

Departmental Disclosure Statement

Racing Reform 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.

10 May 2019

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Part One: General Policy Statement

This Bill is an omnibus Bill introduced under Standing Order 263(a) (dealing with an interrelated topic that can be regarded as implementing a single broad policy).

In April 2018, the Minister for Racing commissioned an expert, Mr John Messara, to assess the state of the New Zealand racing industry. The Review of the New Zealand Racing Industry (the Messara Report) confirmed that the industry was in a state of decline and that, without intervention, it was at risk of suffering irreparable damage.

This Bill forms the Government's first legislative response to the Messara Report which provided recommendations for reform to address the serious issues the industry is facing. The Bill is a first step in implementing a range of provisions that are intended to revitalise the racing industry. It amends the Racing Act 2003 (the Act) and the Gaming Duties Act 1971 to bring into effect a period of transition and various financial changes to the industry.

Transitional Governance Arrangements

Both change management and business as usual (BAU) functions must be delivered during the transition to a financially sustainable future state for the industry. This Bill provides a legislative mandate for the New Zealand Racing Board (NZRB) to be reconstituted as a body corporate named the Racing Industry Transitional Agency (RITA). The RITA will have responsibility for both managing the transition and the existing functions of the former NZRB. The transition period will commence on 1 July 2019 and end 30 June 2020 (unless a later date is specified by Order in Council).

Offshore charges: Betting information use charge and point of consumption charge

This Bill provides a basis for collecting revenue from offshore betting operators that provide betting services to persons residing in New Zealand. The Bill does this by –

- creating powers to enable regulations to be made requiring betting operators based outside of New Zealand to pay a betting information use charge in relation to their use of New Zealand racing and sports information in their betting products:
- creating powers to enable regulations to be made requiring betting operators based outside of New Zealand to pay a point of consumption charge for the bets they take from people residing in New Zealand:
- providing for a designated authority (initially the Department of Internal Affairs) to administer the collection of a betting information use charge and a point of consumption charge:
- providing a threshold below which the requirement to pay the charges will not apply.

This Bill provides for safeguards relating to offshore charges by providing that the Minister for Racing, in recommending the regulations setting out the rates of the charges, will consider –

- the RITA's betting and other revenue:
- payments that the RITA makes to New Zealand racing and sports organisations:
- the relevant taxes and other duties paid by the RITA and offshore betting operators in New Zealand.

This Bill sets out a requirement for the Minister to publish a statement explaining why the Minister considers the rates of the charges to be fair and reasonable and also the purposes for which any money collected from the charges may be applied to. These include –

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

Betting levy repeal

This Bill progressively reduces over a 3-year period, and then repeals, the totalisator duty currently paid by the NZRB to the Crown under the Gaming Duties Act 1971. This Bill also creates powers to set a formula in regulations to distribute the funds that would otherwise make up this levy. A proportion of the betting levy funds will be retained for harm minimisation purposes.

Changes to distribution of racing and sports funds

This Bill removes the distribution formula set out in section 16 of the Act, allowing the application and distribution of racing funds to be determined by regulations. The Bill also removes the formula for calculating minimum payments to New Zealand national sporting organisation's and creates powers to set the formula in regulations. Moving these formulas from primary to secondary legislation will mean that changes can be made more quickly, enabling the ability to respond in a timely way to changes in the racing industry's operating environment.

Sports betting

This Bill permits the relevant body to offer betting products on sports not represented by a qualifying domestic national sporting organisation, provided an agreement is in place with Sport New Zealand. This change will help New Zealand's racing industry to be on a more equal playing field with comparable overseas gambling providers, enabling it to offer betting on a wider range of sports.

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
<p>“Review of the New Zealand Racing Industry”, John Messara, July 2018, accessible at the following link: https://www.dia.govt.nz/vwluResources/Racing-Report-August-2018/\$file/Review-of-the-NZ-Racing-Industry-Report.pdf</p> <p>“Offshore Racing & Sports Betting Working Group Final Report”, accessible at the following link: https://www.beehive.govt.nz/sites/default/files/Working%20Group%20-%20Final%20Report%20October%202015.pdf</p> <p>Ministerial Advisory Committee “Interim Report on the Review of the New Zealand Racing Industry – the Messara Report”, February 2019, accessible at the following link: https://www.dia.govt.nz/diawebsite.nsf/Files/Racing-Review/\$file/Interim-Report-of-MAC-on-the-Review-of-the-New-Zealand-Racing-Industry.pdf</p>	

