



Mr Laurie Glanfield
Director General
Criminal Law Review
NSW Department of Attorney General and Justice
GPO Box 6
Sydney NSW 2001

Dear Mr. Glanfield,

COMPPS SUBMISSION
CRIMES AMENDMENT 'CHEATING AT GAMBLING' BILL 2011 (NSW)

The Coalition of Major Professional and Participation Sports (COMPPS) consists of the following organisations:

- Australian Football League (AFL);
- Australian Rugby Union (ARU);
- Cricket Australia (CA);
- Football Federation Australia (FFA);
- National Rugby League (NRL);
- Netball Australia (NA); and
- Tennis Australia (TA).

Each of these organisations is the governing body and custodian of a major professional sport in Australia. They are not-for-profit bodies and are responsible for the long-term development and sustainability of their sport in Australia.

COMPPS members provide a wide range of public benefits through a self-funding business model. The vast majority of their revenue is devoted to enhancing, promoting and developing sport for all Australians. One of COMPPS' roles is to provide a collective response on behalf of its member sports where their interests are aligned.



Each of the COMPPS member sports conducts matches on which betting takes place. The bulk of sports betting in Australia, excluding horse racing, takes place on these sports. The major focus of COMPPS members is to ensure that their sports remain free from betting-related integrity issues. COMPPS has vocally supported measures to create nationally-consistent gambling regulation, tackle corruption in sport and prevent problem gambling.

COMPPS has considered the *Crimes Amendment (Cheating at Gambling) Bill 2011* (NSW) and responds as follows.

1. COMPPS supports the introduction by the NSW Government of comprehensive anti-cheating legislation

In 2010, COMPPS formed an Anti-Corruption Working Party with the sole purpose of providing the sports industry with a comprehensive analysis of betting-related corruption in sport and an effective approach to deterring potential corruptors and maintaining the integrity of their sports. One of the recommendations made by the Working Party was that nationally consistent criminal legislation be enacted creating an offence of “cheating in connection with sports wagering”.

COMPPS supports the introduction by the NSW Government of comprehensive legislation that makes cheating at gambling a criminal offence. The definition of cheating at gambling set out in the draft Part 4ACA Division 1 of the *Crimes Amendment (Cheating at Gambling) Bill 2011* (NSW) (“the Bill”) is comprehensive. This, together with the four offences set out in Division 2, provide an effective way of dealing with the issue.

We acknowledge that the Bill deals specifically with cheating at gambling for the purpose of financial advantage and is not intended to solve all of the problems that sport may face in relation to underperformance. We agree with the comments made in paragraph 2.31 of the NSW LRC paper that “*this would not criminalise breaking the rules of a sport, or making tactical decisions for reasons other than affecting betting.*”

We acknowledge further that there remains a clear area of activity that falls in the domain of the sporting bodies that is not caught by the Bill. This is clearly expressed in paragraph 2.65:

“It is important to preserve a clear distinction between deliberate cheating aimed at affecting betting activities, and the kinds of rule-breaking or error by a player or official that will inevitably occur in any kind of sporting contest but are not related to betting. Although conduct of the later kind can affect the outcome of a game, it needs to remain the province for match officials and sports disciplinary rules, rather than the criminal law...”:

We suggest, however, that there will be instances of corrupt or questionable activity in sport that are not betting related or result in financial advantage that cause serious concern for sport.

We highlight two fact situations that fall into this category.

- I. The AFL Rules provide that priority picks in the AFL Player Draft are awarded according to the position of teams on the AFL ladder at the end of the season. The lowest ranked team has the first pick, the second lowest ranked team has the second pick, and so on until all teams have made their choices according to their position on the ladder. It has been suggested that teams have deliberately under-performed in late season matches so that they received priority draft picks. The term "tanking" is traditionally applied to this type of under-performance. If proved, it would constitute deliberate, orchestrated under-performance.*

A similar situation may occur in a competition in which there are two groups of teams competing for spots in later rounds of a competition. Situations arise from time to time where a team might be better served by losing a match so that it avoids a dangerous opponent in a later round. Two major events that will soon be held in Australia, the ICC Cricket World Cup 2015 and the FIFA Asia Cup 2015, will comprise groups of teams where this situation may arise.

