Office of the Minister for Racing

Chair
Cabinet Economic Development Committee

Review of Racing: Paper 3 – Proposals for immediately increasing revenue for the racing industry

Proposal
1. This paper proposes changes which are intended to address the New Zealand racing industry’s immediate need for supplementary revenue to ensure its financial sustainability. It seeks agreement to policy decisions for inclusion in the Racing Amendment Bill No. 1 2019 (Bill No. 1).

2. This Cabinet paper is one of a suite of three that will collectively provide the Government’s first legislative response to the recommendations of the Review of the New Zealand Racing Industry (the Messara Report). The other two papers are Paper 1 – Overview of the New Zealand Racing Industry and identified issues (Paper 1), and Paper 2 – Policy decisions on transitional governance to drive change (Paper 2).

Executive summary
3. This paper seeks agreement to include a number of proposals from the Messara Report, which are intended to address the racing industry’s immediate need for supplementary revenue to ensure its long-term financial sustainability, into Bill No. 1. These proposals fall into three broad categories:

- Proposals from the discharged Racing Amendment Bill 2017, which include:
  - implementing two offshore charges – an information use charge and a point of consumption charge (POC);
  - permitting the New Zealand Racing Board (NZRB) to offer betting products on sports not represented by a qualifying domestic national sporting organisations (NSO); and
  - placing the formula for calculating payments to sporting organisations into regulations.

- Repealing and replacing the totalisator duty (betting levy) which is currently paid by the NZRB to the Crown under section 4 of the Gaming Duties Act 1971 and creating a new distribution formula for these funds to be distributed to the racing industry and NSO’s, while also setting aside a proportion to support industry initiatives focused on the reduction of gambling harm; and

- Moving the formula used to distribute funds to the three racing codes from section 16 of the Racing Act 2003 (Racing Act) to regulations.

4. It is in the Government’s interests to revitalise the racing industry. This will lead to increased employment, exports and a general increase in the industry’s already significant contribution to the New Zealand economy.

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1 Note the NZRB and its proposed successor organisations, for simplicity are referred to in this paper as the NZRB.

2 Note the totalisator duty that is currently paid by the NZRB to the Crown is referred to as the betting levy in this paper.
5. The Ministerial Advisory Committee for Racing (the MAC) was established to undertake a detailed analysis on operational aspects of the Messara Report’s proposals and drive the resulting reform effort. In recognition of the racing industry’s urgent need for supplementary revenue, the MAC strongly supports introducing the proposals in this paper.

6. These proposals will have financial implications, both for the Crown and for the racing and sports industries. The financial implications for the Crown, from the proposals in this paper, are estimated to be approximately $57 million of foregone revenue over four years. The Minister for Racing has submitted a Budget 2019 bid for this. Decisions on the betting levy are subject to approval through Budget 2019.

Background

**The racing industry is in urgent need of supplementary revenue**

7. As outlined in Paper 1 of this suite of papers, the racing industry is in a state of serious decline. Prize money is low, so returns to owners are significantly below other jurisdictions. Foal crops are declining which inhibits future race field sizes, leading to less wagering and less revenue for the racing industry. Industry infrastructure is in a poor state. Without a significant boost of revenue, the racing industry will continue to decline.

8. One cause of reduced industry revenue is the impact of offshore betting. There is evidence to suggest that an increasing number of New Zealanders are betting online with offshore betting operators. For example, in 2015 the Offshore Racing and Sports Betting Working Group estimated (using available data) that about $58 million per annum of gross betting profit was being lost offshore. This means that significant sums of money are going offshore rather than being returned to New Zealand racing and sports sectors. The racing industry has argued for many years that the activity of overseas betting websites is resulting in money “leaking offshore” which would otherwise benefit racing in New Zealand via bets made with the TAB.

9. The Messara Report noted that the racing industry has declined over time, and that, without intervention, the industry was now at risk of suffering irreparable damage. Mr Messara drew on his experience driving the reform of the New South Wales racing industry, which has seen it revitalised through, for example, increased revenue generation from taxes and increased prize money for races. As such, the Messara Report made a number of recommendations to assist in revitalising the New Zealand racing industry and to increase its financial sustainability.

