

# Regulatory Impact Statement

## Match-Fixing Criminal Offences

### Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by Sport New Zealand and provides an analysis of options to ensure appropriate criminal offences are in place to deter and sanction match-fixing. Match-fixing involves improperly manipulating results in sports matches, or events within matches, usually for betting returns, rather than for sporting tactical reasons.

A key assumption is that existing offences do not adequately cover match-fixing. Given any necessary criminal offences need to be in place prior to the Cricket World Cup in early 2015, we have only considered relatively minor amendments to existing legislation that can be implemented by the end of 2014. We have not considered creating complex match-fixing specific offences or a stand-alone Match-Fixing Act. However, we consider that our proposed approach will substantially reduce the risk of the most damaging match-fixing conduct going un-prosecuted.

Our analysis focusses on how best to criminalise 'core' match-fixing behaviour. That is, behaviour involving improperly manipulating results in sports matches, or events within matches, usually for betting returns, rather than for sporting tactical reasons. We do not consider criminalising other related behaviour that influences betting outcomes but not the result, or any part of, a sports match. For example we are not looking to criminalise the use of 'inside' information to enhance betting outcomes. 'Inside' information is information that is available to team members and officials but not the general public, such as information regarding team strategies or player availability.

We focus on core match-fixing behaviour for several reasons:

- core match-fixing behaviour presents the biggest risk to the integrity, growth and development of New Zealand sport
- a more significant set of offences would likely be unachievable within the time available
- given that we do not anticipate a high number of people will engage in match-fixing behaviour, our preferred approach is proportionate to the level of risk.

Further, we feel that those who leak 'inside' information can be dealt with appropriately by the governing sports body, which may impose sanctions on members involved in such behaviour.

This regulatory impact statement assesses the application of current offences to match-fixing activity and identifies the most appropriate legislative framework to criminalise match-fixing. Should Cabinet approval be received, further work will be required to determine the exact nature of any necessary legislative amendments. Officials from Sport New Zealand

will work with the Ministry of Justice and the Parliamentary Counsel Office to determine the final nature of specific proposed amendments. Cabinet will have the opportunity to consider these specific amendments once a Bill has been drafted.

The New Zealand courts have not yet been called on to deal with an instance of match-fixing. This means there is uncertainty about the application of existing offences to this activity. This uncertainty is reflected in the analysis below. While any proposed amendments to existing offences can help to clarify their application to match-fixing, their application to all possible match-fixing scenarios cannot be guaranteed.

Our analysis proceeds on the assumption that criminal offences provide for criminal sanctions for offenders and have at least some deterrent effect, although the exact level of deterrence is difficult to establish.



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**Sport New Zealand**

Date: 12/02/2014



## Executive summary

1. New Zealand does not have any criminal offences specifically designed to capture match-fixing. This gap in our legislation creates risks in advance of us hosting large international events involving sports well known for match-fixing risks (Cricket World Cup and FIFA Under 20 World Cup over February-March and May-June 2015 respectively).
2. This regulatory impact statement assesses options to amend legislation to ensure match-fixing is criminalised.

### *What is match-fixing?*

3. Match-fixing involves improperly manipulating results in sports matches, or events within matches, usually for betting returns, rather than for sporting tactical reasons. Match-fixing is commonly associated with bets placed on pre-arranged outcomes for guaranteed financial return. For example, this may involve players being paid by fixers to deliberately lose games or influence aspects of a game in an agreed way.
4. We have focused on 'core' match-fixing behaviour. That is, activity that improperly manipulates the outcome, or a part of, a match. We do not consider it is necessary to criminalise other behaviour that may enhance betting outcomes but which does not affect a match. For example, we consider the use of 'inside information' by players or officials for betting purposes is best dealt with by governing sport bodies rather than the criminal law.

