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CRIMINAL OFFENCES FOR MATCH-FIXING: OBSERVATIONS ON THE CURRENT FRAMEWORK AND SUGGESTIONS FOR FUTURE NATIONAL LEGISLATION

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Match-fixing (particularly when it is linked to betting) poses a significant threat to the integrity of sport in Australia and around the globe. More than a decade ago, the Australian federal, state and territory governments committed to the *National Policy on Match-fixing in Sport* pursuant to which governments agreed to implement nationally consistent legislation to address the issue of match-fixing. However, in 2018, a review of Australia's sports integrity arrangements (Wood Review) concluded that the nationally consistent legislation envisaged by the National Policy had not been achieved. Accordingly, the Wood Review recommended that Australia become a party to the *Council of Europe Convention on the Manipulation of Sports Competitions* ('Macolin Convention'), allowing the enactment of national match-fixing criminal legislation. This article examines the different approaches to the formulation of match-fixing offences from within Australia and overseas and offers suggestions for how the Commonwealth should approach key aspects of any future national criminal legislation for match-fixing, including in relation to scope, jurisdiction, inside information, disclosure, and the protection of whistle-blowers.

1 INTRODUCTION

Australia's match-fixing legislation is lauded as among the most powerful in the world.¹ However, despite early and proactive coordination by state and federal governments, the original ambition to achieve nationally consistent legislation to criminalise match-fixing and related conduct has not eventuated.² As a result, and following a review of Australia's sports integrity arrangements conducted in 2018, the Commonwealth Government is preparing to introduce national criminal offences for match-fixing. It is understood that amendments to

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¹ Kirstin Hallmann et al, 'Against Match-Fixing – European Research & Education' (Project Number: 590606-E PP-1-2017-1-PL-SPO-SCP, Institute of Sport Economics and Sport Management, German Sport University Cologne, October 2019) 12 <REPORT-ON-THE-ANALYSIS-OF-CASE-STUDIES-IN-FIXING-ACTIVITIES-IN-THE-EU-AND-IN-THE-WORLD.pdf (againstmatchfixing.com)>.

² Department of Health (Cth), *Report of the Review of Australia's Sports Integrity Arrangements* (Report No 12074, March 2018) 62 ('Wood Review').

the *Criminal Code Act 1995* (Cth) are in the process of being drafted, though the timing of their release is not known.³ This article examines the different approaches to formulating match-fixing offences from Australia and overseas (particularly Europe) and offers suggestions for how the Commonwealth should approach aspects of the proposed legislation, including in relation to:

- the scope of the provisions;
- extraterritoriality;
- the misuse of inside information; and
- whether or not the failure to disclose knowledge of match-fixing should also be an offence.

2 UNDERSTANDING MATCH-FIXING

A Definitions and Terminology

At its most fundamental, match-fixing is an arrangement to influence the course or result of a sporting event to obtain an advantage for an individual or others and to remove all or part of the uncertainty normally associated with sport.⁴

The Australian Commonwealth, state and territory governments have defined match-fixing as ‘...the manipulation of an outcome or contingency by competitors, teams, sports agents, support staff, referees and officials and venue staff.’⁵ According to the National Policy on Match-Fixing in Sport formulated in 2011 (‘National Policy’), match-fixing conduct is said to include:⁶

1. the deliberate fixing of the result of a contest, or of an occurrence within the contest, or of a ‘points spread’⁷;

³ Sport Integrity Australia, ‘Match-Fixing During the Pandemic’ (Issue 7, December 2021) *Sport Integrity Matters* 25 <https://www.sportintegrity.gov.au/sites/default/files/ELE013-0121_SPORT%20INTEGRITY%20MATTERS_DEC2021_accessible_V7_final.pdf>.

⁴ Chris Hume and Christine May, ‘Match-Fixing and Illegal Sports Betting’ *Clearing House for Sport* (Web Page, 8 December 2017) <https://www.clearinghouseforsport.gov.au/australian-sport-publication-archive/clearinghouse-for-sport/knowledge_base/Match-Fixing_and_Illegal_Sports_Betting_updated_13-12-2017.PDF>.

⁵ Sport and Recreation Ministers’ Council, *National Policy on Match-Fixing in Sport*, (Policy, 10 June 2011) <<https://www.sportintegrity.gov.au/sites/default/files/National%20Policy%20on%20Match-Fixing%20in%20Sport%20%28FINAL%29.pdf>> (‘National Policy’).

⁶ Ibid.

⁷ A ‘Points Spread’ is a type of bet where the favourite to win in a gambling market has to win the match by a certain number of goals (or points) (see Joint Select Committee on Gambling Reform, Parliament of Australia, *Interactive and Online Gambling and Gambling Advertising: Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011* (Second Report, December 2011) 285).

2. deliberate underperformance;
3. withdrawal or ‘tanking’;⁸
4. an official’s deliberate misapplication of the rules of the contest;
5. interference with the play or playing surfaces by venue staff; and
6. 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.

However, the term ‘match-fixing’ is not universally accepted, and in Europe and elsewhere terms such as ‘competition manipulation’ or ‘sporting fraud’ are used instead (although the conduct encapsulated by these terms is similarly broad). Article 3.4 of the Council of Europe Convention on the Manipulation of Sports Competitions (*Macolin Convention*) defines the ‘manipulation of sports competitions’ to mean:

An intentional arrangement, act or omission aimed at an improper alteration of the result or the course of a sports competition in order to remove all or part of the unpredictable nature of the aforementioned sports competition with a view to obtaining an undue advantage for oneself or for others.⁹

Evidently, these concepts encompass a variety of behaviours that potentially threaten the integrity of sport. Such behaviours can either be linked to a betting outcome (referred to as a ‘bet-fixing’) or unrelated to wagering (e.g., deliberately losing a match or matches to secure a more favourable draw or more favourable draft outcomes). However, it is indisputable that match-fixing’s greatest threat to the integrity of sport occurs when it is linked to betting.¹⁰

B *The Extent of Match-Fixing*

The concept of match-fixing is not new. In 2014, researchers deciphered a document that showed a wrestling match which took place in Egypt in the year 267AD was fixed.¹¹ However, over the past two decades, various scandals and police investigations from across the world have drawn attention to the scale of the issue and highlighted the significance of the threat which match-fixing poses

⁸ ‘Tanking’ is the deliberate underperformance or withdrawal by a player midway through an event (see New South Wales Law Reform Commission (‘NSWLRC’), *Cheating at Gambling* (Consultation Paper 12, March 2011) 15.

⁹ *Council of Europe Convention on the Manipulation of Sports Competitions*, opened for signature 18 September 2014, CETS 215 (entered into force 1 September 2019) (*Macolin Convention*) art 3.

¹⁰ International Centre for Sport Security and University Paris 1 Panthéon-Sorbonne, ‘Protecting the Integrity of Sport Competition: The Last Bet for Modern Sport’ (Report, November 2014) 164.

¹¹ Owen Jarus, ‘Body Slam This! Ancient Wrestling Match Was Fixed’, *Live Science* (Web Page, 17 April 2014) <<https://www.livescience.com/44867-ancient-wrestling-match-was-fixed.html>>.

to the integrity of sport. For example, in 2013, a major investigation by Europol and police units from across Europe uncovered an extensive network of match-fixers operating within European football. A total of 425 officials, players, and criminals from more than 15 countries were alleged to have been involved in attempts to fix more than 380 professional soccer matches (including at World Cup, European Championship, and UEFA Champions League level).¹² The former President of the International Olympic Committee ('IOC'), Jacques Rogge, ranked match-fixing on a par with doping as the two issues most dangerous to the future of sport.¹³ Some have even argued that match-fixing now poses a greater threat to the integrity of sport than doping.¹⁴

Certainly, the number of suspicious matches identified by sports integrity and monitoring companies such as Sportradar indicates that match-fixing continues to occur at an alarming rate. In October 2021, Sportradar reported that it had detected 655 suspicious sports matches in the first nine months of 2021 alone.¹⁵ Of those, 382 suspicious matches took place in Europe, 115 in Latin America, followed by 74 in the Asia Pacific region, Africa with 43, 10 in the Middle East and 9 in North America.¹⁶ According to Sportradar, soccer is the sport at most risk of betting related corruption, with more than 500 suspicious matches detected between January and October 2021. In addition to soccer, Sportradar's betting monitoring system also detected suspicious activity in tennis, basketball, table tennis, ice hockey, cricket, volleyball, handball, beach volleyball and eSports.¹⁷ As with other types of corruption, match fixing can be difficult to detect so it is reasonable to assume that these statistics are only the tip of the iceberg. And while some sports and continents are overrepresented in the statistics, it is clear that no sporting code or country is immune to the threat posed by match-fixing.

In Australia, there have been a number of match-fixing scandals over the years, including:

¹² Europol, 'Update – Results From the Largest Football Match-Fixing Investigation in Europe' (Media Release, 27 October 2016) <<https://www.europol.europa.eu/media-press/newsroom/news/update-results-largest-football-match-fixing-investigation-in-europe>>.

¹³ Samantha Lane, 'Illegal Betting, Match-Fixing as Dangerous as Doping, says IOC Chief', *The Sydney Morning Herald* (online, 27 July 2011) <<https://www.smh.com.au/world/illegal-betting-matchfixing-as-dangerous-as-doping-says-ioc-chief-20110726-1hyj6.html>>.

¹⁴ Steve Keating, 'Match-Fixing not Doping Poses Greatest Risk to Sport' *Reuters* (Web Page, 26 April 2019) <<https://www.reuters.com/article/us-sport-matchfixing-idUSKCN1S12UR>>.

¹⁵ Sportradar, 'Sportradar Integrity Services Highlight the Scale of Match Fixing in Sport Over the Last 18 months' (Media Release, 13 October 2021) <<https://investors.sportradar.com/news-releases/news-release-details/sportradar-integrity-services-highlight-scale-match-fixing-sport>>.

¹⁶ Ibid.

¹⁷ Ibid.

1. the 2011 conviction of Ryan Tandy in connection with a plan to manipulate the first score in a National Rugby League (NRL) match in August 2010;¹⁸
2. the manipulation of various matches by four players and a coach from the Southern Stars soccer team in the Victorian Premier League in 2013 at the behest of an international match-fixing syndicate;¹⁹
3. various cases of race fixing in the harness racing industry, including the conviction of Victorians Greg and Shayne Cramp for fixing a race at Mildura in 2014;²⁰ and
4. the case of former Australian Open junior tennis champion, Oliver Anderson, who admitted to deliberately losing the first set of a match at a Challenger tournament in country Victoria in October 2016.²¹

More recently, there have been match-fixing scandals involving eSports²² and table tennis.²³

Notwithstanding these examples, match-fixing and corruption are not traditionally perceived to be widespread problems within Australian sport.²⁴ However, Australian sports continue to be vulnerable to the threat of match-fixing due to (amongst other factors) their large followings, and the exponential

¹⁸ Massoud, Josh, *The Penalty: The inside story of Ryan Tandy and rugby league's most notorious match-fixing scandal* (Allen & Unwin, 2014).

¹⁹ Australian Associated Press, 'Football match-fixing: six men charged over Southern Stars matches' *The Guardian* (online, 16 September 2013) <<https://www.theguardian.com/football/2013/sep/16/football-match-fixing-southern-stars>>.

²⁰ Peta Carlyon, 'Shayne and Greg Cramp: High-profile father and son team plead guilty to harness race fixing' *ABC News* (online, 3 September 2015) <<https://www.abc.net.au/news/2015-09-03/shayne-and-greg-cramp-plead-guilty-to-harness-race-fixing/6746624#:~:text=Each%20of%20the%20men%20pleaded,Greg%20Cramp%20to%20200%20hours>>.

²¹ Nino Bucci, 'Former junior tennis champion Oliver Anderson avoids conviction after pleading guilty to match-fixing' *The Sydney Morning Herald* (online, 23 May 2017) <<https://www.smh.com.au/national/former-junior-tennis-champion-oliver-anderson-avoids-conviction-after-pleading-guilty-to-matchfixing-20170523-gwavu5.html>>.

²² Naaman Zhou, 'Game over: six arrested by Australian police over alleged online gaming match-fixing' *The Guardian* (online, 24 August 2019) <<https://www.theguardian.com/australia-news/2019/aug/24/game-over-six-arrested-by-australian-police-over-alleged-online-gaming-match-fixing>>.

²³ Nick McKenzie and Laura Chung, 'Bets, lies and table tennis: How police pinged an international pong' *The Sydney Morning Herald* (online, 16 December 2020) <<https://www.smh.com.au/sport/bets-lies-and-table-tennis-how-police-pinged-an-international-pong-20201215-p56nsl.html>>.

²⁴ Joint Select Committee on Gambling Reform (n 8) 279.

growth of on-line sports wagering in Asia, coupled with conducive time zones.²⁵ In addition, many Australian athletes are not well paid, leaving them potentially susceptible to the influence of criminals.²⁶ Further, experts on sports corruption are concerned that the threat of match-fixing looms larger than ever due to the impacts of the COVID-19 pandemic. In 2020, the United Nations Office on Drugs and Crime (“UNODC”) and Interpol issued a joint publication warning that as salaries of professional and semi-professional sportspeople are impacted through pandemic-related payment reductions or delays, and the pandemic places other financial pressures on sport, criminal groups may seek to exploit the situation.²⁷ There have even been reports of a number of ‘ghost events’ (for example, football tournaments in the Ukraine) – events staged specifically for betting markets which did not in fact take place.²⁸

C *The Link Between Match-Fixing and Sports Betting Markets*

It is widely accepted that burgeoning sports betting markets (both legal and illegal) have increased the risk of match-fixing.²⁹ The advent of online gambling has globalised the betting market and created unlimited opportunities to place bets on (almost) any sport anywhere in the world. In 2020, the global legal sports betting market (including horse racing) was estimated to be worth USD40 billion³⁰ and it is projected to be worth around USD140 billion by 2028.³¹ However, these figures are dwarfed by the sheer enormity of the illegal sports gambling market, which is currently estimated by some to be worth between USD340 billion and USD1.7 trillion.³² Though it also occurs in connection with

²⁵ Hume and May (n 4).

