These documents have been proactively released:

23 October 2019, DEV-19-MIN-0288 Minute: Review of Racing: Paper 2 – Governance of the New Zealand Racing Industry; and


Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Where information has been withheld for other reasons consistent with advice, it has been annotated with an asterisk. This information may in some cases be accessible under the Official Information Act 1982.

Key to Redaction Codes:

- Budget sensitive
- Section 9(2)(f)(iv) – the confidentiality of advice tendered by Ministers of the Crown and officials
Review of Racing: Paper 2 – Governance of the New Zealand Racing Industry

Portfolio Racing

On 23 October 2019, the Cabinet Economic Development Committee:

TAB NZ

1 agreed that the Racing Act 2003 (the Act) be amended so that the Racing Industry Transition Agency (RITA) is disestablished and TAB NZ is established from 1 July 2020;

2 noted that implementing the above proposal will establish TAB NZ as a statutory body;

3 agreed that current provisions for RITA under the Act be changed so that:

3.1 the objectives for TAB NZ are to:

3.1.1 maximise profits for the long-term benefit of New Zealand racing and sports, subject to ensuring the risk of problem gambling and underage gambling is minimised; and

3.1.2 facilitate and promote racing and sports betting;

3.2 all betting functions currently prescribed to RITA continue for the TAB NZ;

3.3 existing provisions are clarified so that TAB NZ is required to determine the racing calendar, and issue betting licences in conjunction with the three racing codes;

3.4 all racing administration functions currently prescribed to RITA are repealed;

4 agreed that new governance provisions for TAB NZ be created in the Act to provide for:

4.1 a board of up to seven independent directors appointed by the Minister after considering nominations from the three racing codes and Sport NZ;

4.2 the Minister to appoint directors on a skills-basis so that the board of TAB NZ has collectively from its members knowledge of or experience in:

4.2.1 racing and sport administration at a national level;

4.2.2 the betting industry and the betting market;
4.2.3 business, marketing, commercial law and economics; and

4.2.4 gambling harm minimisation;

5 agreed that the current accountability requirements of RITA in the Act be clarified and continued so that the TAB NZ is required to submit to the Minister, after consultation with the codes, its statement of intent (SOI) and annual business plan for tabling in Parliament, without an approval requirement;

6 agreed that new provisions be created in the Act to require the board of TAB NZ to seek approval from the Minister before making decisions that could fundamentally change the shape or nature of the entity;

Racing codes

7 agreed that new provisions be created in the Act to prescribe high-level functions to the racing codes to accommodate the devolution of responsibilities from RITA, with these racing code functions being to:

7.1 govern their respective networks of racing clubs and venues, including the monitoring of performance, finances and health and safety;

7.2 approve racing club constitutions (and changes to them);

7.3 register/license racing clubs and participants;

7.4 develop racing rules (and changes to them) in consultation with the TAB NZ and Racing Integrity Board (RIB);

7.5 create and implement animal welfare policies;

7.6 distribute revenue to race clubs to make participating in racing worthwhile; and

7.7 collaborate with the other racing codes to achieve the objectives of the racing industry as a whole;

8 agreed that a new provision be created in the Act to allow the Minister to establish an entity (on the recommendation from the codes) to discharge any collective code functions set out in paragraph 7 above;

9 agreed that a new provision be created in the Act to allow the Minister to, via regulations, appoint a commissioner to resolve a significant disagreement (whose decisions would be binding on the parties involved) and levy the racing codes for the associated cost;

10 agreed that a new provision be created in the Act to allow the Minister to create regulations to set the terms of the commercial agreement between a racing code, or racing codes, and TAB NZ;

11 agreed that a new provision be created in the Act to allow the Minister to set the appointment process of code directors if this is assessed by the Minister as being required;

12 agreed that existing accountability requirements in the Act for the codes be repealed and replaced with provisions that require the codes to submit their SOIs and annual business plans to the Minister for tabling in Parliament without an approval requirement;
Racing clubs

13 agreed that existing provisions in the Act, which requires clubs to send to RITA annual audited financial statements, be repealed;

The racing integrity system

14 agreed that the current high-level integrity provisions in the Act be repealed and replaced with new provisions to:

14.1 establish the RIB as a statutory body under the Act;

14.2 prescribe to the RIB the function of operating an investigative arm, which will:

14.2.1 employ and train stewards and investigators to preside over races and investigate breaches of the rules of racing;

14.2.2 provide advice to the codes on racing and betting rule changes;

14.2.3 provide or arrange for the provision of veterinary and drug testing services;

14.2.4 monitor and scrutinise the performance and effectiveness of racing code animal welfare policies and initiatives;

14.3 prescribe to the RIB the function of operating an adjudicative arm, which will:

14.3.1 initiate, develop, and recommend to the industry organisations those measures that will, in its opinion, be conducive to the efficient judicial control of racing in New Zealand;

14.3.2 appoint members to any judicial committees to adjudicate on any matter that is brought before it in accordance with the racing rules of a code;

14.3.3 appoint members to any appeals tribunals to adjudicate on any appeals made to it;

14.3.4 recommend to a racing code any changes to the racing rules of the code that it considers desirable in relation to matters of a judicial nature;

14.4 specify that the investigative arm and adjudicative arm must operate independently from each other;

