## Regulatory Impact Statement

## Offshore Racing and Sports Betting

### Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Department of Internal Affairs (DIA).

It provides an assessment of options to address the issues posed by:

* New Zealanders betting on racing and sports with offshore gambling operators, leading to the loss of revenue to New Zealand racing and sports; and
* offshore gambling operators taking bets on New Zealand racing and sports events without contributing to those industries in New Zealand.

This analysis follows the publication in October 2015 of a report and recommendations by the Offshore Racing and Sports Betting Working Group (the Working Group) which was established by the Minister for Racing.

#### Limitation on options under consideration

The Minister for Racing has asked DIA to assess the recommendations made by the Working Group so that they may be considered by Cabinet with a view to amending the Racing Act 2003 (with consequential amendments to other legislation as required) to implement any policy changes that Cabinet approves. The Minister does not wish to implement any measures that depart significantly from the options which were recommended by the Working Group. For that reason, several alternatives that may otherwise have been considered are noted in this Statement but were screened out at an early stage.

#### Limitation on available data

This RIS uses the estimates that the Working Group has presented about the scale of offshore betting in relation to New Zealand, including the potential returns from introducing information use and consumption charges. DIA notes that the Working Group’s estimates were made using the best available information. However, the methodology and findings of the various studies that were used vary significantly, meaning that the resulting estimates are subject to significant margins for error (a point that the Working Group acknowledged).

#### Assumptions about voluntary compliance by offshore gambling operators

Two of the options recommended by the Working Group involve requiring offshore gambling operators to pay charges in relation to bets they take on New Zealand events and from people in New Zealand. Given the extraterritorial nature of these issues, collection of these charges would rely on voluntary compliance from offshore operators. Based on the information it collected, the Working Group considered that high levels of voluntary compliance would be likely.

DIA believes there are reasons to be more cautious in this assumption. Lower levels of voluntary compliance would both reduce the amount of money collected by any charges and increase the cost of administering collection and enforcement.

This, combined with the margins for error around the projected returns from these charges (particularly the consumption charge), means that it is not possible to state with certainty how much money might be collected and available for ultimate distribution to the New Zealand racing and sports sectors.

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### Executive Summary

This Regulatory Impact Statement (RIS) sets out details of the assessment that has been undertaken by the Department of Internal Affairs (DIA) of a range of options designed to meet the following two objectives:

1. to promote the long-term viability of New Zealand racing; and
2. to help create a more level playing field for the New Zealand Racing Board in the face of competition from offshore gambling operators.

The options cover recommendations which were made by the Offshore Racing and Sports Betting Working Group (the Working Group), including:

* a status quo option with no new legislation but with action by the racing industry itself to promote its long-term viability;
* removing the statutory prohibition on the NZRB offering in-race betting;
* enabling the NZRB to offer bets on a wider range of sporting events than at present;
* requiring that offshore gambling operators pay a charge to use New Zealand racing and sporting information in their betting products; and
* requiring that offshore gambling operators pay a charge when they take bets from people in New Zealand.

These policy options do not represent a series of binary choices. Rather, the choice is between maintaining the status quo or adopting a combination of some or all of the other options.

DIA concludes that the options which would permit the NZRB to offer in-race betting and bets on a wider range of sporting events may be recommended on the basis that they would meet the stated objectives and do not pose significant risks in relation to other specific assessment criteria.

The proposed charges payable by offshore operators will require the creation of legislation with extraterritorial effect. The tools for enforcing this legislation outside of New Zealand will be limited so the successful collection of monies will rely primarily on voluntary compliance by offshore operators. This RIS discusses examples of equivalent legislative approaches in other countries, notably Australia, and concludes that there are reasons to believe that this approach can be successful in certain circumstances.

DIA recommends the implementation of legislation that would require offshore gambling operators pay a charge to use New Zealand racing information in their betting products. The RIS notes the risk of low compliance but suggests that the experience in Australia indicates that this is unlikely to be the case and can be further mitigated by ensuring that any charge is set at a level which is not excessive.

Conversely, the proposal that offshore gambling operators pay a charge when they take bets from people in New Zealand is not recommended. This option is considered to carry a higher risk of non-compliance than the information use charge. The projections for the possible revenue from this charge, while based on the best available information, are subject to large margins for error. This means that there is a chance that the returns could vary significantly from what has been predicted and could end up being lower than the cost of administering the charge.

The assessment also finds that the implementation of a consumption charge would mean that bets which people in New Zealand make with offshore operators would need to be treated in fundamentally different ways by different parts of the law.

This could arguably result in an awkward tension between the Racing and Gambling Acts. In order to implement a consumption charge, offshore betting would be regulated by the Racing Act. However, in order to avoid having to authorise offshore operators to provide gambling services in New Zealand (and maintain the NZRB’s position as the only authorised provider of racing and sports betting), or to classify the activity as illegal, offshore betting would continue to be unregulated by the Gambling Act.

### Legislative context

1. Betting on racing and sporting events in New Zealand is governed by the Gambling Act 2003 and Racing Act 2003.
2. The Gambling Act 2003 is designed to deliver the following statutory purposes:
3. control the growth of gambling;
4. prevent and minimise harm from gambling, including problem gambling;
5. authorise some gambling and prohibit the rest;
6. facilitate responsible gambling;
7. ensure the integrity and fairness of games;
8. limit opportunities for crime or dishonesty associated with gambling and the conduct of gambling;
9. ensure that money from gambling benefits the community; and
10. facilitate community involvement in decisions about the provision of gambling.
11. The Racing Act 2003 is designed to deliver the following statutory purposes:
12. to provide effective governance arrangements for the racing industry;
13. to facilitate betting on galloping, harness, and greyhound races, and other sporting events; and
14. to promote the long-term viability of New Zealand racing.

### Status quo and problem definition

#### Status quo

1. The New Zealand Racing Board (NZRB) was established under the Racing Act 2003. Under the provisions of that Act and the Gambling Act 2003, the NZRB is the sole authorised provider of racing and sports betting in New Zealand, through its TAB brand. The vast majority of its profits (once prizes and taxes are paid) are distributed to New Zealand’s three racing codes (thoroughbred, harness and greyhound).
2. Table 1 shows key financial information from the NZRB’s annual reports, including betting and gaming turnover, and profit before and after distributions are made to the three racing codes.

Table : Select NZRB financial information 2013/14 to 2015/16 ($m)

|  |  |  |
| --- | --- | --- |
| 2013/14 | 2014/15 | 2015/16 |
| Betting & gaming turnover | 2,088.5 | 2,389.7 | 2,673.4 |
| Net betting revenue  (once prizes & taxes are paid) | 255.5 | 267.1 | 281.0 |
| Net gaming machine revenue (once prizes & taxes are paid) | 15.0 | 18.4 | 23.2 |
| Other income (inc. NZ racing shown overseas) | 42 | 50.8 | 47.7 |
| Commission payments to National Sporting Organisations | 5.0 | 6.1 | 8.0 |
| Net profit after expenses (not shown in full) but before distributions | 137.0 | 144.0 | 146.7 |
| Distributions from gaming revenue (includes funding for Judicial Control Authority, Racing Laboratory and community organisations) | 2.9 | 6.4 | 8.6 |
| Distribution to racing codes | 134.1 | 134.2 | 135.3 |
| Net profit (or loss) after distributions | (1.4 loss) | 3.1 | 2.1 |

1. There are 119 racing clubs and 64 racetracks in New Zealand. The racing industry relies heavily on the NZRB distribution of profits to sustain it at its current size. For example, in 2015/16 this money represented 85.4 per cent of Harness Racing New Zealand’s total revenue, 92.1 per cent for New Zealand Thoroughbred Racing, and 97.7 per cent for Greyhound Racing New Zealand. These betting profits help to maintain racing clubs, tracks and amenities and also fund stake monies.
2. In 2015/16, the NZRB distributed $135.3 million among the three racing codes. The amount of money which is distributed is determined by provisions of the Racing Act 2003. These specify that the NZRB must, once prizes, taxes, costs and other expenses (including commission to sports organisations) are deducted, pay the racing codes any surplus from the amount it receives from betting. The NZRB is also permitted to retain reserves of money from betting profits if it chooses to do so.
3. As mentioned above, a proportion of the turnover and revenue from sports betting is also paid to National Sporting Organisations (NSOs – the controlling body for their respective sports) through a commission that the NZRB pays to offer betting on sporting events. These payments are made in accordance with the following formula which is specified in the Racing Act 2003:

* at least 5 per cent of totalisator sports betting turnover; and
* at least 1 per cent of fixed-odds sports betting turnover and 5 per cent of gross profit from fixed odds sports betting.

1. Under these arrangements, the NZRB paid $8 million to NSOs in 2015/16. The NZRB and Sport New Zealand are considering options for revising this formula in order to increase the amount that is guaranteed to NSOs.
2. The NZRB may only offer bets on sports which have an NSO in New Zealand which has agreed to permit betting on its sport - both domestically in New Zealand and on matches and competitions for the same sport in other countries. There are currently 71 NSOs that meet Sport New Zealand’s investment eligibility criteria.[[1]](#footnote-2) The NZRB has betting agreements with 34 of these organisations.
3. Gambling operators based outside New Zealand (“offshore operators”) are not permitted to advertise in New Zealand but people in New Zealand are not prevented from betting with offshore operators. These offshore operators are not subject to the same legislative requirements as the NZRB. They can, therefore, offer a greater variety of betting products than the NZRB is permitted to offer.
4. Since October 2016, offshore operators have been subject to the requirement to register for and pay GST on qualifying supplies to New Zealand. Each offshore operator will be also be subject to taxes in its domestic jurisdiction. However, they are not required to make any payments to the New Zealand racing and sports industries, nor are they required to pay New Zealand’s betting duty or problem gambling levy.
5. This lack of any requirement to pay the full range of duties, levies and distributions that must be paid by the NZRB gives offshore operators a competitive advantage over the NZRB.
6. It is clear that, for many events, offshore operators are able to offer better odds than the NZRB to bettors. This competitive advantage may be tempered to some extent by the ban on offshore operators advertising in New Zealand, but this restriction is considered to have less impact now than when it was introduced in 2003. This is due to the high visibility of offshore gambling operators on the internet (e.g. through search engine result rankings) and their sponsorship branding at events that take place outside of New Zealand but which are broadcast in this country.
7. In common with most other parts of the retail and services sector, in recent years bookmaking has seen an increase in customers using online channels compared with physical premises and telephone services.
8. Together with this general market trend, there is evidence to suggest that increasing numbers of New Zealanders are betting with online gambling operators that are based in other countries. This means that significant sums of money are going to offshore operators as profit rather than being returned to New Zealand racing and sports. Gambling with offshore operators also means that New Zealand regulatory frameworks for gambling harm and sporting integrity might be bypassed.

#### The Offshore Racing and Sports Betting Working Group

1. The National Party’s 2014 pre-election manifesto made a commitment to “work closely with the [racing] industry to seek a workable solution to betting on offshore websites.”
2. As part of this commitment, the Minister for Racing commissioned an Offshore Racing and Sports Betting Working Group (“the Working Group”), comprising industry and departmental representatives, to consider the issues posed by offshore gambling as it relates to New Zealand.
3. The Working Group’s terms of reference stated that the group’s purpose was to consider and recommend practical options for addressing the issues of:

* New Zealanders betting on racing and sports with offshore operators; and
* offshore operators taking bets on New Zealand racing and sports events without contributing to those industries in New Zealand.

1. The Working Group published its report in October 2015. The report is available online at the following address: <https://www.beehive.govt.nz/sites/all/files/Working%20Group%20-%20Final%20Report%20October%202015.pdf>
2. The Working Group’s review of the available evidence suggested that:

* Australian corporate gambling operators (Australia accounts for the vast majority of New Zealand’s “offshore market”) turn over approximately $300 million on bets placed on New Zealand racing and $60 million on sports events taking place in New Zealand.
* 40,000 New Zealanders placed bets offshore in 2015, up from 20,000-26,000 in the period 2010-2012.
* Around $58 million of gross betting profit (after prizes are paid but before tax is deducted) per year goes offshore from New Zealanders making bets with offshore gambling operators. This represents potential lost income of approximately $40 million to the three racing codes and $5 million to sports organisations.

1. The following were identified as reasons why NZ consumers may prefer to bet with offshore providers than with the TAB:

* offshore operators offer a wider range of betting products, often integrating betting services (racing, sports and novelty events) with other online gambling services (virtual gaming machines, lotteries and online table games) which the TAB may not offer;
* offshore gambling websites may be more user friendly with attractive customer services and incentives, including free bets and credit betting facilities; and
* offshore operators often offer better odds (helped by lower overheads than the NZRB, including no requirement to pay anything to New Zealand racing and sports) and therefore better returns to players.

1. The effects of New Zealand consumers betting with offshore operators are:

* loss of funding to the racing industry (offshore operators do not contribute to the costs of the New Zealand racing product);
* loss of funding to the sports sector (offshore operators do not contribute to the costs of New Zealand sports);
* loss of revenue to the New Zealand government (in betting duty, the problem gambling levy and, at the time the report was written, also GST);
* potential for increased gambling harm (offshore gambling operators offer varying degrees of harm prevention measures); and
* increased risk to racing and sports event integrity (it is difficult to follow up bets placed with offshore operators to investigate suspicious betting patterns).

1. The Working Group made a number of recommendations aimed at reducing the competitive disadvantage that the NZRB faces in comparison to offshore operators. These include:

* Continued focus and investment by the NZRB to improve its technology base, its products and services; and to improve the efficiency of the organisation and of New Zealand racing as a whole.
* The removal of legislative and structural limitations on the NZRB, specifically:
  + Removing the prohibition on in-race betting (section 52(3) of the Racing Act 2003). This would make in-race betting consistent with in-play betting on sports events.
  + Removing the current restriction that limits sports betting to codes where there is an NSO. In cases where there is no NSO, distributions could be made to Sport New Zealand.
  + Providing the ability to future-proof the operations of the New Zealand TAB by permitting the NZRB to bring new products to market. Appropriate regulatory controls to manage risk, similar to those applying to the Lotteries Commission, would accompany this facility. Betting on so-called “novelty events” (i.e. other than on racing or sports), would be an example of a new product range.
* The introduction of legislation with explicit extra-territorial intent to require all offshore operators to:
  + pay to use New Zealand racing and sports information in their betting products (an “information use charge”); and
  + pay when they take bets from New Zealand residents, regardless of whether the bet is on a New Zealand event or an international one (a “consumption charge”).