²⁶ Declan Hill, ‘The Match-Fixers Are Coming to Ruin Sport – You Can Bet On It’ *The Sydney Morning Herald* (Web Page, 9 October 2009) <<https://www.smh.com.au/politics/federal/the-match-fixers-are-coming-to-ruin-sport-you-can-bet-on-it-20091008-gowm.html>>.

²⁷ United Nations Office on Drugs and Crime (“UNODC”) and Interpol, *Preventing Corruption in Sport and Manipulation of Competitions*, (Article, July 2020) 2 <https://www.unodc.org/documents/Safeguardingsport/Documents/COVID-19_and_Anti-Corruption_FINAL_VERSION_2.pdf>.

²⁸ Oscar Brodtkin, ‘Ghost Games: An Explanation’, *Sportradar* (Web Page, 7 April 2020) <20200407_Sportradar_Ghost-Games_An-Explanation_Final.pdf (sbcnews.co.uk)>.

²⁹ *Macolin Convention* (n 9) preamble.

³⁰ United Nations Office on Drugs and Crime, *Global Report on Corruption in Sport* (Report, December 2021) 14 <https://www.unodc.org/documents/corruption/Publications/2022/Global_Report_on_Corruption_in_Sport_Chapter_9.pdf> (“Global Report on Corruption in Sport”).

³¹ Soo Kim, ‘3 Predictions for the Sports Betting Industry in 2022’, *Nasdaq* (Web Page, 15 December 2021) <<https://www.nasdaq.com/articles/3-predictions-for-the-sports-betting-industry-in-2022>>.

³² *Global Report on Corruption in Sport* (n 30) 17.

legal betting, match-fixing is more likely to happen in conjunction with illegal sports betting.³³

The ever-increasing liquidity of legal and illegal online betting markets has been a boon for transnational organised crime groups, as it has provided them with a unique conduit for laundering the proceeds of their criminal activities.³⁴ As Anderson notes, ‘...at a click it is possible for the proceeds of crime in one jurisdiction to be placed on a betting market in another jurisdiction with the winnings drawn down and laundered in a third jurisdiction...’³⁵ According to Anderson, it also follows that there must be a significant temptation for criminal groups to enhance the laundering process by fixing the matches on which they are betting.³⁶ The laundering of this ‘dirty’ money perpetuates the power and influence of transnational criminal syndicates and, in extreme cases, may even finance terrorist activities.³⁷

The threat to the integrity of sport from organised crime has been acknowledged both in Australia and overseas. According to the Report of the Review of Australia’s Sports Integrity Arrangements (‘Wood Review’) ‘...corruption by organised criminal individuals and groups represents the most significant threat to the integrity of sport at a global level.’³⁸ A decade ago, the Australian Crime Commission released a report claiming that professional sport in Australia is highly vulnerable to organised criminal infiltration through the development of legitimate business relationships with sports franchises and other associations, which is facilitated by a lack of appropriate levels of due diligence by sporting clubs and sports governing bodies when entering into business arrangements.³⁹ Further, the UNODC and the IOC have observed that ‘...match-fixing brings to the surface its links to other criminal activities such as corruption, organised crime and money-laundering.’⁴⁰

³³ Yuta Ando, ‘Harmonisation and International Approaches to Match-Fixing’ in Stacey Steele and Hayden Opie (eds), *Match-fixing in Sport Comparative Studies from Australia, Japan, Korea and Beyond* (Routledge, 2017) 111, 120.

³⁴ Jack Anderson, ‘Match Fixing and Money Laundering’ (Research Paper No 2014-05, Queen’s University Belfast, School of Law, 2014) 4.

³⁵ *Ibid* 3.

³⁶ *Ibid* 5.

³⁷ *Ibid* 3.

³⁸ Wood Review (n 2) 46.

³⁹ Australian Crime Commission, *Organised Crime and Drugs in Sport: New Generation Performance and Image Enhancing Drugs and Organised Crime Involvement in Their Use in Professional Sport* (Report, February 2013) 8.

⁴⁰ United Nations Office on Drugs and Crime and Interpol, *Criminalization Approaches to Combat Match-fixing and Illegal/Irregular Betting: A Global Perspective* (Research Paper, July 2013) 16 <https://www.unodc.org/documents/corruption/Publications/2013/Criminalization_approaches_to_combat_match-fixing.pdf>.

D *Impacts of Match-Fixing*

Besides furthering the illegal activities of organised criminals, match-fixing has other negative impacts for society. Match-fixing ‘robs sport of its essential feature of uncertainty’ and ‘gnaws away at the fundamental foundations of sport. ...Once a sport’s credibility is lost in the minds of supporters it is very difficult to retrieve.’⁴¹ This loss of public confidence in the sporting contest has direct consequences for the health, economic, social and cultural benefits that sport generates for the community.⁴² It can also decimate entire sporting codes via the loss of participants, supporters and sponsorships (for example, the collapse of the Singaporean-Malaysia joint soccer league in 1994).⁴³ Accordingly, there are clear moral and financial imperatives for governments and sporting organisations to combat match-fixing.⁴⁴

If match-fixing is allowed to flourish, many athletes, particularly those in lower-tier leagues (who are often young, low-paid and may not be adequately educated on the disciplinary and criminal consequences of engaging in match-fixing) will be at greater risk of being exploited by criminals and corruptors. By way of example, in 2018, it emerged that three members of the Belgian under 16 women’s football team had been offered 50,000 euros each to fix a match during an international tournament.⁴⁵ On this occasion, the players immediately reported the approach to authorities. However, a single mistake could cost a young person their sporting career and dreams and, in the increasing number of countries where match-fixing is criminalised, could even send them to prison.

3 THE CRIMINALISATION OF MATCH-FIXING

A *The Arguments For (and Against) Criminalising Match-Fixing*

The criminalisation of match-fixing is not universally supported.⁴⁶ There is an argument that a criminal justice response is not an appropriate mechanism to deal with a social problem such as match-fixing. The criminal justice process is slow moving and, particularly where corruption is alleged, under-resourced prosecutors can have difficulty gathering enough evidence to meet the higher standard of proof required by the criminal law. If the prospect of a conviction is

⁴¹ Richard McLaren, ‘Corruption: Its impact on Fair Play’ (2009) 19(1) *Marquette Sports Law Review* 15, 15.

⁴² Wood Review (n 2) 30.

⁴³ Declan Hill, *The Fix: Soccer and Organized Crime* (McClelland & Stewart, 2010) 18 – 19.

⁴⁴ David Thorpe, ‘The Efficacy (and Otherwise) of the ‘New’ Sport Anti-Corruption Legislation in Australia’ (2014) 4(1) *Victoria University Law and Justice Journal* 102, 102.

⁴⁵ Samindra Kunti, ‘Match fixing: 150k Offered to Three Belgian Women’s Youth Players to Fix Game’ *Inside World Football* (Online Article, 29 November 2018).