15 agreed that the new governance and accountability provisions in the Act for the RIB be:

15.1 a board of up to seven independent directors appointed by the Minister with nominations from the three racing codes and TAB NZ;

15.2 that the Minister appoints directors on a skills-basis so that the board has, collectively from its members, knowledge of or experience in adjudication, investigation, disciplinary practices, monitoring and performance measuring;

15.3 to have a strong primary duty to act in the best interest of the board and the achievement of its goals;

15.4 required to develop a SOI and business plan in consultation with the three racing codes and TAB NZ;
15.5 required to submit its SOI and business plan to the Minister for tabling in Parliament, without an approval requirement;

16 agreed that new provisions be created in the Act, in relation to the funding of the RIB, to:

16.1 require the TAB NZ to fund the RIB;

16.2 require the RIB to develop a budget in accordance with its business plan and consult on this budget with TAB NZ;

16.3 require the Minister to approve the RIB’s budget;

16.4 enable the Minister to create regulations that set the level of funding that TAB NZ provides to the RIB if a funding agreement cannot be reached;

17 agreed that the provisions outlined above for the RIB and its functions be commenced at a date specified by an Order in Council;

18 agreed that new provisions be created in the Act to allow the Minister to appoint an establishment board to manage the transition to the new RIB model, and that this establishment board:

18.1 be comprised of five members appointed by the Minister after considering nominations from RITA or its successor organisation;

18.2 has the sole function of facilitating the transfer of assets and functions to the RIB and finalising the new integrity model;

18.3 disestablishes when the RIB provisions commence;

Betting integrity

19 agreed that the current provisions which provide for the application of money received from the collection of offshore betting charges be expanded, so that some of this money can also be applied to processes to identify and address risks to the integrity of racing and sport betting;

Legislative implications

20 9(2)(f)(iv)

21 invited the Minister for Racing to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;

22 authorised the Minister for Racing to take any remaining policy decisions necessary to enable final drafting of the above proposals for inclusion in the Racing Reform Bill (No. 2).

Janine Harvey
Committee Secretary

Hard-copy distribution: (see over)
Present:
Rt Hon Winston Peters
Hon Kelvin Davis
Hon Grant Robertson (Chair)
Hon Phil Twyford
Hon Dr Megan Woods
Hon Chris Hipkins
Hon David Parker
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Jenny Salesa
Hon Damien O’Connor
Hon Kris Faafoi
Hon James Shaw
Hon Julie Anne Genter
Hon Eugenie Sage

Hard-copy distribution:
Minister for Racing

Officials present from:
Office of the Prime Minister
Officials Committee for DEV
Review of Racing: Paper 2 - Governance of the New Zealand Racing Industry

Proposal

1. This paper proposes a governance structure of the key entities which will make up the New Zealand racing industry: TAB NZ, the three racing codes, racing clubs, and the Racing Integrity Board. It seeks agreement to policy for inclusion in the Racing Reform Bill No. 2 2019 (Bill No. 2).

2. This Cabinet paper is one of a suite of four that will collectively provide the Government’s final legislative response to the recommendations of the Review of the New Zealand Racing Industry (the Messara Report). The other three papers are:

   2.1 Paper 1 – Overview of the Final Racing Industry Reforms;
   2.2 Paper 3 – Utilising Racing Industry Property to Support Industry Revitalisation; and
   2.3 Paper 4 – New Products and Strengthened Harm Prevention and Minimisation for TAB NZ.

Executive summary

3. The proposals in this paper aim to assure the long-term sustainability of the New Zealand racing industry following the transition period implemented by the Racing Reform Act 2019.

4. The Messara Report found that racing industry governance was not fit for purpose and that the (former) New Zealand Racing Board (NZRB) structure was not conducive to the efficient regulation of the racing industry or maximisation of wagering revenue because of conflicting priorities. The Ministerial Advisory Committee for Racing (MAC) supported Messara’s conclusions and considered that a more efficient and internationally competitive structure would increase revenue and attract more customers.

TAB NZ

5. The Department of Internal Affairs (the Department) considered a range of organisational forms for the TAB NZ as it will be taking on fundamentally different functions than its predecessor, the Racing Industry Transition Agency (RITA). These options include: a statutory body (as current); an autonomous Crown entity; a state-owned enterprise; or a private company. The Minister for Racing (the Minister) recommends that the most appropriate organisational form of the TAB NZ is a statutory body. This form provides for an adequate commercial focus if supported by appropriate governance, and accountability provisions in the Racing Act 2003 (the Act).

6. For the TAB NZ to be successful as the sole betting operator for racing and sports it must have independence from the industry at the decision-making level. The former NZRB was appointed on a code representative basis, but the Racing Reform Bill 2019 changed this for appointments to RITA. Accordingly, it is recommended that the board of the TAB NZ will also be appointed on a skills basis.
The Minister recommends the Act be changed so:

7.1 RITA is disestablished and TAB NZ is established from 1 July 2020;

7.2 all betting functions currently prescribed to RITA in the Act continue for the TAB NZ;

7.3 all racing administration functions currently prescribed to RITA in the Act are repealed and instead devolved to the racing codes at a high level; and

7.4 the board of directors are appointed by the Minister on a skills basis following nominations from the three codes and Sport New Zealand (Sport NZ).