### *What are the risks of match-fixing occurring in New Zealand?*

5. Global criminal activity concerning corrupt sports betting is increasing, particularly with growth in on-line betting. New options such as on-line live betting during matches also increase the risk of, and create greater opportunity for, match-fixing. Interpol estimated that fraudulent sports betting generated \$US140 billion in turnover in 2010.
6. Threat assessments and intelligence gained by bodies such as Interpol, the Australian Crime Commission, the International Cricket Council (ICC) and investigative experts warn that Australasia is at risk from international crime syndicates looking to expand their current operations in Asia, the Indian subcontinent and Europe.<sup>1</sup> The Australian Crime Commission's February 2013 report, *Organised Crime and Drugs in Sport*, highlighted links between Australian sport and organised crime including match-fixing risks.
7. Upcoming major sporting events also increase the risk of match-fixing occurring in New Zealand.

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<sup>1</sup> Heron, M, Jiang C. 'The Gathering Storm – Organised Crime and Sports Corruption'. Australian and New Zealand Sports Law Journal 5, no.1 (2010): 99-118.

### *The damaging impact of match-fixing*

8. Match-fixing damages the integrity, growth and development of sport. Sport contributes significantly to New Zealand's economy, with an estimated \$5.2 billion (2.8 % of GDP) contributed in 2008/09. Anything that damages the sport sector may also impact negatively on our economic activity.
9. Match-fixing could also do serious damage to New Zealand's strong reputation for integrity and could damage the national pride New Zealander's gain from our sporting excellence. Match-fixing may also damage New Zealand's hosting prospects for major sporting events.

### *What is our preferred approach?*

10. We favour amending the Crimes Act to ensure that match-fixing is criminalised. Given that amendments need to be in place prior to the Cricket World Cup in early 2015, we favour minor amendments to an existing provision. However, we consider that our proposed approach will substantially reduce the risk of the most damaging match-fixing conduct going un-prosecuted.
11. The Crimes Act is the most appropriate legislation to criminalise match-fixing for several reasons, including:
  - The Crimes Act already contains similar corruption and fraud-related offences. In fact some match-fixing activity may already be captured by the Crimes Act (eg, section 240)
  - A match-fixing offence would sit well within the scheme of the Crimes Act which already provides for related offending, such as being a party to an offence or attempting to commit an offence, and covers situations where part of an offence occurs overseas
  - It is likely that relatively minor amendments can be made to an existing offence, or offences, in the Crimes Act in order to criminalise match-fixing. Making minor amendments to existing offences reduces the risk that other behaviour will be inadvertently criminalised
  - Australian match-fixing offences have also been placed in crime-based statutes

### *Working with sport organisations*

12. Sport New Zealand (Sport NZ) is working with our national sport organisations to ensure they have appropriate match-fixing policies in place. Education and anti-match-fixing policies are an important tool for combating match-fixing. Education, coupled with clear rules and policies about how sporting organisations will deal with athletes who engage in match-fixing, will help to reduce the risk of match-fixing occurring. However, this alone may not be enough to protect New Zealand from risks.
13. We consider anti-match-fixing policies, educational policies and criminal offences an interdependent approach and the most effective way to combat match-fixing.



## Status quo and problem definition

### *Status quo*

14. This regulatory impact statement assesses options to ensure appropriate criminal offences are in place to deter and sanction match-fixers. The status of New Zealand's current legal framework is that none of our criminal offences are certain to apply to match-fixing behaviour.

### *Features of match-fixing behaviour*

15. Match-fixing involves improperly manipulating results in sports matches, or events within matches, usually for betting returns, rather than for sporting tactical reasons. Match-fixing is commonly associated with bets placed on pre-arranged outcomes for guaranteed financial return. For example, this may involve players being paid by fixers to deliberately lose games or influence aspects of a game in an agreed way.
16. Arranging or participating in match-fixing can result in substantial financial returns. For example, a recent Australian incident involving alleged match-fixing is estimated to have reaped over \$2 million in betting winnings. That match-fixing incident involved manipulating scores of the Southern Stars football team in the semi-professional Victorian Premier League. Match-fixing will often have links to international organised crime syndicates, due to the possibility of large financial returns.