#### Underlying issues in the racing industry

1. The latest available figures, from 2010, suggest that nearly 53,000 people participate directly in New Zealand racing and that it supports nearly 17,000 full time equivalent positions. This generates around $1.6 billion in economic value added, or 0.9 per cent of Gross Domestic Product (GDP). These figures represent a decline in share of GDP from 1.3 per cent in 2004.[[2]](#footnote-3)
2. As an industry, racing is suffering from long-term under-investment. Income from bets on domestic racing is declining as a share of total income. This is compounded by the fact that betting profit margins have been reducing in recent years – the net average was 14.4 per cent in 2011/12, falling to 12.4 per cent in 2015/16. The main reason for this has been a shift in customer preferences, away from comparatively high-margin totalisator (tote) betting on races and towards lower margin fixed odds betting on sports events.
3. The reduction in racing’s core income has been offset by revenue from betting on overseas racing, sports betting, gaming machine operations (e.g. pokies), tax changes (in 2003, betting duty was reduced from 20 per cent of gross betting revenue to 4 per cent in order to better align with the calculation of casino gambling duty), drawing on the NZRB’s reserves and, in recent years, government funding for infrastructure or to support stakes.
4. This increasing subsidisation of the domestic racing product means that racing clubs have been insulated to an extent from the market signals about the popularity of their product to non-gambling or infrequent gambling customers – i.e. those who in the past might have visited race meetings and/ or placed only very occasional bets. There is arguably a reduced incentive for clubs to maximise revenue, minimise costs and make their product more attractive to consumers and punters if their revenue stream does not necessarily depend on these actions.
5. The statutory framework positions the NZRB as both the leader of the racing industry, charged with ensuring its long-term viability, and as a commercial betting entity. It is required by the Racing Act 2003 to distribute “surplus” profits among the three racing codes but has signalled to the codes that in recent years this has taken precedence over strategic long-term initiatives. In short, too much emphasis has been placed on using income to sustain the racing industry in its current form rather than investing to deliver benefits over the long-term.
6. The NZRB is currently attempting to implement a strategy to address the issues outlined in this section.

#### Problem Definition

**New Zealand residents betting on racing and sports with offshore operators bypass the New Zealand regulatory framework**

1. The current regulatory framework envisages New Zealand residents betting on racing and sports with the TAB so that:

* the racing industry receives funding from net betting profits;
* NSOs receive a proportion of sports betting profits;
* the government receives GST, gaming duty and the problem gambling levy from gross betting profits;
* gambling harm to New Zealand residents is minimised; and
* domestic racing and sports integrity are not compromised.

1. New Zealanders are not, however, prohibited from betting online with offshore providers (although it is illegal for these providers to advertise in New Zealand) and there are no technical restrictions (e.g. website and payment blocks) in force. Although some other countries have taken this approach, there are ways that technical blocks may be circumvented, such as the use of Virtual Private Networks and non-bank payment services including PayPal. Addressing these challenges is considered at this stage to be disproportionately complex and potentially expensive.
2. To the extent that New Zealand residents bet with offshore providers in preference to the TAB, this has implications for taxation, funding to racing and sports, gambling harm and sports integrity.

**Offshore providers accepting bets on New Zealand racing and sports events do not contribute to product costs**

1. Offshore operators accepting bets on New Zealand racing and sports events do not contribute to the cost of the events that they use as the basis for the betting products that they offer. For example, the New Zealand racing industry bears the costs of breeding and training animals, developing jockeys, publishing information about form, hosting and televising events, all of which form the basis of betting products.
2. The NZRB has arrangements with Australian TABs (the companies that operate totalisator betting in Australia and which have traditionally operated retail premises) for racing bets but not sports. Under these arrangements, reciprocal payments are made in relation to New Zealanders placing bets on Australian races and vice versa. These payments cover fees for accepting wagering on the other party’s racing product, allow each party to pool bets in order to increase liquidity and provide each party with access to the other party’s racing coverage, along with a licence to broadcast that coverage.
3. However, these arrangements do not extend to the other, online-only, Australian-based corporate bookmakers, nor are there any equivalent arrangements with gambling operators based in countries other than Australia.

1. Although the NZRB has reciprocal arrangements with Australian TABs for racing product payments, it does not for other sports. The NZRB makes commission payments to New Zealand NSOs but it does not make any equivalent payments to sporting organisations in other countries. Approximately 85 per cent of sports bets taken by the NZRB are on overseas events for which it does not pay charges (for example, NBA basketball in the United States and National Rugby League in Australia). When the NZRB takes bets on overseas sports events, it makes payments to the New Zealand NSO for that particular sport. For example, the NZRB will pay New Zealand Football for all bets taken on international football matches.

**Size of the problem - online gambling by New Zealanders on offshore websites**

1. The Working Group found that estimating the scale of online gambling by New Zealanders on offshore websites is difficult as there is no single authoritative data set. The Working Group commissioned Infometrics to review the estimates from a number of gambling expenditure studies.
2. By assessing the methodology, sample size and information provided in the various studies, Infometrics concluded that:

* The number of New Zealand residents participating in online offshore betting in 2010/12 was probably about 22,900, and almost certainly between 20,000 and 26,000.
* Assuming a 15 per cent per annum growth in participation (weighting the very wide range of estimates in the available studies), participation in 2015 would have been around 40,000.
* Total spending (net loss) in 2010-12 is estimated to have been about $32 million, rising to $58 million in 2015. The error margin on these figures is likely to be around ±20 per cent.
* Over the period 2011 to 2015 the implied point to point annual growth rate in spending was about 16.2 per cent per annum.
* A reasonable forecast for future growth in spending over the next few years is about 11.5 per cent per annum.
* It seems likely that growth in spending will be slower than growth in participation because newer participants in offshore online betting are less likely than early adopters to be high spenders.

1. A common feature of most of the gambling surveys reviewed by Infometrics is that participation in online offshore gambling is increasing (possibly as a result of improved access through mobile and tablet apps) and, as a result, expenditure is also likely to be on the increase.
2. There are several exceptions, however, in two research projects commissioned by the Ministry of Health and client presentations data from Ministry funded services. The first piece of research, undertaken by the Gambling and Addictions Research Centre at Auckland University of Technology (AUT), used data from the National Gambling Survey and suggests that the participation in offshore online gambling fell from 26,170 in 2012 to 19,865 in 2014. Expenditure rates are similarly estimated to have fallen, from $19.4 million in 2012 to $6.9 million in 2014.
3. Infometrics was asked to comment on its assessment of the AUT study. It suggested that the reduction in net spending may result from the more recent surveys in 2013 and 2014 failing to capture high spending individuals, noting that the large variability in the size of amounts wagered make it difficult to pick up high spenders with random sampling. Infometrics also noted that this phenomenon also means that in surveys where high spenders are picked up, their assumed weight within the total population is likely to be over-estimated.
4. Another, more recent, Ministry of Health funded study – the Health and Lifestyle Survey for 2016 – shows preliminary results which are consistent with the AUT study, specifically, that there has been no increase in participation since 2014.
5. In commenting on this research, the Ministry of Health has stated that there has been no significant increase in New Zealanders seeking help for problems associated with any type of offshore gambling from Ministry-funded gambling harm services over the period from 2012 to September 2016.
6. The Ministry of Health funded AUT study, along with the 2016 Health and Lifestyle Survey and the client service presentations are an important component of the overall data that is available about the extent to which New Zealanders are betting with offshore operators and the amounts that they are spending. The fact that these findings show declining trends rather than increases is a reminder that the overall estimates used by the Working Group are subject to significant margins for error.
7. Infometrics concluded that, in its opinion, even allowing for the strengths and weaknesses of the various studies that were available to it, offshore online betting is increasing faster than general household spending.
8. The Department of Internal Affairs (DIA) has reviewed Infometrics’ report and concluded that a range of $30 million to $70 million appears to provide a reasonable estimate for offshore online gambling expenditure by New Zealand residents in 2015 (or equivalent to 10 to 22 per cent of total expenditure by New Zealanders with the TAB).

**Size of the problem - value of bets taken by offshore operators on New Zealand racing and sports**

1. The Working Group similarly found it difficult to estimate the value of bets taken by offshore operators on racing and sports events that take place in New Zealand (whether by New Zealand residents or residents of other countries). This is primarily because information about this activity is held commercially by the offshore operators themselves.
2. Currently, 99 per cent of the wagering products that the NZRB exports go to Australia. Around $600 million is known to be taken by Australian TABs on New Zealand racing. The Australian TABs have between 50 and 60 per cent of the Australian betting market, the rest is made up by online operators licensed in Australia.
3. Extrapolating from this information, and using figures at the lower end of the range of potential estimates, the Working Group suggested that $300 million is turned over by the other Australian-based companies (those which operate only online) on New Zealand racing and around $60 million on sports events taking place in New Zealand. This assumes that customers of the Australian online bookmakers are placing around the same proportion of their bets on New Zealand races through these bookmakers as they do through the Australian TABs.

**Wider review of online gambling**

1. The betting products offered by offshore operators are not limited to racing and sports betting. For example, many offshore operators offer online casino-type games. Similarly, offshore operators often offer the opportunity to bet on non-sporting events such as the outcome of high-profile awards, the result of political elections and celebrity announcements (e.g. baby names etc.). These non-sporting bets are sometimes collectively called “novelty bets.”
2. The Working Group recommended that the NZRB be permitted to offer novelty bets. However, DIA considers that this would amount to the introduction of a significant new type of mainstream betting into New Zealand. For this reason, it is being treated separately from the work to address matters relating to offshore betting. It will be considered as part of a separate, wider review that has been initiated by the Minister of Internal Affairs into online gambling as a whole.

### Objectives

#### Objective A: To promote the long-term viability of New Zealand racing

1. Despite facing some notable problems, the racing industry is, as mentioned in paragraph 25, still a significant employer and contributor to New Zealand’s economy. It is important for many businesses in rural areas; and race clubs and tracks act as a focal point for many communities.
2. One of the purposes of the Racing Act 2003 is to promote the long-term viability of New Zealand racing. Using this as a basis for analysis, this RIS considers options that seek to support the racing industry’s ability to operate on a sustainable financial basis. Particular recognition is given to the fact that racing is heavily reliant on income from betting in New Zealand.

#### Objective B: To help create a more level playing field for the New Zealand Racing Board in the face of competition from offshore gambling operators

1. Despite the prohibition on them advertising in New Zealand, offshore operators may take bets from New Zealand residents and are often subject to fewer restrictions than the NZRB, which must comply with all of New Zealand’s comparatively restrictive gambling laws. In this respect, it can be argued that the playing field on which the NZRB and offshore operators compete is not level, with the NZRB being placed at a competitive disadvantage in certain areas.
2. This RIS considers options for amending New Zealand legislation in ways that could reduce some of these competitive disadvantages. These will include the options recommended by the Working Group.
3. Options for amending legislation may include the lifting or relaxation of current restrictions on some gambling activities so that the NZRB may grow its revenue. If successful, steps of this kind could generate more income for the racing and sports industries. However, any decisions to permit a greater variety of gambling products in New Zealand should be made with the knowledge that this may have the potential to increase gambling harm to some extent.

#### Criteria against which the options will be assessed

1. The criteria against which the options are to be assessed are:

* **Fairness:** does the option provide a fairer basis for competition between the NZRB and offshore operators?
* **Minimisation of harm:** will the option result in an overall increase in gambling harm and/ or risk to the integrity of racing or sports events?
* **Ease of implementation:** would the option involve any significant administrative complexities that could affect its successful implementation and operation?
* **Cost/Benefit:** are the likely costs (if any) of implementing this option likely to be outweighed by the expected benefits to the racing and sports industries in New Zealand?

### Analysis of policy options

1. The Minister for Racing has asked DIA to assess the recommendations made by the Working Group so that they may be considered by Cabinet with a view to amending the Racing Act 2003 (with consequential amendments to other legislation as required) to implement any policy changes that Cabinet approves.
2. This RIS therefore considers the following legislative and non-legislative options:

* a status quo option with no new legislation but with action by the racing industry itself to promote its long-term viability;
* removing the statutory prohibition on the NZRB offering in-race betting;
* enabling the NZRB to offer bets on a wider range of sporting events than at present;
* requiring that offshore gambling operators pay a charge to use New Zealand racing and sporting information in their betting products; and
* requiring that offshore gambling operators pay a charge when they take bets from people in New Zealand.

1. These policy options do not represent a series of binary choices. Rather, the choice is between maintaining the status quo or adopting a combination of some or all of the other options.
2. The Minister for Racing does not wish to implement any measures that depart significantly from the options which were recommended by the Working Group. The following policy alternatives were considered but “screened out” by the Working Group and are therefore not under consideration in this RIS:

* removing the NZRB’s statutory monopoly on racing and sports betting by licensing offshore gambling operators to operate and advertise in New Zealand;
* blocking offshore gambling websites or use of credit cards on such websites in New Zealand;
* taking copyright action in the courts to address the use of New Zealand racing and sports information on an intellectual property basis;
* pursuing bilateral and multilateral treaties and trade agreements; and
* seeking to negotiate purely commercial agreements with offshore operators.

#### Option 1: Status quo - NZRB strategic initiatives

1. The challenges which the racing industry in New Zealand faces have been set out in detail earlier in this RIS. The industry is reliant on income from betting that is by law distributed by the NZRB. The proportion of that money which is generated by bets placed on races in New Zealand is declining as bettors have increasingly preferred to gamble on races from other countries (particularly Australia) and on other sports.
2. The New Zealand racing industry is, therefore, being subsidised increasingly by revenue generated ultimately from “external” sources. This has meant that it has not needed to respond to market signals about the relative attractiveness of its product and the efficiency of its operations in the same way that it would have if its income depended entirely on revenue generated by the industry itself.
3. Although the NZRB has been able to maintain distributions to the industry at a fairly consistent level in recent years, betting margins (the profit it is able to make on bets) are in decline due to the prevailing changes in customer choices, which also include greater preference of lower-margin fixed-odds betting as opposed to more traditional tote bets. The average net betting margin was 14.4 per cent in 2011/12, falling to 12.4 per cent in 2015/16.
4. Because the racing industry relies so heavily on the betting revenue distributed by the NZRB, the NZRB has, wherever possible, sought to maximise the amount of money that it distributes each year. However, this has had the knock-on effect of limiting the amount of money retained for investment in the NZRB’s business. This lack of investment has, in turn, left the NZRB less able to respond as effectively as offshore operators to developments in the betting marketplace such as customers’ move to digital channels and growing preference for non-tote products.
5. In recognition of these issues, the NZRB has begun to implement a set of strategic initiatives that are intended to improve the competitiveness both of the NZRB as an organisation and of the wider racing industry. These include:

* Implementing a new automated fixed-odds betting platform. Betting on high-margin tote products is declining as customers increasingly prefer lower margin fixed odds products. The NZRB currently offers around 4,000 fixed odds options per day, with many tasks performed manually. Offshore competitors offer around 100,000, based on largely automated systems. New ICT will help the NZRB to offer a more competitive range of fixed-odds products.
* Optimising the racing calendar to maximise the economic contribution of racing events. Efforts are underway to achieve greater collaboration between the NZRB, codes and clubs in order to share financial and operational information so that the racing calendar can be better planned and coordinated.
* Improving the NZRB’s sales and marketing operations, addressing both new customers and existing ones. The NZRB’s active account customer base has grown to nearly 181,000 unique account bettors, a 10 per cent increase on 2014/15 and up 23 per cent over the last five years.

1. The NZRB has also stated that it views securing income from charges paid by offshore operators, as recommended by the Working Group, as an important initiative for increasing the amount of money that is available to the racing industry in New Zealand. For the purposes of this regulatory impact assessment, however, offshore charges are considered as separate options.

***Fairness:*** *does the option provide a fairer basis for competition between the NZRB and offshore operators?*

1. Even if these initiatives deliver some success, the NZRB will still be restricted in the betting product range it can offer in comparison to offshore operators. In addition, offshore operators will still enjoy the commercial benefit of not having to make a financial contribution to New Zealand racing and sports, which may contribute to them being able to offer better odds than the NZRB for some events.