⁴⁶ Madalina Diaconu and Andre Kuhn, ‘Match-fixing, the Macolin Convention and Swiss Law: An Overview’ *Jusletter* (16 September 2019) 9.

either uncertain or unlikely, there is a good chance the case will not go ahead. In view of this, some argue that sporting organisations and governing bodies are better placed to protect the integrity of sports via non-criminal regulations and disciplinary sanctions. It has even been suggested that some athletes may be more deterred by the thought of a lifetime ban from their sport than a relatively short prison sentence.⁴⁷ The introduction of criminal sanctions for match-fixing could also result in sporting bodies ‘shirking’ their responsibilities to vigilantly pursue disciplinary action for match-fixing.⁴⁸

While these concerns are valid, there is a strong counterargument that match-fixing is a recognised form of corruption and, as such, ought to be sanctioned by the criminal law.⁴⁹ Anderson points out that while the various initiatives adopted by sports organisations to combat match-fixing (such as player education and training, codes of conduct and the establishment of integrity units) are important, because the source and process of match-fixing is very often linked to organised crime and money laundering, the solutions go beyond sport’s current capacity.⁵⁰ In particular, sporting bodies do not have any jurisdiction to pursue those participants who are operating outside of the relevant sporting code (i.e., organised criminals). They also lack compulsory information gathering powers and, generally speaking, do not have the resources or expertise to conduct complex and lengthy investigations into crime and corruption. Examples of cases involving match-fixing show that the complexity of the crime warrants appropriate tools such as police expertise, telephone interceptions, formal police interviews, prosecutions and trials.⁵¹ Further, Carpenter argues that the prospect of a criminal sanction is the most effective deterrent to match-fixing.⁵² The theory of deterrence is based on the idea that if state-imposed sanction costs are sufficiently severe, criminal activity will be discouraged, at least for some.⁵³ In this regard, while most criminologists agree that having a criminal justice system that imposes liability and punishment for violations deters, research on

⁴⁷ Dr Ben Van Rompuy, ‘Effective Sanctioning of Match-Fixing: The Need for a Two-Track Approach’ (2013) 1(3) *ICSS Journal* 68, 72.

⁴⁸ *Ibid* 70.

⁴⁹ KEA European Affairs, *Match-fixing in Sport: A Mapping of Criminal Law Provisions in EU 27* (Report, March 2012) 15 <https://ec.europa.eu/assets/eac/sport/library/studies/study-sports-fraud-final-version_en.pdf>.

⁵⁰ Anderson (n 34) 3.

⁵¹ UNODC and International Olympic Committee (‘IOC’), *Criminal Law Provisions for the Prosecution of Competition Manipulation* (Report, June 2016) 7 <<https://www.unodc.org/documents/corruption/Publications/2017/UNODC-IOC-Study.pdf>>.

⁵² Kevin Carpenter, ‘Match-Fixing – The Biggest Threat to Sport in the 21st Century?’ [2012] (2) *International Sports Law Review* 13, 18.

⁵³ Daniel S Nagin, ‘Deterrent Effects of the Certainty and Severity of Punishment’ in Daniel S Nagin, Francis T Cullen and Cheryl Lero Jonson (eds), *Deterrence, Choice, and Crime Contemporary Perspectives, Advances in Criminological Theory Volume 23* (Routledge, 2018) 157, 160.

deterrence theory is complex and there are many factors which affect whether criminal laws will have an impact on a potential offender's choices (including their knowledge of the applicable laws, whether the offender is acting rationally and the offender's perception of the potential costs of breaking the law).⁵⁴ As Nagin notes 'We now know that deterrence is ubiquitous but that the effects are heterogeneous, ranging in size from seemingly null to very large.'⁵⁵

It has also been observed that adopting a criminal justice response serves as a reminder that match-fixing is not merely a 'simple' breach of sporting rules or a code of conduct, but an offence against the public order in a broader sense.⁵⁶ Accordingly, while codes of conduct (and resulting disciplinary sanctions for code breaches) will always play an important role in any effective strategy to combat match-fixing, an appropriate criminal justice framework is a necessary response to the omnipresent threat of match-fixing. This position is reflected in article 15 of the *Macolin Convention* which states that:

Each Party shall ensure that its domestic laws enable [it] to criminally sanction manipulation of sports competitions when it involves either coercive, corrupt or fraudulent practices, as defined by its domestic law.⁵⁷

B *The Arguments for Specific Criminal Offences*

The question then for legislators is whether existing penal codes can facilitate the effective sanctioning of match-fixing conduct, or whether specific match-fixing offences are required. There have been some cases where existing criminal provisions (such as those prohibiting fraud, bribery, cheating, corruption or deception) have been successfully utilised to prosecute match-fixing. In Austria, for example, a professional soccer player in the first Austrian division who fixed a number of matches was found guilty of fraud and sentenced to three years in prison.⁵⁸ However, such examples are generally the exception and the majority view is that, in practice, relying on existing criminal provisions may not be as effective as the enactment of specific match-fixing legislation.⁵⁹ General criminal provisions addressing fraud and other offences are not designed with sport in mind and accordingly, loopholes often exist when prosecutors try to apply these provisions in the sporting context. In Switzerland in 2012, the prosecution of

⁵⁴ Paul H. Robinson and John M. Darley, 'Does Criminal Law Deter? A Behavioural Science Investigation' (2004) 24(2) *Oxford Journal of Legal Studies* 173, 173.

⁵⁵ Nagin (n 53) 180.

⁵⁶ UNODC and Interpol, *Criminalization Approaches to Combat Match-fixing and Illegal/Irregular Betting: A Global Perspective* (n 40) 1.

⁵⁷ *Macolin Convention* (n 9) art 15.

⁵⁸ Hallmann et al (n 1) 18.

⁵⁹ John Abbot and Dale Sheehan, 'The INTERPOL Approach to Tackling Match Fixing in Football' in M. R. Haberfeld and Dale Sheehan (eds), *Match-Fixing in International Sports: Existing Processes, Law Enforcement, and Prevention Strategies* (Springer International Publishing, 2013) 263, 279.

three soccer players accused of match-fixing was unsuccessful even though match-fixing had largely been proven (and even admitted to by one of the players). The Court held that Swiss criminal laws in force at the time were unsuitable to convict the accused persons. As a result of the case, Swiss lawmakers introduced a new provision specifically tackling match-fixing in 2019.⁶⁰ Other countries have followed suit. When India announced plans to make match-fixing a specific criminal offence in 2020, a senior official within the International Cricket Council's anti-corruption unit praised the decision as 'the single-most-effective thing' to happen in terms of protecting sport from match-fixers.⁶¹

In a series of joint studies, the UNODC and the IOC have also advocated for specific match-fixing legislation, on the basis that such provisions may reinforce the educational and preventative aspects related to match-fixing by making it clear that cheating at sports can qualify as a criminal offence.⁶² Similarly, implementing specific criminal law provisions against match-fixing was one of the key recommendations of a 2019 research project conducted by the Institute of Sport Economics and Sport Management at the German Sport University Cologne.⁶³

C Australian Match-Fixing Legislation

Pursuant to the National Policy endorsed in 2011, the state, territory and federal governments agreed to pursue nationally consistent legislative arrangements to address the particular issue of match-fixing.⁶⁴ However, more than a decade later, a harmonised, national approach to criminalising match-fixing remains lacking.⁶⁵ Most jurisdictions (New South Wales, South Australia, Victoria, the Northern Territory, the Australian Capital Territory and Queensland) have introduced specific-match fixing offences. Essentially, but with some variations (discussed further below), the legislation introduced by these six jurisdictions creates specific criminal offences for:

1. engaging in, facilitating and/or seeking to conceal conduct that would corrupt:

⁶⁰ Diaconu and Kuhn (n 46) 2.

⁶¹ Interpol, 'Match-fixing law will be a game-changer in India: Steve Richardson' (23 June 2020 – 7 July 2020) *Integrity in Sport Bi-Weekly Bulletin* <<https://www.interpol.int/content/download/15478/file/Weekly%20Bulletin-%2023%20June%20-%207%20July%202020.pdf>>.

⁶² UNODC and IOC, *Criminal Law Provisions for the Prosecution of Competition Manipulation* (n 51) 11.

⁶³ Kirstin Hallmann et al (n 1) 98.

⁶⁴ National Policy (n 5) 3.

⁶⁵ Wood Review (n 2) 76.

- (a) a betting outcome on an event;⁶⁶ or
 - (b) a sporting event or contingency,⁶⁷
- on which it is lawful to bet under Australian law; and
2. the use of corrupt conduct information⁶⁸ and/or inside information⁶⁹ for betting purposes.

Neither Western Australia nor Tasmania have enacted specific match-fixing legislation, on the basis that their existing criminal laws are sufficient to address match-fixing.⁷⁰ As previously noted, there are currently no Commonwealth match-fixing laws.

Among those states and territories which have introduced specific match-fixing legislation, there are a number of gaps and inconsistencies. One of the key differences relates to the link between the fix and betting outcomes. In most jurisdictions (New South Wales, Victoria, South Australia, the Northern Territory and the Australian Capital Territory), for an offence to occur, there must be a connection between the conduct and the outcome of a bet. In those jurisdictions, although the language of each statute differs slightly, for an offence to occur the person must:

1. engage in conduct which affects or is likely to affect a betting outcome and is contrary to the standards of integrity which a reasonable person would expect; and
2. intend to obtain a financial advantage or cause a financial disadvantage in connection with any betting on the event.⁷¹

In other words, there must be an intentional link between the fix and betting. The Explanatory Memorandum to the Victorian Bill states that the legislation is intended to ensure conduct which may affect a betting outcome, but would not generally be considered contrary to the standards of integrity applicable to those persons participating in the event (e.g., strategic and tactical decisions, honest errors and foul play (e.g., a red card in soccer)) are not caught by the offences.⁷²

⁶⁶ All jurisdictions save for Queensland.

⁶⁷ Queensland.

⁶⁸ All jurisdictions.

⁶⁹ All jurisdictions save for Victoria.

⁷⁰ See Tasmania Police, Submission 17 to the *Wood Review*; Government of Western Australia, Department of Racing, Gaming and Liquor, Submission PCG06 to the NSWLRC, *Cheating at Gambling* (Consultation Paper 12, March 2011).

⁷¹ *Crimes Act 1900* (NSW) ss 193H and 193N; *Crimes Act 1958* (Vic) ss 195B and 195C; *Criminal Law Consolidation Act 1935* (SA) ss 144G(3) and 144H; *Criminal Code Act 1983* (NT) ss 237B and 237H; *Criminal Code 2002* (ACT) ss 363C and 363F.

⁷² Explanatory Memorandum, Crimes Amendment (Integrity in Sports) Bill 2013 (Vic) 2.

In Queensland, by contrast, an offence will occur if a person:

1. engages in conduct which affects or is reasonably expected to affect the outcome of a sporting event or the happening of a contingency within a sporting event and is contrary to the standards of integrity which a reasonable person would expect; and
2. intends by the conduct to obtain a pecuniary benefit or cause a pecuniary detriment to another person.⁷³

The key difference in the legislation is that the Queensland model criminalises conduct intended to procure a pecuniary benefit or cause pecuniary detriment, without any requirement that the conduct be linked to a betting outcome. This formulation casts a wider net and means, for example, that a person who accepts a bribe to fix a sporting event unconnected with betting could be guilty of an offence in Queensland but not in New South Wales (although they would possibly be caught by other general bribery provisions under the criminal law of that state). The only qualifier under the Queensland model is that the conduct must be contrary to the standards of integrity that an ordinary person would reasonably expect. This is a question of fact to be determined in each case. However, there is no universal understanding of the meaning of the word ‘integrity’ within the context of sport.⁷⁴ As such, a question arises as to whether this test is sufficiently certain for the purposes of the criminal law. If the test is too uncertain, it may result in an array of potentially conflicting decisions, particularly if the relevant standard is construed by reference to individual sports (i.e., different sports may have different standards of what is acceptable).⁷⁵ Notwithstanding this, as discussed in Part E below, the Queensland model is favoured by a number of jurisdictions overseas (particularly in Europe).

Another difference between the jurisdictions relates to the permissibility of using ‘inside information’. All jurisdictions with specific match-fixing legislation save for Victoria have included a provision which prohibits the communication or use of ‘inside information’ for betting. ‘Inside information’ is information which is not generally available and which, if it was generally available, would (or would be likely to) influence a betting decision.⁷⁶ The general criminal laws of Western Australia and Tasmania also do not address the misuse of inside information.

⁷³ *Criminal Code 1899* (Qld) ss 443 and 443A.

⁷⁴ Catherine Ordway and Hayden Opie, ‘Integrity and Corruption in Sport’ in Nico Schulenkorf and Stephen Frawley (eds), *Critical Issues in Global Sport Management* (Routledge, 2017) 38, 40.

⁷⁵ See the discussion in Thorpe (n 44) 108.

⁷⁶ See, for example, *Crimes Act 1900* (NSW) s 193Q(4).

In addition, the penalties are inconsistent – the maximum penalty for match-fixing offences (save for the misuse of inside information where applicable) in all jurisdictions is 10 years, except for the Northern Territory where it is 7 years.

As well as these inconsistencies, the legislative framework contains some obvious gaps. The match-fixing offences as currently drafted only apply to events on which it is lawful to bet under Australian law.⁷⁷ This means that if a fix is orchestrated to facilitate bets placed on the illegal gambling market or a foreign betting market, rather than a sanctioned Australian betting market, the conduct is not captured by the legislation. This omission is particularly significant given the size of the illegal gambling market noted above and the fact that online in-play betting (betting on a sporting event after it has commenced) is currently prohibited in Australia under the *Interactive Gambling Act 2001* (Cth).⁷⁸ There are also limits to the extraterritorial application of these laws. The New South Wales and Queensland laws, for example, can apply to acts or omissions and persons outside of those states in certain circumstances, such as where the offence is committed:

1. wholly or partly in those states (whether or not the offence has any effect in the relevant state); or
2. wholly outside those states, but the offence has an effect in the relevant state.⁷⁹

In contrast, under the Victorian match-fixing laws, although the definition of ‘event’ includes events taking place outside Victoria (provided it is lawful to bet on the event), the legislation otherwise has no extraterritorial application.

