

Departmental Disclosure Statement

Racing Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Department of Internal Affairs.

The Department of Internal Affairs certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

21 July 2017.

Contents

Contents..... 2

Part One: General Policy Statement 3

Part Two: Background Material and Policy Information 5

Part Three: Testing of Legislative Content..... 7

Part Four: Significant Legislative Features 9

Part One: General Policy Statement

This Bill seeks to amend the Racing Act 2003 (the Act) to implement a range of provisions that are designed to:

- improve the competitiveness of the New Zealand Racing Board's (Board) betting operations; and
- require offshore betting operators to:
 - pay to use New Zealand racing and sports information in their betting products (an "information use charge"); and
 - pay when they take bets on racing or sporting events (or both) where those bets originate in New Zealand (a "consumption charge"); and
- provide for regulations to be made to revise the formula which is used for allocating proceeds from sports betting between the racing and sports sectors.

The Board is the sole legally authorised provider of racing and sports betting in New Zealand. However, betting operators based in other jurisdictions may offer bets to New Zealanders over the Internet and may offer bets on New Zealand sports and racing to all of their customers, regardless of the location of those customers. Those offshore betting operators are not bound by New Zealand law, other than a prohibition on them advertising in this country. Unlike the Board, therefore, offshore betting operators are not required to contribute to the New Zealand racing and sports industries or to gambling harm services in this country.

The amendments in this Bill reflect recommendations from the Offshore Racing and Sports Betting Working Group (Working Group), which was established by the Minister for Racing in 2015. The Working Group was asked to review the issue of offshore gambling and its impact on the Board's income.

The Bill provides for the information use and consumption charges to be inserted into the Act (as new Part 6AA). The Bill provides that the Department of Internal Affairs will administer the charges as the "designated authority". The Department may delegate its functions and powers as designated authority to, without limitation, the Board, a Crown entity as defined in section 7 of the Crown Entities Act 2004, or another department.

The Bill requires offshore betting operators to seek the permission of the designated authority before they can use New Zealand racing and sporting information. Offshore betting operators must enter into agreements with the designated authority in respect of the information use charge.

New Zealand law will apply in relation to any disputes that may arise in respect of those agreements and to enforce those agreements including the recovery of outstanding charges and penalties. The designated authority may issue a penalty notice to an offshore betting operator if the offshore betting operator has failed to get permission to use New Zealand racing and sporting information, failed to enter into an agreement in respect of the information use charge, failed to pay an amount owing under the charges, or provided the designated authority with false or incorrect information.

The Bill provides that the Minister must set the specified rate or rates of the charges, and that regulations may be made to specify the penalty rates and the minimum betting revenue that offshore betting operators must receive for a financial year from their betting operations involving New Zealand before becoming liable to pay the charges for that year.

The Bill provides that existing commercial agreements between the Board and offshore betting operators continue to have effect and are not affected by provisions of the Bill. The Bill also provides for the Minister to grant exemptions to specific offshore operators from the requirements to pay either or both of the charges when an agreement is entered into. This provision is intended to minimise the risk of double-charging in circumstances where offshore betting operators enter into separate commercial contracts regarding the use of New Zealand betting information.

The charges will rely to a great extent on voluntary compliance from offshore betting operators.

The Bill has a safeguard in place to ensure it does not target offshore betting operators unfairly. The total proportion of revenue or profit required to be paid by offshore betting operators should not exceed the equivalent proportion of revenue or profit that the Board pays to New Zealand racing and sports organisations.

The Bill provides that purposes for which any money received from the charges may be applied include:

- promotion of the long-term viability of New Zealand racing and sports;
- covering the cost of administering enforcement and collection of the charges; and
- funding measures to prevent and minimise harm from gambling.

In addition to the information use and consumption charges, the Bill also amends the Act to:

- permit the Board to offer in-race betting; and
- allow the Board to enter into betting agreements with Sport and Recreation New Zealand (Sport NZ) in circumstances where there is no qualifying national sporting organisation (NSO) for a particular sport; and
- permit the Board to make rules declaring sporting events to be or not to be New Zealand sporting events for the purposes of new Part 6AA and attracting the charges.

These additional amendments, to enhance the TAB's products and services, also came from recommendations of the Working Group. Permitting in-race betting would enable the Board to compete on a more even basis with offshore betting operators who may already offer this type of product.

The Bill will provide that in-race betting would apply only to bets on the final outcome of a race, as opposed to events within a race (for example, lead changes or horses retiring prematurely). It would therefore not permit new types of gambling and would align racing bets with in-play betting on sports events, which the Board is already allowed to offer.