### *Instances of match-fixing in New Zealand*

17. We are not aware of any instances of significant, substantiated match-fixing relating to betting activity occurring in New Zealand or involving New Zealand athletes to date. However, there is evidence of connections between New Zealand sporting activity and possible match-fixing.
18. The opportunity and financial incentives for New Zealanders to engage in match-fixing behaviour and for international criminal syndicates or individuals to target New Zealand are likely to increase as sport becomes more globalised and commercial.
19. One of the few benefits of retaining the status quo would be that it would allow us to learn from any international approach that is adopted to criminalising match-fixing. A consistent international approach to criminalising match-fixing would be a useful way of deterring match-fixers. However, it would come at the expense of leaving New Zealand open to match-fixing in the short-term until a consistent international approach is adopted, assuming such an approach emerges.

### *Match-fixers utilise unregulated and/or overseas betting markets*

20. Match-fixers will often attempt to influence the outcome, or part of, a game in order to benefit from bets made in unregulated and/or overseas betting markets. Unregulated betting markets based overseas are beyond the reach of New Zealand authorities.

21. Further regulation of sports betting in New Zealand will not remove the opportunity for match-fixers to place bets in unregulated and/or overseas markets. Incentives for people to engage in match-fixing may therefore remain even if sports betting in New Zealand is subject to increased regulation.

#### The damaging impact of match-fixing

22. Match-fixing damages the integrity, growth and development of sport. Sport contributes significantly to New Zealand's economy, with an estimated \$5.2 billion (2.8 % of GDP) contributed in 2008/09. Anything that damages the sport sector may also impact negatively on our economic activity.
23. Match-fixing could also do serious damage to New Zealand's strong reputation for integrity and could damage the national pride New Zealander's gain from our sporting excellence. Match-fixing may also damage New Zealand's hosting prospects for major sporting events.

#### New Zealand Policy on Sports Match-Fixing and Related Corruption

24. Sport New Zealand has developed a New Zealand Policy on Sports Match-Fixing and Related Corruption in response to emerging international match-fixing threats. The policy is to be implemented from 2014. It provides a comprehensive approach across government, the sport sector and betting industry to prevent and address match-fixing risks.
25. Implementing the policy is a recommendation from an assessment required by the Minister for Sport and Recreation, of New Zealand implications from the Australian Crime Commission investigation and associated report *Organised Crime and Drugs in Sport*, released in February 2013. This investigation noted match-fixing risks to Australian sport through organised crime connections. Our close sporting connections to Australia and a general increase in match-fixing worldwide, mean New Zealand must also be vigilant to these risks. The New Zealand Policy on Match-Fixing and Related Corruption includes:<sup>2</sup>
- work to ensure appropriate criminal offences are in place to deter and sanction match-fixers
  - rules, policies and procedures to prevent and address match-fixing activity by athletes, support staff and others (many national sports organisations already have varying levels of measures in place)
  - education programmes to warn athletes, support staff and others of match-fixing risks and inform them of prevention strategies, rules and consequences.

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<sup>2</sup> <http://www.sportnz.org.nz/Documents/media%20releases/ACC/final/FACTSHEET%20-%20match%20fixing%20policy.pdf>



National and international sporting bodies can sanction members for match-fixing

26. Many international and national sporting bodies have or are now developing match-fixing policies, including codes of ethics that prohibit match-fixing behaviour and processes for investigating and punishing instances of match-fixing.<sup>3</sup> Many sporting bodies also educate their members on the risks presented by match-fixing.
27. If a member of a sporting body (eg, an athlete or official) engages in match-fixing activity they may be liable to sanction from the sporting body. For example, the person may be banned from the sport for a certain period of time, or for life.
28. International and national sporting bodies with advanced anti-corruption policies and well-resourced investigative capacity play an important role in detecting and sanctioning match-fixing behaviour. Athletes will be increasingly aware of the potentially serious consequences of engaging in match-fixing and the likelihood of harsh penalties, such as life bans, being imposed.
29. While many sporting bodies have various anti-match-fixing measures in place, they only have jurisdiction over their members. Sporting bodies cannot sanction match-fixers who do not fall within their jurisdiction, nor can they impose criminal penalties or exercise the investigatory powers available to law enforcement bodies. This makes investigating possible instances of match-fixing difficult, particularly where there may be links with organised crime.
30. Sport NZ is working with our national sport organisations to ensure they have appropriate match-fixing policies in place. Education and anti-match-fixing policies are an important tool for combating match-fixing. Education, coupled with clear rules and policies about how sporting organisations will deal with athletes who engage in match-fixing, will help to reduce the risk of match-fixing occurring. However, this alone may not be enough to protect New Zealand from risks.
31. We consider anti-match-fixing policies, educational policies and criminal offences an interdependent approach and the most effective way to combat match-fixing.