***Minimisation of harm:*** *will the option result in an overall increase in gambling harm and/ or risk to the integrity of racing or sports events?*

1. Implementation of the NZRB’s strategic initiatives would not alter the kinds of betting products that the NZRB is permitted to offer or the events on which it is permitted to offer them. The risk of increasing gambling harm or damage to the integrity of racing or sports events is not, therefore, expected to change significantly from current levels.
2. Any new customers of the NZRB (e.g. as a result of the initiatives mentioned above) would be covered by the organisation’s existing procedures to identify and reduce gambling harm. New Zealanders betting with offshore providers will continue to be exposed to gambling environments that may not comply with New Zealand’s standards for protecting people from the risk of gambling harm. People betting offshore may seek help from New Zealand-based gambling help providers, yet offshore operators do not contribute to the cost of these services, unlike the NZRB which pays the problem gambling levy.

***Ease of implementation:****would the option involve any significant administrative complexities that could affect its successful implementation and operation?*

1. Implementation of these initiatives poses a number of challenges. The NZRB has estimated that an investment of approximately $60-75 million will be required over three years to deliver its strategic initiatives. Notably, significant capital investment will be required for new ICT. The NZRB has stated that, while it would be possible to fully fund the initiatives through profit retention, this would require an unsustainable reduction in code distributions. It is therefore considering options for raising money from other sources such as borrowing and commercial partnerships.
2. Some of the initiatives will also rely on the cooperation of other organisations within the racing industry. There may be circumstances where difficult choices need to be made. For example, optimising the racing calendar could result in fewer races, more focus on certain events and reductions in direct competition between meetings. However, this may require some stakeholders such as racing clubs agreeing to changes that may be in the interests of the industry as a whole, but which may not be universally popular in their local area.

***Cost/Benefit:*** *are the likely costs (if any) of implementing this option likely to be outweighed by the expected benefits to the racing and sports industries in New Zealand?*

1. Taking steps to invest in ICT, improve operating efficiencies (both within the NZRB and across the racing industry) and to grow its customer base may result in increased betting profits, which would, in turn, lead to increased commission payments to NSOs and distributions to racing.
2. As noted above, the NZRB has estimated that an approximately $60-75 million investment will be required over three years to deliver its strategic initiatives. The NZRB further estimates that, if successful, these initiatives (excluding revenue from charges paid by offshore operators) could return annualised profits of approximately $35-39 million.

***Policy objectives:*** *to what extent is this option likely to meet either or both of the policy objectives: a) to promote the long-term viability of New Zealand racing; and b) to help create a more level playing field for the NZRB in the face of competition from offshore operators?*

1. Increasing the amount of profit generated by betting activity (by improving products and growing the active customer base) and reducing industry expenses (through more collaboration and seeking greater operating efficiencies) will both help to promote the long-term viability of New Zealand racing, therefore meeting policy objective A.
2. However, while these initiatives may help the NZRB to become a more competitive as a gambling operator, they do not address any of the legislative restrictions which it faces in relation to the products that it may offer, nor do they address the benefit that offshore operators enjoy by not having to make a financial contribution to New Zealand racing and sports. This option does not therefore meet policy objective B.

#### Option 2: Permit in-race betting

1. Section 52(3) of the Racing Act 2003 prohibits the NZRB from offering bets on a race once that race has begun. This provision carries over a prohibition that existed in previous legislation. Permitting in-race betting would bring racing bets into line with in-play betting on sports events, which the NZRB is already permitted to offer.
2. Unlike in-play sports betting, the proposal is not that bettors should be able to bet on events within a race (e.g. changes of lead, horses or dogs retiring prematurely etc.) but only on the final outcome of the race. For example, it may become apparent during the race that a previously unfancied horse or dog stands a good chance of winning; an in-race bet could be made on that horse or dog to win but at shorter odds than would have been on offer prior to the race.

***Fairness:*** *does the option provide a fairer basis for competition between the NZRB and offshore operators?*

1. In-race betting is permitted in many jurisdictions around the world and is available to New Zealanders via offshore operators.
2. Offshore operators generally provide live betting on both racing and sports events, although it should be noted that Australia restricts live online sports betting (but not in‑race betting), limiting it to bets made in retail premises and by voice over the telephone.
3. Removing the prohibition on in-race betting would therefore enable the NZRB to compete on a fairer basis with offshore operators because it would be able to offer a more similar product range.

***Minimisation of harm:*** *will the option result in an overall increase in gambling harm and/ or risk to the integrity of racing or sports events?*

1. Allowing in-race betting would increase the gambling opportunities that are available through the NZRB via the TAB. This carries some risk of increasing the overall amount of gambling and, as a result, also rates of gambling harm.
2. These products are already available to New Zealanders through offshore operators, which may operate under a wide variety of different standards depending on their domestic jurisdiction. The NZRB has in place harm prevention and minimisation measures that comply with the requirements of the Gambling Act 2003 and Racing Act 2003 and their associated regulations.
3. As indicated above, in-race betting would not permit new types of gambling, e.g. spot betting equivalents such as betting on events within a race. It would simply allow bets on the final outcome to continue to be taken even once the race has started. This will help to mitigate the risk of increased gambling harm because the opportunity to place a high number of bets in a short space of time is limited. It also addresses the potential risks to racing integrity because it does not create an incentive for racing participants to artificially manufacture events such as in-race lead changes.
4. The risks of increased gambling harm that may be associated with permitting the NZRB to offer in-race betting are therefore considered to be manageable.

***Ease of implementation:****would the option involve any significant administrative complexities that could affect its successful implementation and operation?*

1. Permitting in-race betting would be comparatively straightforward to achieve in legislative and practical terms.
2. Legislatively, it may simply require the repeal of section 52(3) of the Racing Act 2003. Practically, the NZRB would manage the operation of in-race bets and apply its gambling harm prevention and minimisation policies as required. Integrity issues are currently covered by each racing code’s respective rules of racing. Breaches of these rules would be investigated and prosecuted by the independent Racing Integrity Unit.

***Cost/Benefit:*** *are the likely costs (if any) of implementing this option likely to be outweighed by the expected benefits to the racing and sports industries in New Zealand?*

1. Operating costs are not expected to be significant since this option would simply allow flexibility in the operation of current racing betting products.
2. The introduction of this flexibility has the potential to provide additional revenue for the NZRB, as long as bettors make use of these new types of bets. There is no information available about market demand in this respect.
3. However, permitting in-race betting to be offered in New Zealand would remove one of the areas where the NZRB is not able to offer the same products as offshore operators. If bettors seeking those types of products make their bets in New Zealand instead of offshore, more money will be available to be distributed to New Zealand racing.
4. As this proposal covers racing only, it is not expected that it would provide additional revenue for sports.

***Policy objectives:*** *to what extent is this option likely to meet either or both of the policy objectives: a) to promote the long-term viability of New Zealand racing; and b) to help create a more level playing field for the NZRB in the face of competition from offshore operators?*

1. The financial position of New Zealand racing stands to be assisted by any potential new revenue stream. Permitting in-race betting, however, is unlikely in isolation to have a significant impact on the long-term viability of the industry. Policy objective A will therefore be partially met by this option.
2. As noted above, permitting in-race betting to be offered in New Zealand would remove one of the areas where the NZRB is not able to offer the same products as offshore operators. In this respect, it can be considered to meet policy objective B.

#### Option 3: Enable betting on broader range of sports

1. Betting is permitted on domestic and overseas sporting events, but only if the NZRB has a written agreement with the appropriate New Zealand NSO. For example, the NZRB requires an agreement with New Zealand Football to conduct betting on English Premier League Football.
2. This limitation means that there are some sports for which the NZRB cannot offer betting products. These tend to be sports which may be popular internationally but for which participation in New Zealand is low or which have limited formal organisation. Some winter Olympic sports fall into this category and, until recently, so did Mixed Martial Arts.
3. It is proposed that, under this option, the NZRB would continue to operate bilateral agreements with those NSOs that wish to have them and, where NSOs exist but choose not to enter into a betting agreement, the NZRB would be prohibited from offering bets on those sports (either on New Zealand events or events in other countries). However, where there is no NSO, the NZRB would be permitted to enter into a sports betting agreement with Sport New Zealand. Sport New Zealand would determine how to distribute any income received through this arrangement.

***Fairness:*** *does the option provide a fairer basis for competition between the NZRB and offshore operators?*

1. Offshore operators are not required to have betting agreements with New Zealand NSOs. The closest comparable regime is in Australia, where gambling operators enter into wagering and integrity agreements with sporting governing bodies, which include payments made to the sports in question. This practice is based largely on convention rather than statute, although Victoria and New South Wales have made it a legislative requirement in recent years. Where there is a recognised governing body but no wagering and integrity agreement, gambling operators are prohibited from offering bets on that sport. However, these Australian laws do not prevent gambling operators from offering bets on sports where there is no relevant governing body.
2. Removing the requirement for a sport to be represented by an NSO before the NZRB may offer bets on it would enable the NZRB to compete on a fairer basis with offshore operators because it would be able to offer a more similar product range. It would enable the NZRB to react as swiftly as offshore operators to emerging international sports. This would help to avoid situations such as that which occurred during the past few years where offshore operators could offer bets on Mixed Martial Arts but the NZRB could not because there was no qualifying domestic NSO.

***Minimisation of harm:*** *will the option result in an overall increase in gambling harm and/ or risk to the integrity of racing or sports events?*

1. This proposal would give the NZRB greater flexibility to offer bets on a wider range of sports than at present and to offer bets on “emerging” sports that may not have national organisations. However, it is unlikely that the overall number of sports on which bets are offered will increase significantly because the majority of sports which are not represented by an NSO are likely to be of limited interest to bettors and, on that basis, the NZRB would not offer bets on them. The NZRB already chooses not to offer bets on many of the lower profile sports that already have NSO representation.
2. For these reasons, it is expected that, in practice, adopting this option would only lead to a small increase in the number of additional sports on which it will be possible for the NZRB to offer bets or for which it will choose to offer bets. The risk of increasing gambling harm is therefore considered to be minimal.
3. The requirement for the NZRB to have agreements with NSOs before it offers bets on their sports dates from the introduction of sports betting in New Zealand in 1996 and was the result of integrity concerns voiced at that time by some sports. For example, boxing initially chose not to enter into a betting agreement. However, after a few years, the governing body decided those concerns could be managed and it entered into a formal betting agreement.
4. DIA considers that it will be possible to mitigate any risks to the integrity of non-NSO sports. The primary way of doing this would be to address the potential risks for each non-NSO sport in the betting agreement with Sport New Zealand. For example, if necessary, the agreement could restrict the NZRB to offering bets only on international events. In these cases, the risk created by the small (by international standards) New Zealand betting market would be minimal.

***Ease of implementation:****would the option involve any significant administrative complexities that could affect its successful implementation and operation?*

1. It is likely that permitting the NZRB to offer bets on sports which do not have a New Zealand NSO could be achieved with comparatively simple amendments to current legislation.
2. The majority of the administrative and compliance activity would fall to the NZRB. However, in the public sector, Sport New Zealand would need to administer any non-NSO betting agreements with the NZRB and distribute any additional revenue that bets on these sports may generate.

***Cost/Benefit:*** *are the likely costs (if any) of implementing this option likely to be outweighed by the expected benefits to the racing and sports industries in New Zealand?*

1. While the slightly increased role for Sport New Zealand will carry some administrative costs, there is potential for a wider range of sports than at present to benefit from betting revenue.
2. The NZRB is required by the Racing Act 2003 to return a commission to the relevant NSO at the following rates:

* at least 5 per cent of totalisator sports betting turnover; and
* at least 1 per cent of fixed-odds sports betting turnover and 5 per cent of gross profit from fixed odds sports betting.

1. Under these arrangements, the NZRB paid $8 million to NSOs in 2015/16. This was $1.9 million higher than the equivalent payment made in 2014/15 and double the amount paid in 2011/12.
2. Under this option, where there is interest in sports that have no qualifying New Zealand NSO, the NZRB will be able to take bets, which in turn will generate revenue that can be distributed by Sport New Zealand for the benefit of domestic sport in general.
3. If the payment arrangements detailed above continue to be followed, the NZRB would retain a proportion of the revenue from these sports bets for distribution to the racing codes. The current system reflects the fact that the NZRB’s overarching betting infrastructure was originally built on investment by the racing industry. However, this rationale would not apply in the case of revenue from sports bets taken by offshore operators.
4. However, the NZRB and Sport New Zealand have had discussions about amending the current formula in order to provide higher payments to sporting organisations. This would reflect the increasing proportion of sports bets within the NZRB’s betting business. It will ultimately be a decision for Cabinet about whether to amend the Racing Act 2003 to change the formula. As well as the form of any new formula itself, Cabinet may also choose whether it would be more appropriate to enable the rules for apportioning money to be set in regulations rather that prescribed in the Act itself. This would provide greater flexibility to amend the formula in the future if necessary.
5. Options for revising the sports betting formula are considered in a separate Regulatory Impact Statement which has been prepared by Sport New Zealand.

***Policy objectives:*** *To what extent is this option likely to meet either or both of the policy objectives: a) to promote the long-term viability of New Zealand racing; and b) to help create a more level playing field for the NZRB in the face of competition from offshore operators?*

1. Enabling the NZRB to offer bets on sports that are not represented by a New Zealand NSO provides the potential for it to broaden the range of sports bets it can provide to its customers. However, in practice, this move is unlikely to increase the overall number of sports on which bets are offered significantly because market demand is likely to be restricted to a minority of non-NSO sports (e.g. some winter Olympic sports). The financial position of New Zealand racing stands to be assisted by any potential new revenue stream. It is unlikely, however, that this measure would, in isolation, have a significant impact on the long-term viability of the industry. Policy objective A will therefore be partially met by this option.
2. As noted above, adopting option 3 would remove one of the areas where the NZRB is not able to offer the same products as offshore operators. In this respect, it can be considered to meet policy objective B.

#### Option 4: Require that offshore gambling operators pay a charge to use New Zealand racing and sports information in their betting products (an “Information Use Charge”)

1. It is a well-established principle in many countries around the world that gambling operators should make a financial contribution towards the racing industry given the degree of mutual interest between betting and racing. Examples of this include the Horserace Betting Levy in the United Kingdom, which will be extended to offshore operators from April 2017 (in respect of bets made by people in Great Britain), and the various “race fields Acts” across most of the Australian states and territories. The payments that the NZRB makes to New Zealand racing and sports organisations perform a similar function in this country but do not extend to offshore operators.
2. The Working Group proposed that an “information use charge” should be introduced in respect of bets that offshore operators take on New Zealand racing and sporting events. The charge would be payable regardless of whether the bettor was located in New Zealand or any other country. If an information use charge is adopted, it is likely that the legislation would make provisions to the effect that, in order to use racing or sports information in relation to specified wagering purposes, an offshore operator must enter into an agreement with a designated body in New Zealand. The enabling legislation might contain certain provisions to define the scope and nature of what such an agreement may cover (such as reporting and payment obligations), or provide for regulations to do that. It may, however, be possible for many of these details to be left to negotiation between the parties.
3. A regime of this kind will rely to a great extent on offshore operators voluntarily electing to enter into such agreements with the designated body. Voluntary compliance is discussed in more detail throughout the rest of this RIS.