Racing codes and clubs

8. The Messara Report recommended the racing responsibilities of the NZRB devolve to the racing codes. This would improve decision making for the codes (and sharpen the commercial focus of the proposed TAB NZ).

9. The Minister recommends RITA devolve its industry governance functions to the three racing codes (the codes). As such, the codes need to be empowered to effectively govern their respective industries and networks of clubs and venues. The Minister recommends new provisions be created in the Act which prescribe high-level racing functions to the codes. The current organisational form of codes and clubs (incorporated societies) is adequate and does not require change.

Racing integrity system

10. The Messara Report proposed that a well-qualified person be appointed to review the structure and efficacy of the Racing Integrity Unit (RIU) and allied integrity bodies. That review has been undertaken by Mr. Malcolm Burgess MNZM, former Assistant Commissioner of Police. Mr. Burgess reported to the MAC in June 2019. His report (the Burgess Report) made several recommendations, including structural changes, to improve the performance and effectiveness of the racing integrity system.

11. The Burgess Report proposed that the functions of the current integrity system (Judicial Control Authority (JCA), RIU, and the New Zealand Laboratory Service) operate out of a single statutory body, the Racing Integrity Board (RIB). The RIB would separate the integrity system from the industry, a factor that is important for growing confidence in racing integrity. It is proposed that the integrity system continue to be funded by TAB NZ, as TAB NZ generates the primary source of revenue for the racing industry.

12. The Minister recommends the current high-level integrity provisions in the Act be repealed and replaced with new provisions which establish the RIB and provide for its function, as the Burgess Report recommends.

Background

The government has agreed to the overall intent of the Messara Report

13. The Messara Report confirmed New Zealand’s racing industry is in a serious state of decline and proposed recommendations for restoring its financial viability (further detail can be found in ‘Paper 1 – Overview of the Final Racing Industry Reforms’).

1 Including the funding of the racing integrity system. Further detail is included at Appendix A.
14. The Messara Report recommended the betting functions of the former NZRB devolve to a separate organisation and racing functions devolve to the codes. The functions of the NZRB were transferred to RITA as part of the transitional arrangements implemented by the Racing Reform Act 2019. It is proposed these functions will, in turn, devolve to TAB NZ and the three racing codes in a second Racing Reform Bill.

**Guiding principles for governance reforms**

15. The racing industry needs to be able to make hard decisions to assure its sustainability in the long run. It needs to support a self-sustaining future which does not require further reform. It is important that the incentives for all entities work to encourage the efficient use of assets and resources.

16. In conceptual form, the proposed organisational changes relating to different functions from 2018, through transition and to the final future form are shown in the following table.

<table>
<thead>
<tr>
<th>Functions</th>
<th>Structure in 2018</th>
<th>Transition</th>
<th>Future</th>
</tr>
</thead>
<tbody>
<tr>
<td>Change management</td>
<td>N/A</td>
<td>RITA</td>
<td>N/A</td>
</tr>
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<td>BAU Betting</td>
<td>NZRB</td>
<td></td>
<td>TAB NZ</td>
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<tr>
<td>BAU Racing</td>
<td>JCA/RIU</td>
<td></td>
<td>Codes</td>
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<td>N/A</td>
<td></td>
<td>RIB</td>
</tr>
<tr>
<td>Residual functions</td>
<td>N/A</td>
<td>N/A</td>
<td>TBC</td>
</tr>
</tbody>
</table>

**Proposals for TAB NZ**

**Future purpose of TAB NZ**

17. It is proposed TAB NZ will be the sole commercial betting operator for racing and sports in New Zealand. TAB NZ will focus primarily on its success as a commercial entity with its key function being the maximisation of profits, subject to ensuring the risk of problem gambling and underage gambling is minimised.

18. TAB NZ’s role within the racing industry will be to sell betting products using the intellectual property (IP) of racing and sporting events. This IP is supplied by the racing codes and the sport sector; in return the TAB NZ distributes surplus revenue back to the codes and makes payments to Sport NZ and national sporting organisations (NSOs).

19. The fundamental relationships between the TAB NZ, the racing codes and NSOs, will be based on commercial agreements. As a commercially-orientated entity independent from the racing codes, the TAB NZ will be able to invest in the long-term sustainability of its operation to achieve the desired outcomes of these reforms.

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2 The Messara Report proposed that the betting operator be named Wagering NZ. The MAC, however considered that the TAB brand has recognition value and suggested instead that the entity be named TAB NZ.

3 The TAB NZ will also operate gaming and broadcasting activities.
BUDGET SENSITIVE

20. The Messara Report recommended full operational outsourcing of all domestic wagering, broadcast and gaming operations, to a single third-party wagering and media operator of international scale. The Racing Act 2003 provides the RITA Board with broad powers to carry out any business or activity and the former entity previously investigated such outsourcing possibilities. The Minister recommends that TAB NZ board decision making should be constrained for decisions that “fundamentally change” the shape or nature of the entity and be agreed by the Minister of Racing.

