

CRIMES AMENDMENT (CHEATING AT GAMBLING) BILL 2012
Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [2.50 p.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Crimes Amendment (Cheating at Gambling) Bill 2012. Following concerns about incidents of match fixing in Australian sport and overseas the former Government made a reference to the New South Wales Law Reform Commission in January 2011 requesting the commission review the coverage of the criminal law in relation to cheating at gambling. A consultation paper was released in March 2011 and a final report was released in August of that year. A number of high-profile incidents of match fixing, which members will be aware of, have occurred in Australia and overseas in recent years, across sports from cricket and rugby league, to racing and football.

In light of these incidents and the size of the growing online sports betting market the Law Reform Commission concluded that it is imperative that a safe and lawful market for sports betting be preserved. This market should be transparent and supervised by regulatory authorities that work closely with sports controlling bodies and betting agencies. While noting that such issues strictly fell outside the terms of reference for the report, the Law Reform Commission made a number of recommendations in relation to the rationalisation of gambling regulatory legislation, and indeed the long-term consolidation of regulatory functions for gambling and liquor licensing into a single authority. Such regulatory issues are being addressed by the Minister for Tourism, Major Events, Hospitality and Racing.

To provide a safety net to such a regulatory approach the Law Reform Commission considered it appropriate that specific criminal offences be available to prosecute those who seek to fix a betting outcome, to profit from such a fix or to use inside information. The Law Reform Commission outlined in its consultation paper the reasons why existing common law and statutory offences that might apply in circumstances of match fixing were inadequate to cover the range of match-fixing behaviours. Reasons included that the offences did not use consistent terminology—some focusing on fraud or dishonesty and others on acting corruptly—or that they required the person charged to have obtained a benefit or be directly engaged in gambling. As such, the Law Reform Commission recommended the introduction of broadly framed criminal offences to cover conduct which corrupts betting outcomes, ideally to be implemented by all States and Territories as uniform offences.

The Law Reform Commission noted that, whilst there is already close supervisory control of the racing industry and betting in that market, such controls were not in place for the growing area of betting on other sports and events. Nevertheless, the proposed draft offences outlined below are broad enough to cover inappropriate conduct with respect to betting on racing.

Separately to the work undertaken by the Law Reform Commission, sports Ministers prepared a national policy on match fixing in sport, which was approved on 10 June 2011. The policy commits governments to address the threat of match fixing and the corruption that flows from it.

On 30 September Australian sports Ministers released an operational model outlining the proposed interaction between sporting organisations, betting agencies and relevant State and Territory regulators in relation to integrity agreements and baseline parameters for betting on events. Work on implementing this model in New South Wales is underway, led by NSW Sport and Recreation in consultation with the Office of Liquor, Gaming and Racing.

Following the agreement on the national policy, in July 2011 the Standing Council on Law and Justice established a working group to develop a proposal for pursuing a nationally consistent approach to criminal offences in relation to match fixing. The working group

conducted an analysis of the existing legislative arrangements in each jurisdiction and agreed on a list of match-fixing behaviours to be covered by State and Territory statutory offences. These behaviours describe, for example, the scope of match fixing, conduct to be covered and the extent to which the use of inside information should be criminalised.

At the standing council meeting on 18 November 2011 the Ministers endorsed the list of match-fixing behaviours and agreed to seek approval from their receptive cabinets for the introduction of specific match-fixing offences. Earlier this year the Government took the opportunity to undertake targeted consultation with legal and sporting stakeholders on the offences proposed by the Law Reform Commission. The consultation included the judiciary, the Director of Public Prosecutions, the Law Society, police, the Office of Liquor, Gaming and Racing, NSW Sport and Recreation, Racing NSW, the New South Wales Sports federation, and the sporting organisation for the major sports in New South Wales. The majority of respondents supported the introduction of the draft offences, some with minor amendments. The amendments in this bill are based upon the Law Reform Commission recommendations, amended to ensure consistency with the nationally endorsed match-fixing behaviours and to reflect comments made during the consultation. As such, we are confident that the provisions in this bill represent a considered, firm and fair approach to the issue of match fixing in sport.

Turning to the substantive provisions of the bill, schedule 1 [1] contains the definitions and offences to be included in the Crimes Act 1900 in new part 4ACA. Proposed section 193H contains the definition of "corrupting the betting outcome of an event". The term applies where conduct affects or, if engaged in, would be likely to affect, the outcome of any type of betting on the event, and is contrary to the standards of integrity that a reasonable person would expect of persons in a position to affect the outcome of any type of betting on the event. This has two key aspects: first, the conduct must be connected with betting on the event. The Law Reform Commission noted that the key risk with match fixing was in relation to betting on events, and hence the conduct must be related to the outcome of betting on the event.

Secondly, the conduct must be contrary to the relevant standard of integrity. This test has been inserted to ensure that conduct that may affect the outcome of betting on an event, but is not inappropriate, is not caught by the offences. For example, tactical decisions, honest errors and even foul play that results in a penalty may all affect the outcome of betting on the event but would generally not be considered contrary to the standards of integrity applicable to those persons participating in the event. Whether the conduct is contrary to the standard of integrity that a reasonable person would expect of persons in a position to affect the outcome of any type of betting on the event will be a matter to be determined by the trier of fact in any proceedings. Proposed section 193I relates to the definition of "betting". It states that "to bet" includes placing a bet, causing a bet to be placed, accepting a bet, or withdrawing a bet.

