

# New Zealand – Regulation of Offshore Betting Operators

13 August 2020

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The New Zealand regulatory regime applicable to offshore betting operators has been updated through the enactment of the *Racing Industry Act 2020 (NZ)* (**RIA**), which came into effect on 1 August 2020. Among other things, the RIA establishes a point of consumption taxation regime, as well as obligations to pay product fees (known as information use charges) in respect of bets taken on racing and sporting events that take place in New Zealand.

We discussed the initial developments in our Focus Paper entitled: *New Zealand – Development in Online Gambling Regulation* (which can be accessed at <https://addisons.com/knowledge/insights/new-zealand-development-in-online-gambling-regulation/> ).

## RIA – Regulation of Racing and Betting in New Zealand

The RIA repeals the *Racing Act 2003 (NZ)* and introduces a new regulatory regime relating to the conduct and governance of racing and betting in New Zealand. Among other things, the RIA sets out the regulatory regime for each of TAB NZ (which is the successor agency to the New Zealand Racing Board, and, more recently, the Racing Industry Transitory Agency) as the sole betting operator in New Zealand, and the Racing Integrity Board as the agency for the administration of integrity in the racing sector.

In addition, the RIA introduces a number of obligations that apply to offshore betting operators.

The RIA has maintained the principal obligations applicable to offshore betting operators that were introduced by the *Racing Act 2003*. Offshore betting operators must:

- (i) before using NZ racing and sporting information:
  - (a) obtain permission from the relevant racing code, relevant NZ national sporting organisation or, in the absence of there being an applicable NZ national sporting organisation, Sport and Recreation New Zealand (or a relevant nominee); and
  - (b) enter into a betting information use agreement that complies with the terms and conditions specified in the RIA, which will include an obligation to pay the applicable information and use fee; and
- (ii) pay consumption charges in respect of bets taken on racing and sporting events, held in or outside NZ, from persons resident in NZ (**POC Charges**).

An offshore betting operator, regardless of where it is incorporated or resident, is required to comply with the obligations in the RIA provisions applicable to offshore betting operators.

## Use of New Zealand Betting Information:

The RIA recognises that certain offshore betting operators had concluded or commenced negotiations for betting information use agreements under the *Racing Act 2003*. These arrangements have been ‘grandfathered’, at least insofar as they relate to racing events that take place in New Zealand.

Offshore betting operators that had not commenced this process must ensure that, before making use of New Zealand racing and sporting information, they have entered into a betting information agreement which complies with the conditions provided in the RIA. The procedure involved relating to the entry into, and the contents of these agreements (including the relevant fees that will be payable) are still to be finalised.

## POC Charges:

The rate of the POC Charges that will be payable by offshore betting operators has not yet been established; however, the RIA provides that the POC Charge rate will be based on a percentage of the operator’s gross betting revenue.

The POC Charge rate will be determined after the Minister consults with the industry (including with offshore betting operators that are liable to pay POC Charges) and will be specified by the Minister in regulations. This is likely to occur after the New Zealand election, which is to be held on 19 September 2020.

POC Charges will not be payable by an offshore betting operator in respect of a financial year if the operator’s revenue from taking bets on racing and sporting events from persons located in NZ in that year is less than NZ\$60,000.

## Enforcement:

The RIA grants power to the designated authority to issue penalty notices in respect of failures by offshore betting operators to comply with obligations set out in the RIA. Accordingly, penalties (which may not exceed NZ\$50,000 in respect of any non-compliance) may be imposed on an offshore betting operator which does not comply with obligations set out in the RIA, for example, a failure to enter into an agreement relating to the use of New Zealand betting information, and/or failing to pay POC Charges.

The designated authority is also required to publish a copy of the penalty notice on its website.

There has been commentary about the effectiveness of this enforcement regime and particularly whether the relevant payment obligations are enforceable against companies that do not have a presence in New Zealand. Accordingly, there remains an element of doubt about the effectiveness of the new regime in causing offshore betting operators to submit to the controls being introduced by the RIA.

## Licensing Regime?

One of the issues subject to review is the way online gambling generally should be regulated in New Zealand. As indicated in our previous Focus Paper, New Zealand is proposing to complete its review in relation to this issue and, more specifically, whether a licensing regime should be developed in respect of the regulation of online gambling services that are provided to persons in New Zealand. Although *the Gambling Act 2003 (NZ)* contemplates that these services can be provided by offshore operators, subject to various obligations relating to the payment of GST and the charges contemplated in the RIA (for offshore betting

operators), it is not possible currently for those operators to promote legally their services to New Zealanders.

It has been signalled that further consultation about this issue will take place after the New Zealand election. Until then, an incongruous situation remains in place with offshore betting operators, at least, being required to pay substantial imposts for the privilege of providing their services to person in New Zealand with limited benefits (for example, no right to advertise) and there being reasonable doubt about the enforceability of those payment obligations.

## Conclusion

The RIA sets the regulatory framework applicable for offshore betting operators from 1 August 2020 to operate legally with respect to New Zealand. Further details are likely to be announced soon. This will include further information about the manner in which the framework will be implemented.

We anticipate that, once these details are announced, most likely in the form of regulations, clarity will exist about the fees and other obligations that will apply to offshore betting operators.

We will continue to monitor the developments. If you have any queries relating to the regulatory framework in New Zealand applicable to online gambling, please contact the Addisons Gambling Team.

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