New Zealand's close sporting ties with Australia

32. New Zealand has close sporting connections with Australia. Several professional New Zealand sports teams play in Australian competitions, trans-Tasman matches occur frequently and many sports people with New Zealand connections are based in Australia.
33. Five Australian states and territories have now passed legislation covering match-fixing. Australia's National Policy on Match-Fixing in Sport (agreed by all Australian governments on 10 June 2011) includes a commitment to pursue consistent criminal offences for match-fixing.

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<sup>3</sup> See, for example, the anti-corruption policies of the ICC and FIFA.

34. New South Wales was the first state to pass match-fixing legislation in September 2012 under the Crimes Amendment (Cheating at Gambling) Bill 2012. This legislation has generally been used as a model by other Australian jurisdictions.

### ***Problem definition and the current legal framework***

#### *A gap in the law*

35. New Zealand legislation has not kept pace with the risks presented by the increasingly globalised and commercial nature of professional sport. The fundamental problem is that New Zealand does not have specific criminal offences which are certain to apply to the common scenarios of match-fixing activity. Existing offences are likely to cover some match-fixing conduct, but there is a risk that some conduct will fall outside these offences.

36. Without specific offences, or a broad offence covering these actions, there is a risk that New Zealand will be unable to deter or sanction those who engage in match-fixing activity.

37. Athletes and officials may be liable to sanction from sporting bodies for match-fixing. However, sporting bodies cannot impose criminal penalties even where an athlete or official has been involved in large-scale and financially lucrative match-fixing. Further, those who organise and mastermind match-fixing operations, and who are therefore most culpable, do not normally fall within the jurisdiction of sporting bodies and are not liable to sanction.

#### *Corruption and bribery of an official and corrupt use of official information (sections 105 and 105A of the Crimes Act)*

38. These provisions make it an offence for an “official” to accept bribes, for an individual to bribe an “official”, or for an “official” to use information obtained in their official capacity corruptly. The maximum penalty for an offence against these sections is seven years’ imprisonment.

39. “Official” is defined as “any member or employee of any local authority or public body”. However, case law does not provide a definitive answer as to whether a sports organisation will be considered a public body. Further, some people who may become involved in match-fixing will not be connected to a sports organisation and will therefore not be covered by these provisions.

#### *Obtaining by deception or causing loss by deception (section 240 of the Crimes Act)*

40. This provision makes it an offence to obtain a pecuniary or other benefit, or cause loss, through deception. Section 240 may cover match-fixing, though there is some uncertainty due to the definition of “deception” and the nature of the benefit obtained or loss caused.

41. In section 240, deception is defined as a false representation, an omission to disclose a material particular where there is a duty to disclose, or a fraudulent device, trick or



stratagem, used with intent to deceive. It is unclear whether all match-fixing scenarios will comfortably fit into one of these definitions.

42. There is also a question of whether the losses sustained will be the type of losses envisaged by section 240. Section 240 appears to only anticipate direct, not indirect, losses. There could be difficulty, for example, in directly linking other betters' losses or financial losses incurred by a sports organisation to the match-fixing. The maximum penalty for an offence against section 240 is seven years' imprisonment.