**Proposals for Bill No. 1 - Options to increase the financial sustainability of the racing industry**

10. Given the racing industry’s precarious financial state, and the Messara Report’s recommendations to address this, the Minister for Racing proposes a number of amendments be made to the Racing Act, as well as an amendment to the Gaming Duties Act 1971 (Gaming Duties Act). These amendments will strengthen the financial position of the New Zealand racing industry to ensure it is economically sustainable into the future. The amendments fall into three broad categories, which are:

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3 It is important to note that the Working Group’s estimates for the amount of gross betting profit lost offshore are likely to have increased since 2015.
Proposals from the discharged Racing Amendment Bill 2017

11. Three of the proposals in this paper were contained in the discharged Racing Amendment Bill 2017 (the discharged Bill). These are:
   - implementing two offshore charges – an information use charge and a POC charge;
   - permitting the NZRB to offer betting products on sports not represented by a qualifying domestic national sporting organisations (NSO); and
   - placing the formula for calculating payments to NSO’s in regulations.

12. The Bill was discharged following the release of the Messara Report to enable it to be considered in the context of broader reform, not because it was lacking support for the provisions it contained. At that time the Minister for Racing noted that officials would consider the matters included in the discharged Bill as part of the wider considerations of the reforms [CAB-18-MIN-0463 refers].

13. The Messara Report used the discharged Bill as a basis to provide further recommendations relating to strengthening the financial position of the racing industry.

Establishing offshore betting charges

14. Offshore charges would require offshore operators to pay a charge to use New Zealand racing and sports information in their betting products, and/or pay a charge for the bets they take from New Zealand residents.

15. The Messara Report recommends the introduction of two offshore charges:
   - an information use charge – a charge payable by offshore operators using New Zealand racing and sports information which is similar to copyright charges for the use of intellectual property; and
   - a POC charge – a charge akin to a tax on offshore operators who are accepting (and subsequently profiting from) bets from New Zealanders. This charge recognises that the New Zealand industry is not benefitting in any way from this betting spend by New Zealanders.

16. Offshore betting charges made up a bulk of the provisions proposed in the discharged Bill and were strongly supported by the NZRB and wider racing industry.

17. Establishing charges of this kind will require legislation which betting operators in other countries would be expected to comply with. This is justifiable as the betting transactions have a New Zealand element: the use of New Zealand racing and sports information in betting products; and/or the acceptance of bets from people in New Zealand. It is important to note that this paper does not propose the rate of these charges, rather it establishes the framework for the rates to be set at a later date via regulations.

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4 Offshore charges are comprised of both the information use charge and the POC charge.
Information use charge

18. The information use charge, proposed in the discharged Bill, is a charge payable by offshore betting operators using New Zealand racing and sports information. This is similar to copyright charges for the use of intellectual property.

19. Many offshore operators use New Zealand racing and sports information for betting purposes but, unlike the NZRB, they do not contribute to the costs of producing the activities from which they are profiting. Therefore, an information use charge is proposed to recognise the commercial value that offshore operators derive from the bets they offer on New Zealand racing and sports events.

20. Money from this charge would be distributed to racing and sports organisations along similar lines to the payments that the NZRB already makes in respect of the bets it takes.

21. In Australia, most of the states and territories have passed laws, collectively known as “race fields Acts” which implement similar charges. Compliance by Australian betting operators across state boundaries is high. Also, a range of betting companies based in Asia, Europe and North America have been willing to pay the required charges.

22. The NZRB has estimated that if the information use charge is set at two per cent of turnover this would yield revenue of $6 million per annum for bets placed on New Zealand racing events with offshore bookmakers. These estimates are based on an extrapolation from the known use of New Zealand events by Australian TABs. It is believed that Australian companies account for the vast majority of offshore bets on New Zealand events.

23. Given this, the Minister for Racing proposes that the Racing Act be amended to create powers (set in regulations) that would require betting operators based outside of New Zealand to pay charges in relation to their use of New Zealand racing and sports information in their betting products.

