1996* (NSW) s 3(1).

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1996 (NSW), although the Act provides that “the functions of Racing NSW are not limited by the Australian Rules of Racing and are to be exercised independently of the Australian Racing Board”.¹⁵³ Racing NSW has also adopted a set of local rules of racing and betting.¹⁵⁴

- 3.121 These rules provide a high level of regulation in all areas of the thoroughbred racing industry, including the registration of horses, the licensing of participants, and the actual conduct of racing events and wagering activities. The regulation of wagering on racing is subject to the *Racing Administration Act 1998* (NSW) and to the supervision of the NSW Office of Liquor, Gaming and Racing, in relation to the authorisation of bookmakers to accept telephone or electronic betting.¹⁵⁵ While Racing NSW has the power to license bookmakers,¹⁵⁶ the Minister and the Office of Liquor, Gaming and Racing retain authority in relation to telephone and electronic betting.
- 3.122 The rules contain a number of provisions dealing with conduct that might involve dishonesty or other practices that could affect the integrity of a race and, as a consequence, impact on betting in respect of that race. For example:
- jockeys (and people acting on their behalf), amateur riders, officials, owners, nominators and trainers are banned from involvement in any betting on races, or receiving consideration of any kind in connection with a horse or a race;¹⁵⁷
 - communication with jockeys is strictly limited in the time between their leaving the jockeys’ room and dismounting and/or weighing in;¹⁵⁸
 - horses must run on their merits and riders must ensure that the horse achieves the best possible place;¹⁵⁹
 - communication devices may not be operated in certain parts of a racecourse.¹⁶⁰

The Rules of Racing, and the powers of Racing NSW under the *Thoroughbred Racing Act 1996* (NSW) allow Racing NSW, Stewards and other racing officials to impose penalties, including fines, suspensions and disqualification, for breaches of the Rules of Racing.¹⁶¹

- 3.123 Stewards and other racing officials are appointed by the Board of Racing NSW according to the *Local Rules of Racing NSW*.¹⁶² Racing Stewards have the role of verifying the bona fides of competing racehorses, monitoring the running of races, and arranging post-race drug testing.

153. *Thoroughbred Racing Act 1996* (NSW) s 13(2).

154. *Local Rules of Racing NSW* (1 March 2011).

155. *Racing Administration Act 1998* (NSW) s 16.

156. *Thoroughbred Racing Act 1996* (NSW) s 14, s 14A.

157. *Australian Rules of Racing* (1 March 2011) AR 83, AR 89, AR 101A, AR 175.

158. *Australian Rules of Racing* (1 March 2011) AR 123.

159. *Australian Rules of Racing* (1 March 2011) AR 135, AR 135A.

160. *Australian Rules of Racing* (1 March 2011) AR 160B.

161. *Australian Rules of Racing* (1 March 2011) AR 8(e); *Thoroughbred Racing Act 1996* (NSW) s 14.

162. *Local Rules of Racing NSW* (1 March 2011) LR 10.

- 3.124 The powers of Stewards under the Australian Rules of Racing extend to search and investigation powers, including the power to enter the premises of persons licensed by Racing NSW¹⁶³ and:
- (b) To require and obtain production and take possession of any mobile phones, computers, electronic devices, books, documents and records, including any telephone or financial records relating to any meeting or inquiry. ...
 - (d) To regulate and control, inquire into and adjudicate upon the conduct of all officials and licensed persons, persons attendant on or connected with a horse and all other persons attending a racecourse. ...
 - (g) To order the examination of any horse for the purpose of ascertaining its age or identity, or for any other purpose connected with the Rules. ...
 - (j) To take or cause to be taken any sample from any horse and to make or cause to be made any test to determine whether any prohibited substance is present in the system of the horse.
 - (jj) To take any sample or to cause such sample to be taken from any rider either prior to or after riding in any race, official trial, jump-out or trackwork, and/or to appoint officials or other persons to take such sample. Further, to make or to cause to be made any test to determine whether any substance banned by AR 81B is present in such sample.
 - (k)
 - (i) To take possession on the course or elsewhere of any horse, whether dead or alive, and to detain and/or remove such horse in order to have conducted whatever tests and/or examinations as they consider necessary.
 - (ii) On any course (whether a race meeting is being conducted thereon or not) to search any licensed person or any gear or equipment used by or about to be used by him and to take possession of any article or thing found as a result of such search which the Steward or Stewards making such search believe could afford evidence of a breach of or an offence under these Rules.¹⁶⁴
- 3.125 Racing NSW is required to establish an Integrity Assurance Committee (the “IA Committee”). The Act states that, amongst other functions, the IA Committee “is to have primary oversight of those aspects of the functions of Racing NSW that relate to race stewards, drug testing and control, licensing, handicapping and horse racing appeals”.¹⁶⁵
- 3.126 The IA Committee is also concerned with investigating complaints against racing officials,¹⁶⁶ and is required to report to the Minister and Racing NSW if satisfied that the result of its investigations indicates there has been a contravention of any Act in relation to the conduct of horse racing or a contravention of the Racing NSW code of conduct.¹⁶⁷ The IA Committee has strong powers of investigation in order to promote the integrity of all areas of racing, including oversight of the actions of

163. *Australian Rules of Racing* (1 March 2011) AR 8B.

164. *Australian Rules of Racing* (1 March 2011) AR 8.

165. *Thoroughbred Racing Act 1996* (NSW) s 23.

166. *Thoroughbred Racing Act 1996* (NSW) s 23A.

167. *Thoroughbred Racing Act 1996* (NSW) s 23B.

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racing officials, which allow the IA Committee to require racing officials who are the subject of an inquiry, to provide information and records the Committee deems relevant to the investigation.¹⁶⁸

- 3.127 The *Greyhound Racing Act 2009* (NSW)¹⁶⁹ and the *Harness Racing Act 2009* (NSW)¹⁷⁰ provide for “Integrity Auditors” that have equivalent functions to the IA Committee under the *Thoroughbred Racing Act 1996* (NSW).
- 3.128 **Tribunal system.** The decisions of Racing NSW and racing officials are subject to an appeal system contained in both the *Thoroughbred Racing Act 1996* (NSW) and the *Racing Appeals Tribunal Act 1983* (NSW). The *Thoroughbred Racing Act 1996* (NSW) established an Appeals Panel,¹⁷¹ to which people aggrieved by decisions of racing authorities¹⁷² regarding disqualifications, licensing and penalties, may appeal. Racing NSW may also appeal decisions of racing authorities to the Appeals Panel. The existence of an Appeals Panel as a primary level of appeal is peculiar to the thoroughbred racing industry. The tribunal system for the greyhound and harness racing industries begins with the Racing Appeals Tribunal.
- 3.129 The Racing Appeals Tribunal is constituted by the *Racing Appeals Tribunal Act 1983* (NSW),¹⁷³ and is the appeal body for all three codes of the racing industry. In relation to thoroughbred racing, standing is accorded to:
- people aggrieved by decisions of the Appeals Panel, a racing association, or a decision in respect of which the Appeals Panel or racing association would not hear an appeal or a decision of Racing NSW;
 - Racing NSW, in respect of decisions of the Appeals Panel, or a racing association, or a decision in respect of which the Appeals panel or racing association would not hear an appeal or a decision of Racing NSW.¹⁷⁴
- 3.130 The position is slightly different in relation to greyhound racing and harness racing, as there is no standing accorded individually to Greyhound Racing NSW or Harness Racing NSW at the Racing Appeals Tribunal, although their Stewards have standing.¹⁷⁵
- 3.131 The particular decisions appealable to the Racing Appeals Tribunal are found in the Racing Appeals Tribunal Regulation 2010 (NSW) and include for all racing codes decisions to disqualify, warn off a person, suspend a license or revoke a license, impose a fine of more than \$200, or disqualify an animal from racing (if the disqualification is in conjunction with a penalty applied to a person).¹⁷⁶

168. *Thoroughbred Racing Act 1996* (NSW) s 23A(4).

169. *Greyhound Racing Act 2009* (NSW) s 25-s 28.

170. *Harness Racing Act 2009* (NSW) s 24-s 27.

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

172. Member of Racing NSW, the Chief Executive or a steward appointed by Racing NSW or other member of staff of Racing NSW: *Thoroughbred Racing Act 1996* (NSW) s 3.

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

174. *Racing Appeals Tribunal Act 1983* (NSW) s 15.

175. *Racing Appeals Tribunal Act 1983* (NSW) s 15A, s 15B.

176. *Racing Appeals Tribunal Regulation 2010* (NSW) cl 5, cl 9.

- 3.132 Further insight into the operation of the racing industry's integrity and tribunal systems can be found in *Waterhouse v New South Wales Thoroughbred Racing Board*,¹⁷⁷ and *Waterhouse v Racing Appeals Tribunal*.¹⁷⁸
- 3.133 Most cases of cheating in racing are dealt with effectively through investigations undertaken by the Stewards and the integrity bodies of each code, and hence by civil sanctions. Such proceedings are subject to the provisions governing administrative proceedings, including those concerned with fair process and natural justice.¹⁷⁹
- 3.134 The provisions of the *Unlawful Gambling Act 1998* (NSW),¹⁸⁰ the fraud provisions of the *Crimes Act 1900* (NSW),¹⁸¹ and the provisions of the *Prevention of Cruelty to Animals Act 1979* (NSW),¹⁸² that give rise to criminal sanctions, can also be invoked in addition to, or in lieu of industry-based sanctions.
- 3.135 One issue that has been flagged by Racing NSW in its preliminary submission has been a lack of clarity, if not contradictory views, as to whether the powers of Racing NSW and of the stewards extend to non-licensed persons.¹⁸³

Financial spread betting contracts and contracts for difference

- 3.136 Financial spread betting contracts and contracts for a difference (CFDs) give rise to interests in derivatives, and are financial products for the purposes of the *Corporations Act 2001* (Cth).¹⁸⁴ Each takes the form of a legally enforceable contract between a licensed provider and investor, that employs a similar concept to that employed in recreational gambling on sporting and other events.
- 3.137 Financial spread betting contracts depend on movements between the opening and closing levels or prices for individual shares, and market indices (for example, ASX 100, FTSE 100) as well as futures or options in equities, bonds, interest rates, currencies and commodities. The provider of such a contract quotes a spread based on the market price of the underlying asset or instrument, and the investor stands to win or lose by reference to the points difference between the settlement or close out price and the opening (buy or sell) price which is taken, multiplied by the agreed stake per point.
- 3.138 A buy contract constitutes an up-bet made from the provider's buy-price, (in the expectation of a rise in value of the underlying instrument) and a down-bet is made from the provider's sell price (in the expectation of a fall in value of the underlying instrument). The difference constitutes the spread. The spread varies as the price of the underlying instrument changes in the selected market.¹⁸⁵

177. *Waterhouse v New South Wales Thoroughbred Racing Board* [2003] NSWSC 541.

178. *Waterhouse v Racing Appeals Tribunal* [2002] NSWSC 1143.

179. *Stollery v Greyhound Racing Control Board* (1972) 128 CLR 509.

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

181. *Crimes Act 1900* (NSW) pt 4AA.

182. *Prevention of Cruelty to Animals Act 1979* (NSW) s 16, in relation to the use of batteries or jiggers on an animal.

183. Arising out of the decision in *Clements v Racing Victoria Limited* [2010] VCAT 114: Racing NSW, *Submission PCG17*.

184. *Corporations Act 2001* (Cth) s 761D and s 764A.

185. GSTD 2005/3, [6]-[8].

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- 3.139 Contracts for difference¹⁸⁶ similarly depend on a “bet” that the price of the instrument that underlies the contract (which may similarly be a share, a market index, an interest rate, a currency, a commodity, etc) will rise or fall. If the investor gauges that the price or level of the instrument will rise, he or she buys a contract (trades “long”). Conversely if the assessment is that the price or level will fall, he or she will sell a contract (trades “short”).
- 3.140 The position of the investor, which depends on the movement of the underlying share price or index, is marked to market daily, and the investor’s account is debited or credited accordingly. Typically the investment is leveraged, and where the account falls below the agreed minimum margin, a margin call will be made by the provider or market maker. The investor does not own the underlying asset or instrument but, in the case of shares, the provider will credit the account with the cash equivalent of any dividends that are declared.¹⁸⁷
- 3.141 Typically, an investor in this market will need to trade in CFDs as the market moves in response to the activities of other investors, as well as in response to unforeseen external factors, including changes in government policy, the release of new information and natural or political world events that can bring about market fluctuations.
- 3.142 In each of the situations mentioned, the contracts have an expiry date, and while there is a potential for a limitless loss, this can (at least in theory) be managed by stop-loss arrangements, and by closing out or taking an opposite contract. Similarly to other forms of gambling, the investor faces the risk of the counterparty being unable to meet its obligations under the contract. This risk can increase when the CFD provider “hedges” the investor’s trades with other parties, or where the provider pools the accounts of its clients, or where there is an insufficient trade in the market to allow an investor to close an open position, or where the market price falls too quickly to allow trades, which have been placed, to be effected at relevant target points, resulting in “gapping”.¹⁸⁸
- 3.143 In Australia, CFDs are available from an over the counter provider (a licensed broker or market maker), or by purchase of a CFD that is listed, traded and cleared on the Australian Stock Exchange (ASX).¹⁸⁹
- 3.144 The risks of market manipulation affecting the value of a financial spread contract or a CFD are minimal in the case where the underlying asset or instrument constitutes an index, or commodity, or currency or other multi-volume item. However, the possibility of manipulation in relation to CFDs where shares are the underlying asset, through practices such as share ramping, churning, or wash trading, cannot be entirely excluded.
- 3.145 Investments in this context, offered as financial products, are not governed in Australia by State gaming and wagering legislation. Although they take the form of a gaming or wagering contract, they are accepted to be a true commercial activity, which places a greater reliance on skill, judgement and market experience than that

186. For an explanation as to the use and risks see ASIC Guide “Thinking of Trading Contracts for Difference (CFDs)” [7]-[12], [29]-[33] and [39]-[41].

187. GSTD 2005/3 [11]-[16].

188. For an explanation of the risks see the Guide to CFDs published by ASIC Guide “Thinking of Trading Contracts for Difference (CFDs)” [13]-[20].

189. The market for ASX listed CFDs is operated by the Sydney Futures Exchange (SFE); while clearing and settlement is arranged by the SFE Clearing Corporation.

which is involved in sports and allied spread betting or recreational gambling.¹⁹⁰ As such, their regulation falls within the reach of the *Corporations Act 2001* (Cth) and hence they are subject to the supervisory control of ASIC and to the detailed market integrity rules made by that agency.¹⁹¹

- 3.146 Market manipulation or misconduct will attract an application of the provisions contained within Part 7.10 of the *Corporations Act 2001* (Cth). These provisions are of some relevance in so far as they might provide some guidance for a potential criminal justice response. In summary, the kinds of conduct that are prohibited, and that potentially attract penal consequences, include:
- market manipulation;¹⁹² and
 - insider information.¹⁹³
- 3.147 It is noted that, as a result of recent changes to the list of approved betting events, under the *Racing Administration Act 1998* (NSW), bets can now be lawfully placed on international and ASX indices and on official Reserve Bank of Australia interest rates (both on movements and ranges of movements).
- 3.148 In the UK, financial spread betting similarly falls outside the reach of the *Gambling Act 2005* (UK).¹⁹⁴ Its supervision falls within the jurisdiction of the Financial Services Authority (the FSA), and it is a regulated activity subject to the provisions of the *Financial Services and Markets Act 2008* (UK),¹⁹⁵ including the market abuse provisions.¹⁹⁶ The insider dealing provision of the *Criminal Justice Act 1993* (UK) will also apply.¹⁹⁷
- 3.149 Non-financial spread betting, which is said to be the fastest growing aspect of sports and event betting, appears to fall within the reach of the *Gambling Act 2005* (UK).¹⁹⁸

190. *Brajkovich v Federal Commissioner of Taxation* (1989) 89 ALR 408, 412-416.

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

192. *Corporations Act 2001* (Cth) s 1041A.

193. *Corporations Act 2001* (Cth) s 1043A.

194. By reason of *Gambling Act 2005* (UK) s 10.

195. *Financial Services and Markets Act 2000* (UK) s 22 and sch 2 cl 19.

196. In particular *Financial Services and Markets Act 2008* (UK) s 118 and s 397.

197. *Criminal Justice Act 1993* (UK) s 52 and s 53.

198. *Gambling Act 2005* (UK) s 10.

4. Regulation and control of gaming in NSW

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4.1 Gaming activities in NSW can be divided into two broad categories:

- those that involve games that are unlawful games under the *Unlawful Gambling Act 1998* (NSW); and
- those that are permitted by the *Unlawful Gambling Act 1998* (NSW) and which are generally subject to regulation by their own particular statutes, such as the *Casino Control Act 1992* (NSW), the *Gaming Machines Act 2001* (NSW), the *Lotteries and Art Unions Act 1901* (NSW), the *Public Lotteries Act 1996* (NSW), and the *Gambling (Two-up) Act 1998* (NSW).

Unlawful games

4.2 The *Unlawful Gambling Act 1998* (NSW) identifies the following games as unlawful games:

- (a) the games called respectively fan-tan, pak-a-pu, two-up, hazard, baccarat, faro or roulette, or any similar game of chance,
- (b) any game of chance that is played at a table or with gaming equipment,
- (c) any game involving the use or operation of a prohibited gaming device,
- (d) any game that involves the disposal of money by lottery or by chance,
- (e) any game in which the chances are not alike favourable to all the players, including among the players, the banker or other person (if any) by whom the game is managed or against whom the other players play or bet,
- (f) any game that involves playing or staking against a bank that does not pass from one participant in the game to another:
 - (i) by chance or by regular rotation among all the participants in the game, and

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- (ii) without any requirement to pay a charge or comply with any other condition,
 - (g) any game with cards or other gaming equipment from which a person receives a percentage or share of the amount wagered,
 - (h) any game of skill or chance, or of mixed skill and chance, in which any money is staked or risked by a person on an event or contingency specified by the person and in which:
 - (i) there is a dealer, croupier or banker who is not a participant in the game while acting in such a capacity, or
 - (ii) a person, other than a participant in the game, receives a payment or other benefit from the playing of the game, or
 - (iii) a payment or other benefit is given or sought for the right to participate in the game or for the right to enter the land or premises on which the game is played.¹
- 4.3 The Act then proscribes certain behaviour in relation to these unlawful games, including:
- organising, conducting or assisting in organising or conducting, an unlawful game (assisting includes acting as a look-out, door attendant or guard);²
 - receiving a percentage or share from any amount wagered on an unlawful game;³
 - selling or giving away a ticket or an opportunity to participate in an unlawful game;⁴
 - participating in, or betting on, an unlawful game;⁵ and
 - possessing or permitting the use of a prohibited gaming device.⁶

Lawful forms of gambling

- 4.4 The *Unlawful Gambling Act 1998* (NSW) lists the lawful forms of gambling and establishes, with respect to them, an offence of cheating⁷ which is discussed in

1. *Unlawful Gambling Act 1998* (NSW) s 5.
2. *Unlawful Gambling Act 1998* (NSW) s 12(1)(a). Maximum penalty: for a first offence—50 penalty units or imprisonment for 12 months (or both), for a second or subsequent offence—100 penalty units or imprisonment for 2 years (or both).
3. *Unlawful Gambling Act 1998* (NSW) s 12(1)(b). Maximum penalty: for a first offence—50 penalty units or imprisonment for 12 months (or both), for a second or subsequent offence—100 penalty units or imprisonment for 2 years (or both).
4. *Unlawful Gambling Act 1998* (NSW) s 13. Maximum penalty: 50 penalty units or imprisonment for 12 months (or both).
5. *Unlawful Gambling Act 1998* (NSW) s 14. Maximum penalty: 50 penalty units or imprisonment for 12 months (or both).
6. *Unlawful Gambling Act 1998* (NSW) s 15. Maximum penalty: in the case of a corporation—500 penalty units, in any other case—50 penalty units or imprisonment for 12 months (or both) for a first offence, and 500 penalty units or imprisonment for 2 years (or both) for a second or subsequent offence.
7. *Unlawful Gambling Act 1998* (NSW) s 18.

greater detail in the following chapter.⁸ The lawful forms of gambling, so far as they relate to gaming, are:

- (b) conducting or participating in a lottery activity or a game of chance (within the meaning of the *Lotteries and Art Unions Act 1901*) that is authorised under that Act,
- (c) conducting or participating in a public lottery (within the meaning of the *Public Lotteries Act 1996*) that is authorised under that Act,
- (d) conducting or participating in a game of two-up that is lawful under the *Gambling (Two-up) Act 1998*,
- (e) gambling carried on in a casino that is licensed under the *Casino Control Act 1992*,
- (f) keeping or operating an approved gaming machine within the meaning of the *Gaming Machines Act 2001* in a hotel or on the premises of a registered club in accordance with that Act,
- (g) exhibiting any device for promotional purposes if the device:
 - (i) is exhibited by the holder of a dealer's licence or seller's licence within the meaning of the *Gaming Machines Act 2001*, and
 - (ii) is exhibited with the approval of the Casino, Liquor and Gaming Control Authority and in compliance with any conditions to which the approval is subject, and
 - (iii) is designed to be used to play a game that could lawfully be played by means of an approved gaming machine within the meaning of the *Gaming Machines Act 2001*, and
 - (iv) is not used for the purposes of gambling,
- (h) the possession, keeping, use or operation of a poker machine within the meaning of the *Gaming Machines Act 2001*, or a device that is in the nature of an approved amusement device within the meaning of that Act, in the circumstances referred to in section 8 of that Act.⁹

4.5 Some other forms of gaming would appear to be permitted in so far as they do not transgress specific provisions under the *Unlawful Gambling Act 1998* (NSW). Poker tournaments conducted in some hotels and licensed clubs in NSW appear to come within this category.¹⁰

4.6 In addition to the offence of cheating under the *Unlawful Gambling Act 1998* (NSW), some of the individual statutes, which regulate the lawful forms of gambling, also include provisions that establish various offences of cheating and other forms of fraud.

4.7 Each of these individual statutes provides, for its particular form of gambling, a different regulatory regime with regards to licensing and other approvals, and for the probity of those conducting gaming operations, their employees and associates. Each statute makes separate provision for the eligibility and appointment of

8. See **para 5.48-5.61**.

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

10. See **para 4.60-4.64**.

Inspectors, and endows them with slightly different powers (including investigative powers) and responsibilities. Each statute also contains slightly different provisions for Police involvement in ensuring compliance.

Interactive gaming

- 4.8 Some forms of the lawful gaming activities listed above may be prohibited under Commonwealth law, if they are provided through the Internet or through some other form of telecommunication or broadcasting service. The *Interactive Gaming Act 2001* (Cth) prohibits the intentional provision of interactive gambling services to customers in Australia.¹¹ It should be noted, however, that the Act does not penalise the customers who make use of such services.
- 4.9 So far as the Act relates to gaming, “gambling service” means:
- (c) a service for the conduct of a lottery; or
 - (d) a service for the supply of lottery tickets; or
 - (e) a service for the conduct of a game, where:
 - (i) the game is played for money or anything else of value; and
 - (ii) the game is a game of chance or of mixed chance and skill; and
 - (iii) a customer of the service gives or agrees to give consideration to play or enter the game; or
 - (f) a gambling service (within the ordinary meaning of that expression) that is not covered by any of the above paragraphs.¹²
- 4.10 An interactive gambling service is any of the above gambling services where:
- (a) the service is provided in the course of carrying on a business; and
 - (b) the service is provided to customers using any of the following:
 - (i) an internet carriage service;
 - (ii) any other listed carriage service;
 - (iii) a broadcasting service;
 - (iv) any other content service;
 - (v) a datacasting service.¹³

11. *Interactive Gambling Act 2001* (Cth) s 15.

12. *Interactive Gambling Act 2001* (Cth) s 4.

13. *Interactive Gambling Act 2001* (Cth) s 5(1).

- 4.11 The following are not interactive gambling services for the purposes of the Act:¹⁴
- a gaming service to the extent that it is provided to customers who are in a public place, that is, “a place, or a part of a place, to which the public, or a section of the public, ordinarily has access, whether or not by payment or by invitation (including, for example, a shop, casino, bar or club)”;¹⁵
 - a service that has a “designated broadcasting link” or a “designated datacasting link”;¹⁶
 - a service for the conduct of a lottery or the supply of lottery tickets (not including an electronic form of a scratch lottery or other instant lottery);¹⁷
 - “a service to the extent to which it relates to the entering into of contracts that are financial products within the meaning of Chapter 7 of the *Corporations Act 2001*”;¹⁸
 - a service that the Minister for Broadband, Communications and the Digital Economy has, by writing, determined to be an exempt service.¹⁹

Casino, Liquor and Gaming Control Authority

- 4.12 The Casino, Liquor and Gaming Control Authority (“CLAGCA”) was established on 1 July 2008. It replaced the Casino Control Authority, the Liquor Administration Board and the Licensing Court of NSW. CLAGCA has licensing and approval functions (but not compliance functions) in relation to liquor, gaming machines and registered clubs. It is also responsible for regulating the Casino.²⁰
- 4.13 The *Casino, Liquor and Gaming Control Authority Act 2007* (NSW) gives CLAGCA, Inspectors appointed by CLAGCA and Police officers investigative powers in relation to itself and other statutes referred to as “gaming and liquor legislation” – principally the *Casino Control Act 1992* (NSW), *Gaming Machines Act 2001* (NSW), *Liquor Act 2007* (NSW), and *Registered Clubs Act 1976* (NSW).
- 4.14 The powers, however, do not apply to gaming under other legislation, such as the *Lotteries and Art Unions Act 1901* (NSW), *Public Lotteries Act 1996* (NSW), and the *Gambling (Two-up) Act 1998* (NSW). The responsibility for the regulation and enforcement of these statutes is reposed in Inspectors appointed by the Minister for Gaming and Racing.

14. *Interactive Gambling Act 2001* (Cth) s 5(3).

15. *Interactive Gambling Act 2001* (Cth) s 8B.

16. *Interactive Gambling Act 2001* (Cth) s 8C.

17. *Interactive Gambling Act 2001* (Cth) s 8D.

18. *Interactive Gambling Act 2001* (Cth) s 5(3)(b).

19. *Interactive Gambling Act 2001* (Cth) s 10.

20. NSW, Casino, Liquor and Gaming Control Authority, *Annual Report 2009-10*, in Communities NSW, *Annual Report 2009-10*, 404.

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4.15 The investigative powers available to Inspectors and Police under the *Casino, Liquor and Gaming Control Authority Act 2007* (NSW) can be used for the following purposes:

- (a) for determining whether there has been compliance with or a contravention of the gaming and liquor legislation,
- (b) for obtaining information or records for purposes connected with the administration of the gaming and liquor legislation,
- (c) in connection with exercising the functions of an inspector under the gaming and liquor legislation,
- (d) generally for administering the gaming and liquor legislation and promoting its objects.²¹

4.16 The investigative powers include those:

- for CLAGCA, or an Inspector or Police officer to require the production of information or records;²²
- for an Inspector or Police officer to enter and search premises and to seize anything believed to be connected with an offence under the gaming and liquor legislation;²³
- for an Inspector or Police officer to require answers of people who are suspected on reasonable grounds of having “knowledge of matters in respect of which information is reasonably required for the purposes of the gaming and liquor legislation”.²⁴

The Casino

4.17 The *Casino Control Act 1992* (NSW) makes it lawful for a licensed casino to conduct games and use gaming equipment. The Act currently provides that only one casino may be licensed under the Act at any one time.²⁵ The Star City Casino at Darling Harbour owned by Tabcorp holds that licence. Some 9,086,000 patrons attended the Star City Casino in 2009/2010.²⁶

4.18 The primary objects of the Act include:

- (a) ensuring that the management and operation of a casino remain free from criminal influence or exploitation, and
- (b) ensuring that gaming in a casino is conducted honestly.²⁷

21. *Casino, Liquor and Gaming Control Authority Act 2007* (NSW) s 18(1).

22. *Casino, Liquor and Gaming Control Authority Act 2007* (NSW) s 21-23.

23. *Casino, Liquor and Gaming Control Authority Act 2007* (NSW) s 24-29.

24. *Casino, Liquor and Gaming Control Authority Act 2007* (NSW) s 30.

25. *Casino Control Act 1992* (NSW) s 6.

26. NSW, Casino, Liquor and Gaming Control Authority, *Annual Report 2009-10*, in Communities NSW, *Annual Report 2009-10*, 406.

27. *Casino Control Act 1992* (NSW) s 4A.

- 4.19 CLAGCA²⁸ is charged under the *Casino Control Act 1992* (NSW) with maintaining and administering systems for the licensing, supervision and control of the Casino.²⁹
- 4.20 CLAGCA can investigate the Casino at any time it thinks desirable and must investigate the Casino when the Minister for Gaming and Racing directs it to do so. The matters which CLAGCA can investigate are not limited, but include:
- (a) the casino and operations in the casino,
 - (b) the casino operator or a person who, in the opinion of the Authority, is an associate of the casino operator,
 - (c) a person or persons who in the opinion of the Authority could affect the exercise of functions in or in relation to the casino,
 - (d) a person or persons who, in the opinion of the Authority, could be in a position to exercise direct or indirect control over the casino operator, or an associate of the casino operator, in relation to functions in or in relation to the casino.³⁰
- 4.21 CLAGCA can require the casino operator or a person who is “directly or indirectly associated with the operator” to provide information and records and attend and answer questions.³¹
- 4.22 Inspectors (who are appointed by the relevant Division Head in CLAGCA)³² can enter and remain in the Casino to exercise their allotted functions under the Act.³³ The Director General of Communities NSW is also an Inspector for the purposes of the Act.
- 4.23 Police officers, in addition to their general powers at law to enter any part of the Casino, can, for the purpose of discharging their duty, regard “any part of the Casino to which the public has access ... as a public place”. They can also enter parts of the Casino to which the public do not have access when CLAGCA or an Inspector authorises them.³⁴ Special provision is made for CLAGCA to refer information to the Commissioner of Police and for CLAGCA to obtain information that may be of assistance to a law enforcement agency.³⁵
- 4.24 CLAGCA can “take whatever action under this Act it considers appropriate in the light of the results of an investigation”.³⁶
- 4.25 CLAGCA can give the casino operator a written direction that relates to the “conduct, supervision or control of operations in the casino” and the casino operator must comply with the directions.³⁷

28. Which is constituted under the *Casino, Liquor and Gaming Control Authority Act 2007* (NSW) s 6.

29. See *Casino Control Act 1992* (NSW) s 140.

30. *Casino Control Act 1992* (NSW) s 30(2).

31. *Casino Control Act 1992* (NSW) s 32.

32. *Casino, Liquor and Gaming Control Authority Act 2007* (NSW) s 20.

33. *Casino Control Act 1992* (NSW) s 77(2).

34. *Casino Control Act 1992* (NSW) s 78.

35. *Casino Control Act 1992* (NSW) s 143C, s 149.

36. *Casino Control Act 1992* (NSW) s 30(4).

37. *Casino Control Act 1992* (NSW) s 29.

4.26 Provisions are also made for the integrity vetting and licensing of casino employees,³⁸ the approval of a system of internal controls and administrative and accounting procedures for the Casino,³⁹ and the exclusion of certain people from the Casino.⁴⁰ As we note in the following chapter, the operations of the Casino and the activities of its staff and those who play at the tables or gaming machines, are subject to very close supervision and regulation, such that there is a high chance of any form of cheating being detected.

Card counting and other advantage play strategies

4.27 One aspect of the regulation of the Casino that has been brought to our attention relates to the exclusion of people who engage in card counting and other advantage play strategies, that involve the memory, knowledge or mathematical ability of the gambler unaided by any form of device or external assistance.

4.28 It would appear that advantage play strategies are not illegal and are not prohibited by the rules for individual games at the Casino as gazetted from time to time. For example, the general provisions that apply to blackjack merely prohibit a person, either acting alone or in concert, from using devices to assist in card counting, that is, using or controlling:

at or near a gaming table or location related to the playing of a game a calculator, computer, or other electronic, electrical or mechanical apparatus or device that is capable, with respect to a game or a part thereof, of recording, projecting, analysing or transmitting an outcome or the changing probabilities or the playing strategies to be used.⁴¹

A casino supervisor may, on being satisfied that a person has engaged in conduct that would amount to a contravention of this provision (which would also potentially constitute an offence under each of the *Unlawful Gambling Act 1998* (NSW) and the *Casino Control Act 1992* (NSW)⁴²), do any or all of the following:

- declare that any wager made by the person is void;
- direct that the person shall be excluded from further participation in the game;
- exclude the person from the Casino; and
- cause the person to be detained until an Inspector or Police officer can take responsibility for the situation.⁴³

4.29 A casino supervisor may also invalidate the outcome of a game if “any fraudulent act is perpetrated by any person that, in the opinion of the casino supervisor, affects the outcome of the game”.⁴⁴ This does not appear to extend to card counting and other strategies that are undertaken without the use of a device or other external assistance.