Further, a reference to betting on an event includes betting on event contingencies. This will ensure the offences cover exotic bets such as first scorer. Proposed section 193J ensures the offences cover betting on events on which it is lawful to bet under a law of any State, Territory or the Commonwealth. For example, this means that someone in New South Wales who places a bet on an event in respect of which it is lawful to bet on in the Northern Territory will be exposed to prosecution if he is committing an offence under the Act. The Law Reform Commission intended the offences to have a wide operation, and interstate online betting is a reality in the market. The offences are not limited to betting on sporting events but extend to any betting on any event. There is no sound policy reason not to criminalise corrupt conduct in relation to betting on non-sporting events.

Proposed sections 193K and 193L relate to defining the terms "obtaining a financial advantage" or "causing a financial disadvantage". Again, in order to avoid criminalising

actions that may affect betting on events but do not involve any financial gain, the corrupt conduct offences are limited to circumstances where the accused intended to obtain a financial advantage, or cause a financial disadvantage, in connection with any betting on the event.

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The person does not need to personally gain the advantage. The definitional provisions ensure that circumstances where the accused obtain a financial advantage for themselves or someone else, or induced someone else to do something that results in themselves or someone else obtaining a financial advantage, or keep a financial advantage that they have, whether the financial advantage is permanent or temporary, are included.

The provisions mirror those used in the fraud provisions in the Crimes Act. Proposed section 193L ensures that the offences extend to circumstances where a person engages in conduct without an intent to cause a financial advantage but is nevertheless aware that a specific financial advantage might be obtained as a result. This may include situations involving blackmail or a threat, in which case the Law Reform Commission noted that the common law defence of duress may apply. Proposed section 193N contains the primary offence of engaging in conduct that corrupts a betting outcome of an event. The offence applies where a person, knowing or reckless as to whether their conduct corrupts a betting outcome of the event and with the intention of obtaining a financial advantage or causing a financial advantage in connection with any betting on the event, engages in conduct that corrupts a betting outcome of an event.

As outlined above, the offence is targeted at circumstances where a person acted contrary to the relevant standard of integrity to affect betting with the intention to obtain a financial advantage or cause a disadvantage. These elements ensure that the offence is targeted at the kind of behaviour that represents a real risk to the integrity of sport and not to the sorts of behaviour that, while not strictly within the spirit of fair play, are matters which are best dealt with by sporting administrators rather than the criminal law. The financial element to the offence and the required connection with betting ensure that the offence does not overreach in this regard. Given its targeted nature, the maximum penalty for the offence is appropriately set at 10 years imprisonment.

The Law Reform Commission recommended this penalty given the serious fraud involved, the potentially wide impact of the conduct, and the need to send a strong deterrent regarding this kind of behaviour. In consultation earlier this year most stakeholders supported the introduction of this severe penalty for cases involving such corrupt conduct. Proposed section 193O contains an offence of facilitating conduct that corrupts the betting outcome of an event. The offence covers circumstances where a person offers to engage in conduct that corrupts a betting outcome of an event, or encourages another person to engage in such conduct, or enters an agreement about conduct that corrupts a betting outcome. Proposed section 193P covers encouraging someone to conceal from relevant authorities conduct that corrupts a betting outcome.

Proposed section 193Q introduces offences relating to the use of corrupt and inside information. The Law Reform Commission considered that the creation of an inside information offence was important, as such information can be of considerable importance to criminal syndicates that use sports betting as a form of money laundering. In any case, several submissions to the commission's review supported the creation of such an offence, noting that the opportunity for misuse of such information to gain an unfair advantage

warranted a criminal response. The commission originally proposed a maximum penalty of 10 years imprisonment for anyone who bet on the basis of, or passed on, information about an event that was not generally available and would be likely to influence betting on the event.

During consultation earlier this year a number of stakeholders were of the view that the proposed 10-year penalty for using inside information was too high, particularly given that there was no requirement to show an intent to gain a financial advantage. As a result the Government has amended the proposed offences to distinguish between the use of "corrupt conduct" information, and "inside" information. Where information is used to place a bet or passed on to someone else who is likely to bet, and the information is about conduct that corrupts a betting outcome, that is covered by the "corrupt conduct" information offence, and a maximum penalty of 10 years will apply as this is clearly serious criminal behaviour.

Where the information used or communicated is inside information the offence carries a penalty of two years imprisonment. "Inside information" is still defined as information about an event that is not generally available and would be likely to influence betting on the event. This sends a message that where someone knows or is reckless as to whether the information they possess is inside information it is inappropriate to either bet on that event or pass on the information to someone who is likely to bet on the event. Such behaviour gives that person an unfair advantage in betting and undermines the concept of fair betting on sporting and other events. Item 2 of schedule 1 inserts a requirement to review these new offences after three years to determine whether the policy objectives remain valid and whether the terms of the offences remain appropriate. Such a review is appropriate given the somewhat novel nature of the offences.

Schedule 2 to the bill provides that the offences may be tried summarily before a Local Court, in which case the maximum financial penalty available in the Local Court will be 100 penalty units or \$11,000. The offences in this bill are a culmination of the extensive work of the New South Wales Law Reform Commission and the Standing Council on Law and Justice Working Group on Match Fixing, and have been the subject of consultation amongst New South Wales legal and sporting stakeholders. The bill reflects the experience and thought of these expert groups, which we thank for their assistance in its development. The bill, which is the product of this work, is designed to send a clear message that criminal behaviour in relation to betting on sport will not be tolerated. Given their consistency with the match-fixing behaviours approved by the Standing Council on Law and Justice, it is hoped that they can serve as a model set of offences to be adopted across the country, reinforcing the message that cheating at gambling will be prosecuted wherever it occurs. I commend the bill to the House.