***Fairness:*** *does the option provide a fairer basis for competition between the NZRB and offshore operators?*

1. The establishment of an information use charge would be in line with some of the underlying principles of the Gambling Act and Racing Acts – that a portion of the proceeds from gambling activity should benefit the community and, more specifically, that profit from racing and sports bets should be paid to the those industries in New Zealand. As noted earlier in this RIS, the racing industry is an important part of New Zealand’s rural economy but it relies on income from betting to sustain it at its current scale.
2. A similar regime to the proposed information use charge is already in place across Australia. Most of the states and territories have introduced legislation which requires gambling operators, whether they are based in their local jurisdiction, elsewhere in Australia or abroad, to pay fees to the respective racing authorities for each race on which they take bets. The charging structures vary from state to state but, in general, payments fall into the range of 1.5 per cent of betting turnover for standard races up to 3 per cent for premier races.
3. Around 50 per cent of all race bets in New Zealand are taken on Australian races. As discussed earlier in this RIS, the NZRB has agreements with Australian TABs that provide reciprocal access to race information in each country. Fees averaging 3 per cent of turnover apply in both directions.
4. The online-only gambling operators that are based in Australia do not pay equivalent charges to the NZRB, nor do gambling operators based in other jurisdictions. Introducing an information use charge for the use of New Zealand racing information would simply seek to apply a similar set of charges to these other organisations that use New Zealand products to make a commercial profit.
5. While the principle of applying information use charges for racing information is well established, it is less common in the case of other sporting events.
6. In Australia, for example, it is general practice for gambling operators to make payments to the governing bodies of the sports on which they offer bets. Victoria and New South Wales have made this practice a statutory requirement but have not mandated a specific rate at which the payments should be made – this is down to the parties to agree between themselves.
7. Conversely, in 2015 the United Kingdom Government consulted on proposals to update the UK’s Horserace Betting Levy and stated that it had no plans to extend the charging system to all sports, noting that this principle had never applied to all sports in the UK.
8. Although the NZRB makes commission payments to New Zealand NSOs when it takes bets on overseas sports events, it does not make any equivalent payments to sporting organisations in other countries. Approximately 85 per cent of sports bets taken by the NZRB are on overseas events (for example, NBA basketball in the United States and National Rugby League in Australia).
9. There is a risk, therefore, that seeking to charge for the use of New Zealand sporting information could be viewed by other countries as out of step with international precedents, which could attract criticism and possibly reciprocal action.
10. If a New Zealand sports information use charge were introduced, it may be simpler to apply it to New Zealand-only competitions (e.g. Mitre10 Cup, Super Smash etc.) rather than include multi-country competitions in which New Zealand teams participate (e.g. Super Rugby, A‑League etc.) because these multi-country competitions are not owned and operated solely by New Zealand-based entities. At present, multi-country competitions such as Super-Rugby and the National Rugby League are among the most popular with NZRB customers.
11. The risk of reciprocal action from other countries is considered to be low due to New Zealand's small betting market (approximately 0.4 per cent of global betting expenditure) but it is not possible to guarantee that equivalent measures will never be taken elsewhere. If reciprocal action does take place, its impact could be significant. This risk could potentially be addressed by initially implementing an information use charge for the use of New Zealand racing information and reserving the right to introduce a separate information use charge for sports information using secondary legislation at a later date.
12. This approach would enable any charging system for the use of New Zealand information to become established in line with the prevailing approach in Australia, which would probably be more likely to encourage voluntary compliance. Assuming the charges operate successfully for racing, probably over a period of several years, the system could then be extended to cover sporting events if that is still considered to be desirable. One downside of this approach, however, would be that the New Zealand sports industry would not benefit from a new source of revenue until such time as an information use charge for sporting events is introduced.
13. If a system of an information use charge or charges is adopted, it will be important that it is implemented in a way that is compatible with New Zealand’s obligations under international trade agreements. The main agreement in this respect is the Closer Economic Relations (CER) Agreement with Australia.
14. Article 5 of the CER Services Protocol requires New Zealand to treat Australians and the services they provide no less favourably than the treatment accorded in like circumstances to New Zealanders and services provided by New Zealanders (and vice versa).
15. Article 8 of the CER Services Protocol provides that New Zealand must not introduce any measure that constitutes a means of arbitrary or unjustifiable discrimination against Australians or a disguised restriction on trade between New Zealand and Australia in services.
16. It will therefore be necessary to ensure that any charges applied to Australian gambling operators in particular, while they do not need to be exactly the same as those that apply to New Zealand businesses, do not result in less favourable treatment overall than that to which a domestic operator, in this case the NZRB, is subject.
17. The reciprocal payments that already take place between the NZRB and the Australian TABs are an example of two parts of the industry in each country recognising the value that their respective racing information creates for each other. The figures set out in Table 2 on page of this RIS also illustrate that, providing any charge is set at a reasonable level (e.g. 2 per cent of betting turnover), offshore operators would not be treated less fairly than the NZRB in terms of the contribution that they make to New Zealand racing and sports.

***Minimisation of harm:*** *will the option result in an overall increase in gambling harm and/ or risk to the integrity of racing or sports events?*

1. It is possible that, faced with the prospect of paying additional charges, some offshore operators might choose to cease offering bets on New Zealand racing and sports. Given that one of the reasons New Zealand bettors choose offshore operators over the NZRB/ TAB is the higher odds that can sometimes be offered offshore, it is possible that this could encourage those New Zealanders that are particularly keen to bet offshore to move to gambling operators in less tightly regulated jurisdictions. This is considered to be a fairly low risk, however, with the greater likelihood being that many (but probably not all) of these bettors would choose the NZRB rather than risk other options due to its familiarity and comparative ease of accessibility.
2. Introducing an information use charge is not considered likely to change the degree to which the integrity of any New Zealand racing or sporting event may be at risk. This is because an information use charge would not precipitate increased gambling activity for those events, which would probably be the primary motivator for any person who might otherwise seek to interfere with an event for gambling purposes.

***Ease of implementation:****would the option involve any significant administrative complexities that could affect its successful implementation and operation?*

1. The successful collection of any charges will rely to a large extent on voluntary compliance by offshore operators. If adopted, information use charges will therefore need to be implemented in a fashion that ensures:

* that it is simple for offshore operators to calculate and certify the amount that they owe; and
* that interaction with the relevant bodies in New Zealand (whether government or industry) is straightforward and kept to the minimum necessary.

1. Even if the processes created by any legislation and compliance system in New Zealand are streamlined, it must be recognised that offshore operators will still bear costs associated with setting up and monitoring systems to identify and pay the amount of information use charge that they owe.
2. The nature of transactions with offshore operators is such that payments are usually made in the currency of the country from which the company operates. In some cases, payments may be made in one of the larger international currencies such as US dollars or Euros, but this is less usual. Offshore operators will need to convert these sums to New Zealand dollars when paying any information use charge that is owed. In order to provide flexibility and to reduce the currency exchange rate risk, it would be possible to implement an approach similar to that which is used for the payment of cross-border GST.
3. When converting to New Zealand dollars for determining the amount of GST required to be returned, the supplier can use the conversion rate at:

* the time of supply;
* the end of each taxable period;
* the time of filing the return (or at the due date for filing, if the return is filed past the due date);
* another time as agreed with the Commissioner of Inland Revenue.

1. Once the supplier elects in their return to use an option other than expressing amounts in New Zealand currency at time of supply, they may not change their method for a period of 24 months, unless agreed otherwise with the Commissioner.
2. As noted in paragraph 135, it is possible that, faced with the prospect of paying additional charges, some offshore operators might choose to cease offering bets on New Zealand racing and sports. The figures set out in Table 2 on page of this RIS illustrate that, providing any charge is set at a reasonable level (e.g. 2 per cent of betting turnover), offshore operators are still likely to make a profit on these bets. In addition, regimes similar to the proposed information use charge are in place in other countries, notably Australia. International gambling operators are therefore familiar with this sort of requirement. These two factors, together with establishing simple administrative arrangements, should help to encourage voluntary compliance.
3. The principle of simplicity applies equally to the bodies in New Zealand that will be responsible for administering the charges. It is likely that establishing and operating a system of information use charges will carry additional operational costs for the organisation(s) that are involved.
4. Paragraphs 225 to 233 of this RIS consider the size of any additional resource required to administer a charging regime and the sorts of tasks that the administrating body may need to carry out.
5. It may be preferable to design any legislation for an information use charge in a way that seeks to explicitly establish a set of expectations and obligations between the offshore operators and the relevant authority in New Zealand, e.g. the NZRB. For example, the legislation could require that offshore operators must enter into an agreement with a designated body in New Zealand to use New Zealand racing and/ or sports information in their betting products. The conditions in this agreement may be defined in legislation or backed by legislative obligations. The conditions may include the provision of timely and accurate information about volume and value of relevant bets and the periods by which payment of any charge monies would be due. Unpaid charges could be treated as a debt which would be recoverable through the courts. Versions of this approach are used in several of the Australian states.
6. The experience of regulators in Australia shows that it is possible to secure voluntary compliance for these types of charges. A range of gambling operators based outside of Australia that offer bets on Australian races have demonstrated a willingness to register to use Australian race field information in their products. Information about licence holders is not published widely, but Racing Victoria provides a useful example, listing organisations such as the Hong Kong Jockey Club, Japan Racing Association, Singapore Turf Club and German Tote as among the international operators which comply with its domestic requirements.

***Cost/Benefit:*** *are the likely costs (if any) of implementing this option likely to be outweighed by the expected benefits to the racing and sports industries in New Zealand?*

1. The vast majority of the NZRB’s exports are to Australia. Extrapolating from the information known about the amount of bets taken on New Zealand races and sports events by Australian TABs, the Working Group estimated that $300 million is turned over by Australian online bookmakers on New Zealand racing and around $60 million on sports events taking place in New Zealand.
2. Based on these estimates, applying an information use charge of 2 per cent of turnover (as suggested by the Working Group) would result in revenue of $5.7 million per annum for racing bets and $1.1 million for sports (after 5 per cent withholding tax).
3. Gambling laws which address the operation of remote gambling operators are in place or are planned in many countries around the world. Many of these take the form of licensing requirements which bring remote operators within the taxation and regulatory regimes of the respective countries. As previously noted, charges for the use of racing information are in place in the United Kingdom and Australia, with the requirements in the latter being similar to the proposed information use charge which is considered in this RIS. Legislating in this area is therefore not particularly novel from a global perspective. However, the possibility exists that compliance will be lower than anticipated by the Working Group.
4. As detailed in paragraphs to 233 of this RIS, DIA has estimated that enforcement costs (staff and other operating expenses) could range from approximately $590,000 per annum (in a basic receipting and processing scenario) up to in excess of $3.9 million per annum (in a scenario where there needs to be more active compliance managment).
5. In the most basic enforcement scenario, income from an information use charge would be greater than costs providing there is a 10.3 per cent compliance rate for racing bets (8.7 per cent for racing and sports combined). Full compliance would deliver $5.1 million after costs for racing bets ($6.2 million for racing and sports combined).
6. However, in the most active scenario for which DIA has prepared estimates, the break-even point rises to a 68.4 per cent compliance rate for racing bets (57.4 per cent for racing and sports combined). Full compliance would deliver $1.8 million after costs for racing bets ($2.9 million for racing and sports combined).
7. Because there is wider precedent for information use charge-type systems in other countries than there is for consumption charges, and therefore many gambling operators are familiar with complying with these requirements, it may be reasonable to expect the compliance costs to be at the lower end of the range. This cannot be guaranteed, however, and there may at least need to be a more active (and therefore more expensive) initial enforcement period in order to establish an information use charge system.
8. It should be noted that these costs could vary to some extent depending on the organisations that are involved in the administration of any charging scheme. For example, the NZRB has existing relationships with many offshore gambling operators and regulators and has experience administering reciprocal payments with the Australian TABs. This experience and expertise may help to deliver efficiencies within any collection and enforcement system. The tables following paragraph 212 of this RIS consider in more detail the roles that different organisations might play.
9. Another risk to consider is the possibility that other countries might apply equivalent information use charges in respect of their domestic sports events. If this were to occur, it is possible that (given the imbalance between international and domestic sports betting in New Zealand) that the NZRB would need to pay out more than it would receive in charges for the use of New Zealand sporting information.

***Policy objectives:*** *to what extent is this option likely to meet either or both of the policy objectives: a) to promote the long-term viability of New Zealand racing; and b) to help create a more level playing field for the NZRB in the face of competition from offshore operators?*

1. Implementation of an information use charge has a chance of providing a new source of revenue for investment in New Zealand racing. If it brings in more money than it costs to administer (noting that the risks for the information use charge appear to be less than for the proposed consumption charge), it would provide an additional source of income for investment. It is unlikely, however, that this measure would, in isolation, raise sufficiently large sums of money to have a significant impact on the long-term viability of the industry. Policy objective A will therefore be partially met by this option.
2. Payment of an information use charge would be a direct recognition by offshore operators of the value (through financial profit) which they realise from the use of New Zealand racing and sporting information in their betting products. The fact that they do not currently make any such payments to New Zealand racing and sports provides offshore operators with a financial advantage which is not available to the NZRB. The ban on offshore operators advertising in New Zealand offsets this advantage to an extent but, given the high profile of offshore operators online, this has less impact now than it did when it was implemented in 2003.
3. The advertising ban is also of less relevance when considering only the proposed information use charge because this charge would apply to bets on New Zealand events regardless of the location of the bettor. The information use charge is also similar in character to charges that are already in place in other jurisdictions, notably across Australia. As long as any charge is set at an appropriate level (not exceeding the equivalent payments made by the NZRB), it is reasonable to argue that it would help to create a more even basis for competition. In this respect, it can be considered to meet policy objective B.

#### Option 5: Require that offshore gambling operators pay a charge when they take bets from New Zealand residents (a “consumption charge”)

1. Introducing an information use charge for New Zealand events, as discussed in option 4 above, would go some way to ensuring that offshore operators make an appropriate contribution to New Zealand racing and sports. However, the majority of bets placed by New Zealanders are on overseas events, so only implementing an information use charge would only address part of the issue that offshore operators present.
2. For this reason, the Working Group recommended that a separate consumption charge should also be introduced. This charge would cover bets that offshore operators take from New Zealand residents and would apply regardless of whether the bet is on a New Zealand event or an international one.
3. It should be noted that this proposal differs in some respects from otherwise equivalent approaches that have been taken by other countries to address online gambling with operators based outside of their borders.
4. A common approach - recently adopted, for example, in the United Kingdom (in addition to its Horserace Betting Levy) and Ireland - is to require “remote” gambling operators to obtain a licence to offer bets to residents of that country even if equipment such as computer servers are located elsewhere. These licences effectively bring remote operators within the regulatory regime of those countries and permit remote operators to operate largely on the same basis as domestic gambling operators. Once they hold a licence, remote operators are subject to the tax system of the licensing country.
5. Implementation of a similar licensing regime in New Zealand would effectively open the domestic racing and sports betting market to operators other than the NZRB. The Minister for Racing has indicated that he does not wish to consider this type of major regulatory change at this time.
6. The consumption charge proposal in option 5 stops short of licencing offshore operators on the same or a similar basis to domestic operators. Offshore operators would continue to be under no requirement to comply specifically with New Zealand’s domestic regulatory requirements; with the exception of GST, they would not be required to pay New Zealand taxes; and they would remain subject to the ban on advertising by gambling operators based outside of New Zealand.