*Gifts to agent without consent of principal and acceptance of gifts by agent (sections 3 and 4 of the Secret Commissions Act 1910)*

43. These provisions make it an offence for any person to corruptly give or offer to an "agent" any gift or other consideration as an inducement or reward for doing, or not doing, an act relating to a "principal's" business, without the "principal's" consent. It is also an offence for the "agent" to accept a gift for such a purpose.
44. The definition of "agent" covers employees, contractors and people acting for the "principal". The definition of "principal" covers employers and people for whom an agent is acting. Therefore, these offences may apply to employees of, or people acting for, a sports organisation who accept payment to match-fix in relation to the organisation's (the principal's) business. They may also apply to those people giving or offering the "agent" a gift or inducement for this purpose.
45. However, section 3 of the Secret Commissions Act will not cover situations where a player deliberately underperforms in a match to benefit from bets they have personally made, as there is no third party offering a corrupt gift. Section 3 will also not cover third parties potentially benefitting or involved in match-fixing but not directly offering a gift to the "agent" – eg people placing bets in reliance upon a match-fixing arrangement. Further, there may be uncertainty regarding whether people who are not employees (eg, informal advisors to a sports organisation) are judged to be 'acting' for the "principal".
46. The maximum penalty for an offence against the Secret Commissions Act is two years' imprisonment. This level of penalty does not allow Police to undertake trespass surveillance or use interception devices to investigate offences against the Secret Commissions Act. Section 45 of the Search and Surveillance Act 2012 requires that an offence be punishable by 7 years' imprisonment or more before enforcement officers can exercise these powers. Police advise that such powers would be necessary to adequately investigate match-fixing offending.
47. In our view, a maximum penalty of two years for match-fixing is not sufficient. Match-fixing can involve large-scale deceit or fraud and significant sums of money. Match-fixing harms not only the betting public and betting organisations but also New Zealand sports organisations, our international reputation, our prospects for securing hosting rights to major sporting events and ultimately may harm our economy.
48. The Organised Crime and Anti Corruption Bill, intended for introduction in 2014, proposes increasing the maximum penalty for an offence against the Secret

Commissions Act to seven years' imprisonment. However, these amendments are unlikely to be in place in time for the Cricket World Cup in 2015.

#### *New Zealand's regulatory system for gambling*

49. Gambling in New Zealand is regulated under the Gambling Act 2003. Section 9 of that Act prohibits gambling unless it is specifically authorised under the Gambling Act or the Racing Act 2003, or is private gambling.
50. Gambling is defined in the Gambling Act as "...paying or staking consideration, directly or indirectly, on the outcome of something seeking to win money when the outcome depends wholly or partly on chance...". This definition is unlikely to cover match-fixing activity or payments between parties as these do not technically involve paying or staking consideration seeking to win money and also lack the element of chance.
51. Section 19 of the Gambling Act sets out penalties for illegal gambling. Section 351 of the Gambling Act also makes it an offence to cheat in a casino. However, neither of these offences will specifically capture match-fixing.
52. All sports betting in New Zealand (including on rugby, cricket, football etc) is regulated under the Racing Act 2003. Sports betting is conducted by the New Zealand Racing Board (NZRB) under its Betting Rules which set guidelines for the administration and conduct of this activity. Under these rules the NZRB can take monitoring and regulatory action to address match-fixing risks. However, there are no offences to address match-fixing in the Racing Act.

#### *The risk of match-fixing occurring in New Zealand is increasing*

53. It is difficult to predict the likelihood of match-fixing occurring in New Zealand. However, the opportunity to engage in this activity and the potential financial rewards from doing so is increasing. As sport becomes more globalised there is an ever increasing range of games to bet on and an increasing number of betting agencies willing to take bets. Sport New Zealand's policy on Sports Match-Fixing and Related Corruption aims to increase knowledge and awareness of match-fixing in the sector. Reporting of match-fixing may increase as the sector becomes more vigilant.
54. New Zealand sports betting turnover (excluding horse/greyhound racing) more than doubled over the last decade, rising from approximately NZ\$105 million in 2001/02 to approximately NZ\$246 million in 2012/13. Internet betting has facilitated the growth in sports betting and has also made access to less or unregulated betting markets easier.
55. Global criminal activity concerning corrupt sports betting is increasing, particularly with growth in on-line betting. New options such as on-line live betting during matches also increase the risk of, and create greater opportunity for, match-fixing. Interpol estimated that fraudulent sports betting generated \$US140 billion in turnover in 2010.
56. Threat assessments and intelligence gained by bodies such as Interpol, the Australian Crime Commission, the International Cricket Council (ICC) and investigative experts warn that Australasia is at risk from international crime syndicates looking to expand