Would these examples of underperformance have been caught by the proposed legislation? It is arguable that this constitutes conduct that corrupts a betting outcome of an event within the meaning of Section 193N. It is also

arguable that it is intended to cause a financial advantage or financial disadvantage.

It is respectfully suggested that these are issues that should be dealt with by the sport governing bodies rather than the criminal law.

- II. Pakistan (Cricket): Fixing part of a match (spot fixing) in order to induce a prospective co-conspirator to invest in the conspiracy. In 2010 a player manager arranged for Pakistan players to bowl no-balls at specified times during a Test Match as part of his plan to convince a prospective investor to pay him large sums of money to be provided with information about spot-fixing in future matches. There was no evidence of betting on the match in question. There was evidence that the players had received money for bowling no-balls or for organising for them to be bowled. Two of the players were found guilty of conspiracy to cheat at gambling and conspiracy to accept corrupt payments. The other player and the player manager pleaded guilty to these offences.*

Would the proposed legislation have covered this fact situation? It is clearly arguable that the conduct constitutes corruption of a betting outcome of an event. The argument that financial advantage is gained as a result of betting on that event, is far from convincing.

It is respectfully submitted that this type of conduct should be dealt with by the criminal law. Ideally, this could be done under the proposed legislation rather than relying on common law offences of conspiracy.

We agree with the definition of “event contingency” as an effective mechanism to deal with spot betting or exotic betting.

The four offences set out in Part 4ACA Division 2 reflect the offences set out in the codes of conduct for each COMPPS member sports. Each sport’s code of conduct addresses a range of offences related to sports betting, including: gambling on any aspect of the sport by a participant; bribery; match-fixing; spot-fixing; providing inside information; failing to report corrupt approaches; and failing to report corrupt activities of others. To this extent, the Bill complements the Codes of Conduct.

The concept of “*conduct corrupting betting outcomes of an event*” is clear and comprehensive. The inclusion of the concept of that conduct being “*contrary to the standards of integrity that a reasonable person would expect of persons in a position to affect the outcome of an event*” provides an effective measure of the proscribed behavior.

The definition of “*financial advantage*” is clear and effective.

An area that has troubled sport is when an “approach” is made to a player to engage in inappropriate activity. It is important that the offence is complete once the approach is made by a third party to a player or official. This seems to be covered by the definition of “Encourage” in Section 193L.

“Encourage

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

When read with Section 193N(2), this seems to be achieved.

Accordingly, COMPPS submits that the scope of the draft offences is appropriate.

2. Penalties

We welcome the introduction of a maximum penalty of 10 years imprisonment.

Clearly, this penalty will be reserved for the most serious offences. It does, however, recognize the seriousness of the offences and the potential impact that they can have on the integrity of sport and the public interest. Sports have the power to impose penalties on those who breach codes of conduct that bind them. They cannot, however, cause police investigations to take place and criminal penalties to be imposed. The maximum penalties provided in the Bill give due weight to the seriousness of the offences and the fact that they are given the same weight as serious general fraud offences is welcomed.

3. COMPPS supports the introduction of nationally consistent legislation

COMPPS' preference is that any sports-specific criminal legislation designed to combat cheating in connection with sports wagering be enacted at a Federal, rather than State level. We recognise, however, that this is unlikely and welcome the enthusiasm with which State Governments, and particularly the NSW Government, have approached this issue. At a minimum, legislation should be nationally consistent.

4. Conclusion

COMPPS welcomes the introduction by the NSW Government of the *Crimes Amendment (Cheating at Gambling) Bill 2011* (NSW) and submits that it be used as a basis for enacting nationally-consistent legislation.

Malcolm Speed

Executive Director, COMPPS