21. The Minister recommends the current provisions for RITA under the Act be amended so that:
   21.1 RITA is disestablished and TAB NZ is established from 1 July 2020;
   21.2 the objectives for TAB NZ would be to:
      21.2.1 maximise profits for the long-term benefit of New Zealand racing and sports, subject to ensuring the risk of problem gambling and underage gambling is minimised; and
      21.2.2 facilitate and promote racing and sports betting;
   21.3 all betting functions currently prescribed to RITA continue for TAB NZ (this includes the provision currently prescribed to RITA of developing programmes for the purposes of reducing gambling harm);
   21.4 existing provisions which require TAB NZ to determine the racing calendar and issue betting licenses are clarified so that the TAB NZ is required to do this in conjunction with the three racing codes; and
   21.5 all racing administration functions currently prescribed to RITA are repealed and provided to the codes.

Governance of TAB NZ

Board of directors

22. The Messara Report suggested the board of TAB NZ contain representatives from the three racing codes and four independent directors, including an independent chair. This proposal is supported by RITA. However, it is important the TAB NZ has independence from the racing codes at the decision-making level. Similar cooperative enterprises have a challenging job in finding a workable balance between optimising pay-outs to their industry stakeholders and the need to run their business for long-term profitability. This requires skilled governance, and it follows that a skills-based governance structure (as is already in place for RITA) is a meaningful way of dealing with the degree of challenge involved.

23. RITA’s preference is the Messara Report recommendation to have representatives of the racing codes on the board of TAB NZ. However, RITA concedes that a skills-based board as is proposed, is its “second-best” preference. Skill-based board appointments are proposed to be made by the Minister following nominations from the racing codes and Sport NZ.

24. The Minister recommends new governance provisions for TAB NZ are created in the Act which provide for:
   24.1 a board of up to seven independent directors appointed by the Minister after considering nominations from the codes and Sport NZ;
24.2 the Minister to appoint directors on a skills-basis so that the board of TAB NZ has, collectively from its members, knowledge of or experience in:

24.2.1 racing and sport administration at a national level;
24.2.2 betting industry and market;
24.2.3 expertise in business, marketing, commercial law and economics; and
24.2.4 gambling harm minimisation.

25. The Minister also recommends that new provisions are created in the Act which require the board of TAB NZ to seek approval from the Minister before making decisions that could fundamentally change the shape or nature of the entity. This could include, for example, the full outsourcing of betting operations as recommended by the Messara Report.

**Accountability**

26. It is recommended the current accountability requirements for RITA in the Act are clarified and continued so that the TAB NZ is required to submit to the Minister, after consultation with the codes, its statement of intent (SOI) and annual business plan for tabling in Parliament, without an approval requirement. This will promote transparency in TAB NZ’s betting operation whilst separating it from government.

**Organisational form of TAB NZ**

27. The Minister considers the most appropriate organisational form of TAB NZ is a statutory body (current form of RITA) with its governance board independent of the codes.

28. The Department considered the alternative options of establishing the TAB NZ as either an autonomous Crown entity, state-owned enterprise, or a private company. Maintaining the current organisational form of RITA as the basis for TAB NZ is the least costly approach in terms of implementation and ongoing sustainability. Transferring relevant RITA functions to the TAB NZ is relatively easy, requiring the amendment of a single Act.

29. Conversely, changing TAB NZ’s form to a Crown owned entity would call in to question the suitability of its current tax exemption status under section CW 47 of the Income Tax Act 2007 and would also create additional costs for monitoring and accountability processes. The third option of setting up the TAB NZ as a private company would require that ownership of it be clarified. The industry’s view is that it owns the betting platform. Ownership is a contentious issue across all the racing codes and would be very difficult to resolve.

30. The Minister recommends Cabinet note that establishing TAB NZ in the Act establishes it as a statutory body.

**Proposals for racing codes**

**Proposed purpose of racing codes**

31. The Messara Report recommended the racing responsibilities of the NZRB devolve to the racing codes. This would improve decision making for the codes (and sharpen the commercial focus of the proposed TAB NZ).
32. The codes would have the role of managing their respective industries and carrying out the racing functions devolved from RITA. At the highest level, the primary purpose of a racing code would be to govern their respective industries to ensure that the highest quality racing product is supplied to the betting market.

33. The Minister recommends new provisions be created in the Act to provide high-level functions for racing codes to accommodate the devolution of responsibilities from RITA as follows: Racing codes may:

33.1 govern their respective networks of racing clubs and venues including monitoring their performance, finances and health and safety;
33.2 approve racing club constitutions (and changes to them);
33.3 register/license racing clubs and participants;
33.4 develop racing rules (and changes to them) in consultation with the TAB NZ and RIB;
33.5 create and implement animal welfare policies;
33.6 distribute revenue to racing clubs to make participating in racing worthwhile; and
33.7 collaborate with the other racing codes to achieve the objectives of the racing industry as a whole.

34. The Minister also recommends a new provision be created in the Act that would allow the Minister to establish an entity, on the code’s recommendation, to discharge collective code functions proposed to be provided by the Act (as outlined above).

35. The ability of the racing codes to collaborate with each other is critical to their future success. If the codes cannot agree on an outcome pertaining to a critical issue this risks the achievement of these reforms and would have a significant effect on the collective good of the industry. In such situations, a ministerial intervention approach is proposed. The Minister recommends that a new provision is created in the Act that allows the Minister to, via regulations, appoint a commissioner to resolve a significant disagreement and levy the racing codes for the associated cost. These provisions would also state that the decisions of the commissioner are binding on the parties involved.