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 Regulatory Impact Assessment (RIA) was provided:</p> <p>“Racing Industry Reforms”, Department of Internal Affairs, 5 April 2019. The RIA is accessible at https://www.dia.govt.nz/diawebsite.nsf/Files/Racing-Review/\$file/Racing-Industry-Reform-RIA-5-April-2019-a.pdf</p> <p>This RIA also referenced two earlier Regulatory Impact Statements which were provided for the discharged Racing Amendment Bill 2017 and which informed this Bill:</p> <p>“Regulatory Impact Statement - Offshore Racing and Sports Betting RIS”, (Department of Internal Affairs) 2017: https://www.dia.govt.nz/diawebsite.nsf/Files/Racing-Amendment-Bill-Regulatory-Impact-Statement/\$file/Regulatory-Impact-Statement-Offshore-racing-and-sports-betting.pdf</p> <p>“Regulatory Impact Statement - Commission Payments made by the New Zealand Racing Board to National Sports Organisations” (Sport New Zealand) 2017: https://sportnz.org.nz/assets/Uploads/Regulatory-Impact-Statement-Sport-NZ-Sports-betting-apportionment-formula.pdf</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?	NO
<p>No independent opinion was given in respect to the RIA because it did not meet the threshold for assessment by the Treasury RIA Team.</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
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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 this Bill are summarised in the Racing Industry Reforms RIA at pages 2-4, and further detail is provided on page 29 (transitional management), pages 54-56 (information use charge), page 58-60 (point of consumption tax), pages 73-4 (betting levy).</p> <p>b) There is the potential for reciprocal action on the introduction of information use charge for sporting events (page 55). However, the Racing Industry Reforms RIA identifies that this is unlikely to occur.</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 impact on costs or benefits are discussed in the Racing Reforms RIA on pages 54-55 (information use charge) and page 58-59 (point of consumption charge).</p> <p>b) The nature and level of regulator effort to be put into encouraging and securing compliance is discussed on pages 55-56 (information use charge) and pages 58-59 (point of consumption charge).</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, with the introduction of offshore charges, it must comply with New Zealand's obligations under international trade agreements. 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). The CER requires that any charges applied to Australian gambling operators do not result in less favourable treatment overall than that to which a domestic operator is subject.

This was identified in discussion with the Ministry of Foreign Affairs and Trade (MFAT), which was consulted during the policy development of the now discharged Racing Amendment Bill 2017. MFAT were again consulted as this Bill reintroduces the same offshore charges. The Bill includes new section 65AM, which provides that the Minister must publish a statement of reasons that explain why the rates set are considered to be fair and reasonable.

These issues were discussed in the Offshore Racing and Sports Betting RIS, including at paragraphs 174 and 274, and again discussed in the Racing Reform RIA at paragraph 194 and 212.