Currently, betting is permitted on domestic and overseas sporting events only if the Board has a betting agreement with the relevant New Zealand NSO for the sport. The Board therefore cannot offer betting products for sports that may be popular internationally but have limited participation or formal organisation in New Zealand. The Bill will provide that, where sports are not represented by a qualifying domestic NSO, the Board can offer betting if the Board enters into an agreement with Sport NZ. Sport NZ would then determine the distribution of betting income.

The Bill also provides for a regulation-making power to update the formula by which proceeds from betting on New Zealand sporting events are allocated between the racing and sports sectors. Sport NZ and the Board believe that the current formula in the Act for allocating this money is no longer fit for purpose.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
Report of the Offshore Racing and Sports Betting Working Group, October 2015, accessible at the following link: https://www.beehive.govt.nz/sites/all/files/Working%20Group%20-%20Final%20Report%20October%202015.pdf .	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The following two Regulatory Impact Statements (RISs) were provided:</p> <p>“Offshore Racing and Sports Betting”, Department of Internal Affairs, 3 March 2017 (the Offshore Betting RIS). The Offshore Betting RIS is accessible at: https://www.dia.govt.nz/Resource-material-Regulatory-Impact-Statements-Index and http://www.treasury.govt.nz/publications/informationreleases/ris.</p> <p>“Commission payments made by the New Zealand Racing Board to National Sports Organisations”, Sport New Zealand, undated (Commission Payments RIS). This RIS is accessible at: http://sportnz.org.nz/news-and-events/media-releases-and-updates/search and http://www.treasury.govt.nz/publications/informationreleases/ris.</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>The Cabinet paper notes in respect of the Commission Payments RIS:</p> <p>“The Regulatory Impact Analysis Team at the Treasury reviewed the RIS prepared by Sport NZ, and considers that the RIS partially meets the quality assurance criteria.</p> <p>The review panel concluded that while the Sport RIS considers a variety of options to address problems with the distribution of revenue from sport funding, changes to the principles of the Racing Act 2003 and the NZRB’s statutory objectives were not considered. Not only does this mean the RIS cannot address wider issues with Government involvement in the racing sector, it constrains the ability to consider what might constitute equitable distribution of revenue generated through sports betting.”</p> <p>The RIA Team reviewed the Commission Payments RIS because Sport NZ did not have the capacity to provide an internal review.</p> <p>No independent opinion was given in respect of the Offshore Betting RIS because it did not meet the threshold for RIA Team assessment.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>(a) The potential costs and benefits of the policy in the Bill are discussed in the Offshore Betting RIS at pages 23 (permitting in-race betting), 26 (enabling betting on a broader range of sports through agreements with Sport New Zealand), 32-34 (information use charge), 41-42 (consumption charge), 58-60 (information use and consumption charges).</p> <p>The potential benefits of the amendment to the sports betting formula are discussed in the Commission Payments RIS at pages 15-17.</p> <p>(b) The potential for some NSOs to receive a reduced commission payment as a result of the proposed new formula for distributing sports betting profits is set out in a table in the Commission Payments RIS at page 16. The RIS also describes measures to mitigate this risk.</p>	
2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>(a) The likely levels of effective compliance with the obligations that may materially impact on costs or benefits are discussed in the Offshore Betting RIS at paragraphs 135, and 137 (information use charge), 182-184 and 202 (consumption charge), and 246-248 (information use and consumption charges).</p> <p>(b) The nature and level of regulator effort to be put into encouraging and securing compliance is discussed in the Offshore Betting RIS at pages 60-62 (information use and consumption charges).</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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Because the Bill has extra-territorial effect, New Zealand has international obligations relevant to this Bill. These were identified in discussions with the Ministry of Foreign Affairs and Trade (MFAT). The most relevant obligations are contained in the Protocol on Trade in Services to the New Zealand – Australia Closer Economic Relations Trade Agreement (CER Services Protocol). In determining whether the Bill is consistent with the CER Services Protocol, the Department consulted with MFAT during policy development. This is discussed in the Offshore Betting RIS, including at paragraphs 174 and 274.