36. Additionally, if the racing codes disagree with TAB NZ on a critical issue relating to a commercial agreement, the Minister recommends a new provision is created in the Act which provides for the Minister to set the terms of the commercial agreement between a racing code, or racing codes, and TAB NZ.

**Governance of racing codes**

**Board of directors**

37. The Messara Report recommended there be a statutory requirement for each code to appoint two independent directors to their respective governing boards. The boards of the racing codes will require a wider skill set in order to carry out the new functions devolved from RITA. Because the codes have made their own efforts to include independent expertise on their boards the Minister considers this does not need to be specified in the Act.
BUDGET SENSITIVE

38. However, in the event that a code board does not have the capacity or knowledge to carry out its new functions, it is recommended that a new provision is created in that provides for the Minister to set the appointment process for code directors if this is assessed by the Minister as being required or recommended by a code.

Accountability

39. As incorporated societies, the constitutions of the codes are approved by their members (racing clubs). The Messara Report recommended that the codes’ constitutions and changes to them should be submitted to the Minister for approval. This was not supported by any of the codes or the Department. In their submissions, the codes generally considered that the requirement be that their constitutions, and any changes to them, be consulted with the TAB NZ, especially if changes were likely to affect the quality of the racing product for betting purposes. The Minister considers these requirements do not need to be specified in legislation.

40. For other accountability requirements, the Minister recommends existing accountability requirements in the Act for the codes be repealed and replaced with provisions that require that the codes submit their SOIs and annual business plans to the Minister for tabling in Parliament without an approval requirement.

Organisational form of racing codes

41. Currently racing codes are established as incorporated societies. This form provides an adequate organisational structure for the additional governance functions that it is proposed the codes will undertake. No change is recommended for the organisational form of racing codes.

Proposals for racing clubs

Future purpose of racing clubs

42. Currently, the perception is that racing clubs have significant responsibilities to their local communities. The future purpose of racing clubs within the wider racing industry will be to produce a high-quality product for the codes to supply to the betting market. This production relies, in part, on the management and maintenance of racing facilities in order to conduct high quality race meetings and provide training venues. This reflects the pivot to a more commercial orientation described in Paper 1 – ‘Overview of the Final Racing Industry Reforms’.

Governance of racing clubs

Board of directors and accountability

43. The Minister considers racing club governance and accountability is best managed by the respective racing codes. The codes will be in a position to use their proposed registration/approval function, described above, to monitor and encourage racing clubs to adopt better governance practices. A code might choose not to approve constitutions of those clubs which do not make efforts to align with wider industry goals. This new function will also allow codes to encourage better governance from racing clubs on a case-by-case basis.
44. The Messara Report suggested that each club’s constitution provide for the appointment of two independent directors. However, the capability and resources of racing clubs varies greatly across New Zealand. It is not recommended that the Act require that every club make such appointments. Additionally, the Minister recommends repealing existing provisions in the Act which requires clubs to send annual audited financial statements to RITA.

Organisational form for racing clubs

45. Currently, the majority of racing clubs in New Zealand are established as incorporated societies. No change is recommended.

Proposals for the racing integrity system

46. Currently the racing integrity system consists of three key entities:
   46.1 the Judicial Control Authority (JCA), an adjudicative statutory body;
   46.2 the Racing Integrity Unit (RIU), an investigative private company owned by RITA and the three racing codes; and
   46.3 the New Zealand Racing Laboratory Service (NZRLS), a private company that contracts with RITA to conduct drug testing of race animals.

47. Appendix A describes the functions of these entities in more detail.

48. The Messara Report recommended that a well-qualified person be appointed to review the structure and efficacy of the RIU and allied integrity bodies. That review has been undertaken by Mr. Malcolm Burgess MNZM, former Assistant Commissioner of Police. The Burgess Report made several recommendations to improve the performance and effectiveness of the racing integrity system. The Minister agreed to the recommendations of the Burgess Report in principle, subject to advice about fine tuning some minor issues identified during consultation with RITA.

Summary of the Burgess Report

49. The Burgess Report had the purpose of identifying areas for improvement and increased efficiency for the racing integrity system. It recommended establishing one independent Racing Integrity Board (RIB) to provide governance of the stewarding, investigative and adjudicative functions. The proposed RIB would oversee two separate operational arms which are:
   49.1 an investigative arm which would undertake the roles of the current RIU; and
   49.2 an adjudicative arm which would undertake the roles of the current JCA.

50. The Burgess Report states that while the RIB should have independence in operational decision making, a strong connection to the racing codes through effective engagement is important. It also recommended that funding for integrity services should continue to be funded by RITA (TAB NZ in future) with a simplified budget approval process. It was also proposed that the RIB would hold the contract with the NZRLS as RITA does currently.

51. The Burgess Report recommends that more race day functions of the current JCA be conducted by racing stewards to improve overall efficiency and reduce costs. This change will require additional training and upskilling for stewards, as well as an amendment to the Act and the respective rules of racing. For some JCA functions which must occur on race days, separate arrangements may need to be designed.
52. A recent NZRB survey identified concerns among industry participants regarding the fairness of the integrity system. The Burgess Report also suggests that a specialist position be created in the RIB to address the issues of fairness, integrity of decision making, the management of poor behaviour and visibility of women in the integrity system.

