

Departmental Disclosure Statement

Gambling (Reinstating COVID-19 Modification) Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Department of Internal Affairs.

The Department of Internal Affairs certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

8 December 2021.

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Part One: General Policy Statement

This Bill amends the Gambling Act 2003 to reinstate a modification of the definition of remote interactive gambling during a specified period due to effects of COVID-19. This will enable Class 3 lotteries to be conducted remotely until the close of 31 October 2024. (For example, operators would be able to receive payments through phone or Internet banking, which would otherwise be prohibited.) Class 3 lotteries are used to raise funds for charitable or non-commercial purposes.

Remote interactive gambling is normally prohibited for Class 3 lotteries. The Gambling Act was amended on 16 May 2020 to add a modification of the definition of remote interactive gambling during a specified period (on and after 16 May 2020 and until the close of 31 October 2021) to enable specified class 3 operators to conduct their lotteries remotely. The specified operators were Countdown Kids Charitable Trust, the National Heart Foundation of New Zealand, and the Royal New Zealand Coastguard Incorporated.

The modification was proposed to be extended (until the close of 31 October 2024), expanded to include any Class 3 lottery (not just those conducted by those 3 specified operators), and simplified, by amendments in the COVID-19 Response (Management Measures) Legislation Act 2021. Unfortunately, due to administrative oversight, while the Bill had its third reading in time, the section expired before the Bill received Royal assent. As a result, as it relates to the section, the Act was ineffective, and this Bill is required to reinstate the modification (expanded and simplified as earlier proposed) after Royal assent and until the close of 31 October 2024.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
This amendment was part of the 2019 consultation on the Online Gambling Review. Refer to 3.6 for details. The summary of submissions can be found here: https://www.dia.govt.nz/onlinegamblingconsultation	

Relevant international treaties

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

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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No specific issues relevant to international obligations were identified in the development of the policy in this Bill. As such, there have been no formal steps to determine whether the policies to be given effect by this Bill are consistent with New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

No specific issues were identified in the Bill that may have implications for the rights and interests of Māori protected by the Treaty of Waitangi. As such, no formal steps have been taken to determine whether the policies to be given effect by this Bill are consistent with the principles of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

NO

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?
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NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Both the Heart Foundation and Coastguard New Zealand wrote to the Prime Minister and the Minister of Internal Affairs in August 2021 with their concerns about the expiry of section 4A of the Gambling Act 2003 on 31 October 2021, given the continued risk of Alert Level changes (which was subsequently realised).</p> <p>These concerns were addressed originally in the COVID-19 Response (Management Measures) Legislation Act 2021 which commenced on 3 November 2021, but due to the technical issue it was enacted too late to amend the relevant section of the Gambling Act. Submissions received by the Cabinet Finance and Expenditure Committee have informed this subsequent Bill. The Departmental Report can be found here: Departmental Report - Class 3 amendments October 2021 (www.parliament.nz)</p> <p>In addition, prior to the COVID-19 situation, the issues facing Class 3 operators were included in the public discussion document “Online Gambling in New Zealand” released in late July 2019. The discussion document stated that the Government supported Class 3 operators being able to offer their gambling products by email and phone. Officials also held targeted consultation meetings on the discussion document with community organisations during the eight-week consultation period.</p> <p>Of the 2,910 submissions received which specifically related to this change, 2,897 (99 percent) supported the removal of the restriction on remote interactive gambling in order to enable Class 3 operators to undertake lotteries online. This was equivalent to 91 percent of all the written submissions received during the consultation.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The amendments to section 4A will extend the provision which has already been in place since May 2020 with three gambling operators: Countdown Kids Charitable Trust, the Heart Foundation and Coastguard New Zealand.</p> <p>Since it has been in place, no issues have been identified with the way it is operating and two of the operators (Heart Foundation and Coastguard New Zealand) have sought for it to be extended. Officials expect therefore that its extension, and its expansion to other Class 3 gambling operators conducting a lottery, is workable within the existing Class 3 licensing regime.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

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

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO