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Criminal Code (Cheating at Gambling) Amendment Bill 2013
Submission 002

BAR ASSOCIATION OF QUEENSLAND

12 March 2014

Mr Ian Berry MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By email: *lacsc@parliament.qld.gov.au*

Dear Mr Berry

Re: Criminal Code (Cheating at Gambling) Amendment Bill 2013

Introduction

Thank you for the invitation to comment on the Bill. It is obviously an important area of law reform in relation to an issue of significant public concern.

This submission will concern the legal aspects of the Bill, but some of those necessarily involve policy considerations as well.

Background and policy approach

The Bill arises from the desire to have a national approach to the problem of cheating in gambling in sport. It is important to preserve the integrity of sporting events or event contingencies on which it is lawful to bet.

As set out in the Explanatory Notes, the Bill is modeled on legislation enacted in other jurisdictions in accordance with the key objective of the national policy on match fixing in sport, which was agreed to by all Australian Governments on 10th June 2011. Since that time, legislation has progressively been enacted in other jurisdictions.

Previous legislation

The history of such legislation is that there was previously in the *Criminal Code* s.429 which dealt with cheating in the general sense of obtaining property by means of a fraudulent trick. Historically it caught such quaint offences as an unfair game at the Beenleigh showgrounds.[1] It had a maximum penalty of two years imprisonment and would appear to have been absorbed in more recent times in the broad rubric of fraud under the current s.408C of the Code, which commenced operation on 1 July 1997. This is a broad offence which may possibly have caught such offences as are now being specifically

[1] *Phelan v Watson [1908] QWN 6*

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targeted in the new Bill, although we are not aware of any previous examples of this having been done.
There was also the more specific offence of cheating at games, which was embodied in s.20 of the *Vagrants, Gaming and Other Offences Act 1931(Qld)* ("*the Vagrants Act*"). This made it an offence to win or attempt to win any money or other property by fraud, unlawful device or ill-practice in wagering on the event of any game, sport, pastime or exercise. The maximum penalty was six months imprisonment. This offence seems to have continued in the *Vagrants Act* from the early 1970's up until an amendment in 2005. It is unclear why this was removed from the final version of the *Vagrants Act* which was passed in 2005, or indeed, why it did not persist in the successor to that Act, the *Summary Offenses Act 2005*. It may possibly have been felt, as outlined above, that such offending could fall within the broad concept of fraud.

In any case, no doubt it is a laudable goal, and consistent with the national agreement, to introduce these specific offences now. The older offences existed, and were framed, in earlier times before widespread online and multimedia gambling.

Discussion of draft Bill

The Bill as drafted is, in the view of the Association, an appropriate response to the key objective of protecting integrity in sport by prohibiting cheating at gambling. To this end, what it introduces into the *Criminal Code* are several offences with the central theme of corruption in relation to betting on sporting events.

Thus, it is an offence to engage in corrupt betting conduct (s.443A); to facilitate corrupt betting conduct (s.443B); to conceal corrupt betting conduct or an agreement or arrangement in relation thereto (s.443C); or to use information about corrupt betting conduct in relation to an event (s.443D). All of these offences, which are potentially serious, given the turnover of betting on sporting events in Australia, carry a maximum penalty of ten years imprisonment. This is proportionate to other examples of fraudulent behavior in the criminal law.

The Association wishes to draw attention to two aspects of the legislation which perhaps should be considered.

"Territory"

Section 443 of the Act defines, amongst other things, "event" and "event contingency". These concepts, as we understand the scheme, are particularly relevant to the idea of what is known as "spot" betting; an example which has had some interest in the media over the years has been the practice of some Indian bookmakers, for example, to bet on such minor events as whether the 4th ball of a particular over would be a "no ball". This is obviously open to, and has fallen victim to, corruption.