D *The Wood Review*

On 5 August 2017, the Commonwealth Minister for Sport announced a review of Australia’s sports integrity arrangements to be led by the Honourable James Wood AO QC (namely, the Wood Review). The final report of the Wood Review was released on 1 August 2018. As noted above, the Wood Review concluded that the National Policy had yet to deliver a cohesive response to match-fixing and related corruption and recommended a more robust capability with a national and international focus.⁸⁰ A key finding of the Wood Review was that the lack of a national cohesive response to the threat of match-fixing was due, in part, to Australia’s federal system of government and the fact that the Commonwealth Government has insufficient constitutional authority to enact

⁷⁷ See, for example, the definition of ‘event’ in s 193J of the *Crimes Act 1900* (NSW).

⁷⁸ *Interactive Gambling Act 2001* (Cth) s 15.

⁷⁹ See *Queensland Criminal Code 1899* ss 12(2) to (4), 13 and 14 and *Crimes Act 1900* (NSW) s 10C.

⁸⁰ Wood Review (n 2) 62.

criminal laws to effectively address match-fixing at a national level.⁸¹ The Wood Review also observed that current match-fixing laws are not able to effectively address transnational criminal activity – a significant lacuna given the international nature of sporting competitions,⁸² and the globalisation of sports betting markets. In view of this, the Wood Review recommended that Australia become a party to the *Macolin Convention*, which would allow the enactment of national match-fixing criminal legislation (under the external affairs power contained in section 51(xxix) of the Constitution).⁸³ Specifically, the Wood Review recommended that the Commonwealth should amend the *Criminal Code 1995* (Cth) to introduce national criminal offences for match-fixing (similar to the model operating in New South Wales), while continuing to encourage national consistency across relevant criminal provisions introduced by the state and territory governments.⁸⁴ Some of the key recommendations as to the specific formulation of the relevant criminal offences were that they should:

1. be transnational in application;
2. be linked to wagering outcomes (irrespective of whether the subject wager is lawful or otherwise); and
3. include offences for the use of inside information.

In its formal response to the Wood Review issued in February 2019, the Commonwealth Government accepted the overarching recommendation to establish national criminal offences for match-fixing (though it did not state whether the Commonwealth offences would follow the New South Wales model).⁸⁵

E Developments in Europe – The Macolin Convention and the UNODC and IOC model provisions

Over the past decade, considerable work has been done in Europe to further the fight against match-fixing. In particular, the *Macolin Convention* proposes a framework for efficient international cooperation to respond to this global threat. It is the only rule of international law on the manipulation of sports competitions.

The UNODC and the IOC have jointly conducted two studies (in 2013 and 2016) comparing criminal law provisions on match-fixing from a cross section

⁸¹ Ibid 63.

⁸² Ibid.

⁸³ Ibid 65.

⁸⁴ Ibid.

⁸⁵ Department of Health (Cth), *Safeguarding the Integrity of Sport – the Government Response to the Wood Review* (Government Response, February 2019) 10 (“Government Response to the Wood Review”).

of international jurisdictions.⁸⁶ As a result of these studies, in 2016, the UNODC and the IOC issued Model Criminal Law Provisions for the Prosecution of Competition Manipulation ('Model Provisions').⁸⁷ The purpose of the Model Provisions is to 'assist countries to in establishing effective legislation to prosecute those involved in competition manipulation.'⁸⁸ It is further noted that the 'harmonisation of criminal legislation is key for international law enforcement and judicial cooperation...'⁸⁹

The UNODC and IOC proposed the following 'core' model criminal law provisions for consideration:

- (a) Any person who, directly or indirectly, promises, offers or gives any undue advantage to another person, for himself, herself or for others, with the aim of improperly altering the result or the course of a sports competition shall be punished by_____.
- (b) Any person who, directly or indirectly, solicits or accepts any undue advantage or the promise or the offer thereof, for himself, herself or for others, with the aim of improperly altering the result or the course of a sports competition, shall be punished by_____.⁹⁰

The most obvious difference between the Model Provisions and the approach adopted by the majority of Australian jurisdictions is that under the Model Provisions, the match-fixing offences are independent from betting on an event which is fixed. This is despite the authors of the study acknowledging that the manipulation of sports competitions is often driven by the primary aim of achieving an economic gain through betting activity.⁹¹ The Model Provisions also do not include a prohibition on the misuse of inside information. This is perhaps unsurprising, given that the misuse of inside information generally occurs in the context of betting and, as noted above, in contrast to the Australian approach, the Model Provisions do not proceed on the assumption that match-fixing is inherently linked to betting outcomes.

The use of the words 'undue advantage' in the Model Provisions means the provisions are much broader in scope than the Australian offences. Whereas the Australian states and territories have adopted the concepts of 'pecuniary' or 'financial' (i.e., material) advantage/disadvantage, the only qualifier used in the Model Provisions is the word 'undue', meaning that the provisions would extend to non-material advantages (such as advancing to a higher level in the

⁸⁶ See UNODC and IOC, *Criminalization Approaches to Combat Match-fixing and Illegal/Irregular Betting: A Global Perspective* (n 40); UNODC and IOC, *Criminal Law Provisions for the Prosecution of Competition Manipulation* (n 51).

⁸⁷ UNODC and IOC, *Criminal Law Provisions for the Prosecution of Competition Manipulation* (n 51).

⁸⁸ *Ibid* 5.

⁸⁹ *Ibid*.

⁹⁰ *Ibid* 46.

⁹¹ *Ibid* 36.

competition, or simply the ‘glory’ of winning).⁹² Again, this is said to be in conformity with the *Macolin Convention*,⁹³ and also reflects the position adopted by the majority of the countries studied.⁹⁴ Interestingly, when the criminal provisions were first assessed by the UNODC and the IOC in 2013, it was concluded that match-fixing not motivated by material advantages did not constitute enough of a social threat and therefore did not warrant a criminal offence (though it still amounted to a breach of the principles of sports and should be sanctioned accordingly).⁹⁵ It is therefore apparent that European governments and institutions have taken an increasingly broad approach to the criminalisation of match-fixing.