24. It is also proposed that the legislation should provide that the Department of Internal Affairs (the Department) is the designated authority to administer the collection of an information use charge, with the ability to delegate its responsibilities to an organisation or organisations in the racing industry to administer the collection of the charge. This would take advantage of the industry’s existing experience in managing contractual agreements with offshore betting operators. It would also recognise that revenue from any charges would be distributed to New Zealand racing and sporting organisations.

Point of consumption charge

25. The point of consumption charge, which was also proposed in the discharged Bill, is a charge that would be imposed on offshore betting operators that accept bets made by New Zealanders. This charge would apply to bets that offshore betting operators take that originate in New Zealand and would apply regardless of where the bet is placed.

26. Currently, when people in New Zealand bet with offshore betting operators, our regulatory system, which ensures the payment of gaming duty, the problem gambling levy and distribution of profits to our racing and sports industries, is bypassed.

5 The NZRB has derived their estimates for both offshore charges by setting the proposed fee at two per cent of turnover which was the rate suggested by the Offshore Racing and Sports Betting Working Group. This was based on examples used in overseas jurisdictions.
27. A range of other countries, including Australia, have addressed this issue by licensing offshore betting operators to take bets from their citizens and residents. The proposed POC charge would not go that far because to do so would effectively be a formal opening-up of the New Zealand online bookmaking market, which would threaten the NZRB’s statutory monopoly.

28. The NZRB has estimated that if the POC charge was set at two per cent of turnover it could yield over $24 million of revenue per annum.\(^6\)

29. The Minister for Racing believes a point of consumption charge would be an appropriate component in the broad legislative response to the issues that offshore betting is causing the New Zealand racing industry. It is therefore proposed that the Racing Act be amended to create powers to enable regulations to be made that would require betting operators based outside of New Zealand to pay charges in relation to the bets they take from people in New Zealand.

30. It is also proposed that the legislation include a clause which specifies that, for the purposes of the POC charge, the location of a bettor should be determined based on the bettor’s home address.

Administration of the offshore charges

31. The Minister for Racing also proposes that the Department should administer the POC charge, and, in conjunction with the Minister of Finance, establish a non-departmental appropriation to be funded from one or more offshore betting charges, with the Department operating a memorandum account to monitor the revenue and expenses over time with the cost of administration met from revenue collected. The administration of offshore charges are intended to be fiscally neutral to the Crown.

Powers to make regulations to implement offshore betting charges

32. The Minister for Racing proposes that empowering regulations should be created to implement offshore charges, largely based on the discharged Bill. The regulations should provide for:

- the ability for the relevant Minister to set charges at a specified rate or rates;
- the requirement that offshore operators must provide the designated authority with any financial or other relevant information necessary to monitor amounts due under the charge(s); and
- the ability for the relevant Minister to set penalty charges at a specified amount (with a maximum set in the primary legislation).

33. The regulations may provide for offshore operators to enter into agreements with the designated authority for the use of New Zealand racing and/or sports information in their betting products. Should any dispute arise in respect of those agreements, the legislation should provide that they will be subject to New Zealand law.

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\(^6\) The NZRB’s estimate for the POC charge is derived from anonymised credit card data from ANZ (which accounts for approximately one-third of the New Zealand credit card market) which categorises transactions by New Zealanders through a gambling Merchant code which enabled them to identify which deposits were with offshore betting providers.
Safeguards relating to the offshore charges including international obligations

34. Legally privileged

35. The Minister for Racing further proposes that certain safeguards be set out in the primary legislation regarding the operation of any charges and the purposes for which any revenue from the charges may be used. It is therefore proposed that the Racing Act should require that:

- the Minister for Racing, in recommending the regulations setting out the rates of the charges, should be required to refer to certain factors to ensure offshore operators do not pay more than the New Zealand TAB. Some of the factors the Minister should be required to refer to include:
  - the NZRB’s betting and other revenue;
  - payments the NZRB makes to New Zealand racing and sports organisations; and
  - the relevant taxes and other duties paid by the NZRB and offshore betting operators in New Zealand.
- the Minister should also be required to publish a statement explaining why the Minister considers the rate of the charges are fair and reasonable.
- the purposes for which any money collected from the charges may be applied to include:
  - promotion of the long-term viability of New Zealand racing and sports;
  - covering the cost of administering enforcement and collection of the charges; and
  - funding measures to prevent and minimise harm from gambling.
- the designated authority applies any money received from the charges to any or all of these purposes.

