

Departmental Disclosure Statement

Gambling (Definition of Remote Interactive Gambling) 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 Policy Group.

The Policy Group certify that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

12 August 2024

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Part One: General Policy Statement

This Bill amends the Gambling Act 2003 (the **Act**) to make permanent the temporary provision currently in section 4A that exempts class 3 gambling in the form of a lottery from the prohibition on remote interactive gambling in section 9. This will enable class 3 gambling that is in the form of a lottery to be conducted remotely. This change will, for example, allow operators to receive payments through phone or internet banking.

The Act was amended on 16 May 2020 to add a temporary modification of the definition of remote interactive gambling during a specified period (on and after 16 May 2020 and until the close of 31 October 2021) to enable specified class 3 operators to conduct their lotteries remotely in response to the COVID-19 pandemic. The specified operators were Countdown Kids Charitable Trust, the National Heart Foundation of New Zealand, and the Royal New Zealand Coastguard Incorporated.

The modification was reinstated from 21 December 2021 until the close of 31 October 2024 by the Gambling (Reinstating COVID-19 Modification) Amendment Act 2021. It temporarily expanded the operation of the exemption for the 3 specified class 3 operators to permit any licensed class 3 operators to conduct a lottery despite the prohibition on remote interactive gambling.

The context in which class 3 operators are conducting lotteries has changed since the enactment of the Act. As advertising and financial transactions are now predominantly digital, the fundraising ability of class 3 operators would be limited without advertising and digital transactions.

The purpose of the Act includes ensuring that money from gambling benefits the community. The amendment made by this Bill will allow licenced class 3 operators to continue raising money for charitable and non-commercial purposes through the sale of lottery tickets by remote means such as phone or internet.

This Bill excludes class 3 gambling in the form of a lottery from the definition of remote interactive gambling. This permanently excludes this form of gambling from the prohibition on remote interactive gambling in section 9.

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?	NO

Relevant international treaties

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

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
The Bill has been exempted from producing a Regulatory Impact Assessment on the grounds that the bill under section 24 of Cabinet Circular CO (20) 2: (Impact Analysis Requirement) – has no or only minor impact on affected industry.	

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?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>The Department of Internal Affairs does not hold data on the proportion of sales made online or the impact the temporary provision to enable 'remote sales' has had on these sales. Class 3 operator financial reporting does not require distinguishing revenue streams by in-person or online sales, and most do not make this distinction.</p> <p>Class 3 organisations advocating for a permanent change point out that banks no longer issue or accept cheques, and newspapers have shifted largely to online advertising. These societal changes tie class 3 operators more and more to remote interactive sales through both their payment methods and how they advertise their charitable/non-commercial lotteries. Reverting to in-person and print-only advertising is likely to have a significantly detrimental impact on class 3 operators fundraising abilities, and operational capabilities.</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?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

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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Consulted with the Ministry of Foreign Affairs and Trade who confirms no inconsistency.

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?

No population implication analysis has been undertaken. Policy proposals work to make permanent the status quo. Te Puni Kokiri and Te Arawhiti have been consulted as part of agency consultation and have raised no concerns.
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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
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An assessment against the New Zealand Bill of Rights Act 1990 is in progress. Once the assessment is complete, the advice will be available on the Ministry of Justice's website:

https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/compliance-reports/

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)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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Remote interactive gambling is prohibited and illegal under section 9 of the Gambling Act (2003). Subsequently, under section 19(1) [particularly 19(1)(c)] and 19(3)] a person commits an offence and is liable to prison or a fine. This exemption would remove remote interactive gambling for the purposes of a licensed Class 3 lottery would no longer be prohibited/illegal, and therefore liable under 19(3). While the definition of the offence and penalty would not change; this is a change to the scope of the definition(s) of remote interactive gambling.
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This does not change the jurisdiction of the Gambling Commission or the Courts.

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
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The Ministry of Justice Bill of Rights Act team have reviewed the provision for compliance with the New Zealand Bill of Rights Act 1990. However, the Ministry of Justice was not consulted more broadly as this amendment makes permanent the status quo.
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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?	NO
This policy decision has not been consulted on externally, although it has been sought by external stakeholders. The choice to not consult is based on it sustaining the status quo of the temporary section 4A of the Act.	

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?	NO

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

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

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

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

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

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

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

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?	NO