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 process and the development of the Bill. No issues were identified in relation to the Treaty of Waitangi. A number of government agencies and stakeholders were consulted, 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 6 May 2019. 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:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>The Bill creates penalties for offshore operators if they fail to pay a betting information use charge or consumption charge on or before the due date, or provide false or incorrect information to the designated authority about the amount they are required to pay.</p> <p>The Bill includes new section 65AT that states the maximum penalties for offshore operators are \$20,000 for an individual, and \$50,000 for a body corporate.</p> <p>The Bill includes new section 65AW that provides for an offshore betting operator to appeal to the District court against a decision of the designated authority to issue a penalty notice under section 65AS.</p>	
3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice (MoJ) consulted during the development of the now discharged Racing Amendment Bill 2017, regarding the appropriate types of penalties for non-compliance with the offshore charges. The MoJ advised in 2017 that the creation of criminal offences is not appropriate in these circumstances. The Offshore Racing and Sports Betting RIS includes this advice from MoJ (paragraph 240).</p> <p>MoJ was again consulted as this Bill reintroduces these penalties for offshore operators. MoJ's comment primarily relates to the offence proposal at clause 65AS which provides that when an offshore betting operator fails to pay or provides false information about payment, DIA (or a 'designated authority') is empowered to make a finding of liability and hand down a penalty accordingly.</p> <p>MoJ considers that regimes in which determinations of liability are made by non-judicial bodies are irregular and should be strongly discouraged. Judicial oversight provides protection against possible abuses, or the appearance of abuses, of regulators' powers. MoJ believes it important that the regulator, enforcer, and adjudicator are distinct from one another. Proper thought must be given at each stage of enforcement as to how to proceed. When these decisions are taken by the same body, there is a real risk that these decisions can be 'collapsed' into one choice to (or not to) proceed. Judicial oversight protects against the regulator determining and handing down penalties unchecked. Regimes in which the regulator determines penalties can also create a perception that the regulator uses penalties to gather revenue. MoJ believes no justification has been provided for the irregular choice of penalty structure in this regime.</p> <p>MoJ notes that DIA have provided for the ability for the court to review DIA or the designated authority's decision, which provides some judicial oversight if the party chooses to appeal.</p> <p>MoJ have also commented that it has not been made clear how the extra-territorial nature of this offence, including its review mechanism, will operate in practice. Extra-territorial offences are unusual because they extend New Zealand's jurisdiction and create cross border enforcement difficulties. They therefore generally require clear justification and explanation as to how the offence will be given practical effect to if the offending occurs overseas.</p> <p>For the reasons articulated above, MoJ has significant concerns about both the construction of the offence and penalty provisions in this Bill, and how they operate in practice.</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?	YES
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Clause 21 inserts new section 65AJ, that specifies a requirement for offshore operators to pay consumption charges to the designated authority, for all bets it takes from persons with a registered address in New Zealand. This would require an offshore operator to hold information of the residential addresses of registered bettors. It is considered likely that the offshore operator would have been supplied this information by the individual as part of the registration process.

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>Public consultation was carried out on the Messara Report's recommendations, where approximately 1,700 submissions were received.</p> <p>The Ministerial Advisory Committee for Racing (MAC) was established with relevant industry experts to undertake a detailed analysis on operational aspects of the Messara Report's recommendations. The MAC has been consulted throughout the policy development process and has provided feedback. The MAC has also engaged with key stakeholders, including the New Zealand Racing Board and the code bodies.</p> <p>The Department has also consulted with Inland Revenue, Ministry of Foreign Affairs and Trade, Te Puni Kōkiri, Sport New Zealand, Treasury, Ministry for Primary Industries, Ministry of Health and the State Services Commission.</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 Ministerial Advisory Committee were consulted on the policy details to be given effect by this Bill, to consider the workability of the provisions for the racing industry.</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?	YES
The Bill creates a point of consumption charge payable by offshore betting operators in relation to the bets that they take which involve New Zealanders. The Department considers that, while not a tax, this charge has some characteristics which are 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 amends two sections of the Racing Act (sections 16 and 57) that relate to distribution of funds. Clause 13 replaces section 16 and empowers regulations to be made prescribing the method (or methods) for determining the distribution of funds to the codes. Clause 20 amends section 57 and empowers regulations to be made prescribing the minimum amounts that must be paid by the Agency to national sporting organisations from its conduct of sports betting.</p> <p>The Bill inserts a new section 17A that empowers regulations to be made prescribing the method (or methods) for determining an amount (or amounts) from the betting profits that may be distributed to the racing codes, Sport New Zealand, and an amount retained by the Agency to contribute to harm prevention and minimisation.</p> <p>Clause 21 inserts new section 65AX that empowers regulations relating to offshore betting, on the recommendation of the Minister for Racing, including:</p> <ul style="list-style-type: none"> • prescribing the financial or other information that offshore betting operators must provide to the designated authority; • prescribing the manner in which rates and adjustments to rates are set; and • specifying penalty amounts. <p>Clause 22 inserts new section 68A, which allows for regulations to be made for prescribing matters to support the performance and exercise of the Agency's functions and powers during the transition period.</p> <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. The safeguards for these powers to make delegated legislation include the procedural safeguards that apply to the making of delegated legislation.</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 21 inserts new section 65AV which provides for the obligation on an offshore betting operator to pay a penalty relating to offshore charges that are suspended by review or legal proceeding. 65AV(3) states, if an offshore betting operator is found not liable following review or legal proceeding, the designated authority will refund the amount of the penalty or part of the penalty for which the offshore operator was not liable as soon as practicable.</p>	