38. *Casino Control Act 1992* (NSW) pt 4.

39. *Casino Control Act 1992* (NSW) pt 9.

40. *Casino Control Act 1992* (NSW) s 79-85A.

41. *Rules of Casino Games: Blackjack*, rule 19.1: NSW, *Government Gazette* (27 June 2003) 6488.

42. *Unlawful Gambling Act 1998* (NSW) s 19; *Casino Control Act 1992* (NSW) s 87.

43. *Rules of Casino Games: Blackjack*, rule 19.3: NSW, *Government Gazette* (27 June 2003) 6488.

44. *Rules of Casino Games: Blackjack*, rule 19.4: NSW, *Government Gazette* (27 June 2003) 6488.

- 4.30 Conceivably, card counting without the assistance of a device could be a ground for exclusion from the Casino. The general power to exclude people from the Casino is broadly expressed:

The Authority or the casino operator or the person for the time being in charge of the casino may, by order given to a person verbally or in writing, prohibit the person from entering or remaining in a casino.⁴⁵

The power is, however, subject to review which the person excluded may request, in writing, from CLAGCA.⁴⁶

- 4.31 It has been suggested that much of the problem of card counting from the Casino's perspective has been mitigated by the use of "continuous shuffling machines" which have made it difficult to employ a card counting system.
- 4.32 In 2001, the Victorian Casino and Gaming Authority conducted a review of the rules of the game of blackjack. It considered, amongst other things, questions relating to card counting strategies and other strategies "collectively known as advantage play" undertaken without the assistance of a device. The Authority concluded that, while such strategies did not "present a risk to gaming in casinos being conducted honestly", "unless countered by the casino operator", they threatened "the financial viability of the game of Blackjack". The Authority recommended that no changes be made to the, then, approved rules of blackjack noting that the rules, which provided for the use of continuous shuffling machines, enabled "the casino operator to properly protect itself from those who play Blackjack using card counting and other advantage strategies".⁴⁷
- 4.33 In general, while there are strategies that those skilled in gaming can employ, without using unlawful devices, to gain an advantage, it would not seem that they should be the subject of the criminal law's attention. Whether the Casino should have a power to place limits on regular gamblers who are known to engage in advantage play or to engage in one or other of the practices known as "angle shooting", or to exclude them, or to place their names on a list available to other casinos, falls outside our terms of reference.

Gaming machines

- 4.34 The *Gaming Machines Act 2001* (NSW) allows hotels and registered clubs to keep or operate approved gaming machines on their premises, and to pay or present prizes and bonuses in relation to those machines so long as they act in accordance with its requirements.
- 4.35 In NSW in 2009/2010, there were:
- 23,640 gaming machines in 1,659 hotels, earning profits (before tax) of \$1.514 billion; and

45. *Casino Control Act 1992* (NSW) s 79(1).

46. *Casino Control Act 1992* (NSW) s 80.

47. Victorian Casino and Gaming Authority, "Review of the Rules of the Game of Blackjack" (2001) <[http://www.vcga.vic.gov.au/domino/web_notes/vcga/VCGAimages.nsf/Images/BJauthoritydec/\\$File/BJauthorityDec.pdf](http://www.vcga.vic.gov.au/domino/web_notes/vcga/VCGAimages.nsf/Images/BJauthoritydec/$File/BJauthorityDec.pdf)> (24 January 2004).

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- 71,275 gaming machines in 1,282 registered clubs earning profits (before tax) of \$3.245 billion.⁴⁸
- 4.36 The Act has imposed a cap on the number of gaming machine entitlements at 99,000.⁴⁹ The number of gaming machines in NSW will reduce over time because of the existence of a scheme for trading poker machine entitlements between different venues. That scheme provides for transfers to be made in blocks of two or three entitlements and for the surrender of one other entitlement with the transfer of each block.⁵⁰
- 4.37 The Act includes other measures for gambling harm-minimisation, including the setting of thresholds for venues, and mandating shut-down periods, as well as stipulating requirements for the operation, location and advertising of gaming machines.⁵¹ It also sets out procedures for CLAGCA to authorise the keeping or disposal of gaming machines, to approve classes of gaming machines,⁵² and to issue gaming-related licenses to gaming machines dealers, sellers, technicians and testers.⁵³
- 4.38 One of the objects of the Act is “to ensure the integrity of the gaming industry”.⁵⁴ The Act accordingly provides for disciplinary action to be taken in relation to the various licensees – hoteliers, registered clubs and holders of gaming-related licences.⁵⁵ The Director of Liquor and Gaming or the Commissioner of Police can make a complaint to CLAGCA in relation to a licensee of gaming machines or a close associate. The grounds on which complaints can be made relate generally to compliance with the Act and the fitness of the licensee to continue to hold a license. Specific grounds include that the licensee has been convicted of an offence under the Act or the regulations, and “that the hotelier or registered club has engaged in conduct that has encouraged, or is likely to encourage, the misuse and abuse of gambling activities in the hotel or on the premises of the club concerned”.⁵⁶ The Director is empowered to carry out such investigations and inquiries as are necessary to ascertain whether a complaint should be made and the Commissioner of Police is required to inquire into and report on such matters as the Director may request.⁵⁷
- 4.39 The offences relating to cheating, fraud, and misuse of gaming machines, are outlined in Chapter 5.

Lotteries and art unions

- 4.40 The *Lotteries and Art Unions Act 1901* (NSW) generally prohibits the selling or disposing of goods by lottery or chance. However, the following activities are

48. Communities NSW, *Annual Report 2009-10*, 51.

49. *Gaming Machines Act 2001* (NSW) s 10(1).

50. *Gaming Machines Act 2001* (NSW) s 20.

51. *Gaming Machines Act 2001* (NSW) pt 4.

52. *Gaming Machines Act 2001* (NSW) pt 5.

53. *Gaming Machines Act 2001* (NSW) pt 7.

54. *Gaming Machines Act 2001* (NSW) s 3(1)(d).

55. *Gaming Machines Act 2001* (NSW) pt 8.

56. *Gaming Machines Act 2001* (NSW) s 129(3).

57. *Gaming Machines Act 2001* (NSW) s 128.

excepted from the general prohibition, subject to certain limitations, including prescriptions of the permitted limits on the value of the prizes offered:

- lotteries conducted by certain charitable and non-profit organisations;⁵⁸
- games of chance conducted by certain organisations in the course of a charitable fundraising appeal, subject to a permit from the Minister for Gaming and Racing;⁵⁹
- lotteries or games of chance for the promotion of trade conducted in accordance with a permit issued by the Minister for Gaming and Racing;⁶⁰
- games of chance in registered clubs;⁶¹
- sweepstakes in relation to the Melbourne Cup and other prescribed events;⁶²
- games of housie under certain conditions, including that they not be held on licensed premises;⁶³
- progressive lotteries (including “hundreds clubs” and tipping competitions);⁶⁴
- gratuitous (free entry) lotteries (including “lucky door” and “lucky seat” prizes);⁶⁵ and
- art unions, subject to conditions and permits.⁶⁶

4.41 The Act also makes provision in relation to “foreign lotteries”. A foreign lottery is a lottery that “is conducted or to be conducted outside Australia and whether or not it is legal in the place where it is or is to be conducted”. The Act establishes penalties for advertising a foreign lottery and selling tickets in a foreign lottery.

4.42 The Minister for Gaming and Racing can appoint Inspectors, including Police officers, to carry out the functions of authorised Inspectors under the Act. The Auditor-General can also exercise the functions of an authorised Inspector. The functions include:

- the carrying out (on behalf of the Minister) an inquiry into any person or organisation that is conducting or has conducted or is participating in or has participated in a lottery activity or is suspected of doing so;⁶⁷
- requiring the production of accounts and other documents, and answers to questions relevant to an inquiry;⁶⁸ and

58. *Lotteries and Art Unions Act 1901* (NSW) s 4.

59. *Lotteries and Art Unions Act 1901* (NSW) s 4A.

60. *Lotteries and Art Unions Act 1901* (NSW) s 4B.

61. *Lotteries and Art Unions Act 1901* (NSW) s 4C.

62. *Lotteries and Art Unions Act 1901* (NSW) s 4D.

63. *Lotteries and Art Unions Act 1901* (NSW) s 4E.

64. *Lotteries and Art Unions Act 1901* (NSW) s 4F.

65. *Lotteries and Art Unions Act 1901* (NSW) s 4G.

66. *Lotteries and Art Unions Act 1901* (NSW) s 5 and s 6.

67. *Lotteries and Art Unions Act 1901* (NSW) s 21B.

68. *Lotteries and Art Unions Act 1901* (NSW) s 21C.

- entering premises when there are reasonable grounds to believe that relevant documents may be found (but only upon certain other conditions including obtaining a certificate issued by the Minister or a search warrant).⁶⁹

4.43 The Minister for Gaming and Racing can also prohibit:

- a particular lottery activity, if he or she is of the opinion that a permit will not be complied with or that it is against the public interest;⁷⁰ or
- a person or organisation from conducting lottery activities, if he or she is satisfied that the person or organisation has persistently failed to comply with the act, the regulations or a permit.⁷¹

Public lotteries

4.44 The *Public Lotteries Act 1996* (NSW) makes provision for the conduct of public lotteries, including the granting of licenses to conduct public lotteries. A public lottery includes games of chance such as draw lotteries, bingo, instant lotteries, lotto, keno, powerball and football pools.

4.45 In 2007/2007, the total amount wagered on instant lotteries, keno, lotteries, lotto and pools in NSW was \$1.653 billion.⁷²

4.46 The Act aims to ensure the integrity of licensees. For example, it provides that the Minister for Gaming and Racing can from time to time determine whether a licensee (or a close associate of the licensee) remains a suitable person.⁷³ It also allows for disciplinary action to be taken on a number of grounds, including that:

- (c) the licensee or any close associate of the licensee has been convicted of an offence under a relevant gaming law,
- (d) the licensee or any close associate of the licensee has been convicted in the State or elsewhere of an offence in connection with the management or operation of a public lotteries, gaming or wagering business.⁷⁴

4.47 The Minister for Gaming and Racing can also give directions to licensees or anyone engaged in the conduct of a public lottery on the licensee's behalf if the Minister is:

of the opinion that the integrity or apparent integrity of a public lottery... is likely to be seriously prejudiced because of:

- (a) any irregularity or alleged irregularity of any kind, or
- (b) the character or reputation of any person concerned in the management or supervision of the public lottery, or
- (c) any other fact or circumstance reported to the Minister.⁷⁵

69. *Lotteries and Art Unions Act 1901* (NSW) s 21D.

70. *Lotteries and Art Unions Act 1901* (NSW) s 22A.

71. *Lotteries and Art Unions Act 1901* (NSW) s 22AA.

72. Queensland, Office of Economic and Statistical Research, *Australian Gambling Statistics* (26th ed, 2010) Product Table, 16.

73. *Public Lotteries Act 1996* (NSW) s 21A.

74. *Public Lotteries Act 1996* (NSW) s 21B(1)(c) and (d).

- 4.48 The Minister can appoint Inspectors for the purposes of the Act. These Inspectors have powers to enter premises and to require the production of documents and answers to questions.⁷⁶

Two-up

- 4.49 The *Gambling (Two-up) Act 1998* (NSW) legalises the conduct of games of two-up on Anzac Day and other prescribed commemorative days⁷⁷ and games of two-up in Broken Hill. One of the stated objects of the Act is to ensure that these games:
- (i) are conducted honestly and with appropriate controls to prevent fraudulent activity, and
 - (ii) are conducted free from criminal influence and exploitation.⁷⁸
- 4.50 There are no specific provisions in the Act relating to fraud or cheating at two-up. Subject to the exceptions permitted under the Act, organising or conducting a game of two-up, or assisting in its organisation or conduct, would, however, constitute an offence under s 5(1)(a) of the *Unlawful Gambling Act 1998* (NSW).

Anzac Day and other commemorative days

- 4.51 Games on Anzac Day and other commemorative days can be held in any premises so long as:
- (a) no payment or other benefit is, for the purpose of participating in the game, given or sought for the right to enter the premises on which the game is to be conducted, and
 - (b) no payment or other benefit is given or sought for the right to participate in the game (otherwise than by the placing of money by way of a bet), and
 - (c) no commission on, percentage of, or fee for, bets or winnings is given or sought by any person, whether or not a participant in the game.⁷⁹
- 4.52 Games can also be held on the prescribed days at registered clubs so long as “all payments or other benefits involved must be entirely disposed of ... for the benefit of any charity or charitable purpose”.⁸⁰

Broken Hill

- 4.53 In relation to two-up in Broken Hill, the Minister for Gaming and Racing can authorise the Council of Broken Hill to conduct games of two-up at approved locations in Broken Hill. The Act sets out the conditions which the Minister can impose on the conduct of such games and also provides for the alteration,

75. *Public Lotteries Act 1996* (NSW) s 59(1).

76. *Public Lotteries Act 1996* (NSW) s 71-73.

77. Currently 15 August and 11 November after 12 noon: *Gambling (Two-up) Regulation 2010* (NSW) cl 4.

78. *Gambling (Two-up) Act 1998* (NSW) s 3(b).

79. *Gambling (Two-up) Act 1998* (NSW) s 7.

80. *Gambling (Two-up) Act 1998* (NSW) s 8(1)(b).

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revocation or suspension of any authorisations.⁸¹ The Minister can also withdraw the approval for a particular person to conduct two-up on behalf of the Council where the Minister “is of the opinion that the integrity or apparent integrity of a game or games of two-up conducted by or on behalf of the Council is likely to be seriously prejudiced because of the criminal record, character or reputation of the person”.⁸²

4.54 The Minister can appoint a public servant to be an Inspector in relation to two-up in Broken Hill.⁸³ Inspectors have a number of powers under the Act, including the power:

- to enter and remain on approved two-up premises to observe and ascertain whether the game is being properly conducted;
- to require the production of documents relating to the conduct of two-up and to require answers to questions concerning them;
- to require the attendance of key employees or other persons concerned in the conduct of two-up to answer questions or provide information.⁸⁴

4.55 A Police officer also has the functions of an Inspector when acting in aid of an Inspector.⁸⁵

4.56 The Minister for Gaming and Racing also has the power to require key employees or other people conducting an authorised game of two-up to provide relevant information and documents or to require them to attend for examination and to answer any questions in relation to such matters.⁸⁶

4.57 The Minister can appoint a person to investigate and report on certain specified matters and circumstances which relate to:

- (a) the conduct of a game of two-up, or
- (b) any person who, in the opinion of the Minister, is an associate of a person conducting a game of two-up on behalf of the Council, or
- (c) a specified person who, or a specified class of persons which includes persons who, in the opinion of the Minister, could affect the conduct of a game of two-up, or
- (d) a specified person who, or a specified class of persons which includes persons who, in the opinion of the Minister, could be in a position to exercise direct or indirect control over the Council in relation to the conduct of games of two-up by the Council or over a person conducting such games on behalf of the Council.⁸⁷

4.58 The Minister can direct the Council or a person conducting games of two-up on the Council's behalf, to take, or refrain from taking specified actions if he or she is of the

81. *Gambling (Two-up) Act 1998* (NSW) s 10, s 11, s 13, s 14.

82. *Gambling (Two-up) Act 1998* (NSW) s 12.

83. *Gambling (Two-up) Act 1998* (NSW) s 17.

84. *Gambling (Two-up) Act 1998* (NSW) s 19.

85. *Gambling (Two-up) Act 1998* (NSW) s 19(4).

86. *Gambling (Two-up) Act 1998* (NSW) s 21.

87. *Gambling (Two-up) Act 1998* (NSW) s 22.

opinion that the integrity or apparent integrity of any game of two-up is likely to be seriously prejudiced:

- (a) by any irregularity or alleged irregularity of any kind, or
- (b) by the criminal record, character or reputation of any person concerned in the conduct of any such game, or
- (c) by any other fact or circumstance reported to the Minister.⁸⁸

4.59 Likewise, in circumstances where the integrity or apparent integrity of a game is threatened, the Minister can also make directions concerning the termination of key employees.⁸⁹

Poker tournaments

4.60 A number of organisations operate poker tournaments in licensed premises and registered clubs around NSW. Before 2007, such tournaments were subject to prohibitions on gaming for stakes⁹⁰ which meant that money could not be wagered in these tournaments. These prohibitions were repealed with the enactment of the *Liquor Act 2007* (NSW).⁹¹ While gaming for stakes is now permitted on licensed premises or in registered clubs, many of these tournaments might, if they offered gaming for stakes, come within the definition of “unlawful game” under the *Unlawful Gambling Act 1998* (NSW) which provides that “unlawful game” includes:

- (h) any game of skill or chance, or of mixed skill and chance, in which any money is staked or risked by a person on an event or contingency specified by the person and in which:
 - (i) there is a dealer, croupier or banker who is not a participant in the game while acting in such a capacity, or
 - (ii) a person, other than a participant in the game, receives a payment or other benefit from the playing of the game, or
 - (iii) a payment or other benefit is given or sought for the right to participate in the game or for the right to enter the land or premises on which the game is played.⁹²

4.61 Poker tournaments have generally not been characterised as an “unlawful game” because they do not involve the staking or risking of money on any game. The poker chips in such tournaments have no monetary value, but are only used to indicate points. Prizes (including cash payments) are awarded at the end of the tournament, and not in the context of individual games.⁹³

88. *Gambling (Two-up) Act 1998* (NSW) s 15(2).

89. *Gambling (Two-up) Act 1998* (NSW) s 16(1).

90. *Liquor Act 1982* (NSW) s 126(1)(a); *Registered Clubs Act 1976* (NSW) s 54B(1).

91. *Liquor Act 1982* (NSW) s 161; *Miscellaneous Acts (Casino, Liquor and Gaming) Amendment Act 2007* (NSW) sch 2[3].

92. *Unlawful Gambling Act 1998* (NSW) s 5(1).

93. NSW, Office of Liquor, Gaming and Racing, "Poker Tournaments in NSW" <http://www.oglr.nsw.gov.au/gaming_poker_tournaments.asp>.

- 4.62 Entry to some of the poker tournaments is free, usually in cases where the venue has paid the organisers to run the tournament - for example, poker games organised by the Australian Poker League.⁹⁴ Participants must pay entry fees for some other poker tournaments - for example, tournaments organised by Exclusive Poker Tour⁹⁵ and National Poker League.⁹⁶ Games in these tournaments are not illegal under the *Unlawful Gambling Act 1998* (NSW) so long as the entry fee relates to the right to participate in the tournament, rather than individual games.⁹⁷
- 4.63 Poker tournaments are not subject to specific regulation despite concerns about cheating in the context of large prize pools, jackpots and their increasing popularity in recent years.⁹⁸
- 4.64 It is noted that, as a result of the recent amendment of the approved betting events in NSW,⁹⁹ bets can now be placed on poker events and series sanctioned by the World Poker Tournaments, or by the World Series of Poker, or by affiliated organisations.

Gambling within virtual reality games

- 4.65 A further area that may potentially be of interest is that of gambling undertaken in the context of a virtual reality game on the Internet. Massive Multiplayer Online Role Playing Games ("MMORPGs"), such as World of Warcraft and Second Life, 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, in some cases, can 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 on-line auction sites.¹⁰⁰
- 4.66 MMORPGs can include virtual casinos and other virtual gambling opportunities. The question, therefore, arises as to whether any of the forms of gaming and gambling that may be made available in the virtual worlds (including, potentially, wagering on player versus player contests) but which can have real-world economic consequences, can be regulated by any of the existing laws at either the State or Commonwealth level, including laws prohibiting minors from participating in any form of gambling.¹⁰¹ Some forms of gaming within MMORPGs may possibly come within the terms of the *Interactive Gaming Act 2001* (Cth) in so far as they involve a game "played for money or anything else of value"¹⁰² on an internet carriage service.

94. <<http://www.playapl.com>>. It would appear that the National Pub Poker League, which organises free entry games in other parts of Australia, does not organise tournaments in NSW: <<http://www.nationalpubpoker.com.au>>.

95. <<http://www.eptpoker.com.au>>.

96. <<http://www.npl.com.au>>.

97. The legality of re-entry fees (sometimes called "rebuys") in this context is uncertain.

98. D Cameron, "The poker craze explodes, but sharks are circling" *Sydney Morning Herald* (7 July 2007) 1.

99. Under the *Racing Administration Act 1998* (NSW) s 18 and s 20. See Appendix C.

100. M Methentis, "A Tale of Two World: New US Gambling Laws and the MMORPG" (2007) 11 *Gaming Law Review* 436.

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

102. *Interactive Gaming Act 2001* (Cth) s 4 (definition of "gambling service").

- 4.67 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”.¹⁰³

103. 31 USC § 5362(1).

5. Review of the criminal law concerned with cheating and other forms of fraud

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- 5.1 In this chapter, we identify the range of common law and statutory offences in force in NSW, that deal with cheating and fraudulent conduct, and consider whether they provide a sufficient response to cheating in the context of gambling.
- 5.2 For convenience, we deal initially with these laws as they apply to cheating in wagering on outcomes or contingencies in connection with sporting and other events. We then deal separately with offences related to the forms of gaming that are summarised in Chapter 4.

Wagering on sporting and other events

- 5.3 The offences that might potentially be invoked, under the current laws of NSW, to deal with cheating in the context of wagering on sporting and other events include:

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- (a) the common law offence of cheating and the inchoate common law offence of conspiracy to cheat;
 - (b) the common law inchoate offence of conspiracy to defraud (sometimes referred to as conspiracy to cheat and defraud);
 - (c) the statutory offence of cheating at gambling;¹
 - (d) the statutory fraud offence of dishonestly obtaining by deception, a financial advantage or causing a financial disadvantage;²
 - (e) the statutory offence of corruptly receiving or giving (or soliciting or offering) a commission as a reward for doing or not doing something;³
 - (f) the common law inchoate offence of inciting or conspiring to commit one or other of the offences (c) to (e); and
 - (g) the offence of attempting to commit one or other of the offences (a) to (e).⁴
- 5.4 Additionally, where one or other of the offences (d) or (e) is committed there may be occasion to charge a person, who knows of, or has a belief as to its commission but fails to report it, with the offence of concealing a serious indictable offence.⁵
- 5.5 As this Consultation Paper shows, there are some practical and theoretical difficulties in seeking to extend the reach of these provisions to cover cheating in the present context. Equally, there are difficulties in applying the principles relating to accessorial liability, or to joint criminal enterprise liability, or to acting through an innocent agent (by proxy) in this area of activity.
- 5.6 In our consideration of these offences, we draw attention to comparable laws in force in other jurisdictions and note any advantages or shortcomings that they would appear to possess.
- 5.7 For convenience, we have included in Appendix D a list of the key cheating provisions that exist in NSW, as well as the comparable provisions in the other jurisdictions.
- 5.8 We note that the preliminary submissions have generally accepted that the current laws concerned with cheating in the present context are unsatisfactory. There is some support for the introduction of a sports specific cheating offence or offences.⁶
- 5.9 The manner in which the absence of a generalised offence of fraudulent or dishonest conduct has been addressed has clouded the consideration of the issues which arise in this context. This absence has been addressed in an evolutionary way, commencing with the common law's acceptance of an offence of cheating, and subsequently through statutory intervention. The fact that there have been relatively

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

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

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

4. *Crimes Act 1900* (NSW) s 344A.

5. *Crimes Act 1900* (NSW) s 316.

6. Racing NSW, *Submission PCG17*; Australian Internet Bookmakers Association, *Submission PCG18*; NSW Bookmakers' Co-operative Ltd, *Submission PCG12*; Betfair Australia, *Submission PCG11*; BetSafe, *Submission PCG8*; Wesley Community Legal Service, *Submission PCG7*; Lander & Rogers, *Submission PCG15*; and Australian Sports Commission, *Submission PCG13*.

few cases in which sports or event fixing has been prosecuted also renders consideration of the issues difficult. There is little precedent concerning the application of the offences discussed below. Nevertheless, we see it as appropriate to identify the necessary elements of those offences, and to note any practical difficulties, or potential limitations, in their application.

Cheating and conspiracy to cheat

- 5.10 The common law offence of cheating has a limited operation. It had its origin in the context of cheating by means of false tokens (that is, by the use of false weights and measures in trade). An essential element is that the relevant conduct affects the public at large.⁷
- 5.11 The common law sanction was enhanced by a statute enacted in 1541 which made it punishable for an individual to use “a false privy token”.⁸
- 5.12 This provision did not address the practice of obtaining money or chattels, by an individual, through the means of untrue or fraudulent statements of fact or intention.⁹ This gap was, however, filled by the Statute of False Pretences, which was enacted in 1757 to deal with “private” cheating as follows:
- All persons who knowingly and designedly, by false pretence or pretences, shall obtain from any person or persons, money, goods, wares or merchandizes, with intent to cheat or defraud any person or persons of the same . . . shall be deemed offenders against law and the public peace.¹⁰
- 5.13 This became the genesis of the offence formerly contained in s 179 of the *Crimes Act 1900* (NSW) which provided:
- Whosoever, by any false pretence or by any wilfully false promise, or partly by a false pretence and partly by a wilfully false promise, obtains from any person any property, with intent to defraud, shall be liable to imprisonment for five years;¹¹
- This provision was subsequently repealed in 2009 and replaced by the provisions in Part 4AA of the *Crimes Act 1900* (NSW),¹² which are discussed below.¹³
- 5.14 In England and Wales, the public injury aspect of the cheating offence was preserved in part when the *Theft Act 1968* (Eng) abolished the common law offence of cheating but retained it for “offences relating to the public revenue”.¹⁴
- 5.15 An offence of conspiracy to commit the offence of cheating (conspiracy to cheat) was recognised before the Act of 1757,¹⁵ arising out of the seventeenth century

7. *R v Weaver* (1931) 45 CLR 321, 340 (Evatt J); E H East, *A Treatise of the Pleas of the Crown* (1806) Vol 2, 816-818, 820.

8. 33 Hen VIII c 1; *R v Weaver* (1931) 45 CLR 321, 340.

9. *R v Weaver* (1931) 45 CLR 321, 341.

10. 30 Geo II c 24 s 1.

11. See also *Criminal Law Amendment Act 1883* (NSW) (46 Vic No 17) s 141.

12. *Crimes Amendment (Fraud, Identity and Forgery Offences) Act 2009* (NSW).

13. **Para 5.75-5.92.**

14. *Theft Act 1968* (Eng) s 32(1)(a). See D Ormerod, “Cheating the Public Revenue” [1998] *Criminal Law Review* 627.

15. *R v Weaver* (1931) 45 CLR 321, 341.

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notion that a cheat effected by two or more in combination was not one against which a man of common prudence could be expected to defend himself.¹⁶

- 5.16 Strictly applied, it was confined to cases with a public aspect. However, in practice, this offence has largely merged into the offence of conspiracy to defraud, as can be seen from the fact that such an offence is often treated as a conspiracy to cheat and defraud. For example, in the 18th century case of *R v Orbell*,¹⁷ the court did not quash a charge of conspiracy to cheat where the accused was alleged to have procured a person to accept (lay) a bet on the result of a footrace and then to have prevailed on a participant to “run booty” (that is, to run badly in order to lose the race) on the grounds that, although the cheating was “private in the particular”, it was “public in its consequences”. Justice Evatt pointed out in *R v Weaver* that, despite the reason given, the case was one of conspiracy to cheat and defraud and clearly not one of “a cheat punishable in an individual at common law” or “what was later the crime of false pretences”.¹⁸ Another example of a conspiracy to cheat in a wagering context can be seen in the case of *R v Hudson*,¹⁹ which involved a variation of a thimble and pea trick, with an unusual circumstance that it was a proponent of the scheme who placed a bet and who ended up being bitten.
- 5.17 As we note later, the operation of the Statute of False Pretences was extended to cover cheating at gambling by a provision, initially in the *Gaming Act 1845* (Eng),²⁰ which deemed cheating at cards and other games and sports wagering to be “false pretences”. The substance of this provision was picked up in NSW in 1850²¹ and later in the *Gaming and Betting Act 1912* (NSW)²² and later still in an expanded form in the *Unlawful Gambling Act 1998* (NSW).²³
- 5.18 In NSW, the common law offence of cheating and conspiracy to cheat have seemingly fallen into disuse. At least in part, this is because of:
- the availability of conspiracy to cheat and defraud as a distinct offence (that did not require the use of false tokens or an act that affected the public); and
 - the existence of the successive provisions to deal with cheating deriving from the English Statute of False Pretences.
- 5.19 A cheating offence was originally included in the Western Australian, Queensland and Tasmanian criminal codes.²⁴ The Western Australian and Queensland provisions, which made it an offence to induce another to pay money or deliver goods or “anything capable of being stolen” to any person “by means of any fraudulent trick or device”, have, however, been repealed and replaced.

16. T B Hadden, “Conspiracy to Defraud” [1966] *Cambridge Law Journal* 248, 254-255, and see also 262 and *R v Wheatley* (1761) 1 Black W 273; 96 ER 151.

17. *R v Orbell* (1704) 6 Mod 42; 87 ER 804.

18. *R v Weaver* (1931) 45 CLR 321, 342. Many of the cases cited in a NSW looseleaf service in the section on the offence of cheating, in fact deal with conspiracies to cheat and defraud and not the individual offence of cheating: *Criminal Law New South Wales* (Thomson Reuters) [3.240].

19. *R v Hudson* (1860) Bell 263; 169 ER 1254.

20. *Gaming Act 1845* (Eng) 8 & 9 Vic c 109 s 17.

21. *Games and Wagers Act 1850* (NSW) 14 Vic No 9 s 7.

22. *Gaming and Betting Act 1912* (NSW) s 15 and see also *Games, Wagers and Betting-Houses Act 1902* (NSW) s 12.

23. *Unlawful Gambling Act 1998* (NSW) s 18. Variants of this formula may also be found in *Casino Control Act 1992* (NSW) s 87; and *Gaming Machines Act 2001* (NSW) s 80(4).

24. *Criminal Code* (Qld) s 429; *Criminal Code* (WA) s 411; *Criminal Code* (Tas) s 252.

- 5.20 The Western Australian provision, which provided for an offence known shortly as “fraud trick” or cheating, was said to have a “field of operation which is marked by gross uncertainty”.²⁵ It has been replaced by a general fraud offence,²⁶ as has the Queensland provision.²⁷ The Tasmanian provision remains in force.²⁸

Conspiracy to defraud

- 5.21 The offence of conspiracy to defraud is a common law indictable offence, the penalty for which is at large. It remains available in NSW which has not, at this time, legislated for a general offence of conspiracy. As in the case of conspiracy to cheat, it is one of the heads of the general crime of conspiracy, which was described by Justice Willis, in *Mulcahy v The Queen*,²⁹ as involving an agreement between two or more people to do an unlawful act, or to do a lawful act by unlawful means.
- 5.22 The common law offence of conspiracy to defraud has been described as “anomalous”,³⁰ and otherwise as “convenient but crude”.³¹ It has been criticised as unduly expansive and uncertain in its reach, as well as inappropriately rendering criminal an agreement by two or more people that something be done, which would not be unlawful, if done by one of them.³² It has however been accepted as an offence, despite the leap in reasoning that renders criminal an agreement to do something which is not in itself criminal, but which is made so because it is the subject of an agreement between two or more people. This does have an immediate relevance in the present context. It is not unlawful for a gambler to place a bet on the result of a sporting contest, or on a contingency in the run of that contest, or to win money from a wagering operator if that bet is successful. Nor is it unlawful for a team to lose a contest; or for a player, for example, in a cricket match, unintentionally to bowl a certain number of no balls, or to be the next player out. Each can happen in the ordinary course of a match, without any form of contrivance or trickery being involved.
- 5.23 The offence had its origins in the fact that the common law did not recognise a generalised criminal offence of fraud.³³ It was employed, and it has been preserved in some jurisdictions, in order to fill the gaps in the existing laws, so as to catch any new form of dishonesty that human ingenuity might invent and in order to overcome the problem of addressing such conduct after the event.³⁴
- 5.24 Where reform has been considered in relation to the codification or introduction of fraud-related offences, it has on some occasions been accompanied by

25. M J Murray, *The Criminal Code: A General Review* (1983) 267.

26. *Criminal Code* (WA) s 409.