***Fairness:*** *does the option provide a fairer basis for competition between the NZRB and offshore operators?*

1. As discussed in relation to the information use charge in Option 4, if any charges are applied to offshore operators, they must be fair and, in particular, must align with New Zealand’s international trade obligations, including the CER with Australia. This section considers this issue in more detail and the assessment presented here applies equally to the proposed information use charge as well as the proposed consumption charge.
2. The proposed charges need to be seen in the wider context of how gambling is regulated in New Zealand, which includes requirements to ensure that money from most forms of gambling is used for wider community benefit, which includes the racing and sports industries. As well as returning money to racing and sports, the NZRB pays various taxes and duties, including the problem gambling levy which is used to fund measures to help people at risk of gambling harm.
3. Since October 2016, offshore operators that sell more than $60,000 per annum of services to New Zealand have been required to pay GST (this relies on voluntary compliance, albeit supported by international tax treaties and common practice), but they are not required to pay other New Zealand levies and duties. They may, however, be required to pay separate taxes in their domestic jurisdiction (it should be noted that some offshore operators are structured so that they are ultimately domiciled in low tax jurisdictions).
4. Table 2 shows the treatment of $100,000 betting turnover with the NZRB compared to the same turnover with an offshore operator. It includes the amounts paid by the NZRB to New Zealand racing and sports under current arrangements and the equivalent amounts that would be raised by the proposed information use and consumption charges (set at 2 per cent turnover, as recommended by the Working Group).
5. As noted in the table, it has been necessary to make some assumptions in this comparison. The net betting margin (the amount retained after prizes are paid) is presented as 12.5 per cent for both the NZRB and offshore operators. This reflects the latest figure reported by the NZRB for its own business but it is likely that other companies will operate with slightly different margins. Similarly, various taxes may apply to offshore operators in their domestic jurisdiction. These will vary significantly between operators, so it is not possible to incorporate them into the table.
6. DIA acknowledges that the net revenue and profit figures shown for the example offshore operator are therefore likely to be lower than the figures presented in the table. However, DIA does not consider that the impact of these differences would negate the financial advantages enjoyed by offshore operators by virtue of them not having to make payments to New Zealand racing and sports.

Table : Comparison of the treatment of bets placed with the NZRB/ TAB vs. an offshore operator

|  |  |  |  |
| --- | --- | --- | --- |
| Bets placed with the NZRB/ TAB | | Bets placed with an offshore operator | |
| Total sales (turnover) | $100,000 | Total sales (turnover) | $100,000 |
| Payout | ($87,500) | Payout | ($87,500) |
| Gross betting revenue  (assuming 12.5% margin of turnover) | $12,500 | Gross betting revenue (assuming 12.5% margin of turnover) | $12,500 |
| GST (15% of GBR) | ($1,875) | GST (15%) | ($1,875) |
| Betting duty  (4% of GBR) | ($500) | Other taxes may apply to the offshore operator in its home jurisdiction. | (Unknown) Subsequent net revenue and profit figures therefore likely to be slightly lower than shown here. |
| Problem gambling levy (0.52% of GBR) | ($65) |
| Net betting revenue | $10,060 | Net betting revenue | <$10,625 |
| **Bold = Total distribution to racing codes and commission to NSOs**  *Italic = amount retained by NZRB for costs & investment.* | **7.24% of turnover**  **(average rate over the five years 2012-2016 inclusive)** =  **$7,240**  *amount retained =*  *$2,820* | **Bold = sum to be paid to NZ in lieu of NZRB’s requirement to make direct return to racing.**  *Italic = amount retained by offshore bookmaker as profit (albeit some likely to cover costs & investment).* | Information Use or Consumption charge:  **2% of turnover =**  **$2,000**  *amount retained =*  *<$8,625* |
| Information Use and Consumption charges:  **4% (2+2) of turnover =**  **$4,000**  *amount retained =*  *<$6,625* |

1. It is important to note that not all bets placed with an offshore operator would attract both an information use and a consumption charge. Bets placed by New Zealanders on overseas events would not attract an information use charge.
2. There is no fixed formula for the amount that the NZRB must return to the three racing codes. There is a formula for the minimum requirement that the NZRB must pay in commission to NSOs (detailed in paragraph 8).
3. The NZRB is permitted to retain a portion of betting revenue to cover its costs and for activities such as investing in its business. This means that the proportion of money distributed to the racing codes and paid in commission to NSOs tends to vary year on year. In the last few years, the NZRB has retained a greater portion of money in order to invest in measures such as updated ICT (for example, total payments to racing and sport were 8.17 per cent of turnover in 2012 and 6.31 per cent in 2016).
4. During the consultation process in April and May 2016, submissions were made by representatives of several Australian based gambling operators expressing concern that the consumption charge may not be consistent with New Zealand’s obligations under the CER. Careful design of any charges applied to Australian based gambling operators may reduce the risk that the charges will be challenged and provide the New Zealand Government with a firm position from which to justify their introduction.
5. Under the CER, offshore operators do not need to be treated in exactly the same way as the NZRB but they cannot be treated in any way that is unjustifiably restrictive or discriminatory. The charges should be designed so that they help to level the playing field rather than simply decreasing the competitiveness of overseas suppliers. They may address the advantage that offshore gambling operators currently enjoy over the NZRB by not having to pay a portion of their profits back to New Zealand racing and sports. However, they should not penalise offshore operators unfairly in comparison to the NZRB.
6. As the figures in Table 2 show, if charges of 2 per cent of turnover are introduced (as recommended by the Working Group), these will still represent a significantly smaller contribution to New Zealand racing and sports than the NZRB is required to make.

***Minimisation of harm:*** *will the option result in an overall increase in gambling harm and/ or risk to the integrity of racing or sports events?*

1. Introducing a consumption charge would carry similar risks to those already discussed in relation to an information use charge in Option 4.
2. Some offshore operators may choose to withdraw from the New Zealand market, which might lead to those New Zealanders that are particularly keen to bet offshore to move to gambling operators in less tightly regulated jurisdictions. This is considered to be a fairly low risk, however, with the greater likelihood being that most of these bettors would choose the NZRB rather than risk other options.
3. Introducing a consumption charge is not considered likely to change the degree to which the integrity of any New Zealand racing or sporting event may be at risk. This is because a consumption charge would not precipitate increased gambling activity for those events, which would probably be the primary motivator for any person who might otherwise seek to interfere with an event for gambling purposes.

***Ease of implementation:****would the option involve any significant administrative complexities that could affect its successful implementation and operation?*

1. As would be the case with an information use charge, if a consumption charge is adopted, it is likely that any establishing legislation would need to contain provisions requiring any offshore operator to disclose, on request, information on the amount of relevant betting. This would help to ensure that the total amount payable is calculated at the correct level.
2. Offshore operators will also face practical issues similar to, but perhaps more extensive than, those associated with the proposed information use charge. Even if the processes created by any legislation and compliance system in New Zealand are streamlined, offshore operators will still bear costs associated with setting up and monitoring systems to identify and pay the amount of consumption charge that they owe. For example, the task of identifying and recording which bets originated from New Zealand-based customers may be challenging. If these administrative processes prove to be particularly difficult or expensive, the likelihood of offshore operators paying a consumption charge voluntarily may be diminished.
3. The Working Group assumed high levels of voluntary compliance by offshore operators. It is believed that the majority of New Zealanders betting with offshore operators do so with companies based in Australia. The CEO of the Australian Wagering Council[[3]](#footnote-4) told the Working Group that he anticipated Australian bookmakers would comply voluntarily with statutory requirements in New Zealand. However, in a later conversation with DIA officials, he stated that he anticipates resistance from some commercial operators. This position was echoed in written consultation responses that were received from Australian-based gambling operators (see paragraphs 251 to 263 in the consultation section below).
4. As has previously been discussed in this RIS, direct equivalents of the proposed consumption charge do not exist in the same form in other countries. This may encourage greater resistance to such a charge among certain offshore operators than might be expected in relation to an information use charge.
5. Despite this opposition to a consumption charge, it is possible that many offshore operators may ultimately comply voluntarily, on the basis that they wish to be “good corporate citizens” and therefore do not wish to operate contrary to the law in New Zealand. In fact, it is possible that the gambling regulators in their home jurisdictions may consider compliance with relevant international laws as a requirement of any domestic licence that they hold. Paragraphs 234 to 245 of this RIS consider how this could assist a New Zealand regulator.
6. Another important factor when considering the ease of implementing a consumption charge concerns the status under New Zealand law of the bets that New Zealand residents make with offshore operators.
7. Under the Gambling Act 2003 and Racing Act 2003, the NZRB is the sole authorised provider of racing and sports betting in New Zealand, through its TAB brand. There is a specific prohibition on remote interactive gambling (e.g. over the internet) unless it is conducted by the Lotteries Commission or authorised under the Racing Act 2003, which is the authority under which the NZRB operates its online betting service.
8. Offshore operators are not required to be specifically authorised (as the NZRB is) because they are considered outside of the scope of the Acts since they are located in other jurisdictions. Gambling by a person in New Zealand conducted by a gambling operator located outside of New Zealand is excluded from the prohibition on remote interactive gambling. This provision was designed in recognition of the difficulty in enforcing any prohibition on the use of overseas gambling websites. However, DIA has published advice stating that if any part of this gambling is conducted in New Zealand, it may be caught by the Gambling Act 2003 and thus become illegal gambling.[[4]](#footnote-5)
9. Seeking payment of a consumption charge for bets placed by New Zealand residents with offshore gambling operators requires a choice to be made about the extent to which New Zealand law does or does not regulate these bets because by its very nature a consumption charge relates to an activity being ‘consumed’ in New Zealand.
10. The Minister for Racing has indicated that he does not wish, at this time, to consider the option of amending legislation to authorise offshore operators to offer gambling services in New Zealand, whether by a licencing regime or some other type of system. Doing so would end the NZRB’s position as the only authorised provider of racing and sports betting.
11. It would be possible to amend the Racing Act to legislate for a consumption charge on offshore bets while leaving the status of offshore betting unchanged in the Gambling Act 2003. Unless the relevant definitions are altered, the current status of offshore operators will continue. The imposition of a consumption charge will not change their legal status or the status of the bets. This could, however, arguably result in an awkward balance between the two Acts. In order to implement a consumption charge, offshore betting would be regulated by the Racing Act. However, in order to avoid having to authorise offshore operators to provide gambling services in New Zealand, or to classify the activity as illegal (which it would be if it is within scope but not authorised), offshore betting would continue to be unregulated by the Gambling Act 2003.
12. This potential point of tension is magnified by the fact that the Racing Act 2003 and the Gambling Act 2003 operate together at the centre of New Zealand’s statutory framework for regulating gambling. Even if a consumption charge were to be created within an Act separate from the Racing or Gambling Acts, the same issue arises because the charge is a specific response to a particular kind of gambling activity and would treat that activity differently from other parts of New Zealand’s regulatory framework for gambling.
13. This RIS recommends that DIA would be the most appropriate organisation to administer a consumption charge if it were adopted. However, because of the circumstances described above, this would create a situation where DIA was collecting a charge in respect of gambling activity which it did not authorise.
14. Taking this sort of dual approach could prove to be an additional barrier to encouraging voluntary compliance by offshore operators, who may argue that direct regulation of their activity under the Racing Act 2003 should be matched with direct regulation (i.e. authorisation) of their activity under the Gambling Act 2003, plus removal of the current ban on them advertising in New Zealand.
15. The issue does not manifest in the same way, however, within the recent changes that were made to the Goods and Services Tax Act 1985, which are restricted to the purpose of collecting GST on remote services and intangibles and which, although covering remote gambling services for that purpose, are not designed to form part of any wider regulatory regime for that activity.
16. This issue relating to the scope of the Gambling Act 2003 is particular to the proposed consumption charge. The information use charge, by comparison, relates to payment by the offshore operator in recognition of the profit made from their use of New Zealand racing and sporting information. It does not call into question the status of the betting activity in New Zealand.

***Cost/Benefit:*** *are the likely costs (if any) of implementing this option likely to be outweighed by the expected benefits to the racing and sports industries in New Zealand?*

1. Based on the review of available studies conducted by Infometrics, the Working Group estimated that, after winnings had been paid, the total expenditure on offshore betting by New Zealanders in 2015 was $58 million, with an overall turnover of $518 million.
2. Applying a consumption charge of 2 per cent of turnover to these figures would return $9.8 million to New Zealand (after 5 per cent withholding tax). The Working Group suggested (based on Infometrics’ projections) that annual growth of 11.5 per cent could be expected over the next few years, which would increase the return to around $16.9 million in 2020.
3. As detailed in paragraphs 225 to 233 of this RIS, DIA has estimated that enforcement costs (staff and other operating expenses) could range from approximately $590,000 per annum (in a basic receipting and processing scenario) up to in excess of $3.9 million per annum (in a scenario where DIA needs to be more active in managing compliance). These costs illustrate a generic “offshore charges” regime and do not apply specifically to either an information use system or a consumption charge. The more complex and demanding the enforcement activity turns out to be, the more expensive it will become, regardless of whether one or both of the proposed charges are implemented.
4. In the most basic enforcement scenario, income from a consumption charge would be greater than costs providing there is a 6.0 per cent compliance rate in the initial year (based on 2015 estimates). This would fall to 3.49 per cent by 2020, resulting in net revenue after costs (based on full compliance) of $9.2 million in the initial year, rising to $16.3 million in 2020.
5. However, in the most active scenario for which DIA has prepared estimates, the break-even point rises to a 39.8 per cent compliance rate in the initial year, falling to 23.1 per cent by 2020. This would result in net revenue after costs (based on full compliance) of $5.9 million in the initial year, rising to $13.0 million in 2020.
6. However, as illustrated by the study undertaken by the Gambling and Addictions Research Centre at AUT on behalf of the Ministry of Health (which suggested much lower instances of offshore gambling than other studies), the figures presented by the Working Group for the estimated revenue that could be recovered by offshore charges are subject to significant margins for error.
7. Given the margin for error around the available data, together with the uncertainty regarding the extent to which voluntary compliance will be achieved, it is possible that the returns from any consumption fee could differ substantially from the $9.8 million to $16.9 million suggested by the Working Group.
8. For comparison, the Inland Revenue Department estimated in its RIS for GST on cross‑border services and intangibles that around 100 offshore suppliers would register voluntarily to pay GST (over 80 had registered as of December 2016), leading to an estimated net gain in revenue of up to $40 million per annum.