36. It should also be possible to set a threshold, below which the requirement to pay the charge(s) will not apply. This threshold would be based on the turnover (or an equivalent measure) of relevant bets by any offshore betting operator. This would help focus resources where they are likely to achieve the greatest return. Pursuing a large number of very small operators is likely to be less efficient than targeting large operators.
Discounted option – Including the point of consumption charge in the Government’s work on online gambling

37. The Minister for Racing also considered, but discounted, not introducing the point of consumption charge so that it might be considered as part of work to futureproof online gambling policy settings in the Gambling Act 2003, under the Internal Affairs portfolio. The online gambling work will look at the full range of options to better regulate the online gambling environment without disrupting the New Zealand gambling framework. A public discussion document relating to online gambling is intended to be released in mid-2019. This option would have looked at how the POC charge might best fit in New Zealand’s overall system for regulating (and minimising the harm of) online gambling.

38. The Minister for Racing considers, however, that the POC charge could be successfully introduced in New Zealand while not prohibiting its consideration as part of the wider online gambling work in the future. POC charges have now been implemented across the majority of Australia’s states and territories, as well as other international territories, such as the UK and Ireland. This means that there are now various regulatory frameworks in place relating to the administration and enforcement of point of consumption charges which New Zealand can use as a basis for introducing the charge here.

Reducing restrictions on sports betting

39. The Messara Report recommended a suite of new wagering products which would help further the financial stability of the racing industry and increase its competitiveness to help ensure New Zealanders prefer the New Zealand racing operator. One of these proposals was to reduce the restrictions on when the NZRB can offer sports betting. This recommendation was part of the discharged Bill and was supported by the majority of submitters through the Select Committee process.

40. Under section 55 of the Racing Act, betting is only permitted on domestic and overseas sporting events if the NZRB has a betting agreement with the New Zealand NSO for each sport in question. The Racing Act defines a “New Zealand NSO” as an organisation that meets Sport New Zealand’s (Sport NZ) investment criteria.

41. The NZRB therefore cannot offer betting products for sports that may be popular internationally but have limited participation or formal organisation in New Zealand. An example of this is Mixed Martial Arts which, until recently, had no qualifying NSO. This places the NZRB at a disadvantage compared to offshore betting operators.

42. The Minister for Racing proposes that the Racing Act is amended to permit the NZRB to offer betting products on sports not represented by a qualifying domestic NSO. In these cases, the NZRB would be permitted to enter into an agreement with Sport NZ, which would then determine the distribution of the resulting betting income to sporting bodies. The current provisions requiring betting agreements with sports that are represented by a qualifying NSO would remain.

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7 The principles underpinning the Gambling Act 2003 are: that communities benefit from the profits from gambling; gambling harm is minimised and the cost of mitigating harm is borne by the industry; and gambling is authorised and conducted by trusted and reputable providers.

8 The new wagering products raised in the Messara Report (i.e. virtual racing games and removing legal restrictions that prevent Wagering NZ from acquiring Class 4 gaming licence venues) require further consideration. The Minister for Racing intends to bring further proposals relating to new wagering products to Cabinet as part of Bill No. 2.
43. The Messara Report also recommended allowing betting on all overseas sporting events without the need to obtain agreement from NSOs. Consideration of this change will form part of work underway on Racing Amendment Bill No. 2.

Risk of gambling harm

44. There is a risk of increased gambling harm from increasing the overall number of sports on which bets are offered. The Department considers that this risk is sufficiently managed under the existing regulatory regime, which includes a focus on harm prevention and minimisation.

Placing the formula for calculating payments to NSO’s in regulations

45. The discharged Bill also included provisions which amended the legislative process required to alter payments to sports codes. These provisions also took the distribution formula from the primary legislation (i.e. Racing Act) and put it into regulations.

46. Placing this formula in regulations would provide greater flexibility, if for any reason it needed to be changed in the future. It would also be consistent with the proposed changes to the formula in section 16 of the Racing Act, and the separate formula the Minister for Racing has proposed for repealing the betting levy (both of which are discussed later in this paper).

47. As such, the Minister for Racing proposes that the formula for calculating minimum payments to NSO’s, currently under section 57(1) of the Racing Act, be set by regulations.

48. It should also be noted that the current distribution of gambling revenue to sports codes is not intended to materially change as a result of Bill No. 1.

Repealing and replacing the betting levy as a revenue mechanism

49. The Messara Report recommended repealing the betting levy currently paid by the NZRB to the Crown under section 4 of the Gaming Duties Act 1971, and that the subsequent revenue should be retained by the racing industry and distributed to the codes.

50. The betting levy’s original purpose was to generate revenue for the Government from gambling profits. The revenue is not hypothecated for a specific purpose. The Messara Report stated that, if the Government were to repeal the betting levy, ‘it would send a clear signal of its support for the Racing Industry and its recognition of the importance of the industry to the New Zealand economy’.

51. The levy is 4% of betting profits. The amount for 2018 was approximately $14 million. The Treasury forecasts that the revenue paid to the Crown through the betting levy is expected to be between $14-15 million per annum over the current forecast period.

Support for repeal of the levy

52. The MAC has identified repealing the betting levy as a priority initiative for revitalising the racing industry. The MAC also supports sports codes receiving the portion of the levy generated from sports betting.
53. Public submissions on the Messara Report largely supported this recommendation. The NZRB and three racing codes all supported the redirection of the betting levy. In total, 104 submissions were received on this recommendation; 41 submitters supported the repeal of the betting levy outright. A further 52 submissions appeared to provide qualified support. 11 submitters opposed the recommendation.

Risk of precedent-setting on other duties

54. Repealing the betting levy and redistributing it back to the racing industry could be seen as inequitable by New Zealand’s other gambling providers. The New Zealand Lotteries Commission, casinos and class 4 gaming providers are likely to argue that the racing industry should not be given special treatment. These providers did not make any submissions on the Messara Report. However, they may lobby to have applicable duties removed from their profits.

55. The table below contains the current duty rates paid by New Zealand’s primary gambling providers.

<table>
<thead>
<tr>
<th>Gambling entity</th>
<th>Rate of duty</th>
<th>Name of duty</th>
</tr>
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<tbody>
<tr>
<td>Class 4 gambling (non-casinos)</td>
<td>20% of class 4 gaming machine profits</td>
<td>Gaming machine duty</td>
</tr>
<tr>
<td>Casinos</td>
<td>4% of betting profits</td>
<td>Casino duty</td>
</tr>
<tr>
<td>Lotto NZ</td>
<td>5.5% of the nominal value of all tickets represented in a lottery draw</td>
<td>Lottery duty</td>
</tr>
<tr>
<td>New Zealand Racing Board (NZRB)</td>
<td>4% of betting profits, 20% of class 4 gaming machine profits</td>
<td>Totalisator duty (betting levy), Gaming machine duty</td>
</tr>
</tbody>
</table>

Repealing the levy and creating a new distribution formula via regulations

56. Notwithstanding the above concerns, the Minister for Racing agrees with the Messara recommendation and the MAC, that redirecting the betting levy would provide an important source of funds to start the revitalisation of the racing industry.

57. The Minister for Racing is seeking funding through Budget 2019 to enable a Crown contribution to cover the loss of funds collected through the betting levy. Subject to the approval of this Budget bid, it is proposed that the betting levy is repealed and that a new distribution formula is created in regulations for an amount to be redistributed to the racing codes and NSO’s.

58. Putting the distribution formula in regulations would enable the use of a distribution formula separate to that used for NZRB profits. The MAC is currently considering this and intends to provide a recommended formula in its final report by 30 June 2019.

Supporting the NZRB to reduce gambling harm

59. Repeal of the betting levy will effectively increase the NZRB’s profits, prior to any distribution to the codes. The Minister for Racing believes that the NZRB should set aside a proportion of these profits for reduction of gambling harm and that the regulated distribution formula should determine the appropriate quantum, taking into account the amount to be distributed to the racing and sports codes.
An effective and fair distribution approach

60. On balance the Minister for Racing believes this distribution approach provides the greatest flexibility to create an effective and fair distribution formula. In summary, this option provides:
   - the greatest transparency for the distribution of revenue;
   - flexibility to set the frequency of distribution of revenue;
   - for sports codes to be included in the distribution of revenue;
   - support for industry initiatives focused on the reduction of gambling harm; and
   - is relatively simple to administer.

