

# Departmental Disclosure Statement

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Racing Industry Amendment Bill
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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.

12 November 2024.

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## Part One: General Policy Statement

This Bill amends the Racing Industry Act 2020 (the Act) to extend TAB New Zealand's existing land-based monopoly for sports and racing betting to include online-provided gambling, to maintain and improve the long-term financial sustainability of the racing industry. TAB NZ's long-term distributions to the racing industry account for 90% of the income for racing codes. However, TAB NZ are losing revenue to offshore online operators, despite entering into a commercial partnership arrangement with Entain New Zealand, a subsidiary of the global betting operation Entain Pty Ltd (a for-profit business) in 2023.

To address this, the Bill extends TAB NZ's monopoly to online settings by inserting a new section into the Act. This provides that no person other than TAB NZ or its partner organisation may offer racing betting, sports betting, or other racing or sports (or any combination of those forms of betting) to a person in New Zealand.

In 2020, the Act established TAB NZ as a statutory entity for the purpose of operating wagering; established offshore charges (payable by betting operators outside New Zealand) to provide additional sources of revenue to the racing industry (Betting Information Use Charges and Point of Consumption Charges) and allowed TAB NZ to partner with offshore betting operators. This Bill will repeal the Point of Consumption Charge sections from the Act as it will no longer be collectable under a sole legal domestic operator model.

In light of the partnership arrangement, which saw a material long-term change for TAB NZ's operating model, the Bill introduces changes to strengthen the governance and oversight of TAB NZ. This Bill also updates and strengthens the skills required on TAB NZ's board by providing that the Minister must regard the need for the governing body to collectively have knowledge of, or experience in, monitoring of legal compliance, contractual obligations, and financial performance.

The Bill introduces new ministerial powers to require TAB NZ to provide any relevant information for the purpose of overseeing the performance of TAB NZ's functions. While some Ministerial reporting is undertaken on a voluntary basis by TAB NZ, there are currently no powers to compel this.

The Bill makes TAB NZ the only domestic legal provider of online sports and racing betting. Given this restriction of choice of operators, it is important to ensure there are adequate protections for domestic consumers. Current existing harm minimisation regulation-making powers for TAB NZ only relate to land-based TAB NZ venues. This Bill therefore expands the harm prevention and minimisation regulation-making powers in the Act to also cover TAB NZ's online operations. It also creates a new regulation-making power to specify the circumstances in which TAB NZ may exclude a person from participating in racing betting or sports betting. This intends to ensure that TAB NZ cannot restrict otherwise lawful customers from accessing its online products without an appropriate reason, such as having an identified gambling problem.

This Bill appoints the Department of Internal Affairs as the regulator of this online monopoly. An interim regulator will be established within the Department of Internal Affairs, until the establishment of an online casino gambling regulator, which at the appropriate time it is intended will assume regulatory control.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>NO</b>

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>

<b>2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?</b>	<b>NO</b>

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>Regulatory Impact Assessment: Protecting TAB NZ's from offshore online betting to ensure a sustainable racing industry, Department of Internal Affairs, 4 September 2024.</p> <p>The content of the regulatory impact statement and timing of the policy introduction means this is not yet released or published. This will be published by the time of introduction to the House.</p>	

<b>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?</b>	<b>NO</b>
<p>The Department of Internal Affairs conducts an internal quality assurance process on the respective RIS. The panel in this instance found the RIS partially met the assessment criteria.</p>	

<b>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?</b>	<b>YES</b>
<p>The RIS discusses long-term enforcement of the monopoly, including focusing enforcement on the to-be-outlawed offshore entities. This bill however does not introduce any penalties or penalty-making powers (e.g., civil penalties) to be used to enforce the monopoly policy. A consequential clarification has been made, to reflect that any gambling done in breach of this prohibition would amount to illegal gambling under section 19 of the Gambling Act 2003. This potential enforcement tool was not contemplated at the time of the development of the RIS.</p> <p>In all other respects, the policy reflects those tested in the Regulatory Impact Statement.</p>	

## Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
The RIS provides a detailed cost-benefit analysis. The main loss of potential concern (zero revenue from the Point of Consumption Charge) however the analysis finds that this is comfortably offset by the increase in other revenues resulting from the main policy outcome.	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>It is noted that enforcing compliance with overseas operators has complications. The Department of Internal Affairs will monitor compliance with the prohibition on overseas operators offering sports and racing betting to New Zealanders, and Ministerial requests for information made under new section 58A.</p> <p>The efficacy of this approach is contingent on a number of factors. Further effective enforcement mechanisms that control the conduct of offshore gambling operators will be developed as part of the online casino gambling reforms, which may be expanded to cover offshore sports and racing betting.</p>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>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?</b>
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The Ministry of Foreign Affairs and Trade has been consulted at multiple phases of policy development. Their advice is legally privileged and provided to Ministers in Policy Products.
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### Consistency with the government's Treaty of Waitangi obligations

<b>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?</b>
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No specific issues were identified in the Bill that may have implications for the rights and interests of Māori protected by the Treaty of Waitangi. As such, no formal steps have been taken to determine whether the policies to be given effect by this Bill are consistent with the principles of the Treaty of Waitangi.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>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?</b>
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NO
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### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>
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<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>
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YES
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<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>
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NO
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The Gambling Act 2003, which contains a prohibition on illegal gambling, has been consequentially amended to clarify that gambling prohibited under this Bill will also be considered illegal gambling under the Gambling Act. Section 19 of the Gambling Act provides an offence for illegal gambling. The amendment in this Bill relates to a clarification in the definition of remote interactive gambling, in section 4, to limit the exemption currently in place for offshore gambling.
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<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>
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NO
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The amendment was a purely consequential amendment to the definition of Remote Interactive Gambling in section 4 of the Gambling Act 2003, to give effect to the prohibition (and offences) established in this Bill. It otherwise has no effect on infringements in the Gambling Act. Consultation was not required.
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### Privacy issues

<b>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?</b>
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NO
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### External consultation

<b>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?</b>	<b>NO</b>

### Other testing of proposals

<b>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?</b>	<b>NO</b>

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>YES</b>
This bill effectively sets the Point of Consumption Charge to 0% and repeals them - by repealing the regulations made under section 123, and repealing sections 123(1)(a), (b), (c), and (e) as well as the heading above 123(1)(b).	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>

### Strict liability or reversal of the usual burden of proof for offences

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

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>

### Significant decision-making powers

<b>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?</b>	<b>NO</b>



## Powers to make delegated legislation

<b>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?</b>	<b>YES</b>
The Bill enables regulations to be made which set out the situations in which TAB NZ can limit or exclude customers. This may limit the ability of TAB NZ to refuse or modify a bet from any person without a reason in s92 of the Act.	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
The Bill includes regulation making powers to: <ul style="list-style-type: none"><li>• expand harm minimisation regulation-making powers to cover TAB NZs online operations, and adds new harm minimisation regulation-making powers.</li><li>• ensure TAB NZ cannot restrict otherwise lawful customers from accessing its online products without an appropriate reason.</li></ul>	

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>