These conceptual differences and divergent approaches to the formulation of criminal offences between Europe and Australia are just some examples of the limits to international harmonisation of laws relating to match-fixing. Though, as Ando points out, the Explanatory Report to the *Macolin Convention* stipulates that article 15 ‘does not require the establishment of a specific and uniform offence for the manipulation of sports competitions’.⁹⁶ According to Ando, the absence of uniformity (in offences) among nations does not necessarily limit the opportunity for harmonisation because the important consideration is simply that each nation will establish criminal offences which are appropriate for its jurisdiction.⁹⁷

4 NEXT STEPS: PROPOSED COMMONWEALTH OFFENCES

As noted above, under Australia’s federal system, the responsibility for making laws relating to sport, crime and gambling largely rests with the states and territories. While Australia signed the *Macolin Convention* on 1 February 2019, until it is ratified it will not be possible to activate the Commonwealth’s external affairs power to give constitutional authority to general federal regulation of sports integrity matters. There is presently no indication as to when the Commonwealth Government will ratify the *Macolin Convention*. However, notwithstanding this, it appears that draft Commonwealth legislation for the criminalisation of match-fixing is in progress. In December 2021,⁹⁸ Sport Integrity Australia advised that it continues to work with relevant government agencies to establish national criminal offences for the manipulation of sports competitions and related corruption in sport and that the drafting of the offences was anticipated to

⁹² Ibid 47.

⁹³ Ibid.

⁹⁴ Ibid 38.

⁹⁵ UNODC and IOC, *Criminalization Approaches to Combat Match-fixing and Illegal/Irregular Betting: A Global Perspective* (n 40) 301.

⁹⁶ Ando (n 33) 119.

⁹⁷ Ibid.

⁹⁸ *Sport Integrity Matters* (n 3).

conclude in the first quarter of 2022.⁹⁹ However, at the time of writing, no draft legislation has been released and there have been no further updates on the date for ratification of the *Macolin Convention* or the status of the draft legislation. Some key issues for the proposed Commonwealth legislation will now be considered.

A *Jurisdiction/territoriality*

In response to the Wood Review, the Commonwealth Government stated that it would give ‘further consideration’ to whether the Commonwealth criminal offences should be transnational in their application.¹⁰⁰ Under the *Commonwealth Criminal Code Act 1995* (Cth) there are four types of extended geographic jurisdiction which could apply. Category A extended geographic jurisdiction applies (subject to certain defences) where:

- conduct occurs wholly or partly in Australia (including wholly or partly on an Australian aircraft or ship);
- conduct occurs wholly outside Australia, and the result of the conduct occurs wholly or partly in Australia (including wholly or partly on an Australian aircraft or ship);
- conduct occurs wholly outside Australia and the accused is an Australian citizen or a corporation incorporated under the law of Australia or an Australian State or Territory; or
- the offence is an ancillary offence where the conduct occurs wholly outside Australia and the conduct constituting the primary offence or the result of the conduct occurs or is intended to occur wholly or partly in Australia.¹⁰¹

Category B extended geographic jurisdiction expands Category A to include conduct occurring wholly outside Australia by Australian residents, along with Australian citizens and Australian corporations (subject to certain defences).¹⁰² Category C extended geographic jurisdiction provides that an offence can be committed (subject to certain defences) whether or not the conduct occurs in Australia and whether or not the results of the conduct occur in Australia, where the accused is neither an Australian citizen nor an Australian corporation.¹⁰³ Finally, category D extended geographic jurisdiction is the same as Category C, except that the relevant defences do not apply.¹⁰⁴

⁹⁹ Ibid 25.

¹⁰⁰ Government Response to the Wood Review (n 85) 10.

¹⁰¹ *Criminal Code Act 1995* (Cth) s 15.1.

¹⁰² Ibid s 15.2.

¹⁰³ Ibid s 15.3.

¹⁰⁴ Ibid s 15.4.

Not much is known about the approach the Commonwealth Government is taking in relation to the transnational application of the proposed new offences. However, Sport Integrity Australia has indicated that the legislators intend to ‘...make it an offence to intentionally corrupt or manipulate a sporting competition taking place in Australia (*wherever the location of the perpetrator*) and for *Australians* to corrupt or manipulate a sporting competition *internationally*, where Australia is represented as a nation.’¹⁰⁵ This language suggests that the Government is considering at least Category A extended jurisdiction (and possibly Category B, depending on whether the definition of ‘Australian’ includes an Australian resident as well as a citizen). Category B extended jurisdiction would be consistent with article 19 of the *Macolin Convention*, which stipulates that each state should adopt legislative measures which are effective to establish jurisdiction for offences committed in its territory, by its nationals or by a person habitually residing in its territory.¹⁰⁶

B *Link to wagering*

Although the Commonwealth Government stopped short of expressing support for the ‘New South Wales model’ (as recommended by the Wood Review), it is likely that the Commonwealth match-fixing offences will follow that model, at least to the extent that the offences will be linked to wagering outcomes. Sport Integrity Australia has indicated that the development of the Commonwealth offences aims to ‘...ensure sporting bodies maintain autonomy for sanctioning behaviours that do not meet a criminal threshold.’¹⁰⁷ This language, although far from explicit, could indicate that the Commonwealth intends to distinguish between match-fixing and bet-fixing, with the former to be excluded from the operation of the criminal provisions (which would place the Commonwealth legislation at odds with the *Macolin Convention* (and, perhaps more significantly, the approach followed in Queensland)). As noted in the Wood Review, the sporting integrity arrangements introduced by Australia’s major professional sporting bodies (in addition to the steps taken to promote sports integrity at the national level) are mature and sophisticated.¹⁰⁸ In such an environment, there is no reason why match-fixing unrelated to betting cannot be properly sanctioned by sporting organisations themselves. Indeed, the disciplinary power of sporting bodies has been acknowledged by the UNODC and the IOC as a ‘fast and efficient coercive tool against the manipulation of sports competitions.’¹⁰⁹ In addition to this, it is submitted that using police and judicial resources to investigate and prosecute manipulation not linked to betting

¹⁰⁵ *Sport Integrity Matters* (n 3) 25 (emphasis added).

¹⁰⁶ *Macolin Convention* (n 9) art 19.

¹⁰⁷ *Sport Integrity Matters* (n 3) 25.

¹⁰⁸ Wood Review (n 2) 81.

¹⁰⁹ *Ibid.*

is not likely to be an effective use of those resources and constitutes a disproportionate response to the threat posed by this type of activity. On this topic, the New South Wales Law Reform Commission (‘NSWLRC’) observed that legislators must preserve the 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.’¹¹⁰

Lastly, on the issue of wagering, the Wood Review points out that the national offences must extend to offshore betting markets and onshore markets which are unlicensed. Currently, the offences only capture events on which it is lawful to bet under Australian law (as discussed above). As the Wood Review notes, there is a significant risk of an increase in match-fixing and related corruption in Australia which is driven in large part by online, offshore wagering platforms (particularly those in Asia).¹¹¹ In view of this, the efficacy of the national criminal laws will be curtailed if they are confined only to legal, onshore gambling activity (bearing in mind that any attempt to extend the applicable laws to capture offshore betting markets would need to ensure that the relevant legislation has extraterritorial effect).