53. The Burgess Report noted that the codes have a substantive role in the provision of animal welfare. The codes have made significant efforts to develop and implement animal welfare policies and should continue with these. However, it notes that there are opportunities to improve monitoring and auditing of the animal welfare system, through the appointment of an animal welfare position in the investigative arm of the new RIB. The Burgess Report does not recommend further legislation or regulation relating to animal welfare is necessary.

The RIB should be a statutory body with its functions prescribed under the Act

54. The operational detail of the Burgess Report recommendations is being worked through by RITA and may need to be managed after RITA ceases to exist on 1 July 2020. Accordingly, it is proposed that a transitional arrangement be put in place.

55. It is therefore recommended that only the high-level functions and board appointment process of the RIB be provided for in the legislative framework (note existing safeguards, such as provisions related to immunity would remain until considered during the Order in Council process outlined below). The intent is that the majority of the operational recommendations of the Burgess Report be carried out by the RIB after Bill No. 2 is enacted. As such, the Minister recommends the current high-level integrity provisions in the Act be repealed and replaced with new provisions that:

55.1 establish the RIB as a statutory body under the Act;

55.2 prescribe to the RIB the function of operating an investigative arm which will:
   55.2.1 employ and train stewards and investigators to preside over races and investigate breaches of the rules of racing;
   55.2.2 provide advice to the codes on racing and betting rule changes;
   55.2.3 provide or arrange for the provision of veterinary and drug testing services; and
   55.2.4 monitor and scrutinise the performance and effectiveness of racing code animal welfare policies and initiatives;

55.3 prescribe to the RIB the function of operating an adjudicative arm which will:
   55.3.1 initiate, develop, and recommend to the industry organisations those measures that will, in its opinion, be conducive to the efficient judicial control of racing in New Zealand;
   55.3.2 appoint members to any judicial committees to adjudicate on any matter that is brought before it in accordance with the racing rules of a code;
   55.3.3 appoint members to any appeals tribunals to adjudicate on any appeals made to it; and
   55.3.4 recommend to a racing code any changes to the racing rules of the code that it considers desirable in relation to matters of a judicial nature; and
55.4 specify that the investigative arm and adjudicative arm must operate independently from each other.

**Governance of the RIB**

**Board of Directors and accountability**

56. The Minister recommends new governance and accountability provisions are provided for in the Act as follows:

56.1 board of up to seven independent directors appointed by the Minister with nominations from the three racing codes and TAB NZ;

56.2 that the Minister appoints directors on a skills-basis so that the board has, collectively from its members, knowledge of or experience in adjudication, investigation, disciplinary practices, monitoring and performance measuring;

56.3 a requirement to develop a SOI and business plan in consultation with the three racing codes and TAB NZ; and

56.4 a requirement to submit its SOI and business plan to the Minister for tabling in Parliament, without an approval requirement.

**The RIB should be funded by the industry**

57. It is important the RIB is funded at an appropriate level to enable it to undertake its expanded functions. It is understood there has, in the past, been some pressure from the industry to constrain funding for the JCA and RIU. The funding has, for several years, been provided by the NZRB/RITA.

58. TAB NZ will be the largest stakeholder in the integrity system as its brand and business model is most at risk should the RIB be underfunded to the point of dysfunction. If this were to happen racing participants and bettors would be less incentivised to engage with the racing and betting industry. Because of this, the integrity system should be funded by TAB NZ. The Minister recommends, as the Burgess Report did, that new provisions be created in the Act that:

58.1 require the TAB NZ to fund the RIB;

58.2 require the RIB to develop a budget in accordance with its business plan and consult on this budget with TAB NZ;

58.3 require the Minister to approve the RIB’s budget; and

58.4 allow the Minister to create regulations that set the level of funding that the TAB NZ provides to the RIB, if a funding agreement cannot be reached.

**An establishment board would be required to manage the transition to the RIB model**

59. Transitioning to the RIB model will require the transfer of assets and functions of the JCA, RIU and NZRLS to the new RIB. It is recommended that the provisions related to the RIB be brought into effect by an Order in Council. The establishment of the RIB can be delayed until the current integrity system is ready for such a change.

60. Additionally, the Minister recommends that new provisions be created in the Act which allow the Minister to appoint an establishment board to manage the transition to the new RIB model. It is recommended that this board:
60.1 is comprised of five members appointed by the Minister after considering nominations from RITA or its successor organisation;

60.2 has the sole function of facilitating the transfer of assets and functions to the RIB and finalising the new integrity model; and

60.3 disestablishes when the RIB provisions commence.

Additional proposal for funding betting integrity

61. Providing for betting integrity, a subset of racing integrity, pertains to preventing conflicts of interests between bettors and racing participants. This area is currently monitored by betting analysts in the RIU and may be monitored by TAB NZ or the RIB in the future. Currently, provisions in the Act provide that the money received from the collection of offshore betting charges can be used for:

61.1 covering the administration costs of the charges;
61.2 promoting the long-term viability of New Zealand racing and sport; and
61.3 funding measures to prevent and minimise harm from gambling.

62. Although betting integrity could be already covered by these purposes, the Minister recommends these provisions be expanded to expressly provide that some of this money might also be applied to address risks to the integrity of racing and sport betting.