27. *Criminal Code* (Qld) s 408C.

28. *Criminal Code* (Tas) s 252.

29. *Mulcahy v The Queen* (1868) LR HL 306, 317.

30. England and Wales, Law Commission, *Fraud*, Report 276 (2002) [2.4].

31. P Gillies, “The Law of Criminal Conspiracy” (1977) 8 *Sydney Law Review* 107, 108, 112, 113 and 133.

32. England and Wales, Law Commission, *Fraud*, Report 276 (2002) [3.2]; P Gillies, “The Law of Criminal Conspiracy” (1977) 8 *Sydney Law Review* 107, 108, 112 and 113.

33. England and Wales, Law Commission, *Conspiracy and Criminal Law Reform*, Report 76 (1976) [1.14]; England and Wales, Law Commission, *Fraud*, Report 276 (2002) [2.4].

34. See NSW Law Reform Commission, *Complicity*, Report 129 (2010) [6.108], [6.111].

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recommendations to preserve the common law offence,³⁵ or to introduce a statutory offence to similar effect³⁶ for pragmatic reasons of this kind.

5.25 The recommendation contained in the 2002 report of the Law Commission of England and Wales³⁷ for abolition of the common law offence was not accepted when the *Fraud Act 2006* (Eng) was enacted. This left alive the common law offence, to fill any limitations that might emerge in relation to the statutory offence of conspiracy which is now embodied in the *Criminal Law Act 1977* (Eng).³⁸

5.26 Within Australia, different approaches have been taken in relation to the offence:

- The *Criminal Code* (Cth) provides for a general offence of conspiracy to commit a substantive offence,³⁹ and for a specific offence of conspiracy with the intention, amongst other things, of dishonestly obtaining a gain from, or causing a loss to, a Commonwealth entity.⁴⁰
- The *Criminal Code* (ACT) similarly provides for a general offence of conspiracy to commit a substantive offence,⁴¹ as well as for a specific offence of conspiracy to defraud, which parallels the Commonwealth provision, except that it is not confined to defrauding a government entity.⁴²
- The Criminal Codes of Queensland, Tasmania and the Northern Territory provide for a general offence of conspiracy to commit a substantive offence⁴³ and make separate provision (with some differences) for specific forms of conspiratorial conduct comprising deceitful or dishonest conduct,⁴⁴ including, in the case of the Northern Territory and Tasmania, conspiracies to deceive or defraud.⁴⁵
- Victoria has replaced the common law general offence of conspiracy to commit a substantive offence with a statutory general offence of conspiracy,⁴⁶ while preserving the common law offences of conspiracy to “cheat and defraud”, and of conspiracy to defraud.⁴⁷

35. England and Wales, Law Commission, *Criminal Law: Conspiracy to Defraud Reform*, Report 228 (1994) [1.20] and [4.74]; and England and Wales, Law Commission, *Conspiracy and Criminal Law Reform*, Report 76 (1976) [1.14]-[1.16].

36. Australia, Criminal Law Officers Committee of the Standing Committee of Attorneys-General, *Model Criminal Code, Chapter 3: Conspiracy to Defraud*, Report (1997) 26-28.

37. England and Wales, Law Commission, *Fraud*, Report 276 (2002) [9.1]-[9.6].

38. *Criminal Law Act 1977* (Eng) s 1 and s 55(1)-(2).

39. *Criminal Code* (Cth) s 11.5(1), which replaces the general conspiracy offence for which provision was made in the *Crimes Act 1914* (Cth) s 86.

40. *Criminal Code* (Cth) s 135.4(1), which replaces the offence of conspiracy to defraud the Commonwealth for which provision was made in the *Crimes Act 1914* (Cth) s 86A.

41. *Criminal Code* (ACT) s 48(1).

42. *Criminal Code* (ACT) s 334(1) and (2).

43. *Criminal Code* (Qld) s 541 and s 542; *Criminal Code* (Tas) s 297(1)(c); *Criminal Code* (NT) s 43BJ, s 282-289.

44. *Criminal Code* (Tas) s 297(1); *Criminal Code* (Qld) s 543(1); *Criminal Code* (NT) s 284-289.

45. *Criminal Code* (NT) s 284; *Criminal Code* (Tas) s 297(1)(d).

46. *Crimes Act 1958* (Vic) s 321-321F.

47. *Crimes Act 1958* (Vic) s 321F(2).

- South Australia has retained the general common law offence of conspiracy,⁴⁸ and also the common law offence of conspiracy to “cheat and defraud”.⁴⁹
 - In Western Australia, a charge of conspiracy may only be brought in relation to substantive offences,⁵⁰ the specific provision relating to the offence of conspiracy to defraud⁵¹ having been repealed.⁵² The general conspiracy provision may now be coupled with the broad substantive offence of fraud which requires an “intent to defraud, by deceit or any fraudulent means”.⁵³
- 5.27 It may be noted that the Commonwealth, NT and ACT offences of conspiracy do require, in addition to proof of the existence of a conspiratorial agreement, proof of the performance of an overt act by at least one of the parties to the agreement.⁵⁴ In all other jurisdictions, the offence is complete once the agreement or understanding is made and the prosecution does not need to prove that there was an overt act. The Commonwealth, NT and ACT codes allow a defence of withdrawal.⁵⁵ This defence is not available in the other jurisdictions.
- 5.28 The various offences that broadly constitute fraudulent conduct have now been codified in NSW within the newly introduced Part 4AA of the *Crimes Act 1900* (NSW). The amendments did not however address the question of whether there should be a specific offence of conspiracy to commit any of the forms of conduct that are prohibited under that Part, or an offence akin to the common law offences of conspiracy to cheat or conspiracy to defraud.
- 5.29 Whether a prosecution, based on the general common law offence of conspiracy to commit one or other of the specific offences contained in Part 4AA, would succeed depends on whether the conduct the subject of the agreement would constitute an offence under that Part, if carried into effect. Whether it could or could not do so, in the present context, is addressed when we examine the specific offence now contained in s 192E of *the Crimes Act 1900* (NSW).⁵⁶
- 5.30 The difficulties in providing an exhaustive statement as to what is now involved in the offence of conspiracy to defraud are well recognised.⁵⁷ Moreover, different views have been expressed as to the elements of the offence, and as to the directions that need to be given to a jury.⁵⁸ Some of these views relate to the concerns as to whether the “dishonesty”, which is involved in the means to be used to secure the intended object, constitutes a separate element of the offence that

48. *Lipohar v The Queen* (1999) 200 CLR 485 [42].

49. *Criminal Law Consolidation Act 1935* (SA) s 133(2).

50. *Criminal Code* (WA) s 558.

51. *Criminal Code* (WA) s 412.

52. *Criminal Law Amendment Act 1990* (WA) s 24.

53. *Criminal Code* (WA) s 409.

54. *Criminal Code* (Cth) s 11.5(2)(c), s 135.4(9); *Criminal Code* (ACT) s 48(2)(c), s 334(5); *Criminal Code* (NT) s 43BJ(2)(c). The same requirement is contained in the public justice conspiracy offences contained in the *Crimes Act 1914* (Cth) s 41(2) and (3).

55. *Criminal Code* (Cth) s 11.5(5), s 135.4(12); *Criminal Code* (ACT) s 48(6) and s 334(7); and *Criminal Code* (NT) s 43BJ(6). See also *Crimes Act 1914* (Cth) s 41(5) and s 42(6).

56. Para 5.75-5.92.

57. For example, see the observations of Toohey and Gummow JJ in *Peters v The Queen* (1998) 192 CLR 493 [20]-[21].

58. Compare the judgments in *Peters v The Queen* (1998) 192 CLR 493 of Toohey and Gaudron JJ [29] and [33], and of McHugh J [79] and [84], with whom Gummow J agreed [93].

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must be proved, and whether the fraud involves an element of dishonesty over and above the means.

- 5.31 The imprecision in the definition of what constitutes an act of defrauding, and in determining what constitutes dishonesty or dishonest means or trickery, potentially gives the offence an extremely wide and uncertain area of operation that can overlap with some substantive offences. Amongst other things, this is due to the fact that “dishonesty” involves both a moral and factual inquiry,⁵⁹ requiring a jury to assess whether the defendant’s conduct was sufficiently blameworthy to constitute a crime. This is a consequence of the fact that the offence of conspiracy to defraud is an offence in its own right; it does not depend on agreement to commit a separate substantive offence.
- 5.32 In the present context, it would seem that the offence of conspiracy to defraud could possibly be made out by proof that two or more people intentionally entered into an agreement, pursuant to which they would fix (or cause to be fixed) without any lawful right, the outcome of an event or contingency upon which a bet or bets were to be placed, in order to obtain a financial advantage from a wagering operator accepting the bet (or, put another way, to cause a financial disadvantage to the operator). In essence, the offence would need to rest upon the proposition that a rigged contest, or a rigged contingency within a contest, does not constitute the genuine test of skill or ability which is assumed or reasonably expected by those who wager on the outcome of the contest or the contingency.⁶⁰
- 5.33 Commission of the offence would not depend on the scheme being successful in terms of resulting in a payout by, or loss to, the bookmaker on the wager. The rights or interests of that party would potentially be placed in peril, from the time that the wager was placed and accepted until the completion of the event; and it might be the case that the bookmaker would, as a result of the bet, lay off with another wagering operator.⁶¹
- 5.34 However, it would be necessary to show that each of the parties to the agreement intended to enter into the agreement, and intended through dishonest means to achieve their objective.⁶² Recklessness as to the making of the agreement, or as to whether its object would be carried out, would not suffice.⁶³
- 5.35 There is some precedent for reliance on the common law offence in the present context. An example can be seen in the case of *R v Eade*,⁶⁴ where the appellant and another man were parties to a scheme to install a device that would discharge ammonia into all of the stalls but one, at a South Australian greyhound racing meeting, thereby affecting the performance of each entrant in a race except the favourite. Chief Justice King observed:

59. England and Wales, Law Commission, *Fraud*, Report 276 (2002) [5.1].

60. T B Hadden, “Conspiracy to Defraud” [1966] Cambridge Law Journal 248, 254-255, and see also 263-264.

61. By analogy to the reasoning in *R v Allsop* (1976) 64 Cr App R 29; *Peters v The Queen* (1998) 192 CLR 493 [25] and [85].

62. *Gerakiteys v The Queen* (1984) 153 CLR 317; *R v Trudgeon* (1998) 39 A Crim R 252, 256, 263; *R v Orton* (1922) VLR 469, 473; *Peters v The Queen* (1998) 192 CLR 493 [30] and [79], a similar requirement that each party intend to carry out the unlawful purpose, that is the object of the agreement, applies to the general conspiracy offence: *DPP v Kamara* [1974] AC 104 and *R v Yip Chiu-Cheung* [1995] 1 AC 111.

63. *R v LK* (2010) 241 CLR 177.

64. *R v Eade* (1984) 14 A Crim R 186.

I have no doubt that if the object of the agreement was to cause loss to the owners of dogs whose chances in the race were affected, or to cause loss to bookmakers who laid bets on the only dog whose chances would be unaffected, or to cause loss to race goers who placed bets on the affected dogs and were deprived of the chance of winning which they would have had if there were an honest race conducted in accordance with the rules, the crime of conspiracy to cheat and defraud would be committed. It is to be remembered, too, that the object of a conspiracy is not to be confused with the conspirators' motivation.

He also observed:

A conspiracy to alter the prospects of success of a runner or runners in a race by means which are dishonest or contrary to the rules of racing for the purpose of affecting the destination of the prize money or the result of bets on the race, is properly charged as a conspiracy to cheat and defraud.⁶⁵

- 5.36 Similarly, the High Court held that an indictment for conspiracy to defraud could properly be laid in a case where there was an agreement between several people to use an electric battery on a horse in a race, for the purpose of securing a declaration that the horse had won the race so that prize money and bets would follow, when according to the rules of racing there would be no right to such a declaration since the horse should have been disqualified.⁶⁶
- 5.37 A further example can be seen in the case of a £300,000 betting coup in the United Kingdom. Bets were placed by a syndicate, in doubles and trebles on three horses including a horse "Gay Future", which had been successfully trialled in secret. Undisclosed was the intention of those involved in the wager to withdraw the other two horses from the race, resulting in all of the bets going on "Gay Future" which won at 10-1 odds.⁶⁷
- 5.38 Although the common law offence may be available in this context, and continues to be used in relation to some agreements to defraud others, it does not accord with the principle that conspiracy should only apply to conduct that would constitute an offence if committed by an individual.⁶⁸ Nor does it accord with the desirability of there being certainty in relation to the reach of the criminal law, or with the more recent trend towards codification. To leave it available solely for the pragmatic reason that new forms of dishonest conduct may emerge that cannot be reached by substantive offences, gives little credit to the capacity of legislators to enact appropriate criminal laws.
- 5.39 In a practical sense, this form of conspiracy like any other form of conspiracy, can be complex in its application by reason of the co-conspirator evidence rule,⁶⁹ and by reason of the directions that need to be given to a jury, particularly in a multi-party trial, when attempting to dissect the admissible and inadmissible evidence between parties.⁷⁰
- 5.40 Moreover there are situations of cheating in the present context that risk falling outside the scope of the offence.

65. *R v Eade* (1984) 14 A Crim R 186, 188.

66. *Aston v Irvine* (1955) 92 CLR 353, 367.

67. *R v Collins & Murphy*, "Two fined £1,000 for Gay Future Plot", *The Times*, 12 February 1976, 2.

68. Australia, Criminal Law Officers Committee of the Standing Committee of Attorneys-General, *Model Criminal Code, Chapter 3: Conspiracy to Defraud*, Report (1997) 24.

69. *Ahern v The Queen* (1988) 165 CLR 87, 92-95.

70. T B Hadden, "Conspiracy to Defraud" [1966] *Cambridge Law Journal* 248, 255-261.

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- 5.41 For example, the case where one of the parties to the agreement does not share, with the other party, a common understanding of that party's intention to benefit, through wagering on the fix. This might apply in the case of a player who is instructed by the captain of the team to do or not to do something, which unknown to him, is the basis of a wager placed by the captain; or in the case of a person who, at the request of a player, places a bet on a contingency, which unknown to him, the player intends to fix. In each case there would arguably be the lack of the common intention and understanding to constitute an unlawful conspiratorial agreement.
- 5.42 Similarly the offence would not seem to be available in a case of conspiracy which involves a gambler gaining an advantage, by placing a bet after obtaining confidential insider information. Such a case would require some provision akin to those provisions that criminalise the supply or use of insider information in relation to trading in financial products.⁷¹
- 5.43 In such a case, it is doubtful whether the common law conspiracy offence would apply where there was an agreement between the source of the insider information and the party placing the wager, to use the information to obtain an advantage. So far as our research shows, the use of insider information in order to support a wager has not been treated as a fraudulent deception, or as giving rise to a conspiracy to defraud, where two or more people agree to use it for such a purpose.
- 5.44 By definition, additionally, the common law offence will not arise for consideration where there is only one person engaged in effecting the fix and placing the wager.
- 5.45 Further, there is the case where the purpose of the fix is to ensure a favourable position in an event which has qualifying rounds, or to assist another team or competitor in a "dead rubber" or "soft match" to avoid relegation or to preserve qualification for future events. Where the event is one which is known to be one upon which bets may be placed, but is not one in respect of which the parties intend to bet, a conspiracy to defraud offence would not seem to be available. In such a case the intended object of the agreement has nothing to do with the placing of a wager, and recklessness as to its impact on other persons would not seem to be enough to attract the offence.
- 5.46 In our view, having regard to the fact that fixing of events or contingencies in relation to wagering is a well recognised but unacceptable activity, there is no need to rely on a somewhat imprecise common law conspiracy offence. Since specific provision is made in the *Unlawful Gambling Act* (NSW) next considered, to deal with cheating, the obvious place for a "fixing" or manipulation offence involving fraud or collusion is within that Act⁷² or, alternatively, within the *Crimes Act 1900* (NSW).
- 5.47 As a final relevant observation for law enforcement purposes, it is our understanding that, since the penalty for the offence of conspiracy is at large rather than for a specified term of years, it would not qualify as an offence in respect of which telecommunications interception would be available.⁷³ This is also a practical problem in relation to some of the other substantive offences reviewed in this chapter, which carry a maximum sentence of less than 7 years imprisonment, as well as for any offence of conspiracy to commit those offences.

71. *Corporations Act 2001* (Cth) pt 7.10 div 3.

72. In this respect we agree with the observations of T B Hadden, "Conspiracy to Defraud" [1966] *Cambridge Law Journal* 248, 267 and 271 that specific provisions are likely to provide a more effective solution than the common law.

73. As permitted under the *Telecommunications (Interception and Access) Act 1979* (Cth).

The statutory cheating offence

New South Wales

5.48 As noted earlier, the *Unlawful Gambling Act 1998* (NSW) does contain a provision in relation to cheating in the context of lawful (but not unlawful) wagering. Relevantly it provides:

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.

Proceedings for an offence under s 18 are to be dealt with summarily before the Local Court,⁷⁴ a limitation that we note later is of considerable significance in relation to the availability of the telecommunications interception and surveillance powers that may be necessary to support an investigation.

5.49 The fact that the offence does not apply in relation to prohibited gambling gives rise to a potential diminution in its usefulness. Cheating, in order to contrive a contingency or to fix the outcome of an event, so as to support a wager placed in the illegal betting market, can have consequences for the other competitors (or owners), as well as for gamblers and bookmakers who engage in lawful gambling on that event or contingency. As the offence is presently framed, Police would be powerless to prosecute a player who is responsible for cheating to support a bet placed with an illegal betting operator located offshore.

5.50 We have not located any prosecutions in relation to the period July 2006 to June 2010⁷⁵ based on s 18 of the *Unlawful Gambling Act 1998* (NSW) or any judicial consideration of the provision.

5.51 There are some potential difficulties in its application. First, it is an element of the offence that the offender be “engaged in” a relevant form of gambling. This would not be a problem where the person who places or accepts the bet, and who is

74. *Unlawful Gambling Act 1998* (NSW) s 51(1). Note that s 18 is not an offence which, as a second or subsequent offence, may be prosecuted on indictment under s 51(2).

75. *Judicial Information Research System* (JIRS) statistics.

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responsible for conduct that would constitute cheating under the Act, is one and the same person.

- 5.52 The position is less clear, where the “fix” is effected by a player, or official, or other participant, who is not personally engaged in placing or accepting the wager. There may be some circumstances where such a person could be charged as a party to a conspiracy to commit the s 18 offence and, perhaps, as an accessory. However, in any such case it would be necessary to establish, in that party, the knowledge and intention required for such forms of liability.
- 5.53 The requirements in relation to conspiracy were identified earlier in this chapter.⁷⁶ For accessorial liability it is necessary, under current law, to show that an accessory knew the essential facts and circumstances giving rise to the relevant offence, that he or she intentionally provided encouragement or assistance to the principal offender for its commission, and that the principal in fact committed the offence.
- 5.54 In this respect, a potential issue could arise as to whether the principal could in fact be regarded as committing the offence where he or she was not actively involved both in placing or accepting the wager, and in effecting the “fix”, that is, unless the player or participant carrying out that act could be regarded as his or her agent.
- 5.55 Any difficulty in this respect is likely to be exacerbated where the bet is placed in an overseas market outside Australia, and the fixing of the outcome of the event or contingency occurs in Australia.
- 5.56 A further potentially unsatisfactory aspect of the section is the uncertain ambit of the expressions “fraudulent scheme or practice”, or “fraudulent trick or representation”. Although the section operates more happily in the context of games of chance, it is wide enough to bring wagering within its reach by reason of the fact that it applies to “any form of gambling”, an expression that is defined to include “betting or wagering”.⁷⁷
- 5.57 Its predecessor, which was of similar effect to s 17 of the *Gaming Act 1845* (UK), followed a somewhat different formula, in that it provided:

Whosoever by any fraud, unlawful device, or ill practice –

...

(c) in wagering on the event of any game, sport, pastime, or exercise,

wins from any person to himself or others any sum of money or valuable thing shall be deemed guilty of obtaining such money or valuable thing from such person by a false pretence with intent to cheat and defraud such person of the same, and being convicted thereof shall be punished accordingly.⁷⁸

- 5.58 This provision took its place in England and Wales alongside the *Theft Act 1968* (Eng) which made it an offence for a person dishonestly by deception to obtain the opportunity to win money by betting.⁷⁹ That provision was repealed when the *Fraud Act 2006* (UK) was introduced.

76. Para 5.21-5.47.

77. *Unlawful Gambling Act 1998* (NSW) s 4.

78. *Gaming and Betting Act 1912* (NSW) s 15.

79. *Theft Act 1968* (Eng) s 16(2)(c).

- 5.59 The expressions “fraud, unlawful device, or ill practice” were employed in the *Gaming Act 1845* (UK) are somewhat vague, and they attracted similar criticism to that offered in relation to the offence of conspiracy to defraud. An offence framed in these terms was also limited, in its application, by the requirement that by such conduct the offender wins “money or a valuable thing” and by the fact that it is not the fraud or ill practice that results in the win. Rather that is attributable to the conduct of the participant in the event. Its deficiencies in relation to wagering swindles were identified by the Law Commission of England and Wales in the several working papers which it has issued in relation to Fraud and Conspiracy to Defraud.⁸⁰
- 5.60 The current provision in NSW shares some of these difficulties in so far as it employs the vague expression “fraudulent” in its several subsections.
- 5.61 It also presents some problems for investigation of the offence by law enforcement agencies. With a maximum penalty of imprisonment for two years, an investigating agency would not be able to obtain a telecommunications interception warrant, since the *Telecommunications (Interception and Access) Act 1979* (Cth) provisions only apply to offences carrying a maximum penalty of at least seven years imprisonment.⁸¹ Furthermore, a surveillance device warrant would be unavailable, since the offence is not one that may be prosecuted on indictment, or that is relevantly prescribed by regulation.⁸² A covert search warrant would be similarly unavailable since the offence is not, amongst other things, a serious indictable offence.⁸³

Other Australian jurisdictions

- 5.62 The provision currently in force in Victoria, contained in the *Gambling Regulation Act 2003* (Vic),⁸⁴ operates similarly to the provision in the now repealed *Gaming and Betting Act 1912* (NSW) and faces similar problems. Of greater interest however, is the specific cheating provisions that are focussed on wagers placed through a betting exchange. First, there are provisions that:
- prohibit a person from offering or accepting a bet through a betting exchange, where that person is a direct participant in the brokered betting event to which the bet relates;⁸⁵ and
 - prohibit the owner of a horse or greyhound from offering or accepting a bet, through a betting exchange, that such horse or greyhound will **fail** to win or place (in any of the several combinations identified).⁸⁶
- 5.63 Secondly, there is an anti-cheating provision as follows:

80. England and Wales, Law Commission, *Conspiracy to Defraud*, Working Paper 56 (1974) [22], [66]; *Conspiracy to Defraud*, Working Paper 104 (1987) Appendix B; *Conspiracy to Defraud*, Report 228 (1994) [4.53]; *Fraud*, Report 276 (2002) [4.48]-[4.52].

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

82. *Surveillance Devices Act 2007* (NSW) s 17 and s 4(1) (definition of “relevant offence”).

83. *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 46A(1)(b), s 46A(2).

84. *Gambling Regulation Act 2003* (Vic) s 2.3.5, a provision that is yet to be tested; Victorian Commission for Gambling Regulation, *Submission PCG21*.

85. *Gambling Regulation Act 2003* (Vic) s 4.3A.34H.

86. *Gambling Regulation Act 2003* (Vic) s 4.3A.34J and s 4.3A.34K.

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A direct participant in a brokered betting event, an indirect participant in a brokered betting event, or an associate of a direct participant or indirect participant in a brokered betting event, must not offer or accept a bet, through a betting exchange, of a kind that could reasonably be taken to constitute an inducement for—

- (a) a human competitor in the event—
 - (i) to withdraw from, become disqualified for, or fail to participate in the event; or
 - (ii) not to participate in the event to the best of the human competitor's ability; or
 - (iii) to interfere with or jeopardise, contrary to the rules of the event, the performance of other human competitors, or any non-human competitors, in the event; or ...
- (b) an official in the event—
 - (i) not to officiate in the event impartially; ...

Penalty: 600 penalty units.⁸⁷

An “indirect participant” is defined to be a person, other than a participant, who is capable of influencing or deciding the outcome of the event or contingency, while “official” is defined to include a marshal, scorer, steward, timekeeper and umpire.⁸⁸ Similar provisions are contained in the *Gaming Control Act 1993* (Tas).⁸⁹

5.64 Some of the other States and Territories have adopted a relatively simple and broad provision of the kind seen in the *Lottery and Gaming Act 1936* (SA) as follows:

No person shall win from any other person any money or valuable thing by fraud or any other unlawful means—

...

- (c) in betting on the event of any game, sport, pastime, or exercise.

Maximum penalty: \$10 000 or imprisonment for 2 years.⁹⁰

and in the *Wagering Act 1998* (Qld) as follows:

- (1) A person must not, in relation to approved wagering, dishonestly obtain a benefit by—
 - (a) an act, practice or scheme; or
 - (b) the use of a thing.

Maximum penalty—200 penalty units or 2 years imprisonment.

87. *Gambling Regulation Act 2003* (Vic) s 4.3A.34I.

88. *Gambling Regulation Act 2003* (Vic) s 4.3A.34A.

89. *Gaming Control Act 1993* (Tas) s 76ZDM.

90. *Lottery and Gaming Act 1936* (SA) s 49. This provision however faces the difficulty noted earlier, that it would seem to require that the party carrying out the manipulation of the event be the person who places the bet; and additionally that it requires that person to place a winning bet.

- (2) For subsection (1), a person obtains a benefit if the person obtains for the person or another person, or induces a person to deliver, give or credit to the person or another person, any money, benefit, advantage, valuable consideration or security.⁹¹

5.65 A somewhat more comprehensive provision can be seen in the *Gaming and Wagering Commission Act 1987* (WA) as follows:

- (1) Any person who by deceit or any fraudulent means in or in relation to a game, lottery, sport, race, exercise or other contest or pastime —
- (a) obtains or attempts to obtain any prize, or any money, property or benefit;
 - (b) gains or attempts to gain a benefit, pecuniary or otherwise, for any person;
 - (c) causes or attempts to cause a detriment, pecuniary or otherwise, to any person; or
 - (d) induces or attempts to induce another —
 - (i) to deliver property to any person;
 - (ii) to do any act which he is lawfully entitled to abstain from doing; or
 - (iii) to omit to do any act which he is lawfully entitled to do,
- commits an offence.

Penalty: \$10 000, or imprisonment for 2 years, or both.

- (2) A person shall be taken to have employed fraudulent means if he cheats or otherwise employs any wrongful practice, trick, scheme or device —
- (a) as to the manner of play or the rules applicable;
 - (b) in regard to any player, or any gaming equipment, instrument of gaming, entrant or participant;
 - (c) in bearing a part in the stakes, wagers or a venture; or
 - (d) in, or in respect of, wagering on the event, or on the sides, or on the chances, of entrants or participants, in, in relation to, or of the contest or pastime.⁹²

5.66 The provisions in the ACT and Northern Territory gambling legislation employ similar language to that of the NSW Act, in creating an offence of obtaining or attempting to obtain any money or advantage by the use of “a fraudulent trick, device, sleight of hand or representation”, or by the use of “a fraudulent scheme or practice”.⁹³

91. *Wagering Act 1998* (Qld) s 217.

92. *Gaming and Wagering Commission Act 1987* (WA) s 44.

93. *Gaming Control Act* (NT) s 69; *Unlawful Gambling Act 2009* (ACT) s 23.

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5.67 The *Tasmanian Criminal Code* (Tas) contains a general cheating provision as follows:

Any person who, with intent to defraud, by means of any trick or device, obtains from any person, or induces any person to deliver to any person, anything capable of being stolen, is guilty of a crime.

Charge: Cheating.⁹⁴

5.68 Additionally, the *Gaming Control Act 1993* (Tas), which by definition applies to wagering, as well as gaming in the sense in which “gaming” is used in this Consultation Paper, creates a specific cheating offence, in addition to a general offence which applies where a person “dishonestly by a scheme or practice” induces, amongst other things, a licensed person to deliver, give or credit to that person, or to another person, any money, benefit, advantage etc.⁹⁵ The specific cheating offence is as follows:

- (4) A person must not –
- (a) cheat in a gaming activity; or
 - (b) do anything for the purposes of enabling or assisting another person to cheat in a gaming activity.

Penalty: Fine not exceeding 10 000 penalty units or imprisonment for a term not exceeding 4 years, or both.

- (5) For the purposes of subsection (4), it is immaterial whether a person who cheats in a gaming activity –
- (a) improves the person's chances of winning anything; or
 - (b) wins anything.
- (6) Without prejudice to the generality of subsection (4), cheating in a gaming activity may, in particular, consist of actual or attempted deception or interference in connection with –
- (a) the process by which the gaming activity is conducted; or
 - (b) a real or simulated game, race or other event or process to which the gaming activity relates.⁹⁶

United Kingdom

5.69 Without attempting an exhaustive international coverage of the cheating offence, in this context, we next draw attention to the provision that has been introduced in the United Kingdom and that deals directly with interference in the context of sporting events.⁹⁷ In this respect, the *Gambling Act 2005* (UK) provides:

- (1) A person commits an offence if he—

94. *Criminal Code* (Tas) s 252.

95. *Gaming Control Act 1993* (Tas) s 165(1).

96. *Gaming Control Act 1993* (Tas) s 165(4)-(6).

97. However, see also *Criminal Code*, RSC 1985 (Canada), and *Gaming and Lotteries Act 1956* (Ireland) for other examples of cheating provisions.

- (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.⁹⁸
- 5.70 It is noted that the Parry Report recommended that the definition of cheating in the Act be reviewed and, if appropriate, given greater clarity.⁹⁹ It is understood that no such review has been undertaken.
- 5.71 Several of the preliminary submissions¹⁰⁰ suggested, albeit with some reservations as to its adequacy, that this provision would be an improvement on the offence currently contained in the *Unlawful Gambling Act 1998* (NSW).¹⁰¹ As was noted in the preliminary submissions, it is not clear that it goes far enough, for example, in not extending to the case where the person placing the bet employs insider information obtained from bribing a player or official, who is unaware of the intended bet. It might not catch deliberate underperformance by a player, although this would depend on the manner in which the expression “actual or attempted deception” is interpreted by a Court.
- 5.72 Later in this chapter we consider legislation that has been introduced in South Africa that is directed at cheating in sport, but is more appropriately categorised as involving a secret commission or bribery offence.

Application to the wagering context

- 5.73 It can be seen from this review that a number of the offences depend on the relevant conduct being characterised as falling within the somewhat vague concepts of a “fraudulent trick, scheme or practice”, an “ill practice”, or as involving “fraudulent means”. It is only in the Western Australian, Tasmanian and UK legislation, that more specific content is given to the conduct that will give rise to an offence in the context of immediate concern.
- 5.74 Consideration of the several Acts mentioned raises the possibility of adopting a modified version of s 18 of the *Unlawful Gambling Act 1998* (NSW), that would more

98. *Gambling Act 2005* (UK) s 42(1)-(6).

99. R Parry, *Report of the Sports Betting Integrity Panel* (UK Gambling Commission, 2010) [1.1].

100. Australian Internet Bookmakers Association, *Submission PCG18*; Betfair Australia, *Submission PCG11*; BetSafe, *Submission PCG8*; Wesley Community Legal Service, *Submission PCG7* and Australian Sports Commission, *Submission PCG13*.

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

precisely focus on conduct directed at the manipulation of outcomes, or of contingencies, in the context of wagering on sporting and other events, and that would overcome the potential difficulties of the current provision.

The statutory fraud offence

New South Wales

5.75 Section 192E of the *Crimes Act 1900* (NSW) makes provision for an offence of fraud as follows:

- (1) A person who, by any deception, dishonestly:
 - (a) obtains property belonging to another, or
 - (b) obtains any financial advantage or causes any financial disadvantage,is guilty of the offence of fraud.

Maximum penalty: Imprisonment for 10 years.