***Policy objectives:*** *to what extent is this option likely to meet either or both of the policy objectives: a) to promote the long-term viability of New Zealand racing; and b) to help create a more level playing field for the NZRB in the face of competition from offshore operators?*

1. Implementation of a consumption charge has a chance of providing a new source of revenue for investment in New Zealand racing. If it brings in more money than it costs to administer, it would assist the long-term viability of the industry, simply by providing an additional source of income for investment. It is noted, however, that the projections for the estimated revenue from a consumption charge are subject to much greater uncertainty than those for an information use charge, and the administration costs in New Zealand are likely to be higher.
2. If a consumption charge was successfully implemented and did return revenue of an order similar to that suggested by the Working Group it would provide the NZRB with around an additional $9.8 million to $16.9 million per annum for investment or distribution. Whether this level of income would be sufficient, in isolation, to have a significant impact on the long-term viability of the New Zealand racing industry is not clear. It would represent a substantially greater boost to the industry’s income than any of the other policy options considered in this RIS apart from the NZRB strategic initiatives described as part of the status quo. However, because of the significant uncertainty around the actual amount of money that would be returned, the consumption charge proposal is assessed as only partially meeting policy objective A.
3. The fact that offshore operators do not currently make any payments to New Zealand racing and sports provides offshore operators with a financial advantage which is not available to the NZRB. The ban on offshore operators advertising in New Zealand offsets this advantage to an extent but, given the high profile of offshore operators online, this has less impact now than it did when it was implemented in 2003. As long as any charge is set at an appropriate level (not exceeding the equivalent payments made by the NZRB), it is reasonable to argue that it would help to create a more even basis for competition. In this respect, it can be considered to meet policy objective B.

#### Summary of the analysis of the policy options

**Table 3 : Summary of the analysis of policy options**  
Key: **++** = much better than status quo; **+** = better than status quo; **/** = no or little change from status quo; **-** = worse than status quo; **- -** = much worse than status quo.

| Fairness: does the option provide a fairer basis for competition between the NZRB and offshore operators? | Minimisation of harm: will the option result in an overall increase in gambling harm and/ or risk to the integrity of racing or sports events? | Ease of implementation: would the option involve any significant administrative complexities that could affect its successful implementation and operation? | Cost/Benefit: are the likely costs (if any) of implementing this option likely to be outweighed by the expected benefits to the racing and sports industries in NZ ? | Objectives: would this option meet either or both of the policy objectives: a) to promote the long-term viability of NZ racing; and b) to help create a more level playing field for the NZRB in the face of competition from offshore operators? | Recommendation |
| --- | --- | --- | --- | --- | --- |
| **Option 1:**  NZRB Strategic Initiatives  (status quo) | **/**   * NZRB still restricted in the products it can offer compared to offshore operators. * Offshore operators still benefit from not paying contribution to NZ racing and sports. | **/**   * No alteration to current betting products, so risk of increased harm is not expected to change from current levels. | **/**   * Requires significant capital investment ($60-75m over three years). * Careful balance between local/ sectoral interests and national/ collective interests for NZ racing as a whole. | **/**   * Investment and restructuring has potential to save costs, grow revenue and make racing industry more sustainable. * NZRB estimate eventual annualized profits of approx. $35-39 million. | * Objective A: Met. * Objective B: Not met. | * Recommended |
| **Option 2:**  Permit in-race betting | **+**   * In-race betting is permitted in many jurisdictions internationally. | **/**   * Increasing gambling opportunities may increase risk of gambling harm in some instances. * However, the proposal will just extend the time during which gambling on a race is permitted. It will not permit “spot betting” on events within a race. * Any risk of increased harm is therefore considered to be manageable. | **++**   * Simple legislative amendment. * Expected to be straightforward for NZRB to manage in practical terms. In‑play betting is already permitted for sporting events. * NZRB would apply gambling and harm minimisation policies as required. | **+**   * Operating costs for NZRB are not expected to be significant since the option simply permits greater flexibility re. racing bets. * Potential to provide additional revenue for NZRB (and thus, NZ racing more widely), although there is no information available about market demand for in-race bets. | * Objective A:   Partially met.   * Objective B: Met. | * Recommended |
| **Option 3:**  Enable betting on broader range of sports | **++**   * Removing the requirement for a sport to be represented by an NSO before the NZRB may offer bets on it would enable the NZRB to offer a more similar product range to offshore operators. * NZRB would be able to react as swiftly as offshore operators to emerging international sports. | **/**   * Increasing gambling opportunities may increase risk of gambling harm in some instances. * However, it is unlikely that the overall number of sports on which bets will be offered will increase significantly. * Any risk of increased harm is therefore considered to be manageable. * Any risk to integrity of non-NSO sports could be addressed in betting agreement with Sport NZ. | **++**   * Simple legislative amendment. * Expected to be straightforward for NZRB to manage in practical terms. * New role for Sport NZ. Will need to be clearly defined but not expected to be substantial. | **+**   * Slightly increased role for Sport NZ will carry some administrative costs but there is potential for a wider range of sports than at present to benefit from betting revenue. | * Objective A:   Partially met.   * Objective B: Met. | * Recommended |
| **Option 4:**  Implement an information use charge that offshore gambling operators must pay to use New Zealand  racing and sports information. | **+**   * Would address the fact that NZRB is required to pay majority of its profits to NZ racing whereas offshore operators pay no equivalent despite profiting from betting on NZ events. * There are international precedents, e.g. in Australia. * Charge will need to be implemented in a way compatible with international trade agreements and at level that is fair in comparison to what the NZRB pays. * Would retain ban on offshore betting advertising in NZ. However, ban has more limited impact than in the past. | **/**   * Rather than pay an information use charge, some offshore providers could choose to stop accepting bets from NZ residents. This could encourage some bettors to seek other, less well regulated operators elsewhere online. This is considered to be a low risk for a minority of bettors because the NZRB will remain more familiar and is easy to access. | **-**   * Successful collection of charges will rely on voluntary compliance by offshore operators. Systems will need to be as simple as possible. * Familiarity with similar charges in other countries, plus desire by large companies to be “good corporate citizens” is likely to support compliance. * NZRB has existing experience in administering similar reciprocal payments with Australian TABs. * Enforcement of outstanding debts in foreign courts, if necessary as a last resort, may be difficult and expensive. | **+**   * DIA estimates enforcement costs could range between $590,000 (basic enforcement) to over $3.9m (more active enforcement) per annum. * Based on Working Group estimates, an information use charge could deliver between $1.8m and $5.1m ($6.2m sports and racing combined) after costs. * However, lower end of cost range/ higher end of revenue range is considered more likely for this information use charge because of the “ease of implementation” elements detailed in the column to the left. * If other jurisdictions were to implement similar charges for their sporting events it is possible that the costs could be greater than the income from NZ events. This is considered a low risk. | * Objective A:   Partially met.   * Objective B: Met. | * Recommended * The negative marking for ease of implementation reflects the risk of low voluntary compliance. These are greater (and fundamentally different in nature) to any risks associated with the status quo. They are however, considered to be manageable. |
| **Option 5:**  Implement a consumption charge that offshore gambling operators must pay when they take bets from New Zealand residents. | **+**   * Would address the fact that NZRB is required to pay majority of its profits to NZ racing whereas offshore operators pay no equivalent despite profiting from betting on NZ events. * Charge will need to be implemented in a way compatible with international trade agreements and at level that is fair in comparison to what the NZRB pays. * Would retain ban on offshore betting advertising in NZ. However, ban has more limited impact than in the past. | **/**   * Rather than pay a consumption charge, some offshore providers could choose to stop accepting bets from NZ residents. This could encourage some bettors to seek other, less well regulated operators elsewhere online. This is considered to be a low risk, relevant to a minority of bettors because the NZRB will remain more familiar and is easy to access. | **--**   * Likely to face greater resistance from offshore operators than the information use charge, which could discourage voluntary compliance. * Incompatible with current provisions in the Gambling Act 2003. Applying a charge to these bets is likely to bring this activity within the scope of the Gambling Act, which in turn would require authorisation of these operators on a similar basis to the NZRB. This would be a significant change to NZ gambling framework and is a much more fundamental change than was envisaged by the Working Group. | **+** \*   * DIA estimates enforcement costs could range between $590,000 (basic enforcement) to over $3.9m (more active enforcement) per annum. * Based on Working Group estimates, an information use charge could initially deliver, after costs, $5.9m (active enforcement) to $9.2m (basic enforcement). * By 2020, net income could rise to $13.0m (more active enforcement) to $16.3m (basic enforcement). * \* The positive marking for this criterion reflects the potential for this charge to become a significant revenue stream. However, the Working Group estimates are subject to significant margins for error and assume high levels of voluntary compliance. Income could therefore differ substantially from the estimates presented here. | * Objective A:   Partially met.   * Objective B: Met. | * Not recommended |

### Implementing the policy options

1. As indicated in the analysis of policy options, the options are not a series of binary choices. Rather, the choice is between relying solely on the strategic initiatives that are being implemented by the NZRB or adopting a combination of some or all of the other options that were recommended by the Working Group.
2. Not all of the options need to be adopted or dismissed at the same time. The objectives set out in this regulatory impact assessment are that policy measures should a) promote the long-term viability of New Zealand racing and b) help create a more level playing field for the NZRB in the face of competition from offshore operators. It is possible that these objectives could be achieved, to some extent, by a sub-set of the proposed policy options. Consideration could be given to phasing the introduction of some of the options over a period of time. The more complex options (e.g. charges) could be introduced if other, simpler options (e.g. the NZRB’s strategic initiatives and removal of some of the current legislative restrictions on the NZRB) are implemented and considered not to be delivering sufficient benefits.
3. Option 1, implementing the NZRB’s strategic initiatives, is a matter for the NZRB and does not require legislative change or direct involvement from government. Options 2 and 3 – permitting in‑race betting and enabling the NZRB to offer betting on broader range of sports – would require amendments to be made to the Racing Act 2003 but, beyond that, changes to existing administrative practices are likely to be limited. More detail in this respect is set out in the specific analysis of Options 2 and 3.
4. However, Options 4 and 5 – the information use and consumption charges that offshore operators would be required to pay – are likely to require significant new administrative arrangements to be put in place in order to ensure that the charges can be collected and enforced.
5. The major elements that require consideration in this RIS are:

* The organisations that should be involved in the administration of any information use and/ or consumption charges and the roles that they should play.
* The level at which the information use and/ or consumption charges should be set.
* If information use or consumption charges are adopted, should there be a minimum threshold at which they apply?
* The size of any additional resource required to administer a charging regime.
* The approach to enforcing the charges in cases of non-compliance.

***Which organisations should be involved in the administration of any information use and/ or consumption charges and the role that they should play.***

#### Option A: IRD participation and linkage to cross-border GST

1. The Working Group suggested that there could be some synergies between the collection of charges from offshore operators and the arrangements that the Inland Revenue Department (IRD) has put in place to administer the collection of cross-border GST on services and intangibles.

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|  | Advantages | Disadvantages | Recommendation |
| *Variant 1: IRD to lead collection and link fully to cross-border GST*   * IRD would require offshore operators (OOs) to submit the information necessary to determine the amounts payable for the information use and consumption charges, together with the information returned for GST purposes. * Administration of the payment system would be run by IRD. * IRD would collect the charges and pass the funds (possibly subject to any deductions to cover costs) to the NZRB, either directly or via DIA. * IRD would initiate any enforcement action. | * IRD would represent a single point in New Zealand for offshore operators. * IRD is experienced in collecting revenue from private companies and individuals. This could lead to administrative efficiencies. | * Could risk sending a signal that NZ will “piggy-back” additional charges onto core taxation. This might risk suppressing voluntary compliance for both revenue streams. * IRD would need to ask for additional information from OOs beyond that necessary for GST. Could complicate the GST admin process. * GST is deducted from gross betting profit rather than from turnover. If the latter is the basis for information use or consumption charges, this could cause confusion. * Recovery of unpaid charges would not have same level of legal backing as recovery of unpaid tax (lack of international treaties etc.). * IRD’s ICT is designed for the NZ tax system. Collection of offshore charges would require a stand-alone system, so there would be no efficiency of which to take advantage. | * Not recommended |

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|  | Advantages | Disadvantages | Recommendation |
| *Variant 2: Partial Linkage with GST*   * Would support Option B or C. * IRD would require OOs to submit the information necessary to determine the amounts payable for the information use and consumption charges, together with the information returned for GST purposes. * This information would be passed to DIA and/ or NZRB, who would be responsible for administration of the payment system. * DIA and/ or NZRB would be responsible for issuing notices of non-compliance, pursuing debt recovery action etc. | * IRD would represent a single first point of contact in New Zealand for offshore operators. | * Could risk sending a signal that NZ will “piggy-back” additional charges onto core taxation. This might risk suppressing voluntary compliance for both revenue streams. * IRD would need to ask for additional information from OOs beyond that necessary for GST. Could complicate the GST admin process. * IRD would not be responsible for the full administration process. DIA and/ or the NZRB would need to follow-up with OOs to make arrangements to collect charges. This risks making the admin process complex and inefficient. * The Tax Administration Act 1994 requires IRD officers to maintain secrecy relating to all information about all taxes and duties payable to the Crown. There are provisions to permit information sharing between government departments in specific circumstances, but IRD has advised that the OO charging proposals would not meet the relevant criteria unless an amendment is made to the 1994 Act itself. | * Not recommended |

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|  | Advantages | Disadvantages | Recommendation |
| *Variant 3: Advisory Notification regarding GST*   * Would support Option B or C. * IRD would not collect any additional information over and above that necessary for GST payment. * IRD would share information with DIA and/ or NZRB identifying the OO’s that have registered to pay GST and showing the size of their business with NZ residents. DIA and/ or NZRB would be responsible for administration of the payment system. * DIA and/ or NZRB would be responsible for issuing notices of non-compliance, pursuing debt recovery action etc. | * IRD would represent a single first point of contact in New Zealand for offshore operators. | * Could risk sending a signal that NZ will “piggy-back” additional charges onto core taxation. This might risk suppressing voluntary compliance for both revenue streams. * As with variant 2, partial linkage, IRD would not be responsible for the full administration process. DIA and/ or the NZRB would need to follow-up with OOs to make arrangements to collect charges and would need to request more information than originally submitted to IRD. This risks making the admin process complex and inefficient. * The Tax Administration Act secrecy requirements discussed in relation to variant 2 would also apply. | * Not recommended. |

#### Option B: Government-led administration separate from GST

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|  | Advantages | Disadvantages | Recommendation |
| *Variant 1: DIA lead*   * DIA would operate a register of OOs identified as needing to pay information use and/ or consumption charges. * DIA would contact each OO advising them of their obligations etc. Alternatively, OOs would be required to self-identify and DIA would only contact to follow-up if this does not occur. * Administration of the payment system would be run by DIA. * DIA would initiate any enforcement action. | * DIA is the government department with policy responsibility for gambling, so there is potential for effective “joining up” between policy and enforcement. * Detaching the collection of information use and/ or consumption charges from the collection of GST could minimise the risk of discouraging voluntary compliance with cross-border GST. * Would avoid issues relating to IRD sharing tax etc. related information because OOs would be providing the information direct to DIA as the lead administrative department. | * More suited to the collection of the consumption charge than the information use charge. The consumption charge would have characteristics of a government levy, whereas the information use charge is more transactional in nature, with OOs paying for the benefit received from information that is produced and curated by the racing industry and sporting organisations. * DIA does not currently carry out similar activities. Establishing this function will require additional resource. * Creating a second point of contact with the New Zealand government (in addition to IRD for GST) may discourage OOs from complying voluntarily. | * If only a consumption charge is adopted, it is recommended that DIA should play a leading role in its administration. * If only an information use charge is adopted, it is not recommended that DIA should play a leading role in its administration. This would be more suited to the NZRB as custodians of racing and sport for wagering purposes. The NZRB also has existing experience administering something similar with Australian TABs. * If both a consumption and information use charge are adopted, consideration should be given to either: having DIA lead the administration of both on the basis that this may be simplest for OOs, thus encourage voluntary compliance (this option); or splitting the administration between DIA (consumption charge) and the NZRB (information use charge) as this may be most efficient given the NZRB’s experience with equivalents to the information use charge (see Option D). The final decision should be informed by further consultation with stakeholders. |

