

6 May 2019

Hon David Parker, Attorney-General

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

Purpose

1. We have considered whether the Racing Reform 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'). This advice has been prepared in relation to the final version of the Bill (PCO218181/4.2).
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 this conclusion, we have considered the consistency of the Bill with s 14 (freedom of expression).

The Bill

3. The Bill is an omnibus Bill implementing a suite of changes intended to revitalise the New Zealand racing and sports betting industries. The Bill proposes amendments to the Racing Act 2003 (the Act) and the Gaming Duties Act 1971.
4. Primarily, the Bill provides for:
 - a. the current New Zealand Racing Board to continue under the name Racing Industry Transition Association;
 - b. revenue to be collected from offshore betting operators that provide betting services to persons residing in New Zealand, or which use New Zealand racing and sports information;
 - c. the creation of a penalty not exceeding \$20,000 in the case of an individual and \$50,000 in the case of a body corporate to be applied against overseas betting operators who provide false or incorrect information about the amount of a charge the operator is required to pay, or who fails to pay an amount due by the due date;
 - d. the progressive reduction (over three years) and eventual repeal of the totalisator duty currently paid by the New Zealand Racing Board to the Crown;
 - e. the replacement of the statutory formula determining how racing and sports betting revenue must be distributed with a power to make regulations specifying a distribution formula; and
 - f. betting products to be offered on sports not represented by a domestic national supporting organisation.
5. The Bill also proposes consequential amendments to several Acts. These consequential amendments only provide for the recognition of the change of name to Racing Industry Transition Association.

Consistency of the Bill with the Bill of Rights Act

Section 14 – Freedom of expression

6. 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
7. Section 24 of the Act currently provides that no person may use any name containing the words “New Zealand Racing Board” or use any name calculated to suggest a connection or endorsement with the same. Clause 14 of the Bill proposes this section be updated to account for the name change to Racing Industry Transition Association.
8. Clause 19 of the Bill also proposes that overseas betting operators who enter into a commercial agreement with the designated authority (in practice this will be the Department of Internal Affairs or its delegate) about the use of New Zealand racing and sports information must provide certain prescribed information – to be set out in regulation – to the designated authority.
9. We consider that these provisions minimally limit the s 14 right to freedom of expression, but that these limits are justified in terms of s 5 of the Bill of Rights Act.² The prohibition on misrepresenting a relationship with the Racing Industry Training Association is necessary to maintain the reputation of that Association and goes no further than is required to protect the public against fraud. The requirement to supply information is a usual requirement for a regulatory regime and goes no further than is necessary to ensure that the designated authority can ensure overseas betting operators are complying with the commercial agreement they chose to enter.³ Both provisions are minimally impairing of the right, related to the objective of the Bill and proportionate to that objective.

Conclusion

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

² *Hansen v R* [2007] NZSC 7 at [123].

³ We note that the Bill does not authorise delegated legislation that is inconsistent with the Bill of Rights Act: see *Drew v Attorney-General* [2002] 1 NZLR 58.