Moving the formula used for distributing funds to the three racing codes from primary legislation to secondary legislation

61. In addition to the suite of recommendations to increase the financial sustainability of the racing industry, the Messara Report also recommended changes to the distribution formula for the NZRB’s profits, which are provided for in section 16 of the Racing Act.

62. The MAC agrees in principle with the recommendation to amend the section 16 distribution formula and is currently engaging an external consultant to consider the issue of fairness in various potential distribution models. Following the findings of the external consultant, the MAC intends to recommend a preferred distribution model in its final report due on 30 June 2019.

Establish the distribution formula in regulations

63. Prior to making any decisions on the distribution formula itself, there is an opportunity to amend the legislative process required to alter the distribution formula. Allowing for the formula to be prescribed in regulation will provide greater flexibility to make changes in the future, should that be necessary. This approach would also be similar to the distribution of net proceeds from class 4 gambling. Under the Gambling Act, the Governor-General may make regulations for the application and distribution of these proceeds.

64. Therefore the Minister for Racing proposes that the distribution formula be removed from section 16 of the Racing Act, and moved into regulations. The empowering provisions should also include a requirement to consult the racing codes about any proposed changes.

Consultation

65. The Department consulted publicly on the Messara Report’s recommendations during September and October 2018. Submissions were received from a range of stakeholders. A broad range of views were expressed but, in general, stakeholders from the racing and sports sectors supported the recommendations. However, representatives of offshore betting operators based in Australia voiced concerns that the proposed information use and POC charges were unfair. More information about the consultation is provided in the Regulatory Impact Assessment (RIA).

66. The MAC has been consulted throughout the policy development process and has provided feedback. The MAC has also worked with the racing industry to help inform its decisions. It strongly supports the recommendations outlined in this paper.
67. Agencies consulted in preparing this suite of papers were: Treasury, State Sector Commission, Inland Revenue Department, Ministry of Foreign Affairs and Trade, Ministry of Health, Te Puni Kokiri, Ministry of Justice, Sport New Zealand and Ministry of Primary Industries. Agency who have provided comments relevant to this paper were: Inland Revenue Department, Treasury, and the Ministry of Health.

68. Inland Revenue notes that, in relation to the recommendation to repeal the betting levy, revenue from gaming duties are approximately $240-$255 million per annum over the forecast period (of which the betting levy accounts for $14-$15 million per annum over the same period). Inland Revenue advises that any reduction in overall gaming duty may result in pressure for more revenue from other tax bases.

69. The Treasury has commented that the proposals in this paper will have significant fiscal implications for the Crown, driven primarily by the proposal to repeal the betting levy. The betting levy was last reduced in 2006 – from 20 per cent of betting profits to 4 per cent – with the aim of improving the economic performance of the racing industry and avoiding further decline. Repealing the betting levy would cost around $57 million over the next four years and is subject to decisions taken through the Budget 2019 process.

70. The Treasury has also commented that there is a risk that repealing the betting levy sets a precedent for levies on other gambling providers to be repealed (such as the gaming machine duty or casino duty).

71. The Ministry of Health considers that there is a low risk of increased gambling harm from the proposals in this paper. Increasing the number of sports that can be wagered on could lead to increased expenditure on gambling, which is linked to increased levels of harm. However, any increase from this is likely to be low, and manageable within current regulations, assuming responsible marketing and good gambling harm minimisation practices are in place at the point of purchase.

Financial implications

72. There are direct financial implications for government from the proposal in this paper to repeal the betting levy. According to Treasury forecasts, repealing the levy will result in approximately $57 million in foregone revenue for the Crown over the next four years.

73. The Minister for Racing has submitted a bid for Budget 2019 to support the repeal of the betting levy. Decisions on this proposal are subject to Budget decisions.