Consultation

63. The contents of this paper were consulted with RITA and its views incorporated where appropriate. The following agencies were also consulted on the contents of this paper: Ministry of Justice (MoJ), Ministry for Primary Industries (MPI), The Treasury and State Services Commission.

64. MPI expressed support for a robust animal traceability process being implemented across the three codes. This aligns with the Messara Report recommendation to “introduce robust processes to establish traceability from birth and the re-homing of the entire thoroughbred herd, as the foundation stone of the industry’s ongoing animal welfare program”.

65. MoJ expressed concerns regarding the separation of powers between the investigative arm and judicial arm of the proposed RIB. In its view this is most simply achieved through placing these functions in separate organisations. While it is proposed that the RIB will bring these two functions together under a single governance umbrella, an assurance of operational separation is recommended to be provided for in the Act.


Financial implications

67. This paper contains a range of proposals which require Ministerial involvement, for example: the appointment of governing boards; the appointment of commissioners to resolve disputes, if required; and establishing an entity to discharge the collective functions that are to be prescribed to the racing codes if required.
Legislative implications

69. The proposals in this paper require amendments to the Racing Act 2003. The current Racing Act binds the Crown. The legislative changes proposed in this paper will also bind the Crown.

Impact analysis

70. A Regulatory Impact Assessment has been completed and is attached as Appendix B of ‘Paper 1 – Overview of the Final Racing Industry Reforms’. The Department has assessed that the Regulatory Impact Assessment partially meets the requirements.

Publicity

71. There is a great degree of interest from the racing industry, sporting organisations and community organisations on the proposals outlined in this paper. Following Cabinet decisions, an announcement will be made about the proposed contents of Bill No. 2.

Proactive release

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

Recommendations

The Minister for Racing recommends the Cabinet Economic Development Committee:

Recommendations for the TAB NZ

1. agree the Racing Act 2003 (the Act) is amended so that the Racing Industry Transition Agency (RITA) is disestablished and TAB NZ is established from 1 July 2020;
2. note that implementing recommendation 1 establishes TAB NZ as a statutory body;
3. agree that current provisions for RITA under the Act be changed so that:
   3.1 the objectives for TAB NZ are to:
      3.1.1 maximise profits for the long-term benefit of New Zealand racing and sports, subject to ensuring the risk of problem gambling and underage gambling is minimised; and
      3.1.2 facilitate and promote racing and sports betting;
   3.2 all betting functions currently prescribed to RITA continue for the TAB NZ;
3.3 Existing provisions are clarified so that TAB NZ is required to determine the racing calendar, and issue betting licences in conjunction with the three racing codes; and

3.4 All racing administration functions currently prescribed to RITA are repealed;

4. **Agree** that new governance provisions for TAB NZ be created in the Act which provide for:

   4.1 A board of up to seven independent directors appointed by the Minister after considering nominations from the three racing codes and Sport NZ;

   4.2 The Minister to appoint directors on a skills-basis so that the board of TAB NZ has collectively from its members knowledge of or experience in:

       4.2.1 Racing and sport administration at a national level;

       4.2.2 The betting industry and the betting market;

       4.2.3 Business, marketing, commercial law and economics; and

       4.2.4 Gambling harm minimisation;

5. **Agree** the current accountability requirements of RITA in the Act are clarified and continued so the TAB NZ is required to submit to the Minister, after consultation with the codes, its statement of intent (SOI) and annual business plan for tabling in Parliament, without an approval requirement;

6. **Agree** new provisions are created in the Act which require the board of TAB NZ to seek approval from the Minister before making decisions that could fundamentally change the shape or nature of the entity.

**Recommendations for racing codes**

7. **Agree** new provisions be created in the Act which prescribe high-level functions to the racing codes to accommodate the devolution of responsibilities from RITA. These racing code functions are to:

   7.1 Govern their respective networks of racing clubs and venues including the monitoring of performance, finances and health and safety;

   7.2 Approve racing club constitutions (and changes to them);

   7.3 Register/license racing clubs and participants;

   7.4 Develop racing rules (and changes to them) in consultation with the TAB NZ and Racing Integrity Board (RIB);

   7.5 Create and implement animal welfare policies;

   7.6 Distribute revenue to race clubs to make participating in racing worthwhile; and

   7.7 Collaborate with the other racing codes to achieve the objectives of the racing industry as a whole;

8. **Agree** a new provision be created in the Act that would allow the Minister to establish an entity (on the recommendation from the codes) to discharge any collective code functions set out in recommendation 7;

9. **Agree** a new provision is created in the Act that allows the Minister to, via regulations, appoint a commissioner to resolve a significant disagreement (whose decisions would be binding on the parties involved) and levy the racing codes for the associated cost;
10. **agree** a new provision be created in the Act that allows the Minister to create regulations to set the terms of the commercial agreement between a racing code, or racing codes, and TAB NZ;

11. **agree** a new provision is created in the Act that allows the Minister to set the appointment process of code directors if this is assessed by the Minister as being required;

12. **agree** that existing accountability requirements in the Act for the codes be repealed and replaced with provisions that require the codes to submit their SOIs and annual business plans to the Minister for tabling in Parliament without an approval requirement;

**Recommendations of racing clubs**

13. **agree** that existing provisions in the Act, which requires clubs to send to RITA annual audited financial statements, be repealed;

