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**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**CRIMINAL CODE (CHEATING AT GAMBLING) AMENDMENT BILL 2013**

**EXPLANATORY STATEMENT**

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## **Criminal Code (Cheating at Gambling) Amendment Bill 2013**

### **Outline**

On 10 June 2011 all Australian governments agreed to pursue a consistent approach to criminal offences and penalties in relation to match-fixing activities under the National Policy on Match-Fixing in Sport. The Standing Council on Law and Justice (SCLJ) Match-Fixing Working Group developed a list of six Match-Fixing Behaviours to assist jurisdictions in determining whether their legislation is appropriate.

In August 2011, the New South Wales Law Reform Commission (NSWLRC) released report 130 — *Cheating at Gambling*. The NSWLRC report considered the coverage of offences that existed at the time in New South Wales (NSW) and made a number of recommendations relating to cheating at gambling and the use of corrupt conduct and inside information.

The February 2013 release of the Australian Crime Commission report, *Organised Crime and Drugs in Sport*, further highlighted the need for nationally consistent government responses to match-fixing. This report noted growing concern with organised criminal groups targeting elite and sub-elite athletes with an aim of having the athletes participate in match-fixing.

A review of ACT legislation has shown that not all of the Match-Fixing Behaviours identified by the SCLJ are currently addressed.

The object of this Bill is to amend the *Criminal Code 2002* (the Code) to prohibit certain conduct that can corrupt the betting outcomes of events on which it is lawful to place bets. The offences in the Bill are intended to apply to events that occur in the ACT or elsewhere.

The Bill prohibits:

- a) intentionally fixing or influencing the outcome of a sporting event or contingency for the purposes of receiving a benefit;
- b) directly or indirectly placing a bet in a sporting event or contingency, reckless as to whether the outcome of the event or contingency has been fixed;
- c) possessing inside information and directly or indirectly placing a bet on a sporting event reckless about whether the information is inside information; and
- d) accepting a bet on a sporting event or contingency knowing that the outcome of the sporting event or contingency has been fixed.

The Bill will ensure that those who participate in Match-Fixing Behaviours will be subject to criminal sanctions. The Bill will also support members of the public who gamble lawfully to do so without the interference of match-fixing activities. Additionally, the offences will

provide a strong general deterrence to those considering becoming involved in match-fixing activities.

The general principles of criminal responsibility in chapter 2 of the Code will apply to the new offences in division 3.8A.2. This includes extensions of criminal responsibility such as attempt, joint commission and conspiracy as well as the geographical applications provisions at part 2.7.

#### Human rights implications

The provisions in the Bill do not engage rights under the *Human Rights Act 2004*.

## Criminal Code (Cheating at Gambling) Amendment Bill 2013

### Detail

#### Clause 1—Name of the Act

This is a technical clause that names the short title of the Act. The name of the Act would be the *Criminal Code (Cheating at Gambling) Amendment Act 2013*.

#### Clause 2—Commencement

This clause provides that the Act commences on the day after its notification.

#### Clause 3—Legislation amended

This is a technical clause stating that the bill will amend the Code.

#### Clause 4—Definitions—*conduct and engage in conduct* Section 13, definition of *conduct*, new note

This clause inserts a note into section 13 of the Code under the definition of *conduct*. The note provides that the new section 363A affects the meaning of *conduct*.

#### Clause 5—Definitions—ch 3 Section 300, definition of *obtain*, note

This clause inserts a dot point into the note to the section 300 definition of *obtain* to indicate that the new section 363D will affect that definition for part 3.8A.

#### Clause 6—New part 3.8A

This clause inserts new part 3.8A, ‘Cheating at gambling’, into chapter 3 of the Code. This part includes a number of definitional sections and three new offences that will prohibit certain match-fixing behaviours and cheating at gambling activities.

**Division 3.8A.1, section 363A** inserts definitions for part 3.8A. This section defines some important terms used in part 3.8A.

This section provides that *bet* includes placing, accepting or withdrawing a bet on an event. Withdrawal has been included in the definition of bet in response to the potential situation where a person withdraws a bet as a result of receiving insider information that the bet may be unsuccessful.

The definition of *conduct* in section 13 of the Code is not applied to part 3.8A. *Conduct* is defined in section 363A as an act or an omission to do an act. ‘*State of affairs*’, which forms part of the definition of ‘conduct’ for the Code at section 13, is not required for part 3.8A as the offences are not dealing with issues relating to the possession of a thing. The possession of information has been dealt with separately in each of the relevant offences.

The definition of *event* means an event (in the ACT or elsewhere), or contingency connected to an event, on which it is lawful to bet under a territory law or a law of a State or the Commonwealth. Defining ‘event’ in this manner recognises the nature of betting in Australia. The definition recognises that a person in the ACT can place a bet on an event in another Australian jurisdiction. Sports in Australia are often multi-jurisdictional, and it is relatively simple to bet on a sporting event taking place in, for example, Victoria, from the ACT. The proliferation of smart phones and the use of the internet for betting purposes means that betting can occur in relation to an event in any Australian or international jurisdiction.

The definition of *event* incorporates an ‘event contingency’ to recognise that a significant amount of sports betting can be ‘exotic’ betting on things that occur during or connected with an event. Examples of event contingencies on which a person can currently bet include:

- first stoppage in play, first try scorer, and the winning margin in a game of rugby union; and
- which colour ball will be the third sunk in a snooker match.

*Financial advantage* and *financial disadvantage* are defined as including permanent or temporary advantage or disadvantage. This is to capture the fluctuating nature of betting odds. For example, a person may bet on an event based on one set of odds, and then these odds may change because of the corruption of a betting outcome. Accordingly, the value of the bet may have contingently increased or decreased as a result of the fix.

**New sections 363B, 363C and 363D** provide more detailed definitions of certain expressions used in part 3.8A. The following terms are defined for part 3.8A: *cause*, *corrupts a betting outcome* and *obtain*. The terms *cause* and *obtain* as defined in section 300 of the Code do not apply to part 3.8A.

These terms are used throughout the offences in new division 3.8A.2

**New section 363E—*Proof of certain matters not required for particular offences against part 3.8A*** provides guidance to the court or jury on how certain elements of the offences in division 3.8A.2 are to be established. The application of this provision is discussed further below.

**New division 3.8A.2** inserts three offences into part 3.8A. These offences have been developed in order to criminalise particular behaviours that can corrupt betting outcomes in sports betting.

### **New section 363F—Conduct that corrupts betting outcome**

Section 363F creates a new offence of engaging in conduct that corrupts a betting outcome. The purpose of the amendment is to make it an offence for a person to engage in conduct that results in a corrupt betting outcome for an event, and obtain or cause a financial advantage or disadvantage in connection with betting on the event. The maximum penalty for the offence is 10 years imprisonment.

The fault element for subsection (1)(a) and (b) is intention as defined in section 18 of the Code.

The fault element for subsection (1)(c) is recklessness. Recklessness is defined in section 20 of the Code.

This offence aims to deal with actions that corrupt a betting outcome. For example, actions such as deliberate underperformance, withdrawal from an event without proper cause (also known as ‘tanking’), an official’s deliberate misapplication of the rules of the contest, or interference with the playing surfaces, are intended to be captured by this new offence.

The offence is also intended to capture someone who pays another person to do one of these things or puts pressure on a player in some other way. Individuals who enter into an agreement to commit the offence will also be covered by the offence through extensions of criminal responsibility in chapter 2 of the Code.

In creating this offence, it is recognised that there may be other reasons a participant, or some other person, may engage in conduct that could influence an event or event contingency. The NSWLRC noted some of these reasons, including a desire to maintain a pre-eminent position in a sporting competition, patriotism to secure a win for a national team, or desire to secure a favoured position in a sporting competition.<sup>1</sup> The aim of the provision is not to criminalise the making of tactical decisions for reasons other than affecting a betting outcome, or an act or omission that led to an honest mistake by a competitor or an official, or breaking the rules of a sport.<sup>2</sup> It is to prevent deliberate cheating aimed at affecting betting outcomes for a financial advantage or disadvantage.

For this reason, the offence has been limited by the following important definitional terms. First there is a requirement that a person obtains or causes, or attempts to obtain or cause, a financial advantage or disadvantage in connection with betting for the event.

Second, the definition of *corrupts a betting outcome* for an event as defined in section 363C applies to this offence. This requires conduct that affects or is likely to affect the outcome of

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<sup>1</sup> New South Wales Law Reform Commission, *Cheating at Gambling*, Report No 130 (2011) 20, 2.62.

<sup>2</sup> *Ibid* 21, 2.64.

any type of betting on the event contrary to the standards of integrity reasonably expected of a person in a position to affect the outcome of any type of betting on an event, or for the circumstances in which the event happens.

New section 363E(1) and (2) applies to this offence. These subsections provide that a person is taken to intend obtaining a financial advantage or causing a financial disadvantage in connection with a bet on an event if, and only if, it is proved that the accused person—

- intended to obtain a financial advantage or cause financial disadvantage in connection with betting on the event; or
- was aware that another person intended to obtain a financial advantage or cause financial disadvantage in connection with betting on the event, as a result of the conduct that the accused person engaged in.

To prove this offence, it is not necessary for the prosecution to prove that the person made the bet themselves.

Furthermore it is not necessary to prove that financial advantage was actually obtained or a financial disadvantage was actually caused.