5.76 For the purpose of this Act “dishonest” is defined to mean:

Dishonest according to the standards of ordinary people and known by the defendant to be dishonest according to the standards of ordinary people.¹⁰²

In this respect, the Act further provides:

In a prosecution for an offence, dishonesty is a matter for the trier of fact.¹⁰³

5.77 The expression “deception” is defined to mean:

Any deception, by words or other conduct, as to fact or as to law, including:

- (a) a deception as to the intentions of the person using the deception or any other person, ...¹⁰⁴

5.78 The Act further provides that:

A person does not commit an offence under this Part by a deception unless the deception was intentional or reckless.¹⁰⁵

5.79 The expression “obtain a financial advantage” is defined to include:

- (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,

102. *Crimes Act 1900* (NSW) s 4B(1).

103. *Crimes Act 1900* (NSW) s 4B(2).

104. *Crimes Act 1900* (NSW) s 192B(1).

105. *Crimes Act 1900* (NSW) s 192B(2).

whether the financial advantage is permanent or temporary.¹⁰⁶

5.80 The expression “cause a financial disadvantage” is defined to mean:

- (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.¹⁰⁷

5.81 Critical for an application of this section, in the present context, is whether or not the fixing of the outcome of an event, or of a contingency within the event, constitutes a “deception” as to a fact within the meaning of the Act; and, if so, whether there is a causative link between the deception and the obtaining of a financial advantage or the causing of a financial disadvantage.¹⁰⁸

5.82 The question which arises is whether the “deception” required for this section could be said to arise from an assumption, formed by a bookmaker, when approached to accept a bet, that the event to which the bet relates will be played, or officiated, according to the rules of the game; or that the teams or players individually will be engaged in a way that involves an honest test of their skill and ability; or that it will be free from unwanted disruption or interference by curators, ground staff or others capable of manipulating its outcome or of any contingency on the run. It would need to be implicit that the bookmaker, in such a case, would not have been expected to accept the wager on the event or contingency had he or she known what was intended in relation to it.

5.83 It is possible that a case could be made out on this basis, for example, by analogy to the case of a restaurant patron whose conduct, in ordering a meal and sitting in the restaurant, gives rise to an expectation or assumption or belief, on the part of the proprietor of the restaurant, arising out of customary behaviour or convention, that the patron is an ordinary, honest citizen who has the means and intention to pay for the meal. In such a case, there is precedent for finding the patron guilty of dishonestly obtaining a pecuniary advantage by a deception if he or she subsequently leaves without paying for the meal.¹⁰⁹

5.84 This does, however, assume that there can be a deception by conduct, on the basis of an unconscious expectation or assumption that is attributed to the restaurant proprietor or, in the present context, the bookmaker accepting the wager, and that is generated by the conduct of another.

5.85 Some concerns have been expressed, in this respect, in relation to the similar provision that was formerly contained in the *Theft Act 1968* (Eng),¹¹⁰ in particular as to whether it is appropriate for there to be a form of “constructive deception”, or a deception arising from silence in circumstances where there is no fiduciary or other obligation of disclosure.¹¹¹

106. *Crimes Act 1900* (NSW) s 192D(1).

107. *Crimes Act 1900* (NSW) s 192D(2).

108. The need for a causative link has been confirmed in relation to similar offences: *R v Ho* (1989) 39 A Crim R 145, 147; *R v Clarkson* (1987) VR 962, 980; *R v King* [1987] QB 547.

109. *DPP v Ray* [1974] AC 370 and see also *R v Rai* [2000] 1 Cr App R 242.

110. *Theft Act 1968* (Eng) s 15(4).

111. See A Smith, “The Idea of Criminal Deception” [1982] *Criminal Law Review* 721.

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- 5.86 The case for an application of the provision might be stronger in relation to a participant, or official, or curator, for example, who places the bet and who is personally responsible for effecting the fix or manipulation that ensures the success of the wager. It is far less clear in the case of a gambler who, becoming aware of a “fix”, but not being responsible for it, or being party to any conspiracy to bring it about, places a bet on the relevant event or contingency – a likely occurrence in a sports betting environment in which the news of a “fix” can spread quickly. The situation in this respect becomes even more cloudy where the motive for the “fix” is not associated with wagering, but is for one of the other reasons mentioned earlier,¹¹² but nevertheless it is one of which advantage is taken by those with knowledge of the arrangements.
- 5.87 Of particular concern obviously is the case of a gambler who makes arrangements for the fix to be effected by an official, or player, or curator, or other person able to manipulate the outcome of the event, or contingency, and who then places a bet. What would be critical for a charge under this section (whether as a principal or accessory, or alternatively through a count of conspiracy) is a determination whether any false expectation or assumption as to the regularity of the event can be attributed to the conduct of that person in *placing or laying the bet*, or whether the conduct is to be taken as extending to anything which he or she has done, or does, to induce or encourage the participant, official or curator to manipulate the outcome.
- 5.88 The potential complication that arises in this context, which is not present, for example, in the restaurant case, is that the placing of the bet would not of itself seem to amount to a deception, as that expression is commonly understood, that is, unless it conveys an expectation or assumption that the gambler does *not intend* to arrange any manipulation of, or interference with, the event, that might support the wager. Even if this could be implied, despite the stretch of the concept of constructive deception that this involves, it would not seem to avail in the case where there was no such plan or arrangement on foot until some time after the placing of the bet.
- 5.89 Apart from possible difficulties in the application of the provision in the context of an organised “fix”, it is even more doubtful whether the inappropriate use of confidential insider information (concerning such matters as team selection or tactics, or player injury) that could affect the outcome of a wager, would constitute a deception in this context. As noted earlier, the “insider trading” provisions under the *Corporations Act* are confined to dealings in financial markets, and absent any provision defining a deception, for example, as including a failure to correct a false impression which one party knows the other to be under, it would not seem that the *Crimes Act 1900* (NSW) offence of fraud could apply.
- 5.90 It may be noted that the s 192E offence carries a much heavier maximum penalty than the *Unlawful Gambling Act 1998* (NSW) offence, although there clearly is a potential for their overlap, if the possible uncertainties in their reach identified above are resolved. Although this offence carries a maximum penalty of imprisonment for 10 years and, therefore, meets the requirement of a maximum penalty of at least seven years for the issue of a telecommunications interception warrant,¹¹³ some of the other requirements, for example, that the offence be one involving “serious fraud”¹¹⁴ would potentially limit its use. Similarly, a covert search warrant may not be available since, although the offence is an indictable offence that attracts a

112. Para 3.6.

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

114. *Telecommunications (Interception and Access) Act 1979* (Cth) s 5D(2)(b)(v).

maximum penalty of 10 years, it may not meet the other requirements for the issue of such a warrant.¹¹⁵ However, a surveillance device warrant would be available since the offence is one that may be prosecuted on indictment.¹¹⁶

- 5.91 The essential concern with this provision is that it is not specifically directed to cheating in the context of gambling on sporting or other events, and does not deal with the fact that the concept of deception would need to do work that does not sit comfortably with the meaning of that term in its ordinary use.
- 5.92 It is, however, noted that the extended definitions of “obtaining a financial advantage” and “causing a financial disadvantage” to include inducing a third person (the fixer) to do something, that results in a relevant advantage or disadvantage, may be of assistance in catching some cases.

Other Australian jurisdictions

- 5.93 Most of the Australian jurisdictions have a fraud offence that similarly depends upon the offender dishonestly obtaining a benefit or financial advantage by a deception or deceit, and that defines deception in similar terms to the NSW provision.¹¹⁷
- 5.94 The *Criminal Code* (Qld) provides relevantly:

A person who dishonestly—

...

(d) gains a benefit or advantage, pecuniary or otherwise, for any person; or

(e) causes a detriment, pecuniary or otherwise, to any person; or

...

(h) makes off, knowing that payment on the spot is required or expected for any property lawfully supplied or returned or for any service lawfully provided, without having paid and with intent to avoid payment;

commits the crime of fraud.¹¹⁸

- 5.95 This provision, in subsection (h), gives statutory force to the “constructive deception” that underlies the restaurant case, and it could be used in a modified form to overcome the jurisprudential difficulties involved in that concept.
- 5.96 The Western Australia provision is in similar terms, save that it applies in the case of a person who, “with intent to defraud, by deceit or any fraudulent means”, amongst other things, gains a benefit for any person or causes a detriment to any person.¹¹⁹

115. *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 46A(1)(b), and s 46A(2).

116. *Surveillance Devices Act 2007* (NSW) s 17 and s 4(1) (definition of “relevant offence”).

117. For example, *Criminal Law Consolidation Act 1935* (SA) s 130, s 139; *Crimes Act 1958* (Vic) s 81-82; *Criminal Code* (ACT) s 325, s 332; *Criminal Code* (Tas) s 252A.

118. *Criminal Code* (Qld) s 408C(1).

119. *Criminal Code* (WA) s 409.

Overseas provisions: New Zealand and United Kingdom

5.97 The New Zealand fraud offence is slightly more detailed in the definition of its reach. It provides relevantly:

- (1) Every one is guilty of obtaining by deception or causing loss by deception who, by any deception and without claim of right,—
 - (a) obtains . . . any pecuniary advantage, benefit, or valuable consideration, directly or indirectly; or
 - ...
 - (d) causes loss to any other person.
- (2) In this section, deception means—
 - (a) a false representation, whether oral, documentary, or by conduct, where the person making the representation intends to deceive any other person and—
 - (i) knows that it is false in a material particular; or
 - (ii) is reckless as to whether it is false in a material particular; or
 - (b) an omission to disclose a material particular, with intent to deceive any person, in circumstances where there is a duty to disclose it; or
 - (c) a fraudulent device, trick, or stratagem used with intent to deceive any person.¹²⁰

5.98 The *Fraud Act 2006* (UK) makes provision for two relevant offences of fraud. The first is dishonestly making a false representation:

- (1) A person is in breach of this section if he—
 - (a) dishonestly makes a false representation, and
 - (b) intends, by making the representation—
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.
- (2) A representation is false if—
 - (a) it is untrue or misleading, and
 - (b) the person making it knows that it is, or might be, untrue or misleading.
- (3) “Representation” means any representation as to fact or law, including a representation as to the state of mind of—
 - (a) the person making the representation, or
 - (b) any other person.

120. *Crimes Act 1961* (NZ) s 240.

- (4) A representation may be express or implied.
- (5) For the purposes of this section a representation may be regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).¹²¹

The second offence is dishonestly failing to disclose information:

A person is in breach of this section if he—

- (a) dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and
- (b) intends, by failing to disclose the information—
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.¹²²

5.99 The New Zealand and United Kingdom provisions deal in part with the constructive deception dilemma in providing, albeit in a limited form, for deception arising from non-disclosure. Otherwise the several provisions mentioned appear to face similar issues to s 192E of the *Crimes Act 1900* (NSW). In the present context, the application of these sections is likely to be limited, without some greater specificity in the definition of deception that would include event or outcome fixing. In any event, an issue arises as to whether the form of conduct involved in the wagering context would be better dealt with by way of an expanded cheating offence under the *Unlawful Gambling Act 1998* (NSW), or by a specific offence that could be added to Part 4AA of the *Crimes Act 1900* (NSW).

The statutory secret commissions (bribery) offence

New South Wales

5.100 The final statutory offence which might have a potential application is that contained in the *Crimes Act 1900* (NSW) as follows:

249B Corrupt commissions or rewards

- (1) If any agent corruptly receives or solicits (or corruptly agrees to receive or solicit) from another person for the agent or for anyone else any benefit:
 - (a) as an inducement or reward for or otherwise on account of:
 - (i) doing or not doing something, or having done or not having done something, or ...

in relation to the affairs or business of the agent's principal ...

the agent is liable to imprisonment for 7 years.

121. *Fraud Act 2006* (UK) s 2.

122. *Fraud Act 2006* (UK) s 3.

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(2) If any person corruptly gives or offers to give to any agent, or to any other person with the consent or at the request of any agent, any benefit:

(a) as an inducement or reward for or otherwise on account of the agent's:

(i) doing or not doing something, or having done or not having done something, or ...

in relation to the affairs or business of the agent's principal ...

the first mentioned person is liable to imprisonment for 7 years.

(3) For the purposes of subsection (1), where a benefit is received or solicited by anyone with the consent or at the request of an agent, the agent shall be deemed to have received or solicited the benefit.¹²³

5.101 The expression "agent" is given a wide definition,¹²⁴ for the purpose of the provision which effectively makes it an offence:

- for a person (A) corruptly to give, or to offer to give, a benefit to a person (B), or
- for B corruptly to receive or solicit (or corruptly to agree to receive or solicit) a benefit from A,

in either case, as an inducement or reward for, or on account of, B doing or not doing something, or for having done or not done something, in relation to the affairs or business of B's principal (Person C).

5.102 Classically the decided cases have concerned the payment of secret commissions, or bribes by a person seeking some advantage (Person A), to a public official or employee (Person B), in order to secure a contract with, or some other benefit from, a statutory organisation or a company (Person C), in circumstances where B is in a position, by reason of his or her employment by C, to influence that event, or to act in a way contrary to his or her duty.

5.103 It is not easy, however, for the provision to be applied in the context of a case where A is a gambler wishing to place a bet with a bookmaker, and B is a participant in an event, who receives money from A, for arranging to fix the outcome of that event, or of a contingency within it, so as to assist a betting coup planned by A.

5.104 For example, where the event involves a head-to-head contest between two participants, one of whom is B, that person does not have a principal C, in relation to whose affairs or business B would do or not do something in return for the reward or inducement. This would seem to preclude an application of the provision, for example, in the case of a boxing or tennis match, or in any other non team event.

5.105 B might conceivably be regarded as an "agent" of a team or club, involved in the event, when he or she is employed by or selected to play for that team or club. In order to make out an offence it would still be necessary to show that B received or solicited (or agreed to receive or solicit) the benefit, as an inducement or reward of the kind mentioned, to do or not do something, "in relation to the affairs or business" of C.

123. *Crimes Act 1900* (NSW) s 249B, replacing the provisions contained in the *Secret Commissions Prohibition Act 1919* (NSW), which has been repealed.

124. *Crimes Act 1900* (NSW) s 249A.

- 5.106 It is acknowledged that the words “in relation to the affairs or business”, in this and in similar provisions, are to be widely construed,¹²⁵ and might apply to the kind of case in question. However, it is at least arguable that the section was not intended to deal with this kind of case. As noted earlier the authorities dealing with similar secret commission provisions have almost universally involved cases where the purpose of the secret commission given by A to B has been to secure B’s assistance in arranging for B’s principal (C), to show favour, or to forbear from showing disfavour, in relation to A’s dealings with C.
- 5.107 In any event, the word “corruptly”, when employed in a section of this type, is potentially ambiguous in its application, and its use has been criticised on that account.¹²⁶ It has been interpreted as meaning “purposefully doing an act which the law forbids as tending to corrupt”, in a section that is aimed at preventing agents and public servants from being put in positions of temptation. Alternatively it has been held to mean acting with some wrongful intention.¹²⁷ In either formulation it involves a question of fact for the jury.¹²⁸
- 5.108 Consideration has been given in the past to substituting the word “dishonestly” for corruptly, but this has also been criticised.¹²⁹ However “dishonesty” has now been given a statutory definition in the *Crimes Act 1900* (NSW).¹³⁰
- 5.109 An illustration of a case where a secret commission provision was applied in a sporting context and resulted in convictions of an “agent”, and of others associated with him, is that of *R v Potter*.¹³¹ It involved the conduct of Potter, the chief steward of the Greyhound Racing Control Board (later the Greyhound Racing Authority) who, in return for payments made respectively by a trainer and a gambler, subverted the procedures which were in place for testing winning greyhounds for performance enhancing drugs. This clearly was a case in which Potter (B), as an agent of the Board or Authority (C), received a payment from another person (A) as an inducement or reward for doing something (or for not doing his duty) in relation to the affairs of C.
- 5.110 Similar reasoning might apply where an official, who is employed by a sporting organisation to referee a game, receives a secret commission in return for deliberately misapplying the rules of the game in order to bring about an outcome or contingency, upon which the person paying the commission has placed a wager. It might similarly apply where a payment is made by a gambler, to a curator employed by a sporting arena, in return for deliberately doing something that is contrary to the curator’s duty, resulting in a contrived outcome on which the gambler has placed a wager.
- 5.111 With the one exception noted above,¹³² our research to date has not found any case of sports fixing, in the context of wagering, where a prosecution has been successfully brought in reliance on s 249B of the *Crimes Act 1900* (NSW) or of any

125. *R v Morgan* (1970) 3 All ER 1053, 1058; *R v Gallagher* [1986] VR 219, 226.

126. England and Wales, Law Commission, *Legislating the Criminal Code: Corruption*, Report 248 (1997) [2.30]-[2.31] and [5.65].

127. *R v Gallagher* [1986] VR 219.

128. *R v Wellburn* (1979) 69 Cr App R 254, 264-265.

129. England and Wales, Law Commission, *Legislating the Criminal Code: Corruption*, Consultation Paper 145 (1997) [8.30]-[8.39].

130. *Crimes Act 1900* (NSW) s 4B.

131. *R v Potter* [2005] NSWCCA 26.

132. *R v Potter* [2005] NSWCCA 26.

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comparable provision in force in the United Kingdom, or in the other States or Territories.

- 5.112 Again, the question arises whether, in the gambling context, it should be necessary to place reliance on the secret commissions offence contained in the *Crimes Act 1900* (NSW), rather than on an appropriately framed provision that could either be added to the *Unlawful Gambling Act 1998* (NSW) or included in a specific cheating offence within the *Crimes Act 1900* (NSW).
- 5.113 As we later note, there is a specific provision in NSW that establishes bribery offences in relation to key officials associated with the Casino.¹³³
- 5.114 It may be noted that, specific bribery offences exist:
- in Queensland in relation to officials under the various gambling statutes in that State;¹³⁴
 - in the Northern Territory in relation to officials holding office under the *Gaming Machine Act* (NT);¹³⁵
 - in Victoria in relation to a category of people holding office under the *Gambling Regulation Act 2003* (Vic);¹³⁶
 - in South Australia in relation to licensees, managers and employees under the *Gaming Machines Act 1992* (SA).¹³⁷
- 5.115 These offences exist in Victoria, and in Queensland, alongside the general secret commission offence that is contained in the primary criminal legislation of those States.¹³⁸

United Kingdom

- 5.116 The United Kingdom has enacted the *Bribery Act 2010* (UK), which provides, on its commencement, for the repeal of the *Prevention of Corruption Act 1906* (UK) and *Prevention of Corruption Act 1916* (UK). Its provisions, which are set out below in some detail, are of interest in providing a comprehensive statement of the elements of the offence, and in legislating for an expectation test, that would also deal with the assumption issue considered earlier in relation to “constructive deception”.
- 5.117 The Act specifies the circumstances in which an offence would be committed, as follows:

1 Offences of bribing another

- (1) A person (“P”) is guilty of an offence if either of the following cases applies.

133. *Casino Control Act 1992* (NSW) s 150. See **para 5.169-5.171**.

134. *Casino Control Act 1982* (Qld) s 111; *Wagering Act 1998* (Qld) s 220; *Interactive Gambling (Player Protection) Act 1998* (Qld) s 172; *Lotteries Act 1997* (Qld) s 143; *Keno Act 1996* (Qld) s 158; *Charitable and Non-Profit Gaming Act 1999* (Qld) s 105.

135. *Gaming Machine Act* (NT) s 173.

136. *Gambling Regulation Act 2003* (Vic) s 10.5.18.

137. *Gaming Machines Act 1992* (SA) s 79.

138. *Crimes Act 1958* (Vic) s 176; *Criminal Code* (Qld) ch 13.

- (2) Case 1 is where—
 - (a) P offers, promises or gives a financial or other advantage to another person, and
 - (b) P intends the advantage—
 - (i) to induce a person to perform improperly a relevant function or activity, or
 - (ii) to reward a person for the improper performance of such a function or activity.
- (3) Case 2 is where—
 - (a) P offers, promises or gives a financial or other advantage to another person, and
 - (b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.
- (4) In case 1 it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned.
- (5) In cases 1 and 2 it does not matter whether the advantage is offered, promised or given by P directly or through a third party.

2 Offences relating to being bribed

- (1) A person (“R”) is guilty of an offence if any of the following cases applies.
- (2) Case 3 is where R requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by R or another person).
- (3) Case 4 is where—
 - (a) R requests, agrees to receive or accepts a financial or other advantage, and
 - (b) the request, agreement or acceptance itself constitutes the improper performance by R of a relevant function or activity.
- (4) Case 5 is where R requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by R or another person) of a relevant function or activity.
- (5) Case 6 is where, in anticipation of or in consequence of R requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly—
 - (a) by R, or
 - (b) by another person at R's request or with R's assent or acquiescence.
- (6) In cases 3 to 6 it does not matter—

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- (a) whether R requests, agrees to receive or accepts (or is to request, agree to receive or accept) the advantage directly or through a third party,
 - (b) whether the advantage is (or is to be) for the benefit of R or another person.
- (7) In cases 4 to 6 it does not matter whether R knows or believes that the performance of the function or activity is improper.
- (8) In case 6, where a person other than R is performing the function or activity, it also does not matter whether that person knows or believes that the performance of the function or activity is improper.

5.118 By way of further definition the Act provides:

3 Function or activity to which bribe relates

- (1) For the purposes of this Act a function or activity is a relevant function or activity if—
- (a) it falls within subsection (2), and
 - (b) meets one or more of conditions A to C.
- (2) The following functions and activities fall within this subsection—
- (a) any function of a public nature,
 - (b) any activity connected with a business,
 - (c) any activity performed in the course of a person's employment,
 - (d) any activity performed by or on behalf of a body of persons (whether corporate or unincorporate).
- (3) Condition A is that a person performing the function or activity is expected to perform it in good faith.
- (4) Condition B is that a person performing the function or activity is expected to perform it impartially.
- (5) Condition C is that a person performing the function or activity is in a position of trust by virtue of performing it.
- (6) A function or activity is a relevant function or activity even if it—
- (a) has no connection with the United Kingdom, and
 - (b) is performed in a country or territory outside the United Kingdom.
- (7) In this section “business” includes trade or profession.

4 Improper performance to which bribe relates

- (1) For the purposes of this Act a relevant function or activity—
- (a) is performed improperly if it is performed in breach of a relevant expectation, and

- (b) is to be treated as being performed improperly if there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation.
- (2) In subsection (1) “relevant expectation”—
- (a) in relation to a function or activity which meets condition A or B, means the expectation mentioned in the condition concerned, and
 - (b) in relation to a function or activity which meets condition C, means any expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises from the position of trust mentioned in that condition.
- (3) Anything that a person does (or omits to do) arising from or in connection with that person’s past performance of a relevant function or activity is to be treated for the purposes of this Act as being done (or omitted) by that person in the performance of that function or activity.

5 Expectation test

- (1) For the purposes of sections 3 and 4, the test of what is expected is a test of what a reasonable person in the United Kingdom would expect in relation to the performance of the type of function or activity concerned.
- (2) In deciding what such a person would expect in relation to the performance of a function or activity where the performance is not subject to the law of any part of the United Kingdom, any local custom or practice is to be disregarded unless it is permitted or required by the written law applicable to the country or territory concerned.
- (3) In subsection (2) “written law” means law contained in—
- (a) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned, or
 - (b) any judicial decision which is so applicable and is evidenced in published written sources.

5.119 It is understood that the Pakistani cricketers, who are alleged to have been involved in the no-ball spot fixing affair during the 2010 Lords test, have been charged with conspiracy to commit an offence under the enlarged s 42 of the *Gambling Act 2005* (UK); and with conspiracy to commit an offence under the *Prevention of Corruption Act 1906* (UK) (which was in force at the time of the relevant events, but which will be replaced by the *Bribery Act 2010* (UK)); but not with a conspiracy to defraud bookmakers, an offence which would require proof that the alleged actions were linked to betting on the contingency.

5.120 Whether the prosecution will succeed on either head of criminality cannot be known at this stage. However, it does appear that the *Bribery Act 2010* (UK) provisions would provide a better foundation for the second form of conspiracy, than that provided by the *Prevention of Corruption Act 1906* (UK), the shortcomings of which were identified by the Law Commission of England and Wales in its Report on Corruption.¹³⁹

139. England and Wales, Law Commission, *Legislating the Criminal Code: Corruption*, Report 248 (1997).

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- 5.121 By way of comparison, the party who was one of the organisers of the plot to cause an abandonment of the premier division football match, by turning off the floodlights once the critical goal was scored,¹⁴⁰ was sentenced for the offence of conspiracy to cause a public nuisance, the plea to which was accepted in discharge of an indictment charging him with conspiracy to defraud.¹⁴¹

South Africa

- 5.122 Even more specific for the present context, is the solution adopted in South Africa by way of the *Prevention and Combating of Corrupt Activities Act 2004* (Sth Africa), which creates a general offence of corruption,¹⁴² as well as specific offences in respect of corrupt activities relating to sporting events,¹⁴³ and in respect of corrupt activities relating to gambling or games of chance.¹⁴⁴

- 5.123 The offence in relation to sporting events is as follows:

Any person who, directly or indirectly-

- (a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of that other person or of another person; or
- (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person-
 - (i) in return for-
 - (aa) engaging in any act which constitutes a threat to or undermines the integrity of any sporting event, including, in any way, influencing the run of play or the outcome of a sporting event; or
 - (bb) not reporting the act contemplated in this section to the managing director, chief executive officer or to any other person holding a similar post in the sporting body or regulatory authority concerned or at his or her nearest police station; or
 - (ii) as a reward for acting as contemplated in subparagraph (i): or
- (c) carries into effect any scheme which constitutes a threat to or undermines the integrity of any sporting event, including, in any way, influencing the run of play or the outcome of a sporting event, is guilty of the offence of corrupt activities relating to sporting events.¹⁴⁵

- 5.124 The offence in relation to gambling and games of chance is to the same effect as that concerned with corruption in relation to sporting events.

140. Para 3.12.

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

142. *Prevention and Combating of Corrupt Activities Act 2004* (Sth Africa) s 3.

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

144. *Prevention and Combating of Corrupt Activities Act 2004* (Sth Africa) s 16.

145. *Prevention and Combating of Corrupt Activities Act 2004* (Sth Africa) s 15; a similar offence exists in relation to corrupt activities relating to gambling games and games of chance *Prevention and Combating of Corrupt Activities Act 2004* (Sth Africa) s 6.

- 5.125 An extended definition is given of the term “gratification” to include money as well as virtually any conceivable benefit, favour or forbearance.¹⁴⁶
- 5.126 The expression “sporting event” is defined as follows:
- “sporting event” means any event or contest in any sport, between individuals or teams, or in which an animal competes, and which is usually attended by the public and is governed by rules which include the constitution, rules or code of conduct of any sporting body which stages any sporting event or of any regulatory body under whose constitution, rules or code of conduct the sporting event is conducted;¹⁴⁷
- 5.127 The expression “gambling game” has the same meaning as that given to the expression by the *National Gambling Act 1966* (Sth Africa); in substance it includes games played with cards and dice, or gambling involving machines and the various table games that are well known in most casinos.
- 5.128 The expression “game of chance” includes a lottery, lotto, numbers game, scratch game, sweepstake or sports pool.¹⁴⁸
- 5.129 For the purposes of the Act, extended definitions are given concerning whether a person has “knowledge of a fact” or “ought reasonably to have known or suspected a fact” and also concerning what constitutes an acceptance of, or an agreement or offer to accept a gratification.¹⁴⁹
- 5.130 Provision is made in the Act in relation to the liability of accessories to or after a relevant offence,¹⁵⁰ and of those who attempt, conspire, or induce another to commit such an offence.¹⁵¹
- 5.131 The available penalties vary according to the Court in which the sentence is imposed, but potentially range from imprisonment for five years to imprisonment for life, in addition to a fine of up to five times the value of the gratification involved in the offence.¹⁵²
- 5.132 Although the sporting event provision is not specifically dependent on the conduct being directed to securing an advantage through a betting activity, there does not seem to be any reason why it could not be applied in that context. However, it would not seem, by reason of the definition of a sporting event, apt to apply to cheating in relation to non-sporting events.
- 5.133 A possible question arises as to whether the contrivance of an event such as bowling a no ball, or not scoring more than a specified number of runs in the first three overs of a cricket match, would fall within the reach of the provision, that is, as something that constitutes “a threat to” or something that “undermines the integrity” of the event. In that respect, it may be questionable whether such acts influence “the run of play” or the “outcome of” the event, although hopefully the section would

146. *Prevention and Combating of Corrupt Activities Act 2004* (Sth Africa) s 1.

147. *Prevention and Combating of Corrupt Activities Act 2004* (Sth Africa) s 1(xxv).

148. *Prevention and Combating of Corrupt Activities Act 2004* (Sth Africa) s 1.

149. *Prevention and Combating of Corrupt Activities Act 2004* (Sth Africa) s 2(1), (2), (3).

150. *Prevention and Combating of Corrupt Activities Act 2004* (Sth Africa) s 20.

151. *Prevention and Combating of Corrupt Activities Act 2004* (Sth Africa) s 21.

152. *Prevention and Combating of Corrupt Activities Act 2004* (Sth Africa) s 26.

be construed broadly. If not, further definition might be required to ensure that micro-events are covered.

- 5.134 Otherwise it would seem to provide a useful precedent for the formulation of a specific offence that would meet the concerns which exist in relation to the laws currently in force in NSW.

Ancillary offences

Accessories

- 5.135 A person could be charged as an *accessory* (before or after the fact, or as a principal in the second degree) if he or she assists or encourages or solicits another to commit any of the substantive statutory offences, or the common law offence of cheating, mentioned above. The circumstances in which that might arise are considered in our Report on Complicity, in which various recommendations were made for the reform of the relevant principles, including their “codification” in statutory form in place of the existing common law principles.¹⁵³
- 5.136 Without descending into further detail, it is noted that, under one or other of these categories of criminal liability, factual issues would arise in relation to the knowledge and intention of any person who was charged as a “secondary participant”. Moreover, any prosecution based on that form of liability would require proof that the primary participant had committed the relevant offence.
- 5.137 This basis of liability is potentially relevant in the application of those provisions to any intermediaries who provide a link between the gambler, bookmaker and participant(s) engaged in effecting the fix, and potentially also in relation to team members other than the organisers who, without any promise of personal gain, go along with it, or help in whatever contrivance was arranged.

Incitement

- 5.138 Additionally there is a possibility of bringing a charge based on the inchoate common law offence of *incitement* against a person who solicited or incited or encouraged another party to commit one or other of the substantive offences. This head of criminal liability was also considered in our Report on Complicity, in which recommendations were similarly made for reform, including codification.¹⁵⁴
- 5.139 The value of an offence of incitement (as in the case of conspiracy) lies in the fact that those responsible can be arrested and charged before the offence incited (or agreed) is committed. Its potential value in the case of wagering scams is obvious, in the light of the multiplicity of people, including others wishing to place bets on the event, who may be directly or indirectly affected by such conduct.
- 5.140 A question does arise as to whether it should be an offence to incite someone to conspire, incite, or attempt, to commit an offence, a question to which we gave consideration and answered in the negative in our Report on Complicity.¹⁵⁵ The reason for that conclusion essentially rested on the view that it was undesirable for

153. NSW Law Reform Commission, *Complicity*, Report 129 (2010) ch 3.

154. NSW Law Reform Commission, *Complicity*, Report 129 (2010) ch 7.

155. NSW Law Reform Commission, *Complicity*, Report 129 (2010) [7.50]-[7.59] and [7.121]-[7.123].

there to be double inchoate offences, a position that is consistent with that arising under the *Criminal Code* (Cth).

Conspiracy

- 5.141 Similarly, subject to the requirements considered in our Complicity Report, offences of *conspiracy* to commit any of the statutory offences mentioned, are potentially available, so long as that which the parties have agreed to do would constitute such an offence if carried into effect.¹⁵⁶

Attempt

- 5.142 The position in relation to *attempt* is somewhat more complex. An attempt to commit a substantive offence is a common law offence in NSW, for which two elements are required:

- first, there must be an intention on the part of the accused to commit the substantive offence;¹⁵⁷ and
- secondly, the accused must have done something that was a step towards the commission of the substantive offence, that was immediately, that is not remotely, connected with its commission, and the doing of which could not reasonably be regarded as having any purpose other than its commission.¹⁵⁸

- 5.143 Recklessness as to the commission of the substantive offence will not suffice;¹⁵⁹ nor will an act that does not progress past the stage of preparation.¹⁶⁰

- 5.144 The available sentence in relation to attempts to commit offences under the *Crimes Act 1900* (NSW) is the same as that which would be available if the substantive offence was committed.¹⁶¹

- 5.145 A common issue, in the application of the attempt principles, has turned on the question whether the act or acts of the accused were “too remote” to attract liability. Efforts to resolve this issue¹⁶² led to enactment of the *Criminal Attempts Act 1981* (UK). The Law Commission of England and Wales in its Report on *Conspiracy and Attempts*¹⁶³ gave further consideration to this question and recommended further amendments to the Act.