74. The table below shows the financial impact of repealing the betting levy over the next four financial years.

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<th>19/20</th>
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<tr>
<td>Approximate impact of repealing the betting levy</td>
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<td>14,000</td>
<td>15,000</td>
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75. The other proposals in this paper may have less direct financial implications for the government. This is because the legislative amendments sought are largely restricted to the creation of enabling powers that will permit setting of regulations in the future.
BUDGET SENSITIVE

76. However, the short-term reduction in Government revenue from the possible repeal of the betting levy may be offset in the long-term through a revitalised racing industry.

77. If the Racing Act is amended to provide for offshore betting charges, the Minister for Racing will return to Cabinet seeking approval to draft regulations to that effect. Full cost estimates and options for funding these costs will be put forward at that time. Previous estimates of costs for administering the charges ranged from approximately $0.59 million to $3.9 million per annum. These costs are ultimately dependent on the level of compliance from offshore betting operators, that is, whether the administration requires basic receipting and processing, or whether there needs to be more active compliance management.

Legislative implications

78. The proposals in this paper require amendments to the Racing Act, an amendment to the Gaming Duties Act, as well as the introduction of regulations.

79. Consequential amendments to the Gambling Act may be required. Should that be necessary, the amendments are not expected to be extensive.

80. The current Racing Act and Gambling Act each bind the Crown. The proposed changes in the Racing Amendment Bills No. 1 and No. 2 will also bind the Crown.

Impact analysis

82. A Regulatory Impact Assessment has been completed and is attached as Appendix E of the Overview paper. The Department of Internal Affairs has assessed that the Regulatory Impact Assessment partially meets the requirements.

Human rights

83. There are no human rights issues associated with this paper.

Gender implications

84. There are no gender implications associated with this paper.

Disability perspective

85. There are no disability implications associated with this paper.

Publicity

86. There is a great degree of interest and expectation from the industry in the proposals going forward. Following Cabinet decisions, an announcement will be made about the broad proposal for reform and the proposed contents of Bill No. 1.
Proactive Release

87. Consistent with Cabinet Office Circular CO (18) 4 – Proactive Release of Cabinet Material: Updated Requirements, the Minister for Racing intends to proactively release this paper, subject to any redactions that may be warranted under the Official Information Act 1982, within 30 business days of decisions being taken. The relevant Regulatory Impact Assessment will also be published at the same time.

Recommendations

88. The Minister for Racing recommends that the Cabinet Economic Development Committee:

1. note that the New Zealand racing industry is in a state of decline and needs supplementary revenue to ensure it is financially sustainable into the future;
2. note that the Messara Report made a number of recommendations to improve the financial position of the racing industry;
3. note that the Racing Ministerial Advisory Committee (the MAC) strongly supports the proposals in this paper to address the racing industry’s immediate need for supplementary revenue;

Proposals from the discharged Racing Amendment Bill 2017

Offshore charges

4. agree that the Racing Act 2003 should be amended to provide for an “information use charge”: a set of provisions that would enable regulations to be made to establish a scheme or schemes that would require offshore betting operators to pay a charge or charges for the use of New Zealand racing and sports information in their betting products;
5. agree that the Racing Act 2003 should be amended to provide for a “point of consumption charge”: a set of provisions that enable regulations to be made that would require offshore betting operators to pay a charge or charges in respect of bets that they take from persons located in New Zealand;
6. agree, subject to the decisions made in relation to recommendations 4 and 5, that there should be provisions for the following actions in relation to the implementation of an information use charge and/or a point of consumption charge:

6.1 the appointment of the Department of Internal Affairs as the designated authority to collect and administer the charges, with the ability to delegate its authority to another suitable body in relation to the information use charge;
6.2 the ability for the relevant Minister to set the charges at a specified rate or rates (subject to any requirements established in relation to recommendation 12);
6.3 the requirement that offshore operators must provide the designated authority with any financial or other relevant information necessary to monitor the amounts due under the charges;
6.4 the application of penalty charges payable by the offshore operators should they fail to pay outstanding charges; and
6.5 the establishment of a threshold:
6.5.1 below which the requirement to pay the charges will not apply; and