their current operations in Asia, the Indian subcontinent and Europe.<sup>4</sup> Particular Australasian risks include comparatively lower paid athletes than global peers, growing connections and shared time-zones with Asia and growth in sports gambling. This creates opportunities for match-fixers. The Australian Crime Commission's February 2013 report, *Organised Crime and Drugs in Sport*, highlighted links between Australian sport and organised crime including match-fixing risks.

57. Upcoming major sporting events also increase the risk of match-fixing occurring in New Zealand. New Zealand will host the Cricket World Cup (CWC) and FIFA Under 20 (football) World Cup over February-March and May-June 2015 respectively. These tournaments involve sports well-known for a risk of match-fixing activity. If a match-fixing incident occurred at these events and prosecution was not possible, this could impact negatively on New Zealand's international reputation and damage our future major events prospects. Without a clear legislative provision that criminalises match-fixing there may be little to deter match-fixers from attempting to influence games in New Zealand.

## Objectives

58. The government's objective is to ensure that appropriate criminal offences are in place to deter and sanction match-fixers. More specifically, the government aims to ensure that international or domestic crime syndicates, corrupt individuals, athletes, officials and other people who improperly influence or attempt to influence the outcome, or any part of, a sports match for the purpose of obtaining a benefit or causing a loss (as opposed to legitimate tactical sporting reasons) will commit an offence.
59. The government aims to have appropriate criminal offences in place prior to the Cricket World Cup in February 2015. This means a Bill would need to be passed by the end of 2014. This objective imposes constraints on the range of legislative options that can be considered. Requiring a Bill to be passed by the end of 2014 means creating comprehensive, stand-alone and potentially complex match-fixing legislation is impractical. A small and low-complexity Bill comprising relatively minor amendments to existing legislation is more appropriate given the significant time constraints.
60. In any case, this approach will pragmatically achieve our main objective of criminalising the most damaging match-fixing behaviours. Match-fixing is also an area of the law that is still developing internationally, so minor legislative amendments are a logical first step which can be reconsidered, if necessary, in light of further developments.

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<sup>4</sup> Heron, M, Jiang C. 'The Gathering Storm – Organised Crime and Sports Corruption'. Australian and New Zealand Sports Law Journal 5, no.1 (2010): 99-118.

## Options and impact analysis

### *Assessment criteria*

61. Given the problem definition and the government's objectives, we have assessed each option against the following criteria:

- Timeliness – can the legislative amendment realistically be implemented in the given timeframe? Is the amendment of low complexity?
- Impact – the extent to which the amendment will pragmatically address the most damaging match-fixing behaviour
- Legislative fit – does the amendment fit well within the scheme of the Act being amended?
- Enforcement – will the amendment lead to offences that can be readily enforced?
- Risk of unintended consequences – to what extent does the option limit the possible unintended consequences?
- Consistency with Australia – to what extent does the option bring us more into line with Australian jurisdictions?

### ***Option 1 – Amend the Crimes Act to ensure match-fixing is an offence (preferred option)***

62. An amendment to the Crimes Act to clearly prohibit match-fixing is our preferred option. The Crimes Act already contains corruption and fraud-related offences and match-fixing is comparable to these offences. Amending the Crimes Act to ensure match fixing is an offence would help deter match-fixers who may otherwise target sporting matches in New Zealand or our athletes. A clear offence would allow New Zealand authorities to take appropriate action to investigate and prosecute match-fixing.