The equivalent offence in the NSW *Crimes Act 1900* is section 193N – engage in conduct that corrupts betting outcome of an event.

### **New section 363G—Bet with information about corrupt betting outcome**

Section 363G creates a new offence of betting on an event with information about a corrupt betting outcome. The purpose of the amendment is to make it an offence for a person who possesses corrupt conduct information to engage in conduct that results in a bet on an event, encourages another person to bet on an event in a particular way, or communicates information to another person who the first person knows, or it is reasonable to know, is likely to bet on an event. The maximum penalty for the offence is 10 years imprisonment.

This section defines the term *corrupt conduct information*, for an event, as information about conduct that corrupts a betting outcome for the event; or proposed conduct that would corrupt a betting outcome for the event.

New section 363E(3) applies to this offence. It provides that to prove this offence, it is not necessary for the prosecution to prove that the person made the bet themselves. Furthermore it is not necessary to prove that the person who was encouraged to bet, or to whom information was communicated, actually bet on the event or that they were encouraged in a particular way.

This offence criminalises the use of information about a match or event that has been fixed or corrupted for a betting purpose.

The fault element for subsection (1)(a) is intention as defined in section 18 of the Code.



The fault element for subsection (1) (b) is recklessness.

The equivalent NSW offence in the NSW *Crimes Act 1900* is found in section 193Q – use of corrupt conduct information or inside information for betting purposes.

### **New section 363H—Bet with inside information**

Section 363H creates a new offence of bet with inside information. The purpose of the amendment is to make it an offence for a person who possesses inside information about an event to bet on the event, encourage another person to bet on the event or communicate information to another person who the first person knows, or it is reasonable to know, is likely to bet on the event. The maximum penalty for this offence is 2 years imprisonment.

New section 363E(3) applies to this offence. It provides that to prove this offence, it is not necessary for the prosecution to prove that the person made the bet themselves. Furthermore it is not necessary to prove that the person who was encouraged to bet, or to whom information was communicated, actually bet on the event or that they were encouraged in a particular way.

The scope of this offence has been restricted by the definition of *inside information* which is limited to instances involving information that is not generally available and if the information had been available, it would likely have affected betting decisions. Information that is *generally available* is defined as information that consists of matters readily observable by the public, or information that has been made available in a way that would, or would be likely to, bring it to the attention of the public, or deductions, conclusions or inferences made or drawn from such information.

A person will not commit an offence if, for example, the fact that a player will not be fielded due to an injury is reported in the media. However, if this information is not reported publicly and the information is not available to the public through other means, and a person with the information bets on an event, it is intended that this person would be captured under this offence. NSW and South Australia have taken the same approach to limiting the scope of this offence.

The NSWLRC noted that inside information, in relation to sports, can be of considerable importance to certain criminal syndicates that employ sports betting in support of money laundering activities. It was also noted that a person who abuses inside information may not be amenable to the disciplinary powers of sports controlling bodies.<sup>3</sup> Accordingly, it is important that an offence of betting on an event with information not generally available is enacted to respond to the real opportunity for the misuse of such information.

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<sup>3</sup> Ibid 25, 2.81.

The definitions employed in this clause are substantially based on those used for the insider dealing offences under the *Corporations Act 2001* (Cth), that have been the subject of judicial interpretation. This will help ensure consistent application and certainty.

The fault element for subsection (1)(a) is intention. The fault element for subsection (1)(b) is recklessness.

The equivalent NSW offence in the NSW *Crimes Act 1900* is found in section 193Q – use of corrupt conduct information or inside information for betting purposes.

**Clause 7—Dictionary, new definition of *bet***

This is a technical clause that inserts a reference to the definition of *bet* for part 3.8A into the dictionary for the Code.

**Clause 8—Dictionary, definition of *cause***

This is a technical clause that inserts a reference to the definition of *cause* for part 3.8A into the dictionary for the Code.

**Clause 9—Dictionary, definition of *conduct***

This is a technical clause that inserts a reference to the definition of *conduct* for part 3.8A into the dictionary for the Code. The new reference clarifies that the definition of *conduct* for part 3.8A differs from the definition of conduct under section 13 of the Code

**Clause 10—Dictionary, new definitions**

This is a technical clause that inserts a reference to the definitions of *corrupts a betting outcome*, *encourage*, *event*, *financial advantage* and *financial disadvantage* for part 3.8A into the dictionary for the Code.

**Clause 11—Dictionary, definition of *obtain***

This is a technical clause that inserts a reference to the definition of *obtain* for part 3.8A into the dictionary for the Code. The new reference clarifies that the definition of *obtain* for part 3.8A differs from the definition of obtain for chapter 3 of the Code (Theft, fraud, bribery and related offences) other than part 3.8A.