- 5.146 It is noted that s 18 of the *Unlawful Gambling Act 1998* (NSW) expressly extends to a case where, through cheating, a person *attempts* to obtain money or an advantage.¹⁶⁴

156. NSW Law Reform Commission, *Complicity*, Report 129 (2010) ch 6.

157. *Knight v The Queen* (1992) 175 CLR 495, 501.

158. *R v Mai* (1992) 26 NSWLR 371, 381-382; *Britten v Alpogut* (1987) VR 929, 938.

159. *Giorgianni v The Queen* (1984) 156 CLR 473, 506.

160. *McMillan v Reeves* (1945) 62 WN (NSW) 126, 127.

161. *Crimes Act 1900* (NSW) s 344A(1).

162. For a discussion on the remoteness question and of variants of the proximity test see S Bronitt and B McSherry, *Principles of the Criminal Law* (3rd ed, Law Book Co, 2010) [8.35]-[8.59]; and the England and Wales, Law Commission, *Attempt, and Impossibility in Relation to Attempt, Conspiracy and Incitement*, Report 102 (1980) [2.19]-[2.50].

163. England and Wales, Law Commission, *Conspiracy and Attempts*, Report 318 (2009).

164. Conduct constituting an attempt is also expressly covered by *Casino Control Act 1992* (NSW) s 87(1).

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- 5.147 The position is different in relation to the fraud offence¹⁶⁵ and the secret commissions offence,¹⁶⁶ although there would not seem to be any reason why the common law offence of attempt would not apply.
- 5.148 An additional question arises in relation to whether it should be an offence to attempt to incite a party to commit any of the offences of relevance in this context. This was also the subject of consideration in our Complicity Report and of a recommendation that it should remain available as an offence.¹⁶⁷

Concealing a serious indictable offence

- 5.149 Concerns were expressed, in some of the preliminary submissions, in relation to the difficulties experienced in obtaining information from people who were in a position to know of the existence of cheating in relation to betting on sports events.
- 5.150 In such circumstances, resort could possibly be had to the offence for which provision is made in s 316 of the *Crimes Act 1900* (NSW). That section provides:
- (1) If a person has committed a serious indictable offence and another person who knows or believes that the offence has been committed and that he or she has information which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for it fails without reasonable excuse to bring that information to the attention of a member of the Police Force or other appropriate authority, that other person is liable to imprisonment for 2 years.
 - (2) A person who solicits, accepts or agrees to accept any benefit for himself or herself or any other person in consideration for doing anything that would be an offence under subsection (1) is liable to imprisonment for 5 years.
- 5.151 It is necessary that the offence which is concealed answer the description of a serious “indictable offence”, that is, one which is punishable by imprisonment for a term of at least five years.¹⁶⁸ Accordingly it would not be available in relation to the concealment of offences under the *Unlawful Gambling Act 1998* (NSW), the *Casino Control Act 1992* (NSW), or (arguably) conspiracy offences where the penalty is at large. It would, however, be available if the concealed offence was a fraud or secret commission offence arising under s 192E and s 249B respectively of the *Crimes Act 1900* (NSW).
- 5.152 The availability of this section, and awareness as to its existence, could serve as a useful deterrent, if potential offenders understood that fellow team members, or others, who were aware of a betting scam, were at risk of prosecution if they failed to report their knowledge or belief.

Blackmail

- 5.153 We note, in passing, that a gambler or bookmaker who engages in conduct amounting to blackmail, in order to pressure a participant in a sporting or other event, or an official or curator, to manipulate the outcome of that event or of a

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

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

167. NSW Law Reform Commission, *Complicity*, Report 129 (2010) [7.27]-[7.29], [7.99], Recommendation 7.1(13).

168. *Crimes Act 1900* (NSW) s 4.

contingency, in aid of a wagering activity, would commit an offence under s 249K of the *Crimes Act 1900* (NSW), which carries a maximum penalty of imprisonment for 14 years.

5.154 The relevant provision is to the following effect:

- (1) A person who makes any unwarranted demand with menaces:
 - (a) with the intention of obtaining a gain or of causing a loss, or
 - (b) with the intention of influencing the exercise of a public duty,is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

- (2) A person is guilty of an offence against this subsection if the person commits an offence against subsection (1) by an accusation, or a threatened accusation, that a person has committed a serious indictable offence.

Maximum penalty: Imprisonment for 14 years.¹⁶⁹

5.155 The Act gives further content as to the meaning of the expressions “unwarranted demands”¹⁷⁰ and “menaces”;¹⁷¹ as a result of which it would appear that most, if not all, forms of inappropriate threat or pressure would be caught where they might cause a person of normal stability and courage, or of particular but known vulnerability, to act unwillingly in fixing the event or outcome.

Conclusion

5.156 A question does arise, in the event of a substantive offence being developed to deal with cheating in the context of wagering activities, and/or in the context of gaming, as to whether specific provisions should be included in relation to these ancillary offences.

5.157 An associated question, which is specific to the racing industry, and which has a relevance for its internal integrity system (including the exercise of disciplinary powers), concerns the application of the Racing Rules to non-licensed persons. If the reasoning in *Clements v Racing Victoria*¹⁷² is applied in NSW, to the effect that the source of the stewards’ powers is contractual or consensual and if, as a result, their powers do not extend to non-licensed persons, such as a professional gambler betting on races, then there is a potential gap which could be filled by legislative amendment. The *Clements v Racing Victoria* case was one that concerned alleged improper conduct in relation to the supply of information, by a jockey to associates, as to the prospects of horses that he was engaged to ride, which became the subject of a Stewards’ inquiry.¹⁷³

169. *Crimes Act 1900* (NSW) s 249K.

170. *Crimes Act 1900* (NSW) s 249L.

171. *Crimes Act 1900* (NSW) s 249M.

172. *Clements v Racing Victoria Limited* [2010] VCAT 1144.

173. Concern as to the possible uncertainty in this respect, and the existence of an opposite view as to the application of the Rules was raised by Racing NSW in its submission arising from the decisions, for example in *Stephen v Naylor* (1937) 37 SR (NSW) 127; *In the matter of the Appeal*

Gaming

- 5.158 In this section of the Consultation Paper, we note the offences that are potentially available in NSW in relation to cheating in the context of the several forms of gaming summarised in chapter 4. Where appropriate, we draw attention to any possible shortcomings in that legislation, and note that there is no overarching or consistent treatment of cheating in each context, although we also recognise that the provisions of s 192E of the *Crimes Act 1900* (NSW) and of s 18 of the *Unlawful Gambling Act 1998* (NSW), in particular, might be invoked in certain cases.

The Casino

- 5.159 Section 87 of the *Casino Control Act 1992* (NSW) contains specific provisions concerning cheating in relation to the operations of the Casino as follows:

- (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

of Dr Tim Roberts, NSW Thoroughbred Racing Board Appeals Panel, 22 April 1998 and in the matter of the Queensland Principal Club and The Kooralbyn Picnic Race Day (unreported, Supreme Court of Queensland, Williams J, 29 January 1999).

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.

...

- (6) In this section:

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

- 5.160 There is a potential overlap between this section and the more general provision contained in s 18 of the *Unlawful Gambling Act 1998* (NSW) which could also be invoked in the context of cheating in the Casino.
- 5.161 This provision however differs from the cheating provision in the *Unlawful Gambling Act 1998* (NSW) in that it:
- proscribes not only obtaining or attempting to obtain a benefit but also inducing or attempting to induce another to give a benefit and causing or attempting to cause a detriment to another person;
 - goes beyond identifying the benefit only as “money or advantage” by stating that benefit “includes any money, chips, prize, advantage, valuable consideration or security”; and
 - requires that the actions of the offender be dishonest rather than fraudulent.
- 5.162 Similar variations may be observed in the cheating provisions in the *Gaming Machines Act 2001* (NSW) and in other Australian jurisdictions.
- 5.163 The *Gaming Machines Act 2001* (NSW), and provisions in the ACT, NT, Queensland, Tasmania and Victoria also proscribe ‘inducing’ another to give a benefit in various contexts.¹⁷⁴ None of these, however, refer to causing a detriment

174. *Gaming Machines Act 2001* (NSW) s 80(4); *Unlawful Gambling Act 2009* (ACT) s 23(b)(ii); *Casino Control Act 2006* (ACT) s 108(1)(b)(ii); *Interactive Gambling Act 1998* (ACT) s 131(2); *Gaming Control Act* (NT) s 69(1); *Gaming Machine Act* (NT) s 176; *Totalisator Licensing and Regulation Act* (NT) s 97; *Interactive Gambling (Player Protection) Act 1998* (Qld) s 169(2); *Wagering Act 1998* (Qld) s 217(2); *Lotteries Act 1997* (Qld) s 140(2); *Charitable and Non-Profit Gaming Act 1999* (Qld) s 106(2); *Keno Act 1996* (Qld) s 155(2); *Gaming Machine Act 1991* (Qld) s 349; *Casino Control Act 1982* (Qld) s 103; *Gaming Control Act 1993* (Tas) s 165; *Gambling Regulation Act 2003* (Vic) s 4.7.5.

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to another person. The *Gaming Machines Act 2001* (NSW), unlike the *Unlawful Gambling Act 1998* (NSW) and the *Casino Control Act 1992* (NSW), does not expressly mention attempt in relation to the relevant conduct.

- 5.164 The *Gaming Machine Act 2001* (NSW) and provisions in the ACT, NT, and Queensland also refer to the gain, which is the object of the dishonest conduct, as including: “money, benefit, advantage, valuable consideration or security”.¹⁷⁵ Some jurisdictions add to this list “chips”, “gaming tokens”, “gaming machine credits” or “tickets”, depending on the context of the particular provision.¹⁷⁶
- 5.165 The ACT, NT, Queensland, Tasmania and Victoria also use “dishonestly”, rather than “fraudulent” to describe the requisite conduct.¹⁷⁷
- 5.166 Inspectors from the Casino Liquor and Gaming Control Authority (CLGCA) are on site at the Star City Casino 24 hours a day and high resolution CCTV is constantly monitored to detect cheating. In addition there are strong measures in place to detect and prevent money laundering and allied forms of criminality on the part of casino patrons. In 2009/2010, Inspectors investigated 96 alleged breaches of s 87 and issued 31 penalty infringement notices.¹⁷⁸ So far as we are aware no offender has been charged with cheating at the Casino under s 18 of the *Unlawful Gambling Act 1998* (NSW).
- 5.167 CLGCA has advised us that the cheating offences detected in the Star City Casino:
- occur on the casino’s table games significantly more frequently than on its gaming machines. The most common cheating offences have been:
- placing a wager after the result is known (past posting);
 - adding additional gaming chips to a winning wager (bet capping);
 - removing a losing wager from the layout (bet retraction);
 - moving a wager from a losing position to a winning position; and
 - a dealer (deliberately) paying a losing wager, not taking a losing wager, or overpaying a winning wager.

175. *Unlawful Gambling Act 2009* (ACT) s 23; *Interactive Gambling Act 1998* (ACT) s 131(2); *Totalisator Licensing and Regulation Act* (NT) s 97; *Interactive Gambling (Player Protection) Act 1998* (Qld) s 169(2); *Wagering Act 1998* (Qld) s 217(2); *Lotteries Act 1997* (Qld) s 140(1); *Keno Act 1996* (Qld) s 155(1).

176. *Casino Control Act 2006* (ACT) s 108; *Gaming Control Act* (NT) s 69(1); *Gaming Machine Act* (NT) s 176; *Gaming Machine Act 1991* (Qld) s 349; *Casino Control Act 1982* (Qld) s 103; *Gaming Control Act 1993* (Tas) s 165; *Gambling Regulation Act 2003* (Vic) s 4.7.5.

177. *Unlawful Gambling Act 2009* (ACT) s 23(b); *Casino Control Act 2006* (ACT) s 108(1)(b); *Interactive Gambling Act 1998* (ACT) s 131(1); *Gaming Machine Act* (NT) s 176; *Totalisator Licensing and Regulation Act* (NT) s 97; *Interactive Gambling (Player Protection) Act 1998* (Qld) s 169; *Wagering Act 1998* (Qld) s 217(1); *Lotteries Act 1997* (Qld) s 140(1); *Charitable and Non-Profit Gaming Act 1999* (Qld) s 106(1); *Keno Act 1996* (Qld) s 155(1); *Gaming Machine Act 1991* (Qld) s 349(1); *Gaming Control Act 1993* (Tas) s 165; *Gambling Regulation Act 2003* (Vic) s 4.7.5.

178. NSW, Casino, Liquor and Gaming Control Authority, *Annual Report 2009-10*, in Communities NSW, *Annual Report 2009-10*, 411. Penalty infringement notices may be issued by an authorised officer (on site Inspector or Police officer) in relation to cheating related offences: *Casino Control Act 1992* (NSW) s 168A and *Casino Control Regulation 2009* (NSW) cl 54 and sch 7.

From time to time, more significant and sophisticated cheating practices have come to light. These have included a patron who, in 2001, was arrested by NSW Police after using a microcomputer hidden in his shoe to cheat at roulette.¹⁷⁹

- 5.168 Since July 2006, Local Courts have sentenced seven offenders for breaches of s 87(1), handing down two dismissals of charges and one conditional discharge under s 10 of the *Crimes (Sentencing Procedure) Act 1999* (NSW), two bonds under s 9 of that Act, and two fines.¹⁸⁰

Bribery

- 5.169 Special provision is also made for offences relating to the bribery of key officials, including the soliciting, receiving, offering or giving of bribes,¹⁸¹ which potentially overlap with the secret commissions offences contained in the *Crimes Act 1900* (NSW).¹⁸² The prescribed penalty for these offences on summary conviction is 100 penalty units or imprisonment for 2 years, or both; or following conviction on indictment, imprisonment for 14 years.
- 5.170 It should be noted that these offences relate only to gambling at the Casino and would not extend to any illegal casinos that may operate in NSW. At the time of the enactment of the *Casino Control Act 1992* (NSW), it was noted that the introduction of legal casinos was unlikely to eliminate illegal casino gambling entirely, in NSW. There are a number of reasons for this, including the community-based nature of some illegal casinos and the opportunities which they provide for participants to participate with greater anonymity, in a range of games, with better odds and variations to the rules, that are not available in the legal casino.
- 5.171 We are not in a position to determine whether illegal casinos continue to exist, or whether they offer cheating opportunities that do not exist at the Star City Casino. We do, however, observe that any such cheating activity would fall outside the reach of the *Unlawful Gambling Act 1998* (NSW) or the *Casino Control Act 1992* (NSW).

Gaming machines

- 5.172 The *Gaming Machines Act 2001* (NSW) contains a series of specific provisions, that deal with cheating and unlawful interference with an approved gaming machine, some of which overlap with the provisions of the *Unlawful Gambling Act 1998* (NSW).
- 5.173 Under s 80(1) it is an offence:
- to possess a device that is made or adapted or intended to interfere with the normal operation of an approved gaming machine;
 - to do anything calculated or likely to interfere with the normal operation of an approved gaming machine; or

179. NSW, Casino Liquor and Gaming Control Authority, *Preliminary submission PCG19*, 3.

180. Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

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

182. **Para 5.100-5.115.**

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- to do anything calculated “to render an approved gaming machine ... incapable, even temporarily, of producing a winning combination,

unless the person doing so is a technician acting in good faith in connection with “the installation, alteration, adjustment, maintenance or repair of an approved gaming machine”, or is an Inspector or other person performing a function conferred by the Act.¹⁸³ The prescribed penalty for an offence under this provision is a maximum of 100 penalty units or imprisonment for 12 months, or both. In the period July 2006-June 2010, the Local Courts imposed one community service order and one sentence of imprisonment for four months in relation to the offence of using or possessing a device that interferes with a gaming machine.¹⁸⁴

5.174 It is also an offence for a person:

- to insert other than an approved type of coin, token, banknote or card in a gaming machine with intent dishonestly to obtain money or financial advantage for him or herself or another person;¹⁸⁵
- to obtain, in connection with an approved gaming machine, for him or herself or another person any money, benefit, advantage, valuable consideration or security by any fraudulent representation, or by a fraudulent scheme or practice or by the fraudulent use of the approved gaming machine or any other thing;¹⁸⁶
- to use or possess, in a hotel or registered club, without lawful excuse, anything that “permits or facilitates cheating or stealing in connection with an approved gaming machine”;¹⁸⁷ or
- to know of any faulty or fraudulent computer programming and, as a result, gain for him or herself or for another person, “an advantage in the operation of an approved gaming machine”.¹⁸⁸

It is also an offence to authorise or permit another person to commit any one of the above offences.¹⁸⁹

5.175 The second mentioned of these cheating provisions¹⁹⁰ follows the *Unlawful Gambling Act 1998* (NSW) in requiring the offenders’ conduct to be “fraudulent”. It also follows the *Casino Control Act 1992* (NSW) in identifying the required benefit as “money, advantage, valuable consideration or security”. It goes beyond the *Unlawful Gambling Act 1998* (NSW) in proscribing not only obtaining a benefit but also inducing another to give a benefit. However, unlike the equivalent provisions in the *Unlawful Gambling Act 1998* (NSW) and the *Casino Control Act 1992* (NSW), it makes no reference to “attempt”, leaving this to be governed by the common law, as discussed above.¹⁹¹

183. *Gaming Machines Act 2001* (NSW) s 80(1) and (2).

184. Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

185. *Gaming Machines Act 2001* (NSW) s 80(3).

186. *Gaming Machines Act 2001* (NSW) s 80(4).

187. *Gaming Machines Act 2001* (NSW) s 80(5).

188. *Gaming Machines Act 2001* (NSW) s 80(6).

189. *Gaming Machines Act 2001* (NSW) s 80(7).

190. *Gaming Machines Act 2001* (NSW) s 80(4).

191. See para 5.142-5.148.

- 5.176 The prescribed penalty for these offences is also a maximum of 100 penalty units or imprisonment for 12 months, or both. In the period July 2006 – June 2010, the Local Courts have imposed one s 9 bond, and two community service orders, in relation to the offence of fraudulently obtaining money in connection with a gaming machine, and one fine in relation to the offence of using or possessing a cheating or stealing device for a gaming machine.¹⁹²
- 5.177 Several other provisions appear to be aimed at preventing gaming machines from potentially being used for cheating, including those that make it an offence for:
- a hotel or registered club to have a machine that “fails to function in the manner in which it was designed and approved by the [Casino, Liquor and Gaming Control Authority] to function”;¹⁹³
 - a technician to “do anything”, in carrying out work on an approved machine, “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 [Casino, Liquor and Gaming Control Authority] to function”;¹⁹⁴ and
 - a person to do anything fraudulently to gain an advantage (whether or not for another person) in the operation of a gaming machine during its design, manufacture, assembly, maintenance or repair.¹⁹⁵

The penalty for these offences is a maximum of 100 penalty units.

- 5.178 It is also an offence for a person to claim a prize from playing an approved machine, “knowing that the claim is false or misleading in a material respect”.¹⁹⁶
- 5.179 Proceedings for any of the above offences must be dealt with summarily before the Local Court within 12 months of their alleged commission.¹⁹⁷

Lotteries and art unions

- 5.180 The *Lotteries and Art Unions Act 1901* (NSW) appears only to deal with fraud and other similar offences that are carried out by those who are involved in the conduct of the lotteries or games of chance. It does not deal with cheating or other fraudulent activity when other people engage in it. Their conduct would be left to the general cheating and fraud provisions under the *Unlawful Gambling Act 1998* (NSW) and the *Crimes Act 1900* (NSW), so far as they might apply.
- 5.181 It is an offence, under the Act, for those who are concerned in the conduct of these lotteries or games of chance:
- to misappropriate the money raised or prizes offered;¹⁹⁸

192. Judicial Commission of NSW, Judicial Information Research System, Sentencing Statistics.

193. *Gaming Machines Act 2001* (NSW) s 76.

194. *Gaming Machines Act 2001* (NSW) s 76A.

195. *Gaming Machines Act 2001* (NSW) s 81.

196. *Gaming Machines Act 2001* (NSW) s 80A: Maximum penalty: 100 penalty units.

197. *Gaming Machines Act 2001* (NSW) s 197.

198. *Lotteries and Art Unions Act 1901* (NSW) s 16.

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- to conduct, or assist or participate in the conduct of, a lottery or game of chance (not being a game partly of skill and partly of chance) with an intent to defraud;¹⁹⁹ and
- to conduct, or assist or participate in the conduct of, a game of chance (being a game partly of skill and partly of chance) fraudulently.²⁰⁰

For an offence under these provisions there is a maximum penalty of 50 penalty units.

5.182 Other offences under the Act include:

- selling tickets in or near a street unless the local council for that area has given permission in writing for the sale of tickets;²⁰¹ and
- failing to award each prize in a lottery to its respective winner, unless the winner was unable to be located after the making of all reasonable inquiries.²⁰²

The maximum penalty for these offences is 50 penalty units.

Public lotteries and Keno

5.183 There are no provisions in the *Public Lotteries Act 1996* (NSW) that expressly deal with cheating or other fraudulent practices in relation to public lotteries, or the game of Keno which is also governed by the Act.

5.184 The Act does, however, prohibit an unauthorised person from promoting or taking part in the “formation of a syndicate for the purpose of purchasing an entry in, or subscribing to, a public lottery” for fee or reward.²⁰³

Conclusion

5.185 In general, the specific offences reviewed above appear to cover the field effectively, in relation to the various forms of cheating and interference with gaming machines or gaming activities, that can occur. We have not, at this stage, had any concerns brought to our attention, in relation to any form of improper or dishonest conduct that falls outside their net.

5.186 Accordingly, subject to any such matter being identified in the consultations that will follow the release of this Consultation Paper, our further considerations in relation to this portion of the Reference will primarily relate to the codification and penalty issues.

199. *Lotteries and Art Unions Act 1901* (NSW) s 17(a).

200. *Lotteries and Art Unions Act 1901* (NSW) s 17(b).

201. *Lotteries and Art Unions Act 1901* (NSW) s 18.

202. *Lotteries and Art Unions Act 1901* (NSW) s 18A.

203. *Public Lotteries Act 1996* (NSW) s 41.

6. Revision of the criminal law

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- 6.1 Arising out of the survey contained in the previous chapters, it appears to us that there are a number of issues concerning the criminal law response to the problem of cheating at gambling.

Codification of the cheating offences?

- 6.2 As has been noted above, there are a range of offences in NSW that might potentially be involved, depending on the manner in which the cheating or fraud is attempted or effected, and on the context in which that occurs. The complexity of the available framework arises from the several offence options to which resort might be had, arising under the common law, the *Crimes Act 1900* (NSW), and the several specific statutes which govern aspects of wagering and gaming, some of which overlap. Their application is not made any easier by reason of the inconsistency in the expression of their reach, and in the penalties which are available.
- 6.3 We have identified the several inconsistencies which exist concerning the manner in which each offence is expressed, in particular, whether it includes, as an element, conduct involving an *attempt* to obtain “a benefit”, or conduct involving an *inducement* to do so, or an attempted *inducement*. We have also identified the inconsistencies in relation to the manner in which the relevant “benefit” was expressed.
- 6.4 Perhaps of greater significance is the fact that both the *Unlawful Gambling Act 1998* (NSW) and the *Gaming Machines Act 2001* (NSW) refer to the conduct by which the perpetrator obtains the benefit as being “fraudulent”;¹ whereas the *Casino Control Act 1992* (NSW)² refers to the necessary conduct as being “dishonest”, a term that is also employed in relation to one subsection of the *Gaming Machines Act 2001* (NSW).³

1. *Unlawful Gambling Act 1998* (NSW) s 18; and *Gaming Machines Act 2001* (NSW) s 80(4).

2. *Casino Control Act 1992* (NSW) s 87.

3. *Gaming Machines Act 2001* (NSW) s 80(2).

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- 6.5 The use of the terms “fraudulently” or “dishonestly” is a means of distinguishing innocent action (for example, legitimate business activities aimed at obtaining money or financial benefit) from criminal ones. Although there has been considerable debate as to whether these terms, and the term “corruptly”, are synonymous, the expression “dishonestly” seems now to be the preferred option in NSW as evidenced by the amendments made when the new fraud provisions were introduced in the *Crimes Act 1900* (NSW),⁴ apparently on the basis that “dishonestly” is a concept that is easier for a jury to apply.⁵
- 6.6 This has been picked up in the definition in the *Crimes Act 1900* (NSW),⁶ where “dishonest” is stated to mean:
- dishonest according to the standards of ordinary people and known by the defendant to be dishonest according to the standards of ordinary people.⁷
- 6.7 The secret commission provision⁸ does not employ either of the expressions “fraudulently” or “dishonestly”: rather it frames the offence in terms of the offender acting “corruptly”, an expression which is not given a statutory definition.
- 6.8 Next, it is noted that in NSW there is a wide range of maximum or other penalties imposed for the range of cheating offences that exist in relation to gambling. A comparison with the laws in force in the other States and Territories and in some overseas jurisdictions reveals that there is also a marked disparity between the penalties available for like offences between jurisdictions.

Table 6.1 Maximum penalties for gambling-related offences

Jurisdiction	Offence and provision	Maximum penalty
	Cheating	
NSW	<i>Unlawful Gambling Act 1998</i> (NSW) s 18 <i>Casino Control Act 1992</i> (NSW) s 87(1)	100 penalty units, 2 years imprisonment, or both.
NSW	<i>Gaming Machines Act 2001</i> (NSW) s 80(4)	100 penalty units, 12 months imprisonment, or both.
ACT	<i>Interactive Gambling Act 1998</i> (ACT) s 131 <i>Unlawful Gambling Act 2009</i> (ACT) s 23	200 penalty units, 2 years imprisonment, or both.
ACT	<i>Casino Control Act 2006</i> (ACT) s 108(1)	500 penalty units, 5 years imprisonment, or both.
NT	<i>Gaming Control Act</i> (NT) s 69(1)	85 penalty units or 2 years imprisonment.

4. *Crimes Act 1900* (NSW) pt 4AA, inserted by *Crimes Amendment (Fraud, Identity and Forgery Offences) Act 2009* (NSW).
5. England and Wales, Law Commission, *Legislating the Criminal Code: Corruption*, Consultation Paper 145 (1997) 81-82; See Australia, Criminal Law Officers Committee of the Standing Committee of Attorneys-General, *Model Criminal Code, Chapter 3: Theft, Fraud, Bribery and Related Offences*, Report (1995) 11-25.
6. *Crimes Act 1900* (NSW) s 192E. See also s 4B.
7. *Crimes Act 1900* (NSW) s 4B; the term dishonest would appear to be preferred by the ACT: *Criminal Code* (ACT) s 300.
8. *Crimes Act 1900* (NSW) s 249B.

NT	<i>Gaming Machine Act</i> (NT) s 176	430 penalty units or 5 years imprisonment.
NT	<i>Totalisator Licensing and Regulation Act</i> (NT) s 97	100 penalty units or 6 months imprisonment.
Qld	<i>Charitable and Non-Profit Gaming Act 1999</i> (Qld) s 106 <i>Interactive Gambling (Player Protection) Act 1998</i> (Qld) s 169 <i>Keno Act 1996</i> (Qld) s 155 <i>Lotteries Act 1997</i> (Qld) s 140 <i>Wagering Act 1998</i> (Qld) s 217	200 penalty units or 2 years imprisonment.
Qld	<i>Gaming Machine Act 1991</i> (Qld) s 349	1000 penalty units or 5 years imprisonment.
Qld	<i>Casino Control Act 1982</i> (Qld) s 103	200 penalty units or 2 years imprisonment (if the relevant benefit obtained or induced is not more than \$50,000). 500 penalty units or 5 years imprisonment (if the relevant benefit obtained or induced is more than \$50,000).
SA	<i>Lottery and Gaming Act 1936</i> (SA) s 49	\$10 000 or imprisonment for 2 years.
Tas	<i>Criminal Code</i> (Tas) s 252	21 years imprisonment, or fine, or both. ⁹
Tas	<i>Gaming Control Act 1993</i> (Tas) s 165	10 000 penalty units, 4 years imprisonment, or both.
Vic	<i>Gambling Regulation Act 2003</i> (Vic) s 2.3.5	10 years imprisonment. ¹⁰
Vic	<i>Gambling Regulation Act 2003</i> (Vic) s 4.7.5	1000 penalty units or 2 years imprisonment, or both.
WA	<i>Gaming and Wagering Commission Act 1987</i> (WA) s 44	\$10 000, or 2 years imprisonment, or both.
UK	<i>Gambling Act 2005</i> (UK) s 42	2 years imprisonment, a fine, or both (conviction on indictment). 51 weeks imprisonment (6 months in Scotland), a fine not exceeding the statutory maximum, or both (summary conviction).
Canada	<i>Criminal Code</i> , RSC 1985 s 209	2 years imprisonment.
NZ	<i>Gambling Act 2003</i> (NZ) s 351	\$20,000 or 1 year imprisonment.
	Use/possess things to facilitate cheating	
NSW	<i>Casino Control Act 1992</i> (NSW) s 87(3)	50 penalty units, 12 months imprisonment, or both.

9. Applied to all *Criminal Code* (Tas) offences by *Criminal Code* (Tas) s 389(3).

10. The penalty applicable to the offences of obtaining property or financial advantage by deception under *Crimes Act 1958* (Vic) s 81 and s 82, the nearest offences to what the *Gambling Regulation Act 2003* (Vic) s 2.3.5 refers to as “obtaining the money or valuable thing from the other person by a false pretence with intent to cheat or defraud the other person of the money or valuable thing”. Section 2.3.5 presumably refers to the obtaining money, etc by false pretences provisions formerly contained in *Crimes Act 1958* (Vic) s 187, s 188 and repealed by *Crimes (Theft) Act 1973* (Vic) s 12(1)(f).

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	and (4)	
ACT	<i>Casino Control Act 2006</i> (ACT) s 108(2)	200 penalty units, 2 years imprisonment, or both.
NT	<i>Gaming Control Act</i> (NT) s 69(2)	85 penalty units or 2 years imprisonment.
Qld	<i>Casino Control Act 1982</i> (Qld) s 104	200 penalty units or 2 years imprisonment.
Vic	<i>Casino Control Act 1991</i> (Vic) s 80	50 penalty units.
NZ	Gambling Act 2003 (NZ) s 352	\$10,000.
	Fraud	
NSW	<i>Crimes Act 1900</i> (NSW) s 192E	10 years imprisonment.
ACT	<i>Criminal Code</i> (ACT) s 326, s 332	1,000 penalty units, 10 years imprisonment, or both.
NT	<i>Criminal Code</i> (NT) s 227	14 years (if the benefit fraudulently gained is valued at \$100,000 or more). 7 years imprisonment. ¹¹
Qld	<i>Criminal Code</i> (Qld) s 408C	12 years imprisonment (in certain circumstances, including the advantage or detriment is valued at \$30,000 or more). 5 years imprisonment.
SA	<i>Criminal Law Consolidation Act 1935</i> (SA) s 139	10 years imprisonment. 15 years imprisonment.
Tas	<i>Criminal Code</i> (Tas) s 252A	21 years imprisonment, or fine, or both. ¹²
Vic	<i>Crimes Act 1958</i> (Vic) s 81, s 82	10 years imprisonment.
WA	<i>Criminal Code</i> (WA) s 409	10 years imprisonment (if the person deceived is 60 years old or more). 7 years imprisonment. \$36,000 and 3 years imprisonment (summary conviction, if the person deceived is 60 years old or more). \$24,000 and 2 years imprisonment (summary conviction).
	Bribery/secret commissions	
NSW	<i>Crimes Act 1900</i> (NSW) s 249B	7 years imprisonment
NSW	<i>Casino Control Act 1992</i> (NSW) s 150	14 years imprisonment (conviction on indictment). 100 penalty units, 2 years imprisonment, or both (summary conviction).
NT	<i>Criminal Code</i> (NT) s 236	3 years imprisonment.
NT	<i>Gaming Machine Act</i> (NT) s 173	215 penalty units or 2 years imprisonment.
Qld	<i>Casino Control Act 1982</i> (Qld) s 111 <i>Charitable and Non-Profit Gaming Act</i>	200 penalty units or 2 years imprisonment.