The Bill includes new section 65AM, which provides that the total proportion of revenue or profit that offshore betting operators are required to pay in each financial year must not exceed the equivalent total proportion of revenue or profit that the NZRB pays to New Zealand's racing and sports organisations under the Racing Act.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The principles of the Treaty of Waitangi were considered during the policy development and development of the Bill. No issues in relation to the Treaty of Waitangi were identified. A number of government agencies and stakeholders were consulted during the policy development stage, including Te Puni Kōkiri, and no issues were raised.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

The Department understands the Ministry of Justice provided its advice to the Attorney-General on 19 July 2017. If the Attorney-General agrees to waive legal privilege, the advice can be accessed at: www.justice.govt.nz.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?
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YES

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

The Bill creates civil pecuniary penalties for: failure to get permission to use New Zealand racing and sporting information (in breach of clause 11 new section 65AF), failure to enter into an agreement in respect of the information use charge (in breach of clause 11 new section 65AF), failure to pay an amount due under the information use charge or consumption charge (in breach of clause 11 new section 65AG or new section 65AJ), or providing false or incorrect information about the amount due under either or both of the charges (in breach of clause 11 new section 65AG or 65AL).

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The consultation involved discussions about the appropriate types of penalties for non-compliance with the charges. The Ministry of Justice advised that the creation of criminal offences is not appropriate in these circumstances. The level of offending is unlikely to meet the threshold normally required to support the pursuit of extradition to New Zealand for trial. The Offshore Betting RIS includes this advice from the Ministry of Justice, and the Cabinet paper to approve the policy sought approval for civil pecuniary penalties for non-compliance.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Consultation occurred throughout the policy development process. The Department consulted publicly on the Working Group's proposals during April and May 2016. Forty-six submissions were received from a range of stakeholders. A broad range of views were expressed, but, in general, stakeholders from the racing and sports sectors supported the proposals. However, some representatives of gambling operators based in Australia voiced concerns that the proposed charges were unfair and/or unworkable.</p> <p>The Working Group met with various sets of stakeholders during a series of meetings in New Zealand, including the NZRB, the three racing codes, Gambling Commission, Problem Gambling Foundation, Lotteries Commission and Sport NZ. The Working Group also spoke to key sector commentators and representatives, customers of the NZRB and members of the general public.</p> <p>The NZRB was consulted on various drafts of the Bill.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The policy details to be given effect by this Bill have been discussed with the NZRB, which is the sole legally authorised provider of racing and sports betting in New Zealand.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
The Bill creates two charges payable by offshore betting operators in relation to the bets that they take which involve New Zealand. The Department does not consider that either of these charges is in the nature of a tax.	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill creates the following powers to make delegated legislation:</p> <ul style="list-style-type: none"> • declaring that an event is a “New Zealand sporting event” in the terms of the Racing Act (disallowable instrument) (clause 8 amending section 54(2)); • prescribing the amount or the formula for the distribution of profits from sports betting (clause 11 new section 65AV); • prescribing the financial or other information required to be provided to the designated authority (clause 11 new section 65AV); • prescribing the specified rate or rates of the information use and consumption charges (clause 11 new section 65AV); • prescribing the adjustment to the specified rate or rates of the information use and consumption charges under new section 65AM (clause 11 new section 65AV); • prescribing the threshold from which the information use and consumption charges will apply (clause 11 new section 65AV); • prescribing the amount or formula of the penalty rates (clause 11 new section 65AV); • prescribing the form of penalty notices (clause 11 new section 65AV); • a general regulation-making power to provide for any other matters contemplated in the new Part, necessary for its administration or to give it full effect (clause 11 new section 65AV). <p>These powers are necessary because the matters above are generally matters of detail for which is not appropriate to use Parliamentary time and for which some flexibility is required.</p> <p>The safeguards for these powers to make delegated legislation include the procedural safeguards that apply to the making of delegated legislation. In addition, there is a requirement to consult with the NZRB, Sport NZ, the racing codes (if the regulations relate to racing betting) and the NSOs that have entered into agreements with NZRB (if the regulations relate to sports betting).</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>Clause 11 inserts new Part 6AA into the Racing Act. This Part sets out a scheme for requiring offshore betting operators to pay charges in respect of racing and sports events held in New Zealand, or bets taken from people in New Zealand. Part 6AA must have extra-territorial application to give effect to this policy. There is no alternative to the Bill having extra-territorial application, if the policy is to be implemented.</p> <p>Clause 11 (new section 65AT) provides that New Zealand law and its legal system will apply to the recovery of outstanding charges and associated penalties for both the betting information use charges and consumption charges.</p> <p>See question 3.1 above for a discussion on the consistency of the legislation with New Zealand’s international obligations, and question 3.4 for a discussion on the civil pecuniary penalties that apply under the Bill.</p>	