63. Section 240 of the Crimes Act (obtaining by deception or causing loss by deception) may already capture some match-fixing activity (see discussion above at paragraph 40). Amendments to this section could clarify its application to match-fixing. Although, further analysis may identify other sections of the Crimes Act better suited to criminalising match-fixing.

64. An offence against section 240 also currently carries a maximum penalty of seven years' imprisonment. We consider a penalty of seven years is a proportionate penalty for match-fixing. A penalty of this level would be consistent with other corruption and fraud offences.



65. A straightforward amendment to an existing offence is preferable given the tight timeframe and the risk of inadvertently capturing other behaviour if new and complicated offences are enacted in a short period of time.
66. The Crimes Act establishes the majority of New Zealand's serious criminal offences and provides for the prosecution of related offending, such as parties to an offence, attempts to commit an offence and extra-territorial matters. A match-fixing offence would sit well within the scheme of the Act.
67. Match-fixing can involve extra-territorial aspects. For example, those who arrange for a match to be fixed may be based outside New Zealand. The Crimes Act already addresses this issue by providing that jurisdiction to prosecute is established when "any act or omission forming part of any offence, or any event necessary to the completion of any offence, occurs in New Zealand..." (section 7 Crimes Act).
68. It is also noteworthy that Australian match-fixing offences have been placed in crimes-based statutes.
69. Creating a new offence will have financial implications where match-fixing offences are committed and offenders are prosecuted through the court system, particularly where a prison sentence is imposed. There will also be costs to law enforcement agencies investigating cases. However, the financial impact of these amendments is likely to be low due to low number of offences and offenders.
70. Any potential cost to the criminal justice system, or agencies like the Police or the Serious Fraud Office, resulting from these amendments can be justified by the benefit in deterring and sanctioning match-fixing. These amendments will help protect the integrity of our sport system, which provided \$5.2 billion to our economy in 2008/09.<sup>5</sup>

### ***Option 2 – Amend the Secret Commissions Act 1910***

71. The Secret Commissions Act is likely to already cover some straight-forward match-fixing scenarios. For instance, where a player accepts a payment in return for fixing a match or part of it. The Act could be amended to apply it to other match-fixing scenarios, such as where there is no direct payment to a player. However, doing so would risk disrupting the current logic of the Act.
72. The Secret Commissions Act is currently drafted very broadly to capture bribery and corrupt payments. Specific match-fixing amendments and/or offences would risk disrupting the current logic of the Act by moving it from an Act of general application to an Act that applies to specific bribery/corruption activities. Adding specific references to match-fixing, or new match-fixing offences, could require complex amendments and would push the Act beyond its original purpose. It is also possible that adding match-

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<sup>5</sup> Sport and Recreation New Zealand (SPARC), 2011. *The Economic and Social Value of Sport and Recreation in New Zealand: An Overview*. Wellington: SPARC.

fixing references to the Act could have unintended consequences, such as inadvertently narrowing the application of the Act.

73. As with option three below, there will be associated costs to the criminal justice system and law enforcement bodies if a new offence is created or an existing offence is broadened. Any such costs are likely to be low given the low number of offenders.

### ***Option 3 – Create new offences in the Gambling and/or Racing Acts***

74. Match-fixing offences could potentially be placed in the Gambling Act 2003 or the Racing Act 2003. This approach is taken in the United Kingdom where section 42 of the UK Gambling Act 2005 makes it an offence for a person to “cheat” at gambling. However, the Department of Internal Affairs (DIA), which administers the Gambling and Racing Acts, has raised concern about whether those Acts are the appropriate legislative framework to address match-fixing.
75. DIA notes that the Racing Act is a relatively specialised piece of legislation that provides the legal framework for the governance and operation of the racing industry. The Racing Act also mandates and regulates the range of betting products that can be offered by the New Zealand Racing Board (NZRB), including sports betting. The Gambling Act does not contain any provisions for regulating betting and gambling activities that are not offered by the NZRB.
76. Further, while match-fixing offences could to be inserted into the Gambling Act, that Act does not have any offences and penalties of a comparable scale to the Crimes Act. The majority of penalties within the Gambling Act are regulatory in nature and only provide for monetary fines.
77. Given the fraudulent nature of match-fixing behaviour, the likelihood of trans-border elements and the potential links with organised crime, DIA also considers that the Police are the most appropriate agency to investigate and prosecute such offending, rather than Gambling Inspectors under the Gambling Act.
78. We agree with DIA. The gambling regime was not designed to address match-fixing and match-fixing offences do not sit well with the gambling regime. If match-fixing offences were inserted into the Gambling Act with our proposed maximum penalties they would carry maximum penalties far above the penalty for any other offence under the Act. The enforcement powers of Gambling Inspectors would also have to be greatly increased which would risk disrupting the regime even further.
79. Adding a match-fixing offence to the Gambling Act or the Racing Act is also likely to require the drafting of a complicated new offence provision. Creating complicated new offences is not desirable given the tight timeframe.