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|  | Advantages | Disadvantages | Recommendation |
| *Variant 2: Third-party regulator*   * The task of administering the charges could be given to a third-party organisation. The Gambling Commission could be an option, as could the establishment of a new body. | * Would put the collection of charges at arms-length from both government and the NZRB. Might therefore be viewed as more neutral by some OOs, which could help to encourage voluntary compliance. | * The Gambling Commission has a very limited role in relation to racing and sports betting. Giving it this function could therefore be an awkward fit with its existing functions and the division of responsibility with both government and the NZRB. * Establishing this function in an existing third-party organisation is likely to require potentially greater resource than it would within DIA or the NZRB. * Establishing a new body would be expensive. It is also unlikely that the size of the task would justify the creation of a new organisation. * Managing the flow of monies from OOs, to the collection body, then on to NZ racing and sports organisations (via the NZRB or not) may be complex. | * Not recommended |

#### Option C: NZRB-led administration

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|  | Advantages | Disadvantages | Recommendation |
| *NZRB-led administration*   * The NZRB would operate a register of OOs identified as needing to pay information use and/ or consumption charges. * The NZRB would contact each OO advising them of their obligations etc. Alternatively, OOs would be required to self-identify and The NZRB would only contact to follow-up if this does not occur. * Administration of the payment system would be run by the NZRB. * The NZRB would initiate any enforcement action. | * NZRB is the statutory body responsible for promoting and enhancing New Zealand’s racing industry. It already performs the function of distributing money to racing and making commission payments to sports bodies. Revenue from information use and/ or consumption charges would be intended for the same purposes as these existing revenue streams. Therefore, leading the administration of the charges could be viewed as an extension of the NZRB’s existing responsibilities. * The NZRB has existing relationships with gambling regulators in many overseas jurisdictions and is well placed to identify where OOs are taking bets on NZ events. * The NZRB already operates commercial arrangements with Australian TABs to administer payments that are similar to the proposed information use charge. | * The collection of levies or duties (such as the consumption charge) is most properly done by the Crown for transparency purposes. * As well as representing the NZ racing industry, the NZRB operates the TAB as a commercial betting business. It could be argued that the NZRB administering a consumption charge represents a conflict of interests. The NZRB would be collecting commercial information from its competitors. It could end up acting in a semi-regulatory function over its competitors, which would be unusual (no obvious equivalent exists in NZ). This could discourage voluntary compliance. However, this risk is reduced in relation to an information use charge because the amount of commercially sensitive information that would need to be disclosed would be much smaller (turnover of bets on NZ events as opposed to metrics about all custom from people in NZ). | * If only an information use charge is adopted, it is recommended that the NZRB should play a leading role in its administration. * If only a consumption charge is adopted, it is not recommended that the NZRB should play a leading role in its administration. * If both a consumption and information use charge are adopted, consideration should be given to either: having DIA lead the administration of both on the basis that this may be simplest for OOs, thus encourage voluntary compliance (see Option B); or splitting the administration between DIA (consumption charge) and the NZRB (information use charge) as this may be most efficient given the NZRB’s experience with equivalents to the information use charge (see Option D). The final decision should be informed by further consultation with stakeholders. |

#### Option D: Separate administration of Information Use and Consumption charges

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|  | Advantages | Disadvantages | Recommendation |
| *DIA would lead the administration of a consumption charge; the NZRB would lead the administration of an information use charge.*   * Administration of the payment systems and of enforcement would be separate, reflecting the different nature of each charge. * There would be scope for joint working and information sharing between DIA and the NZRB. | * Splitting the administration of the charges (if both are adopted) could help to avoid the potential barriers that may face the NZRB regarding operation of the consumption charge while taking advantage of the NZRB’s existing experience with payments that are similar to the proposed information use charge. | * This approach has the potential to involve the most bureaucracy, and thus the greatest cost, of all of the options considered in this RIS. * OOs would be faced with three points of contact with NZ (inc. IRD for GST) which could discourage voluntary compliance. However, consultation with stakeholders could mitigate such concerns. * There is potential for duplication of functions between DIA and NZRB. This may lead to higher operating costs than administering both charges together. | * If both a consumption and information use charge are adopted, consideration should be given to either: having DIA lead the administration of both on the basis that this may be simplest for OOs, thus encourage voluntary compliance (see Option B); or splitting the administration between DIA (consumption charge) and the NZRB (information use charge) as this may be most efficient given the NZRB’s experience with equivalents to the information use charge (this option). The final decision should be informed by further consultation with stakeholders. |

#### The level at which information use and/ or consumption charges should be set.

1. Any charges need to be set in such a way that they:

* are simple to calculate;
* are fair in comparison to the monies that the NZRB pays to the three racing codes and to NSOs – i.e. they should level the playing field, not seek to give the NZRB an advantage over offshore operators; and
* are low enough so as not to act as a disincentive to voluntary compliance, but sufficient to return a reasonable amount of revenue to New Zealand racing and sports.

1. The Working Group presented examples with the information use charge and consumption charge each set at 2 per cent of the turnover of the bets in question.
2. Basing the charges on turnover has the advantage of being simpler than basing them on net betting revenue because the calculation does not need to factor in any other deductions such as taxation. This is especially relevant where different taxes may be payable in separate jurisdictions.
3. Charges based on turnover are relatively common. Some governments, such as in France and Ireland, apply betting taxes to turnover (sometimes referred to as “stakes” in this context) rather than turnover minus the prizes paid to winners (“gross betting revenue”). In addition, the race fields Acts across Australia apply mostly to wagering turnover, although some states operate charges applied to a combination of turnover and gross betting revenue.
4. Table 2 on page of this RIS sets out a comparison of the treatment of bets placed with the NZRB/ TAB vs. an offshore operator. It shows that the total distribution to the racing codes and commission to NSOs over the five years 2012 to 2016 (inclusive) averages 7.24 per cent of the turnover taken by the NZRB on racing and sports bets. It is therefore reasonable to argue that as long as the equivalent rates for the information use and consumption charges do not exceed this percentage of turnover, they would be calibrated appropriately to help level the playing field between the NZRB and offshore operators.
5. As part of this determination, attention will need to be given to the comparability of any information use charges set for New Zealand events versus those which are in place in other jurisdictions. For example, the information use charges for racing under the Australian race fields Acts mostly range between 1.5 per cent of betting turnover for standard races and 3 per cent for premier races. New Zealand information use charges should reflect a fair “market price” in order to encourage voluntary compliance.
6. Another element to factor in is the prohibition on offshore operators advertising in New Zealand. As discussed in paragraph 14, the advertising ban is considered to have less impact now than when it was introduced 2003. This is due to the high visibility of offshore operators on the internet (e.g. through search engine results rankings) and their sponsorship branding at events that take place outside of New Zealand but which are broadcast in this country. However, setting the rates of any information use and consumption charge lower than the equivalent payments by the NZRB may be an appropriate recognition of the fact that they are subject to a restriction in New Zealand that does not apply to the NZRB.
7. If a bill is introduced to allow for the implementation of an information use and/ or consumption charge it would be appropriate for the level of the charges to be set in secondary legislation rather than on the face of the Bill itself. Further consideration can be given to the precise level of the charges when the time comes to make that secondary legislation. However, for the purpose of making the initial decisions about whether to adopt either of the charges and how to implement them, setting each at 2 per cent of turnover would seem to be a reasonable assumption.

#### If information use or consumption charges are adopted, should there be a minimum threshold at which they apply?

1. It is believed that Australian gambling operators account for the vast majority of New Zealand’s “offshore market”, both in terms of bets made on New Zealand racing and sports events and bets taken from people in New Zealand.
2. There are, however, offshore operators based in other jurisdictions which are relevant to the New Zealand market. Some of these may have substantial New Zealand-related turnover but many may not, perhaps taking very small numbers of bets.
3. In order to manage the costs of collecting and enforcing any charges, it will be important to focus resources where they are likely to achieve the greatest return for New Zealand. Pursuing a large number of very small operators is likely to be less efficient than targeting the larger operators.
4. It is therefore proposed that the enabling legislation should provide for a minimum threshold above which any charges would apply. Various options could be considered ahead of making any regulations, but one possibility would be to set this threshold at $60,000 of betting turnover on New Zealand racing or sports and/ or with customers in New Zealand. A $60,000 threshold would match the threshold above which overseas businesses are required to pay GST on cross-border services and intangibles sold to New Zealand residents. This consistency would help to minimise complexity for offshore operators, which may help to encourage voluntary compliance.

#### The size of any additional resource required to administer a charging regime.

1. The best guide to the level of potential resource that may be required to administer a system of information use and/ or consumption charges is to look at potentially equivalent operations that already exist.
2. Collection of race field fees in Australia is generally carried out by the racing authority in each state. These bodies can employ 6+ full time equivalent posts focussing on management of wagering licensing and fee collection. These teams can be supported by separate integrity, legal and finance teams. In some cases, these bodies have invested in proprietary ICT systems to help make their processes more efficient.
3. Conversely, within New Zealand, the Broadcasting Standards Authority operates the Broadcasting Levy using a comparatively low staff resource (less than 1 dedicated FTE) and standard software packages. It should be noted that the Broadcasting Levy is much simpler in nature and applies to a smaller number of operators than what is proposed for either the information use or consumption charges.
4. The resource required for the basic administration of the proposed information use or consumption charges is likely to be somewhere in-between these two examples. DIA has made some initial estimates which suggest that depending on the scale of the administrative activity that is necessary, staff and other operating expenses could range from approximately $590,000 per annum up to in excess of $3.9 million per annum.
5. These estimates would need to be revisited once more is known about the specific design of any charges and the environment in which they would operate. For example, the lower end of the estimated range assumes that DIA would carry out a basic receipting and processing function, working with a comparatively small number (around six) of compliant offshore operators. More operators and/ or less compliant operators will require greater resources, involving more active relationship management, more investigative work, more frequent interaction with overseas regulators, dispute resolution activity and compliance actions.
6. It would seem appropriate that the ultimate costs of administering any charging regime should not fall to the New Zealand taxpayer. This suggests that the administration should be operated in a way that ensures that any Crown costs should be covered by revenue collected via the charge, with any surplus being distributed to the racing and/ or sports sectors. It may be possible over the longer term to fund this from money retained from the charges that are collected, assuming that the revenue is sufficient to cover these costs. However, in the short-term at least, additional funding would be required to cover set‑up expenses.
7. The potential pressure on public finances may be reduced if the NZRB was to play a significant role in the administration of any charging system. As explained in the tables following paragraph 212 of this RIS, it may be appropriate for the NZRB to play a leading role in administering an information use charge (which could help to deliver efficiencies within any collection and enforcement system), but it is unlikely to be appropriate for the NZRB to be involved in the collection of a consumption charge, given the potential conflict of interest posed by the NZRB’s operation of the TAB betting business in competition with offshore operators.
8. The NZRB’s Statement of Intent 2017-2019 indicates an investment by the NZRB of $0.5‑1.0 million in administering a system of offshore charges. This is in line with the lower end of the estimates made by DIA, suggesting a basic receipting and processing system. The Working Group report suggests that regulatory costs would need to be covered by the Crown during the start-up phase but could be recovered later. As noted above, if any Crown money is required, even in the initial phase, it should be provided on a cost-recovery basis.
9. The figures presented in this section of the RIS are DIA’s best initial estimates. As discussed in the next section, however, much greater costs may apply depending on the way in which non-compliance is tackled.

#### The approach to enforcing charges in cases of non-compliance.

1. In general, New Zealand law does not automatically apply to activity, people or property that are not within New Zealand’s territory. However, the New Zealand Parliament has the power to make laws with extraterritorial effect.
2. Any new law requiring offshore operators to pay the sorts of charges described in this RIS would be extraterritorial in nature. This is justifiable on the basis that the betting transactions in question have a New Zealand element: the use of New Zealand racing or sports information in betting products; and/ or the acceptance of bets from people in New Zealand.
3. This position is further supported by the fact that the overall structure for most types of gambling in New Zealand is designed to ensure that money from gambling benefits the community. More specifically, the Racing Act establishes a system whereby most of the profit from racing and sports bets is paid to those industries in New Zealand. Bets placed with offshore operators disrupt this. Money that would otherwise benefit New Zealand racing and sports instead goes overseas as commercial profit. An information use charge would require that offshore operators pay for the New Zealand events that they use. A separate consumption charge would be designed to require that offshore companies operate all of the bookmaking services they offer to New Zealanders in line with the “contribution to good causes” ethos that underpins gambling regulation in New Zealand as a whole.
4. As has been discussed throughout this RIS, the collection of any charges is going to rely primarily on voluntary compliance from the operators in question.
5. There are a variety of actions that could potentially be undertaken to encourage or compel compliance, including:

* Designing any charges in order to minimise bureaucracy and complexity for offshore operators.
* Engaging in proactive dialogue with offshore operators to help them understand their obligations under New Zealand law.
* Ensuring that charges are set at levels which are not excessive and can be shown to be fair in comparison to the payments that the NZRB is required to make to New Zealand racing and sports.
* Warning notices could be issued in cases of non-compliance, requesting remedial action and warning of sanctions. Sanctions would be most appropriate if offshore operators have entered into an agreement of the type described in paragraph 145.
* Overseas regulators could be sent notices advising of non-compliance by any operators based in their jurisdiction. These notices could also be sent to regulators in other jurisdictions where the operator in question is active. This may put pressure on the operator to pay any charges that are due in New Zealand because many regulators around the world expect operators to comply with their international obligations. Failure to be a “responsible international corporate citizen” could have a negative bearing on decisions that overseas regulators make about license conditions for relevant operators in their own jurisdiction.
* To the extent that information about non-payment of charges is available, a list of non-compliant operators could be published. This would be similar in nature to the material that is published by the Financial Markets Authority (FMA) listing businesses marketing financial services to New Zealanders without being registered and businesses about which the FMA advises people should be wary. (<http://fma.govt.nz/news/warnings-and-alerts>). Any decision to take this approach should be made after careful consideration, however. People wishing to make racing and sports bets may be less concerned than investors in the compliance or otherwise of companies with New Zealand law. It would be important to avoid the risk of creating a perverse incentive whereby a “black list” of this kind could, for some bettors, serve as a list of gambling providers to investigate as alternatives to compliant operators, motivated primarily by the betting odds that may be on offer.

1. The Working Group suggested the creation of penalties and fines that would be applicable in cases of non-payment of charges or failure to provide information to integrity monitoring or auditing organisations. The Working Group also suggested consideration of criminal penalties aimed at directors and senior management of organisations in these circumstances.
2. Following discussion with the Ministry of Justice, DIA has determined that the creation of criminal offences is not appropriate in these circumstances. The level of offending is unlikely to meet the threshold normally required to support the pursuit of extradition to New Zealand for trial. A common threshold internationally is more than 12 months imprisonment, which is higher than the maximum 12 months imprisonment currently prescribed for offences under the Gambling Act 2003.
3. An alternative approach, applicable in the case of the proposed information use charge, would be to create a requirement for offshore operators to enter into an agreement with a designated body to make use of New Zealand racing and/ or sports information.
4. There could also be a system of sanctions that apply if an offshore operator does not keep to the terms of any agreement. For example, a penalty would be applicable if an offshore operator failed to pay outstanding charges by a specified date. These penalties could increase depending on whether non-payment was “accidental” (e.g. due to administrative oversight), grossly careless or done knowingly. Further additional penalties could be applied for each month for which payment is overdue.
5. With or without these sorts of penalties, it would be possible to take legal action to seek a New Zealand judgement for unpaid debt. There are provisions in the Trans-Tasman Proceedings Act 2010 that may allow for such a judgement to be enforceable in Australia. Enforcement in countries other than Australia would rely on the rules governing the legal system of the country in question.
6. In broad terms, seeking a legal judgement for enforcement in another country is most likely to be successful if it concerns the recovery of a debt, e.g. an unpaid charge associated with an agreement for the use of New Zealand racing or sports information. It is generally less likely to be successful if the foreign court considers that the unpaid sum relates to a public interest in New Zealand, i.e. the enforcement of a revenue law. The approach to legislation design described in paragraph 145 – which would require that offshore operators enter into an agreement with a designated body - may be helpful in establishing the existence of a recognisable and enforceable debt.
7. Assuming that enforcement in another country is considered possible in a given case, the regulating authority in New Zealand (e.g. DIA or the NZRB) would need to consider the potential cost of taking legal action against any outstanding debt. It is very possible that legal action in multiple jurisdictions, with the potential for appeals to be mounted, could be disproportionately expensive.
8. Two key risks are the possibility of mass non-compliance and the impact of potential retaliatory action. The Working Group envisaged high levels of compliance with any charges that New Zealand might seek to apply to offshore operators. This RIS has already suggested that compliance may not be as high as the Working Group believed. Despite that, mass non-compliance is not expected.
9. Gambling operators based in Australia account for the majority of bets taken on New Zealand racing and sporting events, they also attract most of the offshore bets placed by New Zealanders. These bookmakers are already complying with the various race fields Acts across Australia, so have demonstrated an acceptance of the principle underpinning the proposed information use charge. It is however, accepted that the incentive to comply with Australian law is particularly high since these companies require a licence to operate in Australia.
10. Compliance by operators outside of Australia is lower, but a range of gambling operators in Asia, Europe and North America have been willing to pay the fees required by Australian race fields legislation. As noted in the discussion of Option 5, it is possible that there will be higher levels of resistance to the proposed the consumption charge, which is one of the reasons why it is not recommended.
11. Retaliatory action is also considered unlikely. To some extent, by seeking payments from offshore operators in respect of gambling activity that relates to New Zealand, New Zealand would be applying similar principles to those that are already in place in other countries. The NZRB already complies with relevant laws in other countries – for example, it makes payments to use Australian racing information and it pays fees to offer bets to customers in the United Kingdom and South Africa. However, it chose to cease its small activity with customers in France when gambling authorities there requested that it do so or enter into disproportionately expensive licence arrangements. Similarly, the NZRB recently blocked access to its TAB website from people in Singapore following an approach from Singapore’s gambling regulator. This action was taken to comply with Singapore legislation which makes it illegal for a remote gambling operator to provide gambling services to people in Singapore.
12. As noted in paragraph 129, there is a risk that if New Zealand chooses to apply information use charges to domestic sporting events, other countries could be prompted to take reciprocal action which may cost more in fees paid out than income received. Although this is considered to be a low risk due to New Zealand’s small size in the international gambling market, this RIS has recommended that the information use charge be limited to racing events in the first instance. This would limit the exposure to such a risk while the principle of information use charges in New Zealand is established for racing, which has wider international precedent.

### Consultation

1. The Offshore Racing and Sports Betting Working Group met with various sets of stakeholders during a series of meetings held at different locations around New Zealand. These included the NZRB, Gambling Commission, Problem Gambling Foundation, Lotteries Commission, Sport New Zealand and the three racing codes.
2. The Working Group also spoke to key sector commentators and representatives (including racing clubs, experts in international responses to internet betting and to the CEO of the Australian Wagering Council), customers of the NZRB and members of the general public.
3. DIA ran a public consultation on the Working Group’s proposals for six weeks in April and May 2016. This consultation received a total of 46 submissions. The submitters fell into the following categories: racing clubs, racing industry representatives, individuals, gambling harm support providers, offshore gambling operators, National Sports Organisations and Australian online wagering industry representatives.[[5]](#footnote-6)
4. The consultation submissions provided the following feedback on the proposals that have subsequently been considered in this RIS.

#### Permit in-race betting

1. Thirty submitters supported removing the prohibition on in-race betting (racing industry representative, racing club, individual, offshore gambling operator, NSO). Reasons for support, if provided, were that this would incentivise betting with the New Zealand TAB and not increase the risk of gambling harm or affect racing integrity.
2. Seven submitters opposed this proposal (racing industry representative, gambling harm support, racing club, individual). Concerns included the potential of increasing the risk of harmful gambling behaviour and/or racing integrity risks and the lack of evidence that it would incentivise betting with the TAB.

#### Enable betting on a broader range of sports

1. Thirty-three submitters supported this proposal or offered conditional support (racing industry representative, racing club, individual, offshore gambling operator, NSO). Reasons for support, if provided, included that enabling the NZRB to offer betting on a broader range of sports would enable the NZRB to compete on a more even basis with offshore operators and not increase the risk of gambling harm. Conditional support was offered on the basis that funding to racing should not be affected and that gambling harm risks should not be allowed to increase.
2. Five submitters opposed this proposal (gambling harm support, racing club, racing industry representative), mainly because of concerns about the increased risk of harmful gambling behaviour.

#### Require that offshore gambling operators pay a charge to use New Zealand racing and sports information in their betting products (an “information use charge”)

1. Thirty-nine submitters supported the introduction of an information use charge (racing club, racing industry representative, individual, gambling harm support, NSO, offshore gambling operator). The main reasons for support were because the proposal would ensure that offshore operators could no longer “free ride” on New Zealand racing and sports products and improve integrity if wagering information was provided on request.
2. Four submitters opposed this proposal (individual, online wagering provider, online wagering industry representative). Some of the submissions noted that charging a fee for sports information could result in a net loss to New Zealand if other countries implemented similar arrangements in response. Some individual submitters considered that sports information was readily available publicly and not owned by the NZRB and therefore a sports fee should not be charged.
3. One of the offshore operators indicated that it would be content to pay a 1.5 per cent fee to use event information if it was allowed to advertise in New Zealand but suggested that a lower rate would be fairer if the ban on advertising is retained.

#### Require that offshore gambling operators pay a charge when they take bets from New Zealand residents (a “consumption charge”)

1. Thirty-five submitters supported the introduction of a consumption charge (racing club, racing industry representative, individual, gambling harm support, NSO). The main reason for support was because a consumption charge would help level the playing field between the NZRB and offshore operators and increase revenue for the racing industry. Some submitters stressed the need for strong enforcement mechanisms and low fee rates to ensure compliance with the charging regime.
2. Five submitters opposed the proposed consumption charge (individual, offshore gambling operator, online wagering industry representative). Offshore gambling operators expressed the following concerns:

* The risk that the charge could discriminate against offshore operators in a way that was inconsistent with New Zealand’s free trade agreements, including the CER with Australia.
* Without a strong non-discriminatory enforcement regime, compliant operators would be disadvantaged, as some operators may continue to provide services to New Zealand customers without paying the fee.
* The need to ensure compliance would have to be balanced against ensuring that the fees were not set so high as to cause operators to cease taking bets from people in New Zealand.
* The objective of ensuring customer protection for New Zealanders would be compromised if reputable operators withdrew from the New Zealand market leaving it open to less reputable operators.
* Operators should be licensed and/or allowed to advertise in New Zealand in return for paying any charges. In effect, this would mean opening the New Zealand market to full commercial competition rather than limiting racing and sports betting to one domestic provider, the NZRB, as is the case now.

### Conclusions and recommendations

1. This RIS considers proposed policy options aimed at addressing the loss of revenue to New Zealand racing and sports which is resulting from New Zealanders betting with offshore operators rather than the NZRB.
2. Based on the regulatory impact assessment that has been carried out, which is detailed in this Statement, DIA makes the following recommendations.
3. The NZRB and wider racing industry should be encouraged to continue the implementation of its programme of strategic initiatives designed to improve the competitiveness both of the NZRB as an organisation and of the wider racing industry (Option 1 – the status quo).
4. The prohibition on the NZRB offering in-race betting should be removed (Option 2). This would allow bets on the outcome of a race to continue to be taken once that race has begun. However, any change to the law should make clear that “spot betting” on events that may take place within a race (such as a retirement or a change of lead) will not be permitted.
5. The NZRB should be permitted to offer bets on sports which do not have recognised NSOs in New Zealand (Option 3). The NZRB should continue to operate bilateral agreements with those NSOs that wish to have them. However, in cases where there is a recognised NSO that does not wish to enter into a betting agreement, the NZRB should continue to be prohibited from offering bets on that sport (both for events in New Zealand and in other countries). In cases where there is no recognised NSO, the NZRB should be permitted to have a sports betting agreement with Sport New Zealand. Sport New Zealand would distribute any income received through this arrangement.
6. Offshore gambling operators should be required to pay an information use charge for bets they take on events that take place in New Zealand (Option 4). There is a risk that the returns from the information use charge may not reach the levels estimated by the Working Group, but DIA considers that these risks are lower than the equivalent risks that apply in relation to the proposed consumption charge. Requirements which are similar to the proposed information use charge are in place in other countries, notably Australia. International gambling operators are therefore familiar with this sort of requirement, which is expected to make the task of administering the collection and enforcement of the charge more straightforward than is likely to be the case for the consumption charge considered in Option 5.
7. The information use charge should be applied to New Zealand racing events in the first instance, with the option to use secondary legislation to apply a similar charge to other sporting events. This approach would enable the information use charge to become established in line with the prevailing international approach which is generally limited to racing. Assuming the charges operate successfully for racing, the system could then be extended to cover sporting events if that is still considered to be desirable. However, this has a downside that, unlike the racing industry, the New Zealand sports sector would not benefit immediately from a new source of revenue. This disadvantage would be mitigated to an extent once the new formula is implemented for apportioning profits from sports bets taken by the NZRB. Under these new arrangements, NSOs will receive a larger share of these profits than they do at present.
8. Adoption of a consumption charge, whereby offshore gambling operators would pay a charge in respect of bets that they take from New Zealand residents (Option 5) is not recommended.
9. The proposed consumption charge carries a high risk that it may not achieve the returns that were estimated by the Working Group. One factor that could contribute to such an outcome is resistance from offshore operators to complying voluntarily, particularly if they are not permitted to operate in New Zealand on a similar basis to the NZRB, e.g. at least via the removal of the current advertising ban which applies to them. Another factor is the possibility that the scale of New Zealanders’ betting with offshore operators is lower than the estimates used by the Working Group (albeit the figures could in fact be higher, given the margin for error in the available data).
10. Implementation of a consumption charge would also mean that bets which people in New Zealand make with offshore operators would need to be treated in fundamentally different ways by different parts of the law. This could arguably result in an awkward tension between the Racing and Gambling Acts. In order to implement a consumption charge, offshore betting would be regulated by the Racing Act. However, in order to avoid having to authorise offshore operators to provide gambling services in New Zealand (and maintain the NZRB’s position as the only authorised provider of racing and sports betting), or to classify the activity as illegal, offshore betting would continue to be unregulated by the Gambling Act.
11. If one or both of the information use and consumption charges are adopted, it is important that they are implemented in a way that ensures New Zealand’s compliance with international trade agreements, particularly the Closer Economic Relations agreement between New Zealand and Australia. They must ensure a better competitive balance between the NZRB and its competitors based in in other countries but they must not provide the NZRB with a competitive advantage.
12. For those reasons, it is recommended that the combined level of any charges that are implemented should not exceed the equivalent level of payments that the NZRB makes to the three New Zealand racing codes and NSOs, which averaged 7.24 per cent of betting turnover over the five years 2012-2016 inclusive.
13. Any information use charges should reflect a fair “market price” in order to encourage voluntary compliance. This can be assisted by benchmarking the charge for New Zealand events against similar charges in other countries, such as Australia.

### Implementation

1. It is expected that any bill will be largely enabling in scope. In this respect, the bill will set out the major principles and obligations of the new legislative regime and will contain powers to make regulations that will be used to set up some of the operational elements of any new system.
2. If Ministers decide to implement an information use charge but not a consumption charge, it is recommended that the NZRB be given a leading role in the administration of the charge. This will build on the existing experience that the NZRB has in administering similar commercial arrangements with the Australian TABs.
3. If Ministers decide to implement a consumption charge, further work will be carried out to determine the best approach to its administration. This will build on the assessment that has already been undertaken for this RIS, which recommends that DIA should administer any consumption charge but that, if both a consumption and information use charge are adopted, consideration should be given to either having DIA administer both or splitting the administration between DIA (consumption charge) and the NZRB (information use charge). The aim will be to balance efficiency of administration (acknowledging that taking on new functions will not be cost neutral), encouraging voluntary compliance and taking advantage of existing expertise in both organisations.

### Monitoring, evaluation and review

1. The degree to which any of the options which are adopted are successful will ultimately be determined by the extent to which they produce increased revenue for New Zealand racing and sports organisations.
2. DIA, the NZRB and Sport New Zealand all publish annual reports which include official financial statements. It is expected that these existing processes will be used to publish details of any revenue that the respective organisations receive as a result of any of the proposals considered in this RIS. This should include details of the racing and sporting organisations to which money is allocated and whether any money is retained to cover administrative costs.
3. The operation and performance of the options that are adopted will be kept under review by DIA, the NZRB and Sport New Zealand. This will require the collection of data that these organisations do not collect currently, which will carry an additional cost over and above current business as usual. If at any point it becomes apparent that any of the new measures are not operating as planned (e.g. due to unexpectedly high costs or complexity) and/ or are not delivering increased revenue for New Zealand racing and sports organisations, remedial action will be taken to address any shortcomings.

1. Sport New Zealand’s investment eligibility criteria for NSOs are published online at the following address:

   [www.sportnz.org.nz/about-us/who-we-are/how-we-invest/investment-framework](http://www.sportnz.org.nz/about-us/who-we-are/how-we-invest/investment-framework) [↑](#footnote-ref-2)
2. Size and scope of the New Zealand Racing Industry, New Zealand Racing Board, October 2010

   <https://nzracingboard.co.nz/sites/default/files/documents/NZRB_Size_and_Scope_Final.pdf> [↑](#footnote-ref-3)
3. The Australian Wagering Council at that time represented Bet365, BetFair, Sportsbet and Unibet. In August 2016 it was announced that the Council would be disbanded and that steps would be taken to establish a new body to represent the collective interests of commercial gambling operators in Australia. [↑](#footnote-ref-4)
4. Department of Internal Affairs, Gambling Fact Sheet #27 (2013): www.dia.govt.nz/diawebsite.nsf/Files/GamblingFactSheets-Feb2013/$file/FactSheet27-Feb2013.pdf [↑](#footnote-ref-5)
5. The consultation document *Proposals to amend the Racing Act 2003* is available on DIA’s racing policy webpage at the following address:

   <https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Our-Policy-Advice-Areas-Racing-Policy?OpenDocument> [↑](#footnote-ref-6)