Rt Hon Winston Peters, Minister for Racing

Proactive release of Cabinet material related to the Racing Industry Bill 2019

5 December 2019

These documents have been proactively released:

23 October 2019, DEV-19-MIN-0290 Minute: Review of Racing: Paper 4 – New Products and Strengthened Harm Prevention and Minimisation for TAB NZ; 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

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Cabinet Economic Development Committee

Minute of Decision

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Review of Racing: Paper 4 – New Products and Strengthened Harm Prevention and Minimisation for TAB NZ

Portfolio Racing

On 23 October 2019, the Cabinet Economic Development Committee:

Background

1 noted that:

1.1 the New Zealand racing industry needs to be able to increase its revenue to ensure it is financially sustainable into the future;

1.2 the Messara Report made several recommendations to amend the Racing Act 2003 to improve the financial position of the racing industry, which included getting approval to deliver new wagering and gambling products;

2 noted that a review of how New Zealand regulates online gambling is underway and, dependent on the outcomes of that review, there is the potential to enable TAB NZ to deliver a wider range of broader gambling products;

Strengthening the Racing Act’s focus on harm prevention and minimisation

3 noted that:

3.1 any proposal that enables TAB NZ to expand its product offering over time will have the potential to increase harm from gambling;

3.2 a balance needs to be maintained between the Racing Act’s focus on revenue generation, and identifying and addressing harm from gambling for New Zealanders;

4 agreed that the Racing Act’s purpose be updated to ‘prevent and minimise harm from gambling, including problem gambling’;

Maintain the Racing Act’s current scope of wagering products only

5 noted that the products recommended for introduction by the Messara Report and the Ministerial Advisory Committee for Racing consist of wagering (racing and sport betting) products regulated by the Racing Act and broader gambling products (which are normally regulated by the Gambling Act 2003);
agreed that the Racing Act will continue to enable wagering (racing and sports betting) products only;

noted that consideration of broader gambling products, such as virtual online racing games, are being considered as part of the online gambling review;

Introduce an approval mechanism to enable new wagering and, if applicable, gambling rules

agreed to introduce an approval mechanism to the Racing Act to provide a process to comprehensively consider new products being proposed for introduction;

noted that there is precedent for this approach, with a similar mechanism already in place in the Gambling Act for Lotteries Commission rules under section 243;

Authorising authority for approval mechanism

agreed to Option 2, as outlined in the paper under DEV-19-SUB-0290, which requires an independent body to approve new game rules under the Racing Act. This could possibly be an existing independent body, such as the Gambling Commission, although this would involve an increase to the Commission’s scope, function and powers;

agreed that any application for a new rule will require the following information to be provided:

11.1 likely revenue and the beneficiaries of revenue;
11.2 likely gambling harm and how risks will be managed;
11.3 age restrictions and how these will be monitored/enforced;
11.4 a plan on how the integrity of the product will be maintained;
11.5 what mechanisms are in place to safeguard online products; and
11.6 the stakeholders who have been consulted;

agreed to delegate decisions regarding the operationalisation of the approval mechanism and authorising authority to the Minister for Racing;

Retaining existing settings for existing products

noted that:

13.1 products that TAB NZ currently offers will not be subject to new requirements as a result of proposed changes to the Racing Act;
13.2 if TAB NZ wishes to make minor changes to existing products, it will retain the ability to use its existing Gazette mechanism;

agreed that the Racing Act provide for a list of the existing suite of wagering products currently offered by TAB NZ to be published on TAB NZ’s website. As new products are approved, these will be added to the published list;

noted that TAB NZ can bring in e-sports as a result of changes made by the Racing Reform Act 2019;
Class 4 gaming machines

16 noted that the Messara Report recommended the removal of section 33(3) of the Gambling Act to enable TAB NZ to increase its income from class 4 gambling (electronic gaming machines/pokies), and that this proposal was supported by the Ministerial Advisory Committee for Racing and the Racing Industry Transition Agency;

17 noted that the status quo will be retained (i.e. no change to restriction on TAB NZ’s ability to increase its share of the class 4 gambling market);

Intellectual property

18 agreed to amend the Racing Act to provide TAB NZ exclusive rights to intellectual property in the Australian and New Zealand market;

Legislative implications

19 9(2)(f)(iv)

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

21 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

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

Officials present from:
Office of the Prime Minister
Officials Committee for DEV

Hard-copy distribution:
Minister for Racing
Office of the Minister for Racing

Chair
Cabinet Economic Development Committee

Review of Racing: Paper 4 – New Products and Strengthened Harm Prevention and Minimisation for TAB NZ

Proposal

1. This paper proposes changes to generate additional revenue and profit to support the revitalisation and sustainability of the New Zealand racing industry (the racing industry). It seeks agreement to policy decisions 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 three other papers are:
   2.1 Paper 1 – Overview of the Final Racing Industry Reforms;
   2.2 Paper 2 – Governance of the New Zealand Racing Industry; and
   2.3 Paper 3 – Utilising Racing Industry Property to Support Industry Revitalisation.