11. *Criminal Code* (NT) s 210.

12. Applied to all *Criminal Code* (Tas) offences by *Criminal Code* (Tas) s 389(3).

	<p>1999(Qld) s 105</p> <p><i>Interactive Gambling (Player Protection) Act 1998</i> (Qld) s 172</p> <p><i>Keno Act 1996</i> (Qld) s 158</p> <p><i>Lotteries Act 1997</i> (Qld) s 143</p> <p><i>Wagering Act 1998</i> (Qld) s 220</p>	
SA	<i>Gaming Machines Act 1992</i> (SA) s 79	\$50 000 or imprisonment for 4 years.
Vic	<i>Gambling Regulation Act 2003</i> (Vic) s 10.5.18	600 penalty units or 2 years imprisonment, or both.
South Africa	<i>Prevention and Combating of Corrupt Activities Act 2004</i> (Sth Africa) s 15, s 16	<p>A fine or life imprisonment (where sentence imposed by a High Court).</p> <p>A fine or 18 years imprisonment (where sentence imposed by a regional court).</p> <p>A fine or 5 years imprisonment (where sentence imposed by a magistrate's court).</p>
UK	<i>Bribery Act 2010</i> (UK) s 1, s 2	<p>A fine, ten years imprisonment, or both (conviction on indictment).</p> <p>A fine (conviction on indictment of a person not an individual).</p> <p>A fine not exceeding the statutory maximum, 12 months imprisonment, or both (summary conviction).</p> <p>A fine not exceeding the statutory maximum (summary conviction of a person not an individual).¹³</p>
	Conspiracy	
NSW	Conspiracy (common law) to commit any of the above NSW offences	Penalty at large.

- 6.9 An associated problem arising from the presence of several Acts is the lack of consistency in the powers assigned to Inspectors under those Acts, and the differences in the integrity standards and probity checking that apply under each Act.¹⁴
- 6.10 It may be accepted that the lack of consistency, in which cheating and dishonesty offences are expressed in the relevant legislation, is related to the different processes by which, and the times at which, the individual provisions were promoted. This does not, however, assist in their application, a situation which risks being compounded when reference is made to the potentially overlapping common law offences, or to the general offences under the *Crimes Act 1900* (NSW).
- 6.11 An obvious issue that arises for consultation is whether the gambling legislation should be consolidated in a single Act that deals with all forms of gambling, that spells out those activities that are prohibited generally, and that contains a statement either of an all embracing offence or a series of context specific offences. This would enable the use of consistent expressions to denote what is involved in cheating or fraud in the context of gambling, and it would lead to the replacement of possibly vague expressions such as “ill practice”, “fraudulent trick”, and “sleight of

13. *Bribery Act 2010* (UK) s 11.

14. NSW, Office of Liquor, Gaming and Racing, *Preliminary consultation*. See para 6.59.

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hand”, which have a long history of use in anti-cheating laws in the UK and Australia.

6.12 The *Gambling Regulation Act 2003* (Vic) provides a precedent in this respect, in that it regulates all forms of gambling, and contains a series of offences in relation to:

- cheating at play in relation to unlawful games and gaming;¹⁵
- betting exchange offences in relation to the involvement of a direct participant, or owner of a horse or greyhound, in a brokered betting event, and in relation to the placement of bets by a direct or indirect participant in a brokered event that might constitute an inducement that could affect its outcome;¹⁶
- cheating in relation to wagering or approved betting competitions;¹⁷ and
- bribery of authorised persons,¹⁸

as well as a number of other offences.

6.13 While it does bring the several forms of gambling under the one Act in the place of the eleven Acts that previously covered the field, resort may still be had to the provisions of the *Crimes Act 1958* (Vic) that provide for general offences concerning fraud or dishonesty,¹⁹ or concerning the giving or receipt of secret commissions,²⁰ or to any residual common law offences.

6.14 The *Gambling Regulation Act 2003* (Vic) also provides for the establishment of a single authority, the Victorian Commission for Gambling Regulation, with the functions and powers necessary for the regulation of the gambling industry.

6.15 The *Gaming Control Act 1993* (Tas) similarly provides for the comprehensive regulation of all forms of gambling in that State, and for the establishment of the Tasmanian Gaming Commission with the functions and powers necessary for that purpose.²¹

6.16 To a lesser extent, the *Gaming and Wagering Commission Act 1987* (WA) brings within its reach the regulation of most forms of gambling in Western Australia, and establishes a Gaming and Wagering Commission with regulatory duties and powers.²² The Act however operates in conjunction with the *Betting Control Act 1954* (WA), the *Racing and Wagering Western Australia Act 2003* (WA), the *Lotteries Commission Act 1990* (WA) and the *Casino Control Act 1984* (WA), each of which provides for context specific offences.

6.17 The *Gambling Act 2005* (UK) also provides comprehensive coverage within the one Act of gambling in all of its potential forms with provisions for some context specific

15. *Gambling Regulation Act 2003* (Vic) s 2.3.5.

16. *Gambling Regulation Act 2003* (Vic) s 4.3A.34H-s 4.3A.34K.

17. *Gambling Regulation Act 2003* (Vic) s 4.7.5.

18. *Gambling Regulation Act 2003* (Vic) s 10.5.18.

19. *Crimes Act 1958* (Vic) s 81.

20. *Crimes Act 1958* (Vic) s 176.

21. *Gaming Control Act 1993* (Tas) s 123, 125, 126.

22. *Gaming and Wagering Commission Act 1987* (WA) s 4-8.

offences, as well as for a general cheating offence.²³ It similarly provides for the creation of a single Gambling Commission with regulatory powers and duties.

6.18 If a similar “codification” was to occur in NSW, that would provide within the one Act a clear, comprehensive and consistent statement of the relevant offences, then consideration would need to be given to the possible reformulation, and incorporation, of the offences that arise under the following Acts:

- *Unlawful Gambling Act 1998* (NSW);
- *Gambling (Two-up) Act 1998* (NSW);
- *Casino Control Act 1992* (NSW);
- *Gaming Machines Act 2001* (NSW);
- *Public Lotteries Act 1996* (NSW); and
- *Lotteries and Art Unions Act 1901* (NSW).

Question 6.1

- (1) Should consideration be given to the introduction of a Gaming and Wagering Act that would consolidate, within the one Act, the relevant provisions for the regulation of all forms of gambling, and that would provide for a general offence of cheating and fraud, in relation to gambling, along with specific offences of direct relevance for each of the several specific activities, including those concerned with wagering, gaming (including the Casino), and lotteries?
- (2) Alternatively, should the *Crimes Act 1900* (NSW) be amended, so as to incorporate within it a specific set of offences concerned with cheating and fraud in the context of gambling, in the place of those currently found in the *Unlawful Gambling Act 1998* (NSW), and in the associated gaming and racing legislation?

6.19 More specific consideration is given to these general issues later in this chapter.

Sports and event gambling – a specific cheating offence?

6.20 As we have noted earlier, there was widespread support in the preliminary submissions for the introduction of a specific offence, that would strengthen the existing anti-cheating laws, that would be clear and easy to understand and apply, and that would carry an appropriate criminal sanction.

6.21 Among other considerations, the existence of such an offence 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 boundaries of sport and event related gambling, and

23. *Gambling Act 2005* (UK) s 42.

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- function as a deterrent to those who might consider engaging in such practices.

In this respect, we acknowledge the importance of transparency and accountability in achieving integrity in sports and event betting.

6.22 It appears to us that there are *several issues* to be addressed in relation to a specific offence, including:

- (a) whether it should be a stand alone provision, or should co-exist with the fraud and secret commission provisions of the *Crimes Act 1900* (NSW)?
- (b) whether it should replace any of the context specific offences that arise under the gaming legislation which are expressed, in substance, in terms of an offender obtaining, or inducing another to give to him or her any money, benefit or other advantage, etc, by way of a fraudulent or dishonest representation?
- (c) what are the kinds of conduct or practice that it should catch, and, specifically, should they include profiting from the use of price sensitive information (insider trading), deliberate underperformance, and inducement of athletes to fix events or contingencies through blackmail or menaces?
- (d) how it can be formulated so as to catch every person who is knowingly or recklessly engaged in any co-ordinated cheating activity, including those who are not subject to integrity requirements as employees or pursuant to codes of conduct?
- (e) what mental element should it require and how should it be expressed?
- (f) whether it should specifically embrace assistance (of the kind that would give rise to liability as an accessory), attempts at cheating, conspiracy, incitement, and wilful non disclosure of material information?
- (g) whether it should be confined to cheating in relation to legal betting, or extended to such conduct in relation to illegal betting?
- (h) whether it should apply irrespective of whether or not the conduct results in a winning bet for any party or an improvement of his or her chances of obtaining a win from the bet?
- (i) whether the cheating which gives rise to the offence should be linked to gambling, or should be available in relation to any interference with, or manipulation of, a sporting event or contingency, irrespective of the motive?
- (j) whether it should extend to a person who is not associated in any of the arrangements to fix the outcome of an event, or contingency, but who knows that a “fix” has been arranged, or who becomes aware of a rumour to that effect, and as a consequence places a bet in the expectation of its occurrence?
- (k) at what point is the offence to be taken to have been committed; and should there be a defence of withdrawal before commencement of the event?
- (l) should there be separate offences in relation to cheating involving the conduct of match officials and of staff of racing clubs, of sporting arenas and the like on the one hand; and that of athletes agents, managers, medical

officers and the several other persons who may be directly associated with individual athletes or teams which they represent, on the other hand?

(m) should the offence be framed in a way that will overcome any cross border issues?

6.23 We wish to consult stakeholders in relation to these issues. In order to assist their consideration we note some provisional views.

Co-existence of a specific provision

6.24 It would seem appropriate to include, within the *Crimes Act 1900* (NSW), as a separate part of the Act (possibly, Part 4AAA), indictable cheating dishonesty offences that would specifically apply to sporting and other events. If that was to occur then this part could deal with the several forms of cheating that might be linked with gambling (wagering), or that might be linked to the provision of a secret commission for some other purpose.

6.25 It would be possible for the offences in this Part to co-exist with the general fraud and secret commission offences arising under the *Crimes Act 1900* (NSW),²⁴ and with the cheating offence arising under the *Unlawful Gambling Act 1998* (NSW). This would have several advantages in:

- focussing on the specific opportunities for cheating or dishonesty that apply in the context of sporting or other events that might be the subject of deliberate manipulation, yet do not exist in the other fields of activity governed by the general fraud and secret commission offences;
- providing for an offence triable on indictment with an available maximum penalty, that would support the use of telecommunication interception and surveillance devices, and that would flag the seriousness of this form of conduct, which is of increasing concern internationally and nationally;
- overcoming the areas of uncertainty identified earlier in relation to the somewhat vague and antiquated common law offences of cheating and conspiracy to defraud, and the statutory fraud and secret commission offences, as well as in relation to the statutory concealment offence; and
- overcoming the limitations of the *Unlawful Gambling Act 1998* (NSW) offence arising from the fact that it does not apply in relation to gambling in the unlawful betting markets, or to a person who is not “engaged in gambling” within the meaning of the section.

Coverage of any provision(s)

6.26 It would next seem appropriate that the offence be sufficiently wide to capture cheating or dishonest conduct that is linked with gambling (wagering), as well as conduct of the kind that is linked to some other purpose. The gravamen of the offence should lie in the fact that the offer, or inducement, or agreement to engage in the conduct, or the carrying of it into effect, is related to the receipt of some benefit or advantage, or to the occasioning of some disadvantage to another; and

24. *Crimes Act 1900* (NSW) s 192E and s 249B.

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that it have the intended effect 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.

6.27 For this purpose it would seem appropriate that a sufficiently wide definition be given of:

- *sporting and other events* to which the offence should apply;
- the *parties* to whom the provision should relate so as to include gamblers, bookmakers, event participants (including athletes and others such as agents, managers, assistants, etc, who may be associated with a participant or with his or her team); sports officials (umpires, referees, judges, etc); curators and ground officials; as well as intermediaries and others who may provide assistance in some form or another;
- the *conduct* to be caught, so as to proscribe the abuse of confidential insider information, deliberate underperformance, and the deliberate fixing of the outcome or of a contingency.

6.28 Of particular interest in relation to the people within the reach of the provision is the question whether it should extend to those who, knowing of a “fix”, or being aware of a rumour as to its existence, place a bet on the relevant event or contingency. In our provisional consideration of this issue, we see merit in such a person becoming subject to the same potential criminal sanction as one who engineers the fix to support a bet. This would constitute an additional deterrent of some significance, although we consider that it should be confined to the case where such a person places the bet in reliance on insider information that has been communicated by a person who acquired such information in his or her capacity as a participant in the event, or as part of that participant’s team; or otherwise as an official or other person who is involved in the planned fix.

6.29 An allied consideration is whether non-disclosure of information concerning cheating should be included as an offence, where a person knows or believes that it is planned or has occurred. It is our provisional view that s 316 of the *Crimes Act 1900* (NSW) concerning the concealment of a serious indictable offence should be capable of capturing such conduct, that is, assuming the proposed offence would be punishable by imprisonment for at least 5 years. Similarly we are of the view that the blackmail offence contained in s 249K of the *Crimes Act 1900* (NSW) is sufficient to respond to any case where a participant is subject to any form of blackmail or threat to fix the outcome of an event or contingency.

6.30 It is recognised that the inclusion, within a cheating offence, of conduct involving insider dealing, is potentially controversial. There can be a fine line between dishonesty in that context, and the use by a gambler or bookmaker of rumours, and the kind of “mail” on which those involved in gambling have traditionally relied. There was, however, support for its inclusion in the preliminary submissions, and it has an added relevance now that bets can be placed and accepted on events that occur in the financial markets, namely interest rates, stock market and oil indices. For that reason, as will later appear, the offence proposed will in this respect mirror the insider trading provision contained in the *Corporations Act 2001* (Cth). It is also noted that several of the existing codes of conduct adopted by the sports controlling bodies prohibit the provision of insider information.

What mental element is required?

- 6.31 In relation to each possible act of cheating involved it would seem appropriate to require that the relevant act or omission be intentional, or reckless.

When is the offence complete?

- 6.32 It would seem appropriate that the offence be taken to be committed by a relevant party once the inducement is made, or an agreement is reached, to effect the fix; or once an offer is made or sought in relation to the payment or supply of a benefit; or once the relevant payment or benefit is provided or received, as the case may be.
- 6.33 Denial of the availability of an offence of withdrawal to a party who having entered into a relevant arrangement later acquires cold feet, 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 the Complicity Report concerning a defence of withdrawal in relation to conspiracy apply.²⁵ This would not, however, preclude withdrawal from being relevant for sentencing purposes.

The available penalty

- 6.34 It would seem desirable that there be a higher maximum penalty than that arising under the cheating provision contained in the *Unlawful Gambling Act 1998* (NSW). By reason of the seriously fraudulent nature of the conduct involved and its consequences for a potentially wide group of people, and the need for a strong deterrent, a maximum penalty in line with that for which provision is made for the general fraud offence, of imprisonment for 10 years, would, in our provisional view, be appropriate.
- 6.35 Although subject to the qualifications noted earlier, the enlargement of the available penalty would open the door to the use of telecommunications interception and of surveillance devices (including access to stored communications data and data surveillance) that would appear to be important for the investigation of this kind of offence.

A possible draft provision

- 6.36 We propose for consideration a series of offences that would, in substance, be to the following effect:
- (1) An offence is committed where:
- (a) a person, directly or indirectly, with intent:
- (i) to obtain a **benefit** for himself or herself or for any other person; or
- (ii) to cause a loss or disadvantage to any other person,
- dishonestly** induces or attempts to induce a **participant**, or makes an offer to such a **participant**:

25. New South Wales Law Reform Commission, *Complicity*, Report 129 (2010) [6.194]-[6.197].

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- (iii) to engage in any act or omission which constitutes a threat to or which undermines the integrity of any **sporting or other event**, including:
 - (A) deliberately under-performing or withdrawing from such event; or
 - (B) in any way fixing or influencing the outcome of such event, or of any contingency that may occur during it,

being an event, outcome or contingency upon which the person or any other person stands to lose or gain any money or monies worth, whether as a **participant**, or by betting on such outcome or contingency; or
 - (iv) not to bring to the attention of a member of the Police Force, or other appropriate authority such as a sports controlling body, any such offer or inducement or attempted inducement in relation to a scheme or arrangement of the kind contemplated by sub-paragraph (1)(a)(iii); or
 - (b) a **participant** dishonestly offers or agrees to carry into effect, or carries into effect, any scheme or arrangement of the kind contemplated by sub-paragraph (1)(a)(iii).
- (2) It shall also be an offence where an **insider** possesses information in relation to a **sporting or other event** or contingency that he or she knows or ought reasonably to know is **insider information**, and with that knowledge,
- (a) **dishonestly** places a bet directly or indirectly on the outcome of that event or contingency, or
 - (b) directly or indirectly **dishonestly** communicates the information or causes that information to be communicated to a third party who the **insider** knows or ought reasonably to know would or would be likely to place a bet on that event or contingency; or
 - (c) procures a third party to place a bet directly or indirectly on the outcome of that event or contingency
- (3) It shall also be an offence where a third party, to whom information is disclosed by an **insider**:
- (a) knows or ought reasonably to know that the information is **insider information**; and
 - (b) with that knowledge, **dishonestly** places directly or indirectly a bet or accepts a bet on the outcome of the event or contingency to which the **insider information** relates.
- (4) For the purpose of these provisions no offence is committed unless the relevant act or omission was intentional or reckless.
- (5) It is not necessary for proof of any of the offences contained in this section that the act or omission results in a win or gain, or in the securing of any advantage, or the causing of any disadvantage.
- (6) The maximum penalty available for any such offence shall be imprisonment for 10 years.

6.37 For clarity, we consider it desirable that definitions be provided to the following effect:

“**benefit**” includes any money or monies worth, any release or forbearance in relation to any pre-existing, or future obligation, any avoidance of a loss or punishment, and any other favour or service, or valuable consideration of any kind.

“**contingency**” means any incident or happening that may occur during the course of a sporting event, including those that relate to the run of play or that constitute something that may be done or achieved by a participant or team in the course of the contest or series of contests.

“**dishonest**” means dishonest according to the standards of ordinary people and known by the defendant to be dishonest according to these standards.

“**insider**”, for the purposes of sub-sections (2) and (3), means a **participant** who possesses **insider information**.

“**insider information**” is information that:

- (a) is not generally available in relation to a pending sporting or other event, including:
 - (i) information concerning any arrangement of the kind referred to in sub-paragraph (1)(a)(iii); or
 - (ii) concerning any injury to a player or team tactics; and
- (b) if it were generally available, a reasonable person would expect it to have a material effect on the betting on that event, or on a contingency occurring within it.

“**other event**” means any non-sporting event that is a declared betting event within the meaning of the *Racing Administration Act 1998* (NSW), or an event upon which bets can be placed under the laws of any other State or Territory.

“**participant**” means a person competing or taking part in a **sporting or other event**; his or her agent; any person who is a member, or coach, manager, official or a person providing services of any kind for a team or club that is involved in such an event; any person who acts as a judge, referee or official of any kind in relation to such an event; and any person who is engaged as a curator or official at any venue where the event is to take place.

“**sporting event**” means any contest between individuals or teams, or that involves a thoroughbred, harness or greyhound race, that is usually attended by the public, and that is governed by rules which include the Constitution, Code of Conduct or Rules for the contest, of the Sports Controlling Body that stages the event, or of the regulatory agency under whose Constitution, Code of Conduct or Rules it is conducted.

6.38 So formulated, it is expected that the offences would apply so far as the relevant conduct is related to betting, whether or not the bets were to be placed or are placed in the legal or illegal betting markets.

6.39 It is also expected that the principles concerning the potential liability of accessories and of conspirators discussed in our Report on Complicity²⁶ would apply, in the

26. NSW Law Reform Commission, *Complicity*, Report 129 (2010).

case of these offences, without the need for any specific mention in the part that is here proposed.

Question 6.2

- (1) Should an offence or offences to the effect of the proposed draft provision in paragraph 6.36, or some variation of it, be adopted?
- (2) If so, should it be inserted as part of the *Crimes Act 1900* (NSW) or added to some other Act or Acts?
- (3) Should it co-exist with the statutory fraud and secret commissions provisions contained in the *Crimes Act 1900* (NSW)?
- (4) Are the proposed definitions for the provision in paragraph 6.37 sufficiently wide or too wide?
- (5) What should be the available maximum penalty?

Jurisdictional reach

- 6.40 A potential issue in relation to wagering is the fact that such activities can occur online and across State and national boundaries. Moreover, the conduct giving rise to the manipulation of an event or contingency on which a bet is placed, 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. Potentially, relevant conduct could occur in at least three places:
- the place where an offer or inducement is made and accepted;
 - the place where the bet is placed or accepted; and
 - the place where the event and manipulation occurs.
- 6.41 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 formulation.
- 6.42 The position in relation to a cheating offence, charged under the *Unlawful Gambling Act 1998* (NSW) is less clear, and this may provide an additional reason for transferring the relevant offences to the *Crimes Act 1900* (NSW).
- 6.43 We have not received any preliminary submissions identifying any concerns as to whether the jurisdictional limits of the States and Territories pose a problem for the enforcement of cheating laws in Australia, save so far as there was general support for the introduction of legislation at a national level.

Question 6.3

- (1) Are there any limitations arising from the jurisdictional reach of the *Crimes Act 1900* (NSW), or the *Unlawful Gambling Act 1998* (NSW), or of the common law offences of cheating and conspiracy to defraud, that would limit or inhibit the prosecution of cheating in the context of sporting events?
- (2) If so, what is the solution?

Gaming – a specific cheating offence?

- 6.44 As noted above, there are currently a number of individual offences of cheating that apply in the context of gaming, some of them overlapping. First, there is s 18 of the *Unlawful Gambling Act 1998* (NSW) which applies to all legal forms of gaming in NSW, including those regulated by specific statutes - lotteries and art unions, public lotteries, two-up, gambling at the Casino, and gambling on gaming machines. Then there are the specific offences of cheating which apply to gambling at the Casino, under s 87(1) of the *Casino Control Act 1992* (NSW); and to gambling on gaming machines, under s 80(4) of the *Gaming Machines Act 2001* (NSW).
- 6.45 It does not seem that there is cause for any particular concern in relation to cheating in the conduct of, or participation in, lotteries and art unions, public lotteries and two-up. The opportunities for cheating in this context are limited and such attempts that might be made to do so would seem to fall within the reach of s 18 of the *Unlawful Gambling Act 1998* (NSW) and the fraud provision in s 192E of the *Crimes Act 1900* (NSW). There are also no apparent loopholes in the more comprehensive coverage contained in the *Casino Control Act 1992* (NSW) and in the *Gaming Machines Act 2001* (NSW).
- 6.46 However, there are inconsistencies in expression, differences in the available penalties and overlap in relation to the several statutory and common law offences, that could be invoked in relation to cheating in the gaming context.
- 6.47 As we have already noted, s 87(1) of the *Casino Control Act 1992* (NSW) provides a very comprehensive set of offences concerned with cheating in relation to gaming within the Casino. A question arises as to whether this could provide a better model, with some appropriate variations, for either a general cheating offence or for a series of similarly framed specific offences in relation to the several forms of gaming mentioned above, to be contained either in a relevant stand-alone statute, as is the case in Queensland,²⁷ among the relevant provisions in a compendious gambling statute, as is the case in Victoria,²⁸ in the *Crimes Act 1900* (NSW), or in the *Unlawful Gambling Act 1998* (NSW).
- 6.48 It is to be noted that the statutory cheating offences focus on two essential elements – the proscribed outcomes and the means of achieving the proscribed outcomes.
- 6.49 The proscribed outcomes of any cheating offence generally concern:
- a person obtaining or inducing another person to give a benefit for himself or herself or for any other person; and
 - a person causing, or inducing another person to cause, a disadvantage or a detriment (financial or otherwise) to another person.
- 6.50 The benefit is generally stated to include any money, benefit, advantage, valuable consideration or security and also, where relevant to the context, any chips, prize, gaming tokens, credits or tickets; while a disadvantage or detriment will generally involve the loss of any such benefit.

27. *Interactive Gambling (Player Protection) Act 1998* (Qld) s 169; *Wagering Act 1998* (Qld) s 217; *Lotteries Act 1997* (Qld) s 140; *Charitable and Non-Profit Gaming Act 1999* (Qld) s 106; *Keno Act 1996* (Qld) s 155; *Gaming Machine Act 1991* (Qld) s 349; *Casino Control Act 1982* (Qld) s 103.

28. *Gambling Regulation Act 2003* (Vic) s 2.3.5; *Gambling Regulation Act 2003* (Vic) s 4.7.5.

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6.51 The means of achieving any of the proscribed outcomes generally include the dishonest use of:

- any trick, device, sleight of hand or representation;
- any fraudulent act, scheme or practice;
- gaming equipment or any other thing; and
- an instrument, or article of a type normally connected with gaming or appearing to be of a type normally connected with gaming (for example, loaded dice or shaved cards).

These provisions are relatively consistent among the various cheating provisions both in NSW and in the other Australian jurisdictions.

6.52 The use of the expression “dishonest”, rather than “fraudulent”, would achieve consistency with the fraud provisions in the *Crimes Act 1900* (NSW), if given a similar definition to that contained in that Act. Similarly, the adoption of a consistent set of expressions, that would take into account the proscribed outcomes and means, would seem to lead to a greater certainty in their application, whether included in a single statute or in the several statutes concerned with gaming.

6.53 A further question arises in this context, namely whether attempting to achieve the proscribed outcomes should be expressly included in any such offence. “Attempt” is not currently included, for example, in the cheating provision in the *Gaming Machines Act 2001* (NSW). The inchoate offence of attempt is, otherwise, currently governed by the common law.

6.54 The next question that arises is whether the maximum penalties for cheating at gaming should be reviewed by reference, first, to whether the penalties should be consistent and, secondly, to whether they, or any of them, should be increased.

6.55 There would seem to be a strong case for achieving consistency between the various offences, since a person who engages in cheating with respect to gaming machines could be subject to a higher maximum penalty than that imposed under the *Gaming Machines Act 2001* (NSW), if he or she is prosecuted under the equivalent provision in the *Unlawful Gambling Act 1998* (NSW).

6.56 Arguably the individual offences that do exist under the gaming Acts could be seen as more serious than the current penalties suggest. The cheating offences under the *Unlawful Gambling Act 1998* (NSW), and under the *Casino Control Act 1992* (NSW), both attract a maximum penalty of 100 penalty units, or 2 years imprisonment, or both; while the cheating offence under the *Gaming Machines Act 2001* (NSW) attracts a lesser maximum penalty of 100 penalty units, or 12 months imprisonment, or both. This can be compared with the 10 years imprisonment available for fraud under s 192E of the *Crimes Act 1900* (NSW).

6.57 The NSW penalties for cheating are also not as serious as those in some other jurisdictions, for example:

- the maximum penalty of 500 penalty units, five years imprisonment or both available under the *Casino Control Act 2006* (ACT);²⁹

29. *Casino Control Act 2006* (ACT) s 108(1).

- the maximum penalty of 430 penalty units or 5 years imprisonment under the *Gaming Machine Act (NT)*;³⁰
- the maximum penalty of 1000 penalty units or 5 years imprisonment under *Gaming Machine Act 1991 (Qld)*;³¹ or
- the maximum penalty of 10 years imprisonment available under s 2.3.5 of the *Gambling Regulation Act 2003 (Vic)* which provides for the same penalties that apply to obtaining property or a financial advantage by deception under the *Crimes Act 1958 (Vic)*.

6.58 We have confined our consideration in this context to cheating with respect to lawful gaming. This is consistent with the approach currently taken in NSW and in all other Australian jurisdictions. It is justified by the circumstances that any other form of gaming or of conducting a game, or of using gaming machines is unlawful and punishable as such. It differs in this respect from cheating in the context of sporting or other events, where dishonest or fraudulent conduct intended to gain an advantage in the illegal betting market will have an impact or consequences for those engaged in the legal betting market.

Question 6.4

- (1) Are there any forms of dishonesty or cheating in connection with gaming that fall outside the reach of the current legislation that regulates gaming?
- (2) If so, what are they?

Question 6.5

- Should there be, in relation to cheating with respect to lawful forms of gaming:
- (a) an overarching offence of cheating included in either the *Crimes Act 1900 (NSW)* or in the *Unlawful Gambling Act 1998 (NSW)*; or
 - (b) a series of cheating offences expressed in consistent terms to be included in the individual Acts concerned with gaming?

Question 6.6

- (1) Should the maximum penalties for cheating at gaming be made consistent?
- (2) What should the maximum penalties for cheating at gaming be?

Inspectors

6.59 The various Acts that regulate gaming make separate and disparate provision for the appointment of Inspectors and for the powers that they can exercise.³² For example:

30. *Gaming Machine Act (NT)* s 176.

31. *Gaming Machine Act 1991 (Qld)* s 349.

- Inspectors appointed in relation to the operations of the Casino and in relation to the use of gaming machines are appointed by the “relevant Division Head” (that is the head of a Division of the government service employed to enable CLAGCA to exercise its functions)³³ while Inspectors appointed in relation to two-up, lotteries and art unions, and public lotteries are appointed by the Minister for Gaming and Racing.
- only three of the relevant Acts require the Inspectors appointed to be of the “highest standard of integrity”, and each of these makes separate provision for probity checking;³⁴
- each Act has a different set of investigative powers, expressed in different terms and subject to different conditions for their exercise, concerning, for example, powers of entry, powers to access documents and powers to require answers to questions,³⁵ and
- each Act makes different provision for the involvement of Police in the investigative processes, for example, allowing Police officers to have the functions of an Inspector while acting in aid of an authorised Inspector with respect to the regulation of two-up in Broken Hill,³⁶ authorising every Police officer “of or above the rank of sergeant” to exercise the functions of an authorised Inspector with respect to lotteries and art unions,³⁷ and vesting in Police officers many of the same functions as Inspectors appointed under the *Casino, Liquor and Gaming Control Authority Act 2007* (NSW).³⁸

Question 6.7

Should the Inspectors under the several Acts concerned with gaming:

- (a) be given a common suite of investigative powers;
- (b) be subject to the same integrity standards and probity checking?

Question 6.8

Are there additional powers that should be conferred on Inspectors or Police under the context specific Acts mentioned or under a consolidated Act; and if so what should they comprise?

-
32. *Lotteries and Art Unions Act 1901* (NSW) s 21A-21F; *Casino, Liquor and Gaming Control Authority Act 2007* (NSW) s 18-s 34; *Public Lotteries Act 1996* (NSW) s 69-s 74; *Gambling (Two-Up) Act 1998* (NSW) s 17-s 20.
 33. *Casino, Liquor and Gaming Control Authority Act 2007* (NSW) s 20(1).
 34. *Public Lotteries Act 1996* (NSW) s 69; *Casino, Liquor and Gaming Control Authority Act 2007* (NSW) s 14(2); and *Gambling (Two-Up) Act 1998* (NSW) s 17(2).
 35. *Lotteries and Art Unions Act 1901* (NSW) s 21C-s 21E; *Casino, Liquor and Gaming Control Authority Act 2007* (NSW) s 21-s 27; *Public Lotteries Act 1996* (NSW) s 71-s 73; *Gambling (Two-Up) Act 1998* (NSW) s 19.
 36. *Gambling (Two-Up) Act 1998* (NSW) s 17(1).
 37. *Lotteries and Art Unions Regulation 2007* (NSW) cl 21.
 38. *Casino, Liquor and Gaming Control Authority Act 2007* (NSW) pt 4.

