

19 July 2017

Hon Christopher Finlayson QC, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Racing Amendment Bill

Purpose

1. We have considered whether the Racing Amendment Bill ('the Bill') is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with s 14 (freedom of expression). Our analysis is set out below.

The Bill

3. The Bill amends the Racing Act 2003 ('the principal Act'). The purpose of the Bill is to improve the competitiveness of the New Zealand Racing Board's ('NZRB') betting operations. The Bill seeks to do this by creating a regulatory scheme requiring offshore betting operators to pay to use New Zealand racing and sporting information in the conduct of their betting operations and pay when they take bets on racing and sporting events, held in or outside New Zealand, from persons located in New Zealand.
4. The Bill also amends the principal Act to:
 - a. enable the formula that is used for allocating proceeds from sports betting between the racing and sports sectors to be revised
 - b. allow the NZRB to enter into betting agreements with Sports New Zealand where there is no national sporting organisation for a particular sport, and
 - c. permit the NZRB to offer in-race betting.

Consistency of the Bill with the Bill of Rights Act

Section 14 – Freedom of Expression

5. Section 14 of the Bill of Rights Act affirms that everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form. The right has been interpreted as including the right not to be compelled to say certain things or to provide certain information.¹
6. There are two provisions in the Bill that compel the provision of specific information:

¹ See, for example, *Slaight Communications v Davidson* 59 DLR (4th) 416; *Wooley v Maynard* 430 US 705 (1977).

- a. new 65AG which requires offshore betting operators to provide prescribed information, in the prescribed manner, to the designated authority for the purpose of enabling the authority to monitor the amounts payable by offshore betting operators for using New Zealand racing and sporting information in the conduct of their betting operations, and
 - b. new 65AL which requires offshore betting operators to provide the prescribed information to the designated authority for the purpose of enabling the authority to monitor the amounts payable by offshore betting operators in respect of bets that they take on racing and sporting events, held inside or outside New Zealand, from person located in New Zealand.
7. To the extent that these provisions limit s 14, we consider they are justified. The Bill seeks to increase the competitiveness of the NZRB's betting operations by requiring offshore betting operators to pay charges for using New Zealand racing and sporting information or when they take bets on racing and sporting events from persons in New Zealand. Requiring an offshore betting operator to provide information that enables the designated authority to monitor the amounts payable is rationally connected to that objective. Further, as the provisions are limited to information that enable monitoring, we consider the provisions are in due proportion to the importance of the objective and do not limit the right any more than is reasonably necessary.
8. We therefore consider that the Bill appears to be consistent with the right to freedom of expression affirmed in s 14 of the Bill of Rights Act.

Conclusion

9. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

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