6.5.2 which may be based on the turnover or other suitable measure of relevant bets taken by offshore operators;

7. **note** that the offshore charges are intended to be fiscally neutral for the Crown;

8. **authorise** the Minister of Finance and Minister for Racing to approve the establishment of any new appropriation(s) and a memorandum account to give effect to the offshore charges;

9. **agree**, subject to the decision made in relation to recommendation 4 (information use), that regulations may provide that:

9.1 offshore betting operators must enter into an agreement or agreements with the designated authority before they are permitted to use, for specific purposes connected to wagering, information about racing or sports events that take place in New Zealand; and

9.2 that New Zealand law will apply in relation to any disputes that may arise in respect of those arrangements;

10. **agree**, subject to the decisions made in relation to recommendation 5 (point of consumption), that for the purposes of the point of consumption charge the location of a ‘bettor’ should be determined based on the bettor’s home address;

11. **agree**, subject to the decisions made in relation to recommendation 4 and 5, that it should be possible, in subsequent regulations, to revoke, replace or amend any regulatory requirements which are established in relation to the information use charge or point of consumption charge;

12. **agree** that the following safeguards should be established in relation to the operation of the proposed charges and the purposes for which any revenue from the charges may be used:

12.1 the proportion of revenue or profit required to be paid by offshore betting operators should not exceed (in total) the equivalent proportion of revenue or profit that the NZRB distributes to New Zealand racing and sports organisations;

12.1.1 regulations will detail the specific method for determining the relevant proportion of revenue or profit paid by the NZRB and used as reference for the charges to be paid by offshore betting operators; and

12.1.2 these proportions should be reviewed annually, and regulations made to adjust the level of the charges as necessary;

12.2 the purposes for which any money received from the charges should be applied may include:

12.2.1 promotion of the long-term viability of New Zealand racing and sports;

12.2.2 covering the costs of administering the enforcement and collection of the charges;

12.2.3 funding measures to support the industry to prevent and minimise harm from gambling; and
BUDGET SENSITIVE

12.2.4 maintaining public confidence in the integrity of racing and sports betting;

Betting on new Sports

13. agree to permit the NZRB to offer betting products on sports not represented by a qualifying national sporting organisation (NSO), providing that it enters into a betting agreement with Sport NZ;

Move the distribution formula in section 57 from primary legislation to regulations

14. agree to remove the current formula for calculating the application by the NZRB of revenue from sports betting from section 57 of the Racing Act;
15. agree to creating a power for the responsible Minister to specify in regulations a new formula for calculating the application by the NZRB of revenue from sports betting;

Repeal and replace the betting levy

16. agree in principle, subject to approval of the totalisator duty (betting levy) component of the racing bid through the Budget 2019 process, to:
16.1 repeal the betting levy currently paid by the NZRB to the Crown under section 4 of the Gaming Duties Act 1971; and
16.2 specify in regulations a new distribution formula for this component of the NZRB’s annual surplus which will:
16.2.1 set aside a proportion to support the reduction of gambling harm; and
16.2.2 include Sport New Zealand along with the three racing codes

Move the distribution formula in section 16 from primary legislation to regulations

17. agree to remove the current formula used for distributing funds to the three racing codes from section 16 of the Racing Act;
18. agree to creating a power for the responsible Minister to specify in regulations a new formula for distributing funds to the three racing codes;

Other recommendations

19. note that, subject to the approval of the proposals in “Paper 2 – Policy decisions on transitional governance to drive change” to reconstitute the NZRB as the Racing Industry Transitional Agency (RITA), certain references in this paper to the NZRB should be read as references to RITA;
20. invite the Minister for Racing to issue drafting instructions to the Parliamentary Counsel Office that give effect to the above policy proposals;
21. agree that the Bill should make any consequential amendments necessary to other legislation, including the Gambling Act 2003;
22. agree that the Minister for Racing be authorised to make further decisions relating to the technical design of the draft legislation; and
23. note that the Minister for Racing intends to proactively release this Cabinet paper, subject to any redactions that may be warranted under the Official Information Act 1982, within 30 business days of decisions being taken.
Authorised for lodgement

Rt Hon Winston Peters
Minister for Racing