Racing

- 6.60 As we have noted earlier, there is a comprehensive system for investigating and dealing with cheating, or with other forms of dishonesty, in relation to the conduct of licensed participants who are involved in the racing industry, including owners, jockeys, trainers, strappers, and stable employees, as well as bookmakers and their clerks. Under that system, civil penalties can be imposed including fines, suspensions, disqualifications and warnings off.
- 6.61 The investigative powers, and the disciplinary and appeal procedures, available under the Racing Rules or otherwise, would seem to be adequate to respond to most forms of cheating or dishonest conduct in this context, whether related to betting or otherwise.
- 6.62 Where the misconduct is particularly serious, then resort to the criminal law may be necessary either in addition to or in lieu of the domestic remedy. Depending on the facts, the general cheating offence which we have proposed, in relation to sporting events, could be engaged particularly where a fix is arranged by a gambler or a jockey, or a driver, or an owner, concerning the outcome of a race, or the performance of an individual entrant. Alternatively, resort could be had to s 192E of the *Crimes Act 1900* (NSW) in relation to a deception involving for example a “ring in”; or to s 249B of the *Crimes Act 1900* (NSW) where the conduct involves the payment of a secret commission or bribe to a racing official to breach his or her duty, for example by interfering with or destroying a sample taken for post-race drug testing.
- 6.63 Accordingly, we have not attempted to formulate any offence that would specifically deal with cheating in the context of thoroughbred, harness or greyhound racing.
- 6.64 The only question which has been raised in this context is whether the powers of the Racing Stewards, and the disciplinary procedures that have been established in relation to this industry, extend to non-licensed people.
- 6.65 This issue does not fall specifically within our terms of reference. However, it does have an indirect relevance, since, in some circumstances, it may be preferable for cheating by non-licensed people, such as professional gamblers whose activities principally concern the racing industry, to be dealt with under its domestic laws, rather than under the criminal law, or in addition to it. That may be the case if for no other reason than that the domestic laws allow for the temporary, or permanent removal of those who are subject to the disciplinary rules and procedures, from any racing venue within the State, which will then have an interstate application.

Question 6.9

Should the powers of racing stewards to investigate and penalise breaches of the rules, or cheating, in the context of thoroughbred, harness and greyhound racing, be amended to apply to non-licensed people?

7. Related issues

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7.1 As we have observed earlier, there appears to be a general consensus that cheating in the context of gambling requires a holistic response, involving statutory gambling authorities, law enforcement agencies, sports controlling bodies and betting agencies. Criminal sanctions risk being little more than a deterrent on paper without the active participation of all of these bodies in:

- the development of sport-specific codes of conduct;
- the establishment of internal integrity units and disciplinary measures;
- the provision and sharing of information in relation to suspect activities; and
- ensuring that there is capacity for the monitoring of events and the investigation of matters of concern.

7.2 A consideration of possible reform in relation to this wider landscape falls outside our terms of reference. However, we feel compelled to identify the key issues that merit separate consideration. One of the issues is specific to NSW, while the others are of general relevance.

A Gambling Commission or Authority

7.3 If the gambling laws are consolidated in a single statute, a related question of particular relevance is the possibility of establishing a single Gambling Commission for NSW that will amalgamate the roles of the Casino, Liquor and Gaming Control Authority (CLAGCA) and of the Office of Liquor, Gaming and Racing (OLGR).

7.4 As noted earlier, the UK and several Australian States and Territories have each established a single regulatory agency. These agencies, listed below, have the functions of administering the gaming laws of those jurisdictions, and of controlling, supervising and regulating all gaming activities within their boundaries.

Jurisdiction	Organisation	Statute
Victoria	Victorian Commission for Gambling Regulation	<i>Gambling Regulation Act 2003</i> (Vic) ch 10
Western Australia	Gaming and Wagering Commission	<i>Gaming and Wagering Commission Act 1987</i> (WA)
South Australia	Independent Gambling Authority	<i>Independent Gambling Authority Act 1995</i> (SA)
Tasmania	Tasmanian Gaming Commission	<i>Gaming Control Act 1993</i> (Tas) pt 7
ACT	ACT Gambling and Racing Commission	<i>Gambling and Racing Control Act 1999</i> (ACT) pt 2

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- 7.5 A somewhat different regulatory structure exists in the Northern Territory. The Racing Commission, which is established under the *Racing and Betting Act* (NT), has responsibility for the racing industry; while the Northern Territory Licensing Commission established under the *Northern Territory Licensing Commission Act* (NT), has the responsibility of regulating and enforcing the racing, gaming and licensing legislation, including that concerned with liquor control, kava management, private security, escort agencies and gaming machines.
- 7.6 The regulatory arrangements currently in place in Australia do vary from jurisdiction to jurisdiction. In Victoria, for instance, the laws in relation to the regulation of gambling are largely contained in the Act that creates the Commission for Gambling Regulation, but these are supplemented by the provisions of the *Casino Control Act 1991* (Vic), and the *Racing Act 1958* (Vic). We note that the *Racing Act 1958* (Vic) makes provision for a Racing Integrity Commissioner¹ with separate responsibility for integrity issues within the racing industry.
- 7.7 In South Australia, in addition to the *Independent Gambling Authority Act 1995* (SA) there are five associated Acts of relevance.²
- 7.8 There are similarly five associated Acts of relevance in the Northern Territory.³
- 7.9 In the ACT, apart from the *Gambling and Racing Control Act 1999* (ACT), there are nine associated Acts of relevance.⁴
- 7.10 In Western Australia, apart from the *Gaming and Wagering Commission Act 1987* (WA), there are six associated Acts of relevance.⁵
- 7.11 Queensland has not established any overarching Gaming or Wagering Commission or Authority. The relevant gambling activities are left to be regulated according to the provisions of eight Acts⁶ and the Regulations under those Acts.
- 7.12 NSW alone has separate regulatory authorities responsible to the same Minister - the Minister for Gaming and Racing. It is somewhat anomalous that, while CLAGCA is established pursuant to statute,⁷ and has the functions and powers conferred by that statute and by the *Casino Control Act 1992* (NSW), OLGR is not established under a statute. Its powers and functions, so far as we can determine, are derived by way of ministerial delegation, or by appointment of Inspectors under the individual Acts.

1. *Racing Act 1958* (Vic) pt 1A.

2. *Authorised Betting Operations Act 2000* (SA); *Casino Act 1997* (SA); *Gaming Machines Act 1992* (SA); *Racing (Proprietary Business Licensing) Act 2000* (SA); *State Lotteries Act 1966* (SA).

3. *Gaming Control Act* (NT); *Gaming Machine Act* (NT); *Totalisator Licensing and Regulation Act* (NT); *Unlawful Betting Act* (NT); *Soccer Football Pools Act* (NT).

4. *Betting (ACTTAB Limited) Act 1964* (ACT); *Casino Control Act 2006* (ACT); *Gaming Machine Act 2004* (ACT); *Interactive Gambling Act 1998* (ACT); *Lotteries Act 1964* (ACT); *Pool Betting Act 1964* (ACT); *Race and Sports Bookmaking Act 2001* (ACT); *Racing Act 1999* (ACT); *Unlawful Gambling Act 2009* (ACT).

5. *Betting Control Act 1954* (WA); *Casino Control Act 1984* (WA) (see also *Casino (Burswood Island) Agreement Act 1985* (WA)); *Gaming and Betting (Contracts and Securities) Act 1985* (WA); *Lotteries Commission Act 1990* (WA); *Racing and Wagering Western Australia Act 2003* (WA) (see also *Western Australian Greyhound Racing Association Act 1981* (WA)).

6. *Casino Control Act 1982* (Qld); *Charitable and Non-Profit Gaming Act 1999* (Qld); *Gaming Machine Act 1991* (Qld); *Interactive Gambling (Player Protection) Act 1998* (Qld); *Keno Act 1996* (Qld); *Lotteries Act 1997* (Qld); *Racing Act 2002* (Qld); *Wagering Act 1998* (Qld).

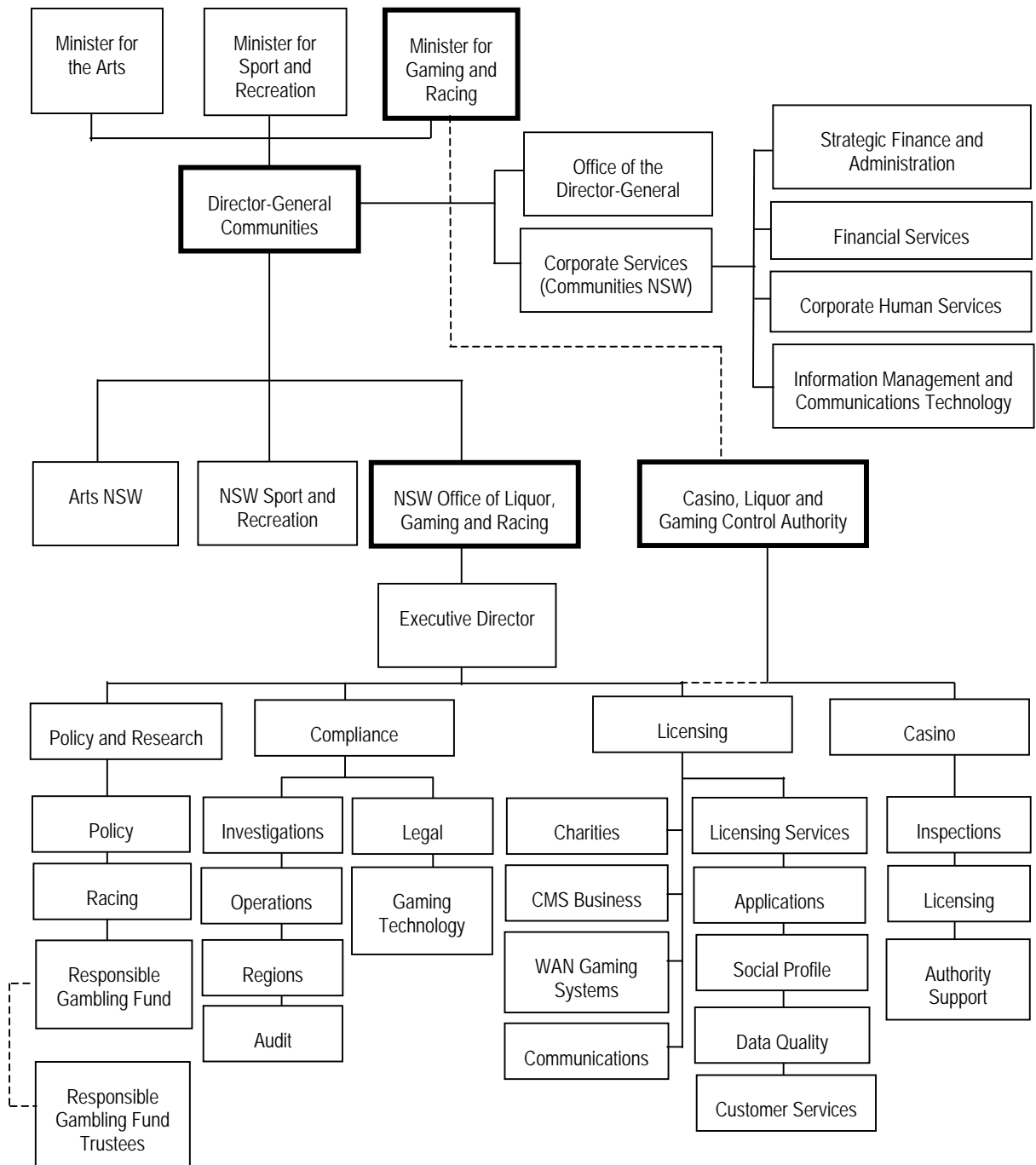
7. *Casino, Liquor and Gaming Control Authority Act 2007* (NSW).

- 7.13 Each “agency” sits within Communities NSW, as shown in Figure 7.1. They have a degree of interdependence in that OLGR provides secretarial and administrative support to CLAGCA (and also to the Responsible Gambling Fund), although there is a grey area in relation to the integration of OLGR staff with respect to CLAGCA activities.
- 7.14 OLGR’s role includes overall policy direction and advice (including advising government on legislative change) in relation to all regulated activities, early intervention, education activities and co-ordination of licensing, compliance and enforcement functions.
- 7.15 The regulatory domains it coordinates include:
- the sale and consumption of alcohol in more than 14,000 licensed premises, including over 1,700 hotels;
 - the operation of more than 1,300 licensed clubs;
 - gambling, including 96,000 gaming machines, wagering, lotteries, keno, art unions and raffles with an annual turnover in excess of \$40 billion and a combined annual state tax contribution of \$1.6 billion; and
 - charitable fund raising (in excess of 14,000 permits annually).⁸
- 7.16 Under the *Casino Control Act 1992* (NSW), CLAGCA is the sole body responsible for the regulation of gaming and liquor matters at Star City Casino, encompassing both licensing and enforcement functions.⁹
- 7.17 As a consequence there falls within the regulatory domain of these two “agencies” the following Acts:
- *Casino Control Act 1992* (NSW);
 - *Gaming Machines Act 2001* (NSW);
 - *Unlawful Gambling Act 1998* (NSW);
 - *Totalizator Act 1997* (NSW);
 - *Lotteries and Art Unions Act 1901* (NSW);
 - *Public Lotteries Act 1996* (NSW);
 - *Gambling (Two-up) Act 1998* (NSW);
 - *Registered Clubs Act 1976* (NSW); and
 - *Liquor Act 2007* (NSW).

8. NSW Office of Liquor, Gaming and Racing, <<http://www.olgr.nsw.gov.au>>.

9. Its objects and functions are as specified in the *Casino Control Act 1992* (NSW) s 140-141 and include the approval of games to be played and the rules which are to apply, as well as the detection and prosecution of offences committed in or in relation to the Casino.

Figure 7.1: Organisational chart for NSW Office of Liquor, Gaming and Racing and the Casino, Liquor and Gaming Control Authority, as at May 2010



- 7.18 A further question is whether the regulation of cheating and fraudulent conduct, in the context of gambling, would be better regulated by the establishment of a single Gambling Commission or Authority, for example, one based on the model of the UK Gambling Commission with functions and powers conferred under the *Gambling Act 2005* (UK) in relation to compliance, investigation and prosecution of offences.¹⁰
- 7.19 Such an initiative would bring NSW into greater conformity with the position which exists in the other States and Territories that have established a single authority with responsibilities for the regulation of most, if not all, of their gambling laws.
- 7.20 Such a Commission or Authority could more closely co-ordinate the current responsibilities of OLGR and CLAGCA in relation to gambling (including racing, wagering, gaming, lotteries, etc), leaving for separate administration the regulation of those aspects of the laws concerning liquor licensing and supply, and the conduct of registered clubs, which do not involve gambling activities. The separation of these responsibilities could possibly be achieved by restructuring OLGR, and by providing it with a statutory basis in which specific provision could be made to define its functions and powers.
- 7.21 Any such structure may need to follow the Victorian approach by preserving for separate regulation the licensing and administration aspects of the *Racing Administration Act 1998* (NSW), and the *Casino Control Act 1992* (NSW). This was not the course taken in the UK, however, where the regulation of racing and casino operations comes within the reach of the *Gambling Act 2005* (UK).

Approved betting and gaming events

- 7.22 As we have noted above, there are some differences between the States and Territories in relation to:
- the events, or contingencies, on which bets can be placed with local betting agencies;
 - the forms of betting that are permitted; and
 - the process by which events or contingencies are approved for betting.
- 7.23 For example, although the laws in some States do make express provision in relation to betting exchanges, as we understand the current situation, that facility is only available in Tasmania.
- 7.24 The list of events or contingencies which are designated as approved betting events in NSW did not until very recently extend to allow bets in connection with entertainment,¹¹ yet local residents could place such bets by telephone or on-line through wagering agencies in other States or Territories. In NSW betting on elections is still not an approved event, although bets can be lawfully placed on a NSW election or on any other election, through interstate betting agencies.
- 7.25 In NSW betting events are approved by the Minister and brought into effect by order published in the *Government Gazette*. In Victoria, as noted earlier, the approved

10. *Gambling Act 2005* (UK) s 27, s 28.

11. NSW, *Government Gazette*, 4 March 2011, 1739-1755. See Appendix C.

sports controlling bodies have an integral role in establishing the events, within Victoria, that can be the subject of lawfully placed bets. In South Australia, the responsibility for the approval of contingencies, which can be the subject of bets, rests with the Independent Gambling Authority.¹² Similarly, that responsibility rests with the Gaming and Wagering Commission in Western Australia, under the *Betting Control Act 1954* (WA).¹³ In the NT, the Racing Commission may “declare an event or contingency to be a sporting event” for the purposes of the *Racing and Betting Act* (NT).¹⁴ Under the *Gaming Control Act 1993* (Tas) the Tasmanian Gaming Commission may declare an “approved sports event” by placing a notice in the *Tasmanian Gazette*.¹⁵ In Queensland, UNiTAB is the only licensee authorised to conduct sports wagering. The *Wagering Act 1998* (Qld) permits the licensee to conduct wagering on a “sporting event or contingency (whether in Australia or elsewhere)”, or “another event or contingency that is an approved event or contingency for the licensee”.¹⁶ In the ACT, the ACT Gambling and Racing Commission may issue a determination that a sporting or other event is a “sports bookmaking event” for the purposes of the *Race and Sports Bookmaking Act 2001* (ACT).¹⁷

- 7.26 Clearly there are some sporting events or contingencies that are particularly prone to manipulation or cheating. Accordingly, it would seem desirable that there be a proper process for the approval of events and of bet types (contingencies), that involves an evaluation of the risks of manipulation, with input from wagering operators and sports controlling bodies. The procedures in place in Victoria provide a useful precedent in this respect.
- 7.27 Equally it would seem desirable that there be an attempt to secure national uniformity in relation to approved events and contingencies. It is recognised that this would require inter-government co-operation, and the introduction of either uniform legislation or legislation at a federal level, or for agreements between sports controlling bodies and betting agencies that would have effect across the country.
- 7.28 As such, it is not a matter on which we wish to make comment beyond noting that it seems generally unsatisfactory for lawful betting to occur across State boundaries on events or contingencies, which are not the subject of permitted betting in the home state of the gambler placing the bet.
- 7.29 We do note, additionally, that the opportunity for cheating in gambling on non-sporting events or contingencies, is limited by the fact that the control of any outcome rests with committees or agencies that may not be involved in placing a bet. However, the possibility of cheating, for example, through the use of insider information or otherwise cannot be entirely excluded. Rigged game shows or quizzes are not unknown, and there is obviously a possibility that contestants in a reality show could agree on a particular outcome in return for some benefit.

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

13. *Betting Control Act 1954* (WA) s 4B.

14. *Racing and Betting Act* (NT) s 4(2). The extensive list is set out in a "Schedule of Declared Sporting Events" issued by the Northern Territory Department of Justice.

15. *Gaming Control Act 1993* (Tas) s 3(1) and (8). A list of "Approved Sports Events" is maintained by the Liquor and Gaming division of the Tasmanian Department of Treasury and Finance.

16. *Wagering Act 1998* (Qld) s 7. The licensee may apply to the Minister for approval to conduct wagering on an event or contingency or a class of events or contingencies: s 56.

17. *Race and Sports Bookmaking Act 2001* (ACT) s 20. The “sports events” that may be “offered as fixed odds betting markets” are listed in *Race and Sports Bookmaking (Rules for Sports Bookmaking) Determination 2009 (No 1)* (ACT).

- 7.30 A difficulty does exist in this context, which does not arise in relation to sporting events, in that there is no relevant controlling body that can supervise the event, or enforce a code of conduct or other rules that would govern the behaviour of those who are involved in the event, or who may place a bet on it.
- 7.31 In those circumstances, the detection of any potential manipulation or cheating rests, for all practical purposes, in the capacity of betting agencies to detect and report any suspicious betting activity. This then gives rise to a broader question of whether betting on events and contingencies should be confined to those activities where there is an effective controlling body such as a sports controlling body.
- 7.32 An allied question for separate consideration, which falls outside our terms of reference, concerns the potential overlap of the legislation regulating the marketing of the financial products known as derivatives and contracts for difference, with the gambling laws that now permit betting on Reserve Bank of Australia interest rate decisions and stock market indices, which includes the equivalent of spread betting.

Sports controlling bodies and integrity units

- 7.33 As we have noted earlier there has been support internationally, and otherwise, for a greater co-ordination in the role of sports controlling bodies and betting agencies in combating cheating in the context of both lawful and unlawful sports gambling. Of note has been the planned formation, arising out of the Lausanne summit, of a task force to secure a co-ordinated approach to the problem.¹⁸ Several questions would seem to arise in this context. Again, there clearly is a need for these matters to be further considered in a co-ordinated and, hopefully, national context.
- 7.34 First, while some sports controlling bodies have a comprehensive code of conduct that deals with cheating and the misuse of insider information by those who are subject to its reach, this is not universally the case. Nor is there any uniformity in the terms of the codes of conduct that do exist. Much the same comment can be made in relation to the extent to which such bodies provide education programs concerning sporting integrity to athletes; and in relation to whether agent accreditation schemes are in place which contain suitable integrity provisions.
- 7.35 Of considerable assistance in this respect would be the development of best practice models that would permit some modification to suit individual sports.
- 7.36 Possibly the existence of such a code, and/or a participant education program, or agent accreditation requirements, could be made a pre-condition of any approval for betting purposes of events within that sport. At least their existence and terms should be taken into account when consideration is given to any application for approval.
- 7.37 Secondly, there is the issue of whether individual professional sports controlling bodies, whose events are the subject of betting, should be required to have internal integrity units. Alternatively, it may be preferable, and feasible, to establish a National Sports Integrity Unit that would be independent of the individual sports controlling bodies, along the lines of the UK Sports Betting Intelligence Unit, with similar powers to those possessed by that Unit.

18. "Mafia threatens world sport: Rogge", *The Australian*, 1 March 2011, 36.

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- 7.38 It is recognised, in this respect, that the adoption and implementation of integrity measures can be expensive, and that the financial support that is supplied by betting agencies that have entered into sponsorship arrangements, or into arrangements of the kind that are in place in Victoria, may be insufficient to fund such activities.
- 7.39 Further consideration of this question falls outside our terms of reference, but there does appear to be considerable support in the preliminary submissions for its further exploration, and for there to be a national, or at least uniform approach.
- 7.40 Allied to the involvement of the sports controlling bodies, and of the Australian Sports Commission, in this context, is that of the betting industry. It already has a significant involvement through its participation in the work of the *Coalition of Major Professional and Participation Sports* (COMPPS) and through the agreements that betting agencies have established with sports controlling bodies. A precedent for its active engagement, in partnership with sports controlling bodies, can also be seen in the formation of the *European Sports Security Organisation*.
- 7.41 The value of the contribution of the betting industry lies in the fact that it is likely to have the first opportunity of identifying suspicious betting trends, and in its possession of records that can track betting activity and trace it to the person or people placing the bets. For the industry to be effective in combating cheating however, there needs to be a will on the part of its members to supply information to sports controlling bodies and to law enforcement officials, and a capacity under privacy laws for it to do so lawfully.
- 7.42 Consideration may also need to be given to the circumstances in which betting markets could or should be suspended or voided, and the powers needed to achieve this, where there is a reasonable cause for suspicion that cheating is taking place. The Gambling Commission already has these powers in the UK.¹⁹

19. *Gambling Act 2005* (UK) s 336-338. See also UK, Gambling Commission, *Licensing, Compliance and Enforcement Policy Statement* (2009) [5.41]-[5.47].

Appendix A

Preliminary submissions

PCG1	Gambling and Racing Commission (ACT), 28 January 2011
PCG2	Australian Communications and Media Authority, 8 February 2011
PCG3	Financial Services Authority (UK), 9 February 2011
PCG4	Local Court of NSW, 11 February 2011
PCG5	Tabcorp, 11 February 2011
PCG6	Department of Racing, Gaming and Liquor (WA), 11 February 2011
PCG7	Wesley Community Legal Service, 11 February 2011
PCG8	BetSafe, 14 February 2011
PCG9	Australian Athletes' Alliance, 14 February 2011
PCG10	Peter Lawrence, 14 February 2011
PCG11	Betfair Australia, 14 February 2011
PCG12	NSW Bookmakers' Co-operative Ltd, 14 February 2011
PCG13	Australian Sports Commission, 14 February 2011
CPCG14	Confidential submission, 14 February 2011
PCG15	Lander and Rogers Lawyers, 15 February 2011
PCG16	Australian Rugby Union, 15 February 2011
PCG17	Racing NSW, 16 February 2011
PCG18	Australian Internet Bookmakers Association, 17 February 2011
PCG19	Casino, Liquor and Gaming Control Authority (NSW), 17 February 2011
PCG20	Independent Gambling Authority (SA), 22 February 2011
PCG21	Victorian Commission for Gambling Regulation 7 March 2011
PCG22	Northern Territory Racing Commission, 9 March 2011
CPCG23	Confidential submission, 9 March 2011
PCG24	Australian Federal Police, 14 March 2011

Appendix B

Preliminary consultations

Richard Eccles, Deputy Secretary, Arts and Sport Group, Department of the Prime Minister and Cabinet, 14 January 2011.

Casino, Racing and Gaming Investigation Unit (NSW Police) - Detective Superintendent Arthur Katsogiannis, Commander, Firearms and Organised Crime Squad, 8 February 2011.

Kerri Harward and Des Gleeson, Victorian Office of Gaming and Racing, 9 February 2011.

Elizabeth Tydd, NSW Office of Liquor, Gaming and Racing, 16 February 2011.

Appendix C

Schedule of sports betting events and approved forms of betting

(Under sections 18 and 20 of Racing Administration Act 1998.)

(Last updated 4 March 2011.)

	Sport	Sporting events or classes of sporting events	Approved forms of betting
1	Athletics	World Athletic Championships Australian Open Championships State Open Championships Professional events sanctioned by an Australian Professional Athletics Assoc'n Grand Prix events sanctioned by International Amateur Athletics Federation Commonwealth Games Goodwill Games Olympic Games	Winner/placegetter in event or stage Quinella Exacta Trifecta Favourite Out betting Field Betting Head to head Best of the select (Group betting) Individual performance Reach final/specified level
2	Australian of the year	Australian of the Year Senior Australian of the Year Young Australian of the Year Australia's Local Hero	Winner Favourite Out Betting Individual Performance
3	Australian Rules Football	Australian Football League Premiership Competition Australian State Premier Division AFL Competitions State of Origin Games AFL Official Pre-season Competition Most Valuable Player awards sanctioned by AFL International Rules Matches (Aust v Ireland)	Head to Head [Match] Handicap [Match/Premiership/Series] Margins [Match] Line [Match] Team to lead at end of specified time period(s) [Match] Match score total [Match] Match score competitor [Match] Match score exact [Match] Scoring methods (Ranges) [Match] First, next or last specific scoring play/scorer [Match] Individual Performance [Match/Premiership/Series] Number of Disposals [Match] Match Period Performance [Match] Team Performance [Match/Premiership/Series] Game Events [Match] Ladder betting [Premiership/series]

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	Sport	Sporting events or classes of sporting events	Approved forms of betting
			<p>Team(s) to win or reach finals/specified level [Premiership/series]</p> <p>Wooden spoon [Premiership/series]</p> <p>Best of the select (Group betting) [Premiership/series]</p> <p>Favourite out betting [Premiership/series]</p> <p>Field betting [Premiership/series]</p> <p>Last team standing/winning [Premiership/series]</p> <p>Win [Premiership/series]</p> <p>Quinella [Premiership/series]</p> <p>Exacta [Premiership/series]</p> <p>Match with highest total score in round or series</p> <p>Match with highest winning margin in round or series</p> <p>Winner / Placegetter [Award, etc]</p>
4	Backgammon	<p>World Championships</p> <p>World Series of Backgammon</p> <p>American Backgammon Tour</p> <p>European Backgammon Tour</p> <p>Tournaments sanctioned by the World Backgammon Association (WBA) or affiliated international or national organisations</p>	<p>Winner/placegetter in stage/event/series/tournament or competition</p> <p>Favourite Out Betting</p> <p>Head to Head</p> <p>Individual Performance [Match/Premiership/Series]</p> <p>Match Period Performance [Match]</p> <p>Team Performance [Match/Premiership/Series]</p>
5	Badminton	<p>Uber Cup</p> <p>Sudirman Cup</p> <p>BWF World Championship</p> <p>BWF Super Series</p> <p>BWF Grand Prix Gold and Grand Prix events</p> <p>Sanctioned Tournaments by the Badminton World Federation (BWF) and regional conferences - Badminton Asia Confederation,</p> <p>Badminton Confederation of Africa, Badminton Pan Am, Badminton Europe and Badminton Oceania</p>	<p>Winner/placegetter in stage/event/series/tournament or competition</p> <p>Favourite Out Betting</p> <p>Head to Head</p> <p>Line</p> <p>Margin</p> <p>Total Score</p> <p>Best of a Select (Group Betting)</p> <p>Individual Performance</p> <p>Match Period Performance [Match]</p> <p>Team Performance [Match/Premiership/Series]</p>
6	Baseball	<p>US National Baseball League Competition</p> <p>US College Baseball League Competition</p> <p>Australian Baseball League Competition</p> <p>Special Events sanctioned by Australian Baseball League</p> <p>Most Valuable Player awards sanctioned by relevant recognized governing body</p> <p>Olympic Games</p> <p>Matches and Series sanctioned by the</p>	<p>Head to Head [Match]</p> <p>Handicap [Match/Premiership/Series]</p> <p>Margins [Match]</p> <p>Line [Match]</p> <p>Team to lead at end of specified time period(s) [Match]</p> <p>Match score total [Match]</p> <p>Match score competitor [Match]</p>

Schedule of sports betting events and approved forms of betting Appendix C

	Sport	Sporting events or classes of sporting events	Approved forms of betting
		International Baseball Federation (IBAF) or affiliated international or national organisations World Baseball Classic *sanctioned by IBAF Baseball World Cup *sanctioned by IBAF US National Baseball League (Minor Leagues) National Domestic competitions (men/women) eg Nippon Professional Baseball (Japan League)	Match score exact [Match] Scoring methods (Ranges) [Match] First, next or last specific scoring play/scorer [Match] Individual Performance [Match/Premiership/Series] Match Period Performance [Match] Team Performance [Match/Premiership/Series] Game Events [Match] Ladder betting [Premiership/series] Team(s) to win or reach finals/specified level [Premiership/series] Wooden spoon [Premiership/series] Best of the select (Group betting) [Premiership/series] Favourite out betting [Premiership/series] Field betting [Premiership/series] Last team standing/winning [Premiership/series] Win [Premiership/series] Quinella [Premiership/series] Exacta [Premiership/series] Series correct score [Premiership/series] Match with highest total score in round or series Match with highest winning margin in round or series Winner [Award, etc]
7	Basketball	European Championship Competition National Basketball Association (NBA, USA) Competition Women's Basketball Association (WBA, USA) Competition National/International Events sanctioned by Basketball Australia National Collegiate Athletics Association (NCAA) Competition Australian National Basketball League (NBL) Competition Australian Womens National Basketball League (WNBL) Competition Playoff series Australian Continental Basketball League (CBA) World Championships sanctioned by Federated International Basketball Association Most Valuable Player awards sanctioned by relevant recognized governing body	Head to Head [Match] Handicap [Match/Premiership/Series] Margins [Match] Line [Match] Team to lead at end of specified time period(s) [Match] Match score total [Match] Match score competitor [Match] Match score exact [Match] Scoring methods (Ranges) [Match] First, next or last specific scoring play/scorer [Match] Individual Performance [Match/Premiership/Series] Match Period Performance [Match] Team Performance [Match/Premiership/Series] Game Events [Match] Ladder betting [Premiership/series]

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	Sport	Sporting events or classes of sporting events	Approved forms of betting
		<p>Goodwill Games</p> <p>Olympic Games</p> <p>Commonwealth Games</p> <p>Matches and Series sanctioned by the Federated International Basketball Association (FIBA) or affiliated international or national organisations including Basketball Australia</p>	<p>Team(s) to win or reach finals/specified level [Premiership/series]</p> <p>Wooden spoon [Premiership/series]</p> <p>Best of the select (Group betting) [Premiership/series]</p> <p>Favourite out betting [Premiership/series]</p> <p>Field betting [Premiership/series]</p> <p>Last team standing/winning [Premiership/series]</p> <p>Win [Premiership/series]</p> <p>Quinella [Premiership/series]</p> <p>Exacta [Premiership/series]</p> <p>Match with highest total score in round or series</p> <p>Match with highest winning margin in round or series</p> <p>Winner [Award, etc]</p>
8	Boxing	<p>Sanctioned World Title Fights by World Boxing Association</p> <p>Sanctioned World Title Fights by World Boxing Council</p> <p>Sanctioned World Title Fights by International Boxing Federation</p> <p>Sanctioned World Title Fights by World Boxing Organisation</p> <p>Sanctioned World Title Fights by International Boxing Association</p> <p>Sanctioned World Title Fights by International Boxing Organisation</p> <p>Sanctioned World Title Fights by World Boxing Federation</p> <p>Sanctioned World Title Elimination Fights by WBA, WBC, IBF, IBA, WBO, IBO and WBF</p> <p>Sanctioned Australian Championship Fights by Australian Boxing Feder'n</p> <p>Goodwill Games</p> <p>Commonwealth Games</p> <p>Olympic Games</p> <p>Fights Sanctioned by Australian Boxing Federation</p> <p>Fights Sanctioned by Ring Magazine</p> <p>Fights involving a current or previous title holder of WBA, WBC, IBF, IBA, WBO, IBO, WBF or Australian Boxing Federation</p> <p>Fights broadcast on Australian television</p>	<p>Fight winner/draw</p> <p>Result/Method - KO/TKO, points decision, disqualification</p> <p>Result/Duration (number of rounds)</p> <p>Tournament Head to Head</p> <p>Tournament Winner</p>
9	Chess	<p>Sanctioned Tournaments by the Fédération Internationale des Échecs (FIDE)</p> <p>Sanctioned Tournaments by National Chess Organisations</p>	<p>Winner/placegetter in stage/event/series/ tournament or competition</p> <p>Favourite Out Betting</p>