C Offences with respect to the use of ‘inside information’

Each of the Australian jurisdictions with specific match-fixing provisions has included offences against the use of inside information except for Victoria. In contrast, in Europe, the misuse of inside information is more often seen as a disciplinary issue (if at all).¹¹² There is certainly a compelling argument that criminal sanctions for the misuse of inside information could result in unduly harsh outcomes for athletes who have inadvertently passed along information without any criminal intent. The example of Australian Rules footballer Nick Maxwell is a case in point. In 2011, Maxwell was fined \$5000 by the Australian Football League (AFL) after family members used information he had given them (that he was to start the match in the forward line rather than his usual position in the backline) to place bets on the match.¹¹³ However, under s 193Q(2) of the *Crimes Act 1900* (NSW) (for example), Maxwell’s actions could have resulted in up to two years in jail. All that is required for an offence to have occurred is for a person who possesses inside information (and who knows or is

¹¹⁰ NSWLRC, *Cheating at Gambling* (Consultation Paper 12, March 2011) 16.

¹¹¹ Wood Review (n 2) 62.

¹¹² For example, the disciplinary regulations of the national soccer associations of France, Germany, Greece, and the United Kingdom all prohibit the sharing of inside information. However, Austria, Bulgaria and Italy do not. For more information, see the comparison table published in Hallmann et al (n 1) 100.

¹¹³ Caroline Wilson, ‘Heath Shaw suspended for betting on football’, *The Age* (Web Page, 15 July 2011) <<https://www.theage.com.au/sport/afl/heath-shaw-suspended-for-betting-on-football-20110715-1hhe1.html>>.

reckless as to whether the information is inside information) to communicate the information to another person who the first person knows or ought reasonably to know would be likely to bet on the event. Arguably, Maxwell ought reasonably to have known that:

1. the decision to start him out of position was inside information;
and
2. his family members would be likely to bet on the match.

The Wood Review noted the possibility of high penalties for this type of offence could leave law enforcement officials reluctant to charge athletes with inside information offences in circumstances where there is no evidence of criminal intent (which would, in turn, diminish the potential deterrent effect of the provision).¹¹⁴

In contrast, those who advocate for the criminalisation of inside information offences argue that requests for inside information can serve as an entry point for fixers to initiate a relationship with athletes (for example, by requesting seemingly harmless information at first), which they can later exploit to manipulate matches.¹¹⁵ As such, the Wood Review concluded that offences for the misuse of inside information are of critical importance to ensuring that the criminal offence regime is as effective as possible.¹¹⁶ However, the Wood Review also concluded that, to account for the range of offending that may be caught, it is preferable to introduce a flexible penalty regime ranging from pecuniary penalties for inadvertent or reckless offending through to a prison term for serious criminality.¹¹⁷

D Failure to disclose

The Wood Review declined to accept the submission put forward by Victoria Police that the proposed Commonwealth legislation should criminalise the failure of a person with knowledge of a match-fixing event to disclose that knowledge to police or another relevant authority.¹¹⁸ This is generally consistent with existing match-fixing legislation (which, in all jurisdictions save for the Australian Capital Territory, criminalises the act of encouraging someone to conceal match-fixing conduct but otherwise does not punish the act of concealment itself).¹¹⁹

¹¹⁴ Wood Review (n 2) 82.

¹¹⁵ Sportradar, 'World Match-Fixing: The Problem and the Solution' (Online Article, April 2014) 13 <<https://www.yumpu.com/en/document/read/40384161/sportradar-security-services-world-match-fixing-the-problem-and-the-solution>>.

¹¹⁶ Wood Review (n 2) 81.

¹¹⁷ *Ibid.* 82.

¹¹⁸ *Ibid.*

¹¹⁹ See *Crimes Act 1900* (NSW) s 193P; *Crimes Act 1958* (Vic) s 195E; *Criminal Code 1899* (Qld) s 443E; *Criminal Law Consolidation Act 1935* (SA) s 144J; *Criminal Code Act 1983* (NT) s 237K.

Match-fixing, being a form of corruption, can be very difficult to prove. There is often no forensic evidence that a crime has occurred and there are very often no obvious victims. The primary mechanism for detecting match-fixing is therefore through whistle-blowers. As such, legislators must ensure that the criminal justice framework works effectively to encourage, rather than dissuade, disclosure. It is also likely that an offence for failing to disclose match-fixing would overwhelmingly target athletes and sportspeople. As such, it is submitted that criminalising a failure to disclose knowledge of match-fixing should be avoided. Rather, more should be done to encourage disclosure via strengthened legal protections for witnesses and whistle-blowers. The Wood Review observed that a large number of stakeholders reported that there is a general reluctance to report actual or suspected corruption (including match-fixing) among players and officials because of a prevailing view that whistle-blowing can ‘ruin careers.’¹²⁰ In view of this, the Wood Review recommended the establishment of an independent whistle-blower service which could include:

1. a dedicated hotline for receiving confidential reports of suspected integrity threats; and
2. a regulatory protected disclosure regime.¹²¹

In this regard, article 21 of the *Macolin Convention* recommends that nations take ‘such legal measures as may be necessary’ to provide effective protection for whistle-blowers and witnesses.¹²² The UNODC and IOC also support the establishment of legislated protections for whistle-blowers.¹²³

5 CONCLUSION

The introduction of national criminal offences for match-fixing is an important step towards addressing problems within the current legislative framework, the effectiveness of which is hampered by the gaps, inconsistencies and jurisdictional issues outlined above. As the Wood Review noted, the enactment of provisions criminalising match-fixing and related corruption at the Commonwealth level is ‘[c]learly...the next major milestone’ in the fight against match-fixing.¹²⁴ Not only will the introduction of laws at the Commonwealth level hopefully address some of the gaps in the existing framework (for example, in relation to extraterritoriality and illegal or offshore gambling markets), it may also be the impetus required to prompt the states and territories to harmonise

¹²⁰ Wood Review (n 2) 181.

¹²¹ Ibid.

¹²² *Macolin Convention* (n 9) art 21.

¹²³ United Nations Office on Drugs and Crime and International Olympic Committee, *Criminal Law Provisions for the Prosecution of Competition Manipulation* (n 51) 45.

¹²⁴ Wood Review (n 2) 76.

their existing match-fixing regimes. To this end, the national laws could act as a useful model for those states that are yet to introduce specific match-fixing laws.

An effective criminal justice response to match-fixing is but one (albeit, important) aspect of a range of measures that must be employed to effectively combat a global phenomenon as complex and challenging as match-fixing. Education and awareness are crucial. Sports organisations must ensure that their members are scrupulously educated on the threat of match-fixing. Further, sporting bodies and codes must continue to prioritise integrity by properly funding and resourcing their integrity units. Unfortunately, in recent years, there have been numerous reports of cost-cutting by Australian sporting organisations due to COVID-19, which has had direct impacts on integrity units and officers. This is particularly concerning having regard to the additional financial pressures the pandemic has placed on large numbers of athletes around the world. Integrity experts have warned that any divestment in integrity frameworks (whether as a result of the pandemic or otherwise) could be ‘disastrous for sports’ and leave players more susceptible to match-fixing.¹²⁵

¹²⁵ John Stensholt, ‘Cost Cutting Could Cause Sports Integrity Issues, Experts Warn’, *The Australian* (Web Page, 5 September 2020) <<https://www.theaustralian.com.au/sport/cost-cutting-could-cause-sports-integrity-issues-experts-warn/news-story/c70df9d362d7cc1ec04ed42dc4bce9fb>>.