**Recommendations for the racing integrity system**

14. **agree** that the current high-level integrity provisions in the Act be repealed and replaced with new provisions that:
   14.1 establish the RIB as a statutory body under the Act;
   14.2 prescribe to the RIB the function of operating an investigative arm which will:
      14.2.1 employ and train stewards and investigators to preside over races and investigate breaches of the rules of racing;
      14.2.2 provide advice to the codes on racing and betting rule changes;
      14.2.3 provide or arrange for the provision of veterinary and drug testing services; and
      14.2.4 monitor and scrutinise the performance and effectiveness of racing code animal welfare policies and initiatives;
   14.3 prescribe to the RIB the function of operating an adjudicative arm which will:
      14.3.1 initiate, develop, and recommend to the industry organisations those measures that will, in its opinion, be conducive to the efficient judicial control of racing in New Zealand;
      14.3.2 appoint members to any judicial committees to adjudicate on any matter that is brought before it in accordance with the racing rules of a code;
      14.3.3 appoint members to any appeals tribunals to adjudicate on any appeals made to it; and
      14.3.4 recommend to a racing code any changes to the racing rules of the code that it considers desirable in relation to matters of a judicial nature;
   14.4 specify that the investigative arm and adjudicative arm must operate independently from each other;

15. **agree** that the new governance and accountability provisions in the Act for the RIB be:
15.1 a board of up to seven independent directors appointed by the Minister for Racing with nominations from the three racing codes and TAB NZ;
15.2 that the Minister appoints directors on a skills-basis so that the board has, collectively from its members, knowledge of or experience in adjudication, investigation, disciplinary practices, monitoring and performance measuring;
15.3 to have a strong primary duty to act in the best interest of the board and the achievement of its goals;
15.4 required to develop a SOI and business plan in consultation with the three racing codes and TAB NZ; and
15.5 required to submit its SOI and business plan to the Minister for tabling in Parliament, without an approval requirement;

16. **agree** new provisions be created in the Act, in relation to the funding of the RIB, that:
16.1 require the TAB NZ to fund the RIB;
16.2 require the RIB develop a budget in accordance with its business plan and consult on this budget with TAB NZ;
16.3 require the Minister to approve the RIB’s budget; and
16.4 allows the Minister to create regulations that set the level of funding that TAB NZ provides to the RIB if a funding agreement cannot be reached;

17. **agree** the provisions outlined above for the RIB and its functions be commenced at a date specified by an Order in Council;

18. **agree** new provisions be created in the Act which allow the Minister to appoint an establishment board to manage the transition to the new RIB model and that this establishment board:
18.1 be comprised of five members appointed by the Minister after considering nominations from RITA or its successor organisation;
18.2 has the sole function of facilitating the transfer of assets and functions to the RIB and finalise the new integrity model; and
18.3 disestablishes when the RIB provisions commence;

*Additional proposal for betting integrity*

19. **agree** that current provisions which provide for the application of money received from the collection of offshore betting charges be expanded so that some of this money can also be applied to processes to identify and address risks to the integrity of racing and sport betting;

*Impact analysis*

20. **note** that a Regulatory Impact Assessment has been completed and is attached as Appendix B to Paper 1 - Overview of the Final Racing Industry Reforms and that the Department has assessed that the Regulatory Impact Assessment partially meets the requirements;

*Other recommendations*

21. **invite** the Minister for Racing to issue drafting instructions to the Parliamentary Counsel Office that give effect to the above policy proposals;
22. **note** that the Minister for Racing is seeking delegation to take any remaining policy decisions necessary to enable final drafting of Bill No. 2; and

23. **note** that the Minister for Racing intends to proactively release this Cabinet paper, subject to any redactions that may be warranted under the Official Information Act 1982, within 30 business days of decisions being taken.

Authorised for lodgement

Rt Hon Winston Peters

Minister for Racing
Appendix A: Functions of the entities within the current racing integrity system

**Racing Integrity Unit**

73. The Racing Integrity Unity (RIU) is a limited liability company with the three codes and the RITA as equal shareholders. The functions of the RIU can be broadly described as contributing to the management of racing activities through:

73.1 employing and training stewards and investigators;

73.2 liaising with and providing advice to the codes and RITA on rule and betting changes; and

73.3 oversight of veterinary and drug testing services.

**Judicial Control Authority**

74. The Judicial Control Authority (JCA) is a statutory body, established by the Racing Act 2003. The functions of the JCA set out in section 37 are to:

74.1 initiate, develop, and recommend to the Agency and the recognised industry organisations those measures that will, in its opinion, be conducive to the efficient judicial control of racing in New Zealand;

74.2 to select and appoint, by any procedures and inquiries that it thinks fit, panels of suitable persons from which members of a judicial committee or members of an appeals tribunal may be appointed;

74.3 appoint the members of judicial committees;

74.4 appoint the members of appeals tribunals;

74.5 recommend to a racing code to which this section applies any changes to the racing rules of the code that it considers desirable in relation to matters of a judicial nature;

74.6 to exercise and perform other functions, powers, and duties that are conferred or imposed by or under this Act or any other enactment or by any racing rules.

**New Zealand Racing Laboratory Service**

75. The New Zealand Racing Laboratory Service is an independently owned limited company which contracts with RITA to deliver drug testing of samples taken from animals registered by the codes, for the detection of prohibited substances.