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	Sport	Sporting events or classes of sporting events	Approved forms of betting
			Head to Head Best of a Select (Group Betting) Individual Performance [Match/Premiership/Series] Match Period Performance [Match] Team Performance [Match/Premiership/Series] Game Events [Match]
10	Cricket	World Cup of Cricket (One Day Series) Test Matches Interstate 1st Class Competition Interstate One Day Series International One Day Series Matches and Series sanctioned by Australian Cricket Board or affiliated international organisations Commonwealth Games English County Games Most Valuable Player awards sanctioned by relevant recognized governing body	Head to Head [Match/Premiership/Series] Result [Match] Margins [Match] Method of dismissal [Match] Next player out [Match] Next wicket taker [Match] Team to lead at end of specified time period(s) [Match] Match score total [Match] Match score competitor [Match] Match score exact [Match] Competitors score (ranges) at end of specified time period [Match] Individual Performance [Match/Premiership/Series] First/Next/Last specific play/scorer [Match] Match Period Performance [Match] Team Performance [Match/Premiership/Series] Ladder betting [Premiership/series] Team(s) to win or reach finals/specified level [Premiership/series] Wooden spoon [Premiership/series] Best of the select (Group betting) [Premiership/series] Favourite out betting [Premiership/series] Field betting [Premiership/series] Last team standing/winning [Premiership/series] Win [Premiership/series] Quinella [Premiership/series] Exacta [Premiership/series] Match with highest total score in round or series Match with highest winning margin in round or series Winner [Award, etc]
11	Cycling	World Championships Tour de France	Winner/placegetter in event/stage/category (general, sprint, king of mountain)

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	Sport	Sporting events or classes of sporting events	Approved forms of betting
		<p>Australian Championships</p> <p>Melbourne to Warnambool</p> <p>Other events sanctioned by International Cycling Fed'n or Cycling Australia</p> <p>Goodwill Games</p> <p>Commonwealth Games</p> <p>Olympic Games</p> <p>2009 Tour Down Under</p>	<p>Quinella</p> <p>Exacta</p> <p>Trifecta</p> <p>Favourite Out betting</p> <p>Field Betting</p> <p>Head to head</p> <p>Best of the select (Group betting)</p> <p>Individual Performance</p> <p>Reach final/specified level</p>
12	Darts	<p>Sanctioned Competitions by the Professional Darts Corporation</p> <p>Sanctioned Competitions by the British Darts Organisation</p> <p>Sanctioned Competitions by the World Darts Federation</p>	<p>Winner/placegetter in stage/event/series/tournament or competition</p> <p>Favourite Out Betting</p> <p>Head to Head</p> <p>Best of a Select (Group Betting)</p> <p>Individual Performance</p>
13	Entertainment	<p>Academy Awards (Oscars)</p> <p>Screen Actors Guild Awards (SAG)</p> <p>British Academy of Film and Television Arts (BAFTA)</p> <p>Logie Awards</p> <p>The Australian Film Institute Awards (AFI)</p> <p>Cannes International Film Festival</p> <p>Sundance Film Festival</p> <p>Venice International Film Festival</p> <p>Tropfest Short Film Awards</p> <p>Razzie Awards</p> <p>Miss Universe Beauty Pageant</p> <p>Miss World Beauty Pageant</p> <p>Miss Australia Beauty Pageant</p> <p>Miss America Beauty Pageant</p> <p>* Awards for film, television and entertainment industries in Australia and other countries</p>	<p>Winner</p> <p>Favourite Out Betting</p> <p>Individual Performance</p> <p>Contestant to win or reach finals/specified level</p>
14	Equestrian	<p>Olympic Games</p> <p>World Championships</p>	<p>Winner/placegetter in event or stage</p> <p>Quinella</p> <p>Exacta</p> <p>Trifecta</p> <p>Favourite Out Betting</p> <p>Field Betting</p> <p>Head to Head</p> <p>Best of the select (Group betting)</p>

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	Sport	Sporting events or classes of sporting events	Approved forms of betting
			Individual Performance Reach final/specified level
15	Floorball	Matches and Series sanctioned by the International Floorball Federation or affiliated international or national organisations	Winner/placegetter in stage/event/series/tournament or competition Favourite Out Betting Head to Head Line Margin Total Score Best of a Select (Group Betting) Individual Performance [Match/Premiership/Series] Match Period Performance [Match] Team Performance [Match/Premiership/Series]
16	Futsal	FIFA Futsal World Cup FIFUSA World Futsal Championships AMF World Futsal Championships Futsal Mundialito Grand Prix de Futsal Events and Series sanctioned by FIFA/UEFA or affiliated international or national organisations	Head to Head [Match] Handicap (Points Start) [Match/Premiership/Series] Margins [Match] Line [Match] Result [Match] Team to lead at end of specified time period(s) [Match] Match score total [Match] Match score competitor [Match] Match score exact [Match] First/next or last specific play/scorer [Match] Individual Performance [Match/Premiership/Series] Match Period Performance Match/Match Period/Series Team Performance [Match/Match Period/Series] Game Events (excluding throw-ins, kick off or goal kick options) [Match/Match Period/Series] Ladder betting [Premiership/series] Team to win or reach finals/specified level [Premiership/series] Wooden spoon [Premiership/series] Best of the select (Group betting) [Premiership/series] Favourite out betting [Premiership/series] Field betting [Premiership/series] Last team standing/winning [Premiership/series] Promotion/relegation [Premiership/series] Winner/Placegetter [Premiership/series]

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	Sport	Sporting events or classes of sporting events	Approved forms of betting
			<p>Exacta [Premiership/series]</p> <p>Quinella [Premiership/series]</p> <p>Trifecta [Premiership/series]</p> <p>Match with highest points in round or series</p> <p>Match with highest winning margin in round or series</p> <p>Winner [Award, etc]</p>
17	Gaelic Football	Matches and Series sanctioned by the Gaelic Athletic Association or affiliated international or national organisations	<p>Winner/placegetter in stage/event/series/tournament or competition</p> <p>Favourite Out Betting</p> <p>Head to Head</p> <p>Line</p> <p>Margin</p> <p>Total Score</p> <p>First, next or last specific scoring play/scorer</p> <p>Best of a Select (Group Betting)</p> <p>Individual Performance [Match/Premiership/Series]</p> <p>Match Period Performance [Match]</p> <p>Team Performance [Match/Premiership/Series]</p> <p>Game Event [Match]</p>
18	Golf	<p>Australian or State Opens</p> <p>Australian Professional Golf Association/Ladies Professional Golf Association Championships</p> <p>PGA Tour of Australasia Ltd Events</p> <p>US Masters</p> <p>US PGA/LPGA</p> <p>Dunhill Cup</p> <p>US Open</p> <p>US PGA/LPGA Tour Events</p> <p>British Open</p> <p>World Match Play</p> <p>Ryder Cup</p> <p>President's Cup</p> <p>Other events (incl. "Skins") sanctioned by governing PGA/LPGA or an affiliated international organisation</p> <p>Olympic Games</p>	<p>Best of the select (Group betting)</p> <p>Head to head</p> <p>Individual Performance</p> <p>Make cut/final series</p> <p>Winner/placegetter in event</p> <p>Quinella</p> <p>Exacta</p> <p>Trifecta</p> <p>Stage betting</p> <p>Favourite out betting</p> <p>Field betting</p> <p>Total match score/winning score</p> <p>Greens in regulation</p> <p>Fairways hit</p> <p>Putts per round</p> <p>No of Birdies/Eagles/Bogeys</p> <p>Playoff Yes/No</p> <p>Wire to Wire winner</p>
19	Gridiron (American Football)	United States National Football League Competition	<p>Head to Head [Match]</p> <p>Handicap [Match/Premiership/Series]</p>

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	Sport	Sporting events or classes of sporting events	Approved forms of betting
		<p>Superbowl</p> <p>United States College Football Competition</p> <p>Events sanctioned by National Football League & National Collegiate Athletic Association</p> <p>Most Valuable Player awards sanctioned by relevant recognized governing body</p>	<p>Margins [Match]</p> <p>Line [Match]</p> <p>Team to lead at end of specified time period(s) [Match]</p> <p>Match score total [Match]</p> <p>Match score competitor [Match]</p> <p>Match score exact [Match]</p> <p>First, next or last specific play/scorer [Match]</p> <p>Scoring methods (Ranges) [Match]</p> <p>Individual Performance [Match/Premiership/Series]</p> <p>Match Period Performance [Match]</p> <p>Team Performance [Match/Premiership/Series]</p> <p>Game Events (excluding kick off) [Match]</p> <p>Ladder betting [Premiership/series]</p> <p>Team(s) to win or reach finals/specified level [Premiership/series]</p> <p>Wooden spoon [Premiership/series]</p> <p>Best of the select (Group betting) [Premiership/series]</p> <p>Favourite out betting [Premiership/series]</p> <p>Field betting [Premiership/series]</p> <p>Last team standing/winning [Premiership/series]</p> <p>Win [Premiership/series]</p> <p>Quinella [Premiership/series]</p> <p>Exacta [Premiership/series]</p> <p>Match with highest total score in round or series</p> <p>Match with highest winning margin in round or series</p> <p>Winner [Award, etc]</p>
20	Handball	<p>Matches and Series sanctioned by the International Handball Federation (IHF) or affiliated international or national organisations</p>	<p>Winner/placegetter in stage/event/series/tournament or competition</p> <p>Favourite Out Betting</p> <p>Head to Head</p> <p>Best of a Select (Group Betting)</p> <p>Individual Performance [Match/Premiership/Series]</p> <p>Match Period Performance [Match]</p> <p>Team Performance [Match/Premiership/Series]</p>
21	Hockey	<p>World Cup</p> <p>International Tournaments and Tests</p> <p>Australian Championships</p> <p>Commonwealth Games</p>	<p>Head to Head [Match]</p> <p>Handicap [Match/Premiership/Series]</p> <p>Margins [Match]</p> <p>Line [Match]</p>

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	Sport	Sporting events or classes of sporting events	Approved forms of betting
		Other matches sanctioned by International Hockey Fed'n or Hockey Australia Most Valuable Player awards sanctioned by relevant recognized governing body Olympic Games	Result [Match] Team to lead at end of specified time period(s) [Match] Match score total [Match] Individual Performance [Match/Premiership/Series] Match Period Performance [Match] Team Performance [Match/Premiership/Series] Game Events [Match] Ladder betting [Premiership/series] Team to win or reach finals/specified level [Premiership/series] Wooden spoon [Premiership/series] Best of the select (Group betting) [Premiership/series] Favourite out betting [Premiership/series] Field betting [Premiership/series] Last team standing/winning [Premiership/series] Promotion/relegation [Premiership/series] Winner/Placegetter [Premiership/series] Exacta [Premiership/series] Quinella [Premiership/series] Trifecta [Premiership/series] Match with highest points in round or series Match with highest winning margin in round or series Winner [Award, etc]
22	Ice Hockey	US National Hockey League Competition Australian National Hockey League Competition Canadian National Hockey League Competition International matches sanctioned by IHL World Championships Most Valuable Player awards sanctioned by relevant recognized governing body Olympic Games	Head to Head [Match] Handicap [Match/Premiership/Series] Margins [Match] Line [Match] Result [Match] Team to lead at end of specified time period(s) [Match] Match score total [Match] Match score competitor [Match] Match score exact [Match] Individual Performance [Match/Premiership/Series] Match Period Performance [Match] Team Performance [Match/Premiership/Series] Game Events [Match] Ladder betting [Premiership/series] Team to win or reach finals/specified level

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	Sport	Sporting events or classes of sporting events	Approved forms of betting
			[Premiership/series] Wooden spoon [Premiership/series] Best of the select (Group betting) [Premiership/series] Favourite out betting [Premiership/series] Field betting [Premiership/series] Last team standing/winning [Premiership/series] Promotion/relegation [Premiership/series] Winner/Placegetter [Premiership/series] Exacta [Premiership/series] Quinella [Premiership/series] Trifecta [Premiership/series] Match with highest points in round or series Match with highest winning margin in round or series Winner [Award, etc]
23	Interest rates	Official Interest Rates of the Reserve Bank of Australia (RBA)	Will there be an increase/decrease Size of increase/decrease (ranges)
24	Lacrosse	Matches and Series sanctioned by the Federation of International Lacrosse (FIL) or affiliated international or national organisations	Winner/placegetter in stage/event/series/tournament or competition Favourite Out Betting Head to Head Best of a Select (Group Betting) Individual Performance [Match/Premiership/Series] Match Period Performance [Match] Team Performance [Match/Premiership/Series]
25	Lawn Bowls	NSW Premier League Test Series City of Sydney Masters State Number 1 Pennants (Grade 1) Australian Sides Championship NSW State Championship Final Series Trans Tasman Series Asia Pacific Games Champion of Champions Competition Australian Indoor Championships World Championships Commonwealth Games	Head to head Pick the winners Winning margins Competition winner Progress to an identified final Pick a winning score Total points
26	Literary and arts awards	Archibald Prize / Packing Room Prize Miles Franklin Award	Winner Favourite Out Betting

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	Sport	Sporting events or classes of sporting events	Approved forms of betting
		Booker Prize	Individual Performance
27	Magic Millions Horse Sales	Magic Millions Sales	Highest Selling Horse Highest Bid (ranges) Highest Average Sire Average Price Number Passed in Individual Performance
28	Miscellaneous	Commonwealth Games Olympic Games Jockey Challenge	Select medal tally won by a specific competitor or country overall or in a specific sport Ladder Betting Winner
29	Motor Racing	World Formula One Grand Prix Championship Races and Series World Grand Prix Championship Races and Series (Cars and Bikes) World/Australian Touring Car Championship Rounds and Series Indy Car Grand Prix races Bathurst 1,000 (Production and 2 litre classes) State and National Sprintcar Championships Le Mans NASCAR Championship Races & Series Indianapolis Races British League Championship (Speedway/Bikes) Speedway Riders World Championship (Bikes) Australian Rally Championships World Rally Championships World Grand Prix Support Championship Races & Series (Cars & Bikes) World A1 Grand Prix Championship Races and Series	Winner/placegetter in event or stage Quinella Exacta Trifecta Favourite Out betting Field Betting Head to head Best of the select (Group betting) Individual Performance Reach final/specified level Number of competitors to complete/be eliminated from event or stage Pole Position Fastest Lap Race Period Performance [Race] Team Performance [Race/Premiership/Series] Race Events [Race] Competitor to lead at end of specified period
30	Netball	Commonwealth Games Interstate Premier Competition World Netball Championships International Matches sanctioned by International Federation of Netball Associations	Head to Head [Match] Handicap [Match/Premiership/Series] Margins [Match] Line [Match] Team to lead at end of specified time period(s) [Match] Match score total [Match] Match score competitor [Match]

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	Sport	Sporting events or classes of sporting events	Approved forms of betting
			Match score exact [Match] First, next or last specific play/scorer [Match] Scoring methods (Ranges) [Match] Individual Performance [Match/Premiership/Series] Match Period Performance [Match] Team Performance [Match/Premiership/Series] Ladder betting [Premiership/series] Team(s) to win or reach finals/specified level [Premiership/series] Wooden spoon [Premiership/series] Best of the select (Group betting) [Premiership/series] Favourite out betting [Premiership/series] Field betting [Premiership/series] Last team standing/winning [Premiership/series] Win [Premiership/series] Quinella [Premiership/series] Exacta [Premiership/series] Match with highest total score in round or series Match with highest winning margin in round or series Winner [Award, etc]
31	Nobel Peace Prize	Categories - chemistry, physics, literature, peace, and physiology or medicine	Winner Favourite Out Betting Individual Performance
32	Olympic & Commonwealth Games	Events conducted at the Olympic Games sanctioned by the International Olympic Committee (IOC) Events conducted at the Commonwealth Games sanctioned by the Commonwealth Games Organising Committee	Winner/placegetter in stage/event/series/tournament or competition Favourite Out Betting Head to Head Handicap Margins Line Team to lead at end of specified time period(s) Match Score Total / Ranges Match score competitor First, next or last specific scoring play/scorer Individual Performance Team/Country Performance Best of a Select (Group Betting) Bet types approved under the individual sports in this schedule

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	Sport	Sporting events or classes of sporting events	Approved forms of betting
33	Poker	Events and Series sanctioned by the World Poker Tournaments (WPT) or affiliated international or national organisations Events and Series sanctioned by the World Series of Poker (WSOP) or affiliated international or national organisations	Winner/placegetter in stage/event/series/tournament or competition To make final table Favourite Out Betting Head to Head Best of a Select (Group Betting) Individual Performance [Match/Premiership/Series] Event Period Performance [Match] Team Performance [Match/Premiership/Series]
34	Power boats	Events and Series sanctioned by the UIM - Union Internationale Motonautique (International Power Boating Association) or Australian Power Boat Association or affiliated international or national organisations	Winner/placegetter in stage/event/series/tournament or competition Favourite Out Betting Head to Head Best of a Select (Group Betting) Individual Performance [Race] Team Performance [Race/Premiership/Series]
35	Reality TV shows	Australian and International Television Shows	Winner Eliminated Contestant Individual Performance
36	Rowing	Olympic Games World Championships Events sanctioned by the International Rowing Federation (FISA) or affiliated international or national organisations	Winner/placegetter in event or stage Quinella Exacta Trifecta Favourite Out Betting Field Betting Head to Head Best of the select (Group betting) Individual Performance Reach final/specified level
37	Rugby League	Test Matches/Series National Rugby League Premiership Competition State of Origin Competition World Sevens or Nines Tournaments Special Matches sanctioned by NRL Super League Competition (United Kingdom) NSW RL Premier League Matches Most Valuable Player awards sanctioned by relevant recognized governing body	Head to Head [Match] Handicap [Match/Premiership/Series] Margins [Match] Line [Match] Team to lead at end of specified time period(s) [Match] Match score total [Match] Match score competitor [Match] Match score exact [Match] First, next or last specific play/scorer [Match] Scoring methods (Ranges) [Match]

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	Sport	Sporting events or classes of sporting events	Approved forms of betting
		NRL Toyota Cup Finals Matches NRL Toyota Cup Competition Matches and Series sanctioned by the Rugby League International Federation (RLIF) or affiliated international or national organisations Matches and Series sanctioned by the Australian Rugby League / National Rugby League and affiliated state bodies Matches and Series sanctioned by the New Zealand Rugby League (NZRL) NSW Cup Bundaberg Red Cup CRL games S G Ball Cup Harold Matthews Cup	Individual Performance [Match/Premiership/Series] Match Period Performance [Match] Team Performance [Match/Premiership/Series] Game Events (excluding kick off) [Match] Ladder betting [Premiership/series] Team(s) to win or reach finals/specified level [Premiership/series] Wooden spoon [Premiership/series] Best of the select (Group betting) [Premiership/series] Favourite out betting [Premiership/series] Field betting [Premiership/series] Last team standing/winning [Premiership/series] Win [Premiership/series] Quinella [Premiership/series] Exacta [Premiership/series] Match with highest total score in round or series Match with highest winning margin in round or series Winner [Award, etc]
38	Rugby Union	Five/Six Nations Tournament Matches NSW and Queensland Premiership Competition Test Matches World Sevens Competitions World Cup Matches Tri-Nations Series Super 15 Competition Interstate Matches Other Matches Sanctioned by International Rugby Board or affiliated governing body Commonwealth Games Most Valuable Player awards sanctioned by relevant recognized governing body U19/Junior World Championships/World Cup	Head to Head [Match/Premiership/Series/Round] Handicap [Match/Premiership/Series] Margins [Match] Line [Match] Team to lead at end of specified time period(s) [Match] Match score total [Match] Match score competitor [Match] Match score exact [Match] First, next or last specific play/scorer [Match] Scoring methods (Ranges) [Match] Individual Performance [Match/Premiership/Series] Match Period Performance [Match] Team Performance [Match/Premiership/Series] Game Events (excluding kick off) [Match] Ladder betting [Premiership/series] Team(s) to win or reach finals/specified level [Premiership/series] Wooden spoon [Premiership/series] Best of the select (Group betting) [Premiership/series] Favourite out betting [Premiership/series]

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	Sport	Sporting events or classes of sporting events	Approved forms of betting
			Field betting [Premiership/series] Last team standing/winning [Premiership/series] Win [Premiership/series] Quinella [Premiership/series] Exacta [Premiership/series] Match with highest total score in round or series Match with highest winning margin in round or series Winner [Award, etc]
39	Squash	Events and Series sanctioned by the World Squash Federation or Professional Squash Association (PSA) or the Women's International Squash Players Association (WISPA) or affiliated international or national organisations	Winner/placegetter in stage/event/series/tournament or competition Favourite Out Betting Head to Head Line Margin Total Score Best of a Select (Group Betting) Individual Performance [Match/Premiership/Series] Match Period Performance [Match] Team Performance [Match/Premiership/Series]
40	Snooker	Sanctioned Tournaments by the World Professional Billiards and Snooker Association Sanctioned Tournaments by the Australian Billiards and Snooker Council	Winner/Placegetter in stage/event/series/tournament or competition Favourite Out Betting Head to Head Best of Select (Group Betting) Individual Performance Match Period Performance
41	Soccer	English Premier League and 1st, 2nd & 3rd Division Competition English Conference League FA Cup UEFA Europa League (formerly UEFA Cup) World Cup A-League (formerly Australian National Soccer League) European Champions League Competition UEFA European Football Championship (formerly Euro Championship) Special Matches sanctioned by Soccer Australia, FIFA, UEFA NSW State League Competition Other National/International Competitions/Cups sanctioned by	Head to Head [Match] Handicap (Points Start) [Match/Premiership/Series] Margins [Match] Line [Match] Result [Match] Team to lead at end of specified time period(s) [Match] Match score total [Match] Match score competitor [Match] Match score exact [Match] First/next or last specific play/scorer [Match] Individual Performance [Match/Premiership/Series] Match Period Performance Match/Match

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	Sport	Sporting events or classes of sporting events	Approved forms of betting
		FIFA/UEFA Most Valuable Player awards sanctioned by relevant recognized governing body Olympic Games Scottish Division 2 Scottish Division 3 Italian Serie B and C Spanish Division 2 German Division 2 J-League Division 2 US Major Soccer League Division 2 Brazilian State Leagues Russian Division 2 Turkish Division 2 Portugal Division 2	Period/Series Team Performance Match/ Match Period/Series Game Events (excluding throw-ins, kick off or goal kick options) Match/Match Period/Series Ladder betting [Premiership/series] Team to win or reach finals/specified level [Premiership/series] Wooden spoon [Premiership/series] Best of the select (Group betting) [Premiership/series] Favourite out betting [Premiership/series] Field betting [Premiership/series] Last team standing/winning [Premiership/series] Promotion/relegation [Premiership/series] Winner/Placegetter [Premiership/series] Exacta [Premiership/series] Quinella [Premiership/series] Trifecta [Premiership/series] Match with highest points in round or series Match with highest winning margin in round or series Winner [Award, etc]
42	Stock Market Indices	International Indices ASX Indices	Increase / Decrease Margin (Ranges)
43	Surf Life Saving	Australian Iron Man/Woman Competitions World Iron Man/Woman Competitions Australian Surf Life Saving Championship Events Goodwill Games	Winner/placegetter in event or stage Quinella Exacta Trifecta Favourite Out betting Field Betting Head to head Best of the select (Group betting) Individual Performance Reach final/specified level
44	Surfing	World Professional Men's and Women's Tour Events Events sanctioned by the Association of Surfing Professionals or affiliated international or national organisations	Winner/placegetter in stage/event/series/tournament Quinella Exacta Trifecta Favourite Out betting Field Betting Head to head

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	Sport	Sporting events or classes of sporting events	Approved forms of betting
			Best of the select (Group betting) Individual Performance Reach final/specified level
45	Swimming	Olympic Games World Championships Commonwealth Games Events sanctioned by the FINA or affiliated international or national organisations Events sanctioned by Swimming Australia	Winner/placegetter in event or stage Quinella Exacta Trifecta Favourite Out Betting Field Betting Head to Head Best of the select (Group betting) Individual Performance Reach final/specified level
46	Table tennis	Events and Series sanctioned by the International Table Tennis Federation (ITTF) or affiliated international or national organisations	Winner/placegetter in stage/event/series/tournament or competition Favourite Out Betting Head to Head Line Margin Total Score Best of a Select (Group Betting) Individual Performance [Match/Premiership/Series] Match Period Performance [Match] Team Performance [Match/Premiership/Series]
47	Ten Pin Bowling	Events and Series sanctioned by the Professional Bowlers Association (PBA) or affiliated international or national organisations Events and Series sanctioned by the European Tenpin Bowling Federation Events and Series sanctioned by the United States Bowling Congress (USBC) Weber Cup World Tenpin Masters Qubica/AMF World Cup.	Winner/placegetter in stage/event/series/tournament or competition Favourite Out Betting Head to Head Line Margin Total Score Best of a Select (Group Betting) Individual Performance [Match/Premiership/Series] Match Period Performance [Match] Team Performance [Match/Premiership/Series] First, next or last specific scoring play/scorer
48	Tennis	Grand Slam Tournaments Australian State Open Championship Australian Indoor Championship	Head to head [Match/Tournament] Correct set score in match [Match] Number of games played in a set/match [Match]

Schedule of sports betting events and approved forms of betting Appendix C

	Sport	Sporting events or classes of sporting events	Approved forms of betting
		Davis Cup Hopman Cup Federation Cup Association of Tennis Professional Tour Other Events sanctioned by Association of Tennis Professionals, Womens Tennis Association, International Tennis Federation or affiliated bodies Olympic Games Exhibition matches involving ATP/WTA players World Team Tennis	Number of aces in a game/set/match [Match] Next set winner [Match] Next game winner [Match] Match Period Performance [Match] Team Performance [Match/Premiership/Series] Game Events (excluding 1st to serve) [Match] Line [Match] Player/team to win or reach finals/specified level [Tournament] Best of the select (Group betting) [Tournament] Favourite out betting [Tournament] Field betting [Tournament] Individual Performance [Match/Tournament] Exacta [Tournament] Quinella [Tournament]
49	Triathlon	Events sanctioned by Triathlon Australia or International Triathlon Union or a recognised affiliated body Goodwill Games Commonwealth Games Olympic Games	Winner/placegetter in stage/event/series/tournament Quinella Exacta Trifecta Favourite Out betting Field Betting Head to head Best of the select (Group betting) Individual Performance Reach final/specified level
50	Volleyball	Olympic Games World Championships Events sanctioned by International Federation of Volleyball (FIVA) or affiliated international or national organisations Beach Volleyball Events sanctioned by FIVA or affiliated international or national organisations	Head to head Handicap Margins Line Team to lead at end of specified time period/s Match score total Match score competitor Match score exact Scoring methods (Ranges) First, next or last specific scoring play/scorer Individual Performance Ladder betting Team(s) to win or reach finals/specified level Wooden spoon Best of the select (Group betting)

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	Sport	Sporting events or classes of sporting events	Approved forms of betting
			<p>Favourite out betting</p> <p>Field betting</p> <p>Last team standing/winning</p> <p>Win</p> <p>Quinella</p> <p>Exacta</p> <p>Match with highest total score in round or series</p> <p>Match with highest winning margin in round or series</p>
51	Weightlifting	<p>Olympic Games</p> <p>World Championships</p> <p>Commonwealth Games</p> <p>Events sanctioned by International Weightlifting Federation (IWF) or affiliated international or national organisations</p>	<p>Winner/placegetter in event or stage</p> <p>Quinella</p> <p>Exacta</p> <p>Trifecta</p> <p>Favourite Out Betting</p> <p>Field Betting</p> <p>Head to Head</p> <p>Best of the select (Group betting)</p> <p>Individual Performance</p> <p>Reach final/specified level</p>
52	Winter Sports	<p>Ice Skating, Skiing, Sledding, Snowboarding and Snowmobiling Events and Series sanctioned by the International Ski Federation</p>	<p>Winner/placegetter in stage/event/series/tournament or competition</p> <p>Favourite Out Betting</p> <p>Head to Head</p> <p>Best of a Select (Group Betting)</p> <p>Individual Performance [Match/Premiership/Series]</p> <p>Event Period Performance [Match]</p> <p>Team Performance [Match/Premiership/Series]</p>
53	Yacht racing	<p>Sydney to Hobart</p> <p>America's Cup</p> <p>Admiral's Cup</p> <p>Senior 18 Foot Sailing sanctioned by Yachting Association of NSW</p> <p>Olympic Games</p> <p>Events sanctioned by the International Sailing Federation (ISAF) or affiliated international or national organisations</p>	<p>Winner/placegetter in stage/event/series/tournament</p> <p>Quinella</p> <p>Exacta</p> <p>Trifecta</p> <p>Favourite Out betting</p> <p>Field Betting</p> <p>Head to head</p> <p>Best of the select (Group betting)</p> <p>Individual Performance</p> <p>Reach final/specified level</p>

Source: NSW, Government Gazette (4 March 2011) 1739-1755.

Appendix D

Cheating, fraud and other relevant provisions

Cheating

New South Wales

Casino Control Act 1992 (NSW) s 87

Gaming Machines Act 2001 (NSW) s 80

Unlawful Gambling Act 1998 (NSW) s 18

Australian Capital Territory

Casino Control Act 2006 (ACT) s 108

Interactive Gambling Act 1998 (ACT) s 131

Unlawful Gambling Act 2009 (ACT) s 23

Northern Territory

Gaming Control Act (NT) s 69

Gaming Machine Act (NT) s 176

Totalisator Licensing and Regulation Act s 97

Queensland

Casino Control Act 1982 (Qld) s 103

Charitable and Non-Profit Gaming Act 1999 (Qld) s 106

Gaming Machine Act 1991 (Qld) s 349

Interactive Gambling (Player Protection) Act 1998 (Qld) s 169

Keno Act 1996 (Qld) s 155

Lotteries Act 1997 (Qld) s 140

Wagering Act 1998 (Qld) s 217

South Australia

Lottery and Gaming Act 1936 (SA) s 49

Tasmania

Criminal Code (Tas) s 252

Gaming Control Act 1993 (Tas) s 165

Victoria

Gambling Regulation Act 2003 (Vic) s 2.3.5, s 4.7.5

Western Australia

Gaming and Wagering Commission Act 1987 (WA) s 44

United Kingdom

Gambling Act 2005 (UK) s 42

Canada

Criminal Code, RSC 1985 s 209

New Zealand

Gambling Act 2003 (NZ) s 351

Ireland

Gaming and Lotteries Act 1956 (Eire) s 11

Fraud/dishonesty

New South Wales

Crimes Act 1900 (NSW) s 192E

Australian Capital Territory

Criminal Code (ACT) s 326, s 332

Northern Territory

Criminal Code (NT) s 227

Queensland

Criminal Code (Qld) s 408C

South Australia

Criminal Law Consolidation Act 1935 (SA) s 139

Tasmania

Criminal Code (Tas) s 252A

Victoria

Crimes Act 1958 (Vic) s 81, s 82

Western Australia

Criminal Code (WA) s 409

Canada

Criminal Code, RSC 1985 s 380

Bribery/secret commissions

New South Wales

Casino Control Act 1992 (NSW) s 150

Crimes Act 1900 (NSW) s 249B

Northern Territory

Criminal Code (NT) s 236

Gaming Machine Act (NT) s 173

Queensland

Casino Control Act 1982 (Qld) s 111

Charitable and Non-Profit Gaming Act 1999 (Qld) s 105

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Keno Act 1996 (Qld) s 158

Lotteries Act 1997 (Qld) s 143

Wagering Act 1998 (Qld) s 220

South Australia

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New Zealand

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South Africa

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United Kingdom

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