The relevant definitions in the Queensland Bill include an event "on which betting under the law of the Commonwealth or a State is lawful". In other legislation around the country, including New South Wales, South Australia,

Northern Territory and the Australian Capital Territory, the relevant definition also includes a "territory", thus including explicitly the Australian Capital Territory or the Northern Territory. We are not aware whether this is a deliberate exclusion or one which is desired, however we draw attention to this feature as it would seem to be an anomaly. It would be wise, in our submission, unless there is a particular policy objective in this drafting, to change the wording of s.443 to include a territory.

Inside information

Secondly, there appears to have been a deliberate decision in drafting the legislation to omit any equivalent of s.193Q(2) of the *Crimes Act 1900 (NSW)*, whereby an offence is created of using information which is "inside information" (rather than corrupt information) for betting purposes. The concept seems to be that if a person has inside information which is not generally available to the public and is of such a nature that if it were, it would be likely to influence betting, such a person is guilty of an offence if they bet on the event, encourage another to do so or communicate the information to another person likely to bet on the event. The maximum penalty for this offence, understandably, is much lower; it is a two year maximum. There is a similar offence created in the South Australian jurisdiction, by the *Criminal Law Consolidation Act 1935 (SA)*, s.144K(2). Again, the maximum penalty for such an offence is two years. There is a similar offence in the Northern Territory legislation (s.237M) and in the Australian Capital Territory legislation (s.363H). In all cases, the inside information offence is much less serious than the corrupt betting offence, carrying a two year maximum only.

It therefore appears that a deliberate decision has been made not to include the "inside information" type of offence in the Queensland legislation. It would appear a similar decision was made in Victoria. The Association is not aware of whether there is a policy reason behind this decision, or the nature of any such reasons. One aspect of the exercise of such legislative drafting is that it could well be a difficult type of offence to prosecute, particularly for example, endeavouring to prove beyond a reasonable doubt that a certain category of information was not generally available. There may also be perceived difficulties of proof about whether such information would be likely to influence persons who commonly bet on the event in deciding whether or not to do so. Further, in endeavouring to prove such an offence, the prosecution would probably also be met with the requirement to satisfy a subjective test; did the accused realise that such information was generally available and if so, would it be likely to influence persons who commonly bet on such an event? These would all be hurdles in the prosecution of such an offence.

There may also be a concern that such an offence has the potential to cast a very wide net. The concept of "inside information" has been common currency, no doubt, on racetracks and other sporting arenas for a very long time, perhaps hundreds of years. Whether to criminalise such behaviour when it falls short of corruption is, in the view of the Association, ultimately a matter for Government policy. However, we do point out that, in the right facts situation, it may well be the kind of behaviour which the public would prefer to see dealt with in the criminal courts. An analogy is the disputed allegations concerning the John Singleton/Gai Waterhouse scenario which unfolded in 2013. If a trainer were to have some information about the condition or health of a horse (and such information is in no way corrupt) and

then share this with a bookmaker, to the potential detriment of the owner and the general betting public, the potential seriousness of that situation is obvious (we are, of course, in no way suggesting that this was what happened in the abovementioned case; we merely use the broad potential scenario as an example). It would be quite unfair, and possibly damaging to, the general betting public; and unfairly advantageous to those in the know. Unfair losses or winnings could be large.

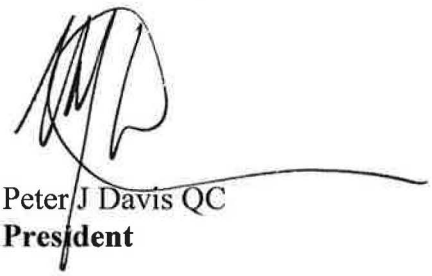
Racing and other authorities may have their own processes for dealing with such allegations. These are necessarily less formal and thus possibly less effective than legal processes.

It may therefore be only in a rare factual situation that the circumstances and evidence are such that prosecution for such an offence is appropriate. However, when that rare circumstance arises, in the view of the Association, the availability of the less serious offence of using inside information for betting purposes should be at least considered, as in other jurisdictions.

Apart from the above, there are no other aspects of the Bill upon which the Association wishes to make a submission.

We thank you for your attention.

Yours faithfully



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