### ***Option 4 – Amend the Major Events Management Act 2007***

80. The Major Events Management Act 2007 (MEMA) could be amended to create match-fixing offences that would only apply to major events. However, using the MEMA would not adequately address the match-fixing problem and is again not a good fit for the



serious criminal offences proposed. Importantly, the risk of match-fixing is much wider than major events, as illustrated by recent football match-fixing activity in Australia.

### ***Option 5 – Include the required amendments in the Organised Crime and Anti Corruption Bill***

81. Match-fixing related amendments could be included in the Organised Crime and Anti Corruption Bill (the Bill), likely to be introduced in 2014.
82. Match-fixing is often associated with international organised crime syndicates and involves serious corruption. Match-fixing related amendments fall within the scope the Bill.
83. However, the Bill is unlikely to be passed by the end of 2014. The only pressing deadline for the Bill is a progress report to the OECD in October 2015.
84. Including match-fixing related amendments in the Bill would risk not having the required amendments in place by the end of 2014. A stand-alone match-fixing Bill which can be prioritised is our preferred option.

## **Consultation**

85. We have worked closely on the proposal with the Ministry of Justice given its significant interest in the criminal law.
86. The Department of Internal Affairs, New Zealand Police, Department of Corrections, Serious Fraud Office, Crown Law, Treasury, PCO, Ministry for Culture and Heritage and Ministry of Foreign Affairs and Trade have also been consulted. The Department of Prime Minister and Cabinet has been informed.

## **Conclusions and recommendations**

87. We consider an amendment to the Crimes Act is the best way to proceed. Given the fraudulent nature of match-fixing and its possible links with organised crime, the Crimes Act appears the best fit for an offence of this nature.
88. The Crimes Act already deals with similar offending and may even already capture some match-fixing activity. It is likely that a relatively straight forward amendment can be made to an existing offence. This approach is preferable given the time constraints, but will achieve our main objective of substantially reducing the risk of the most damaging match-fixing conduct going un-prosecuted. Amending the Crimes Act to clarify its application to match-fixing does not risk disrupting the logic of that Act or pushing it beyond its purpose.
89. The exact nature of any amendments can be determined after further analysis by Sport New Zealand, the Ministry of Justice, New Zealand Police and Parliamentary Counsel Office.

90. There is a need to have clear offences in place in time for the Cricket World Cup in early 2015. Therefore, amendments to an existing offence are preferable to creating complicated new offences, because any Bill will have to proceed through the legislative process relatively quickly.

## **Implementation plan**

91. A Bill is required to implement our preferred option. A category two Bill (must be passed in the year) would be needed in 2014 to ensure amendments are in place to address match-fixing risks prior to our hosting of the Cricket World Cup in February 2015.
92. A stand-alone Bill amending the Crimes Act, which can be prioritised, is therefore the preferred option. A bid for such a Bill to be included in the 2014 legislation programme has already been made.

## **Monitoring, evaluation and review**

93. The impact of our preferred option can be assessed by tracking prosecution and conviction outcomes.
94. Case law should be monitored to ensure the amendments are being applied as intended and that there are no loop-holes that may be exploited by match-fixers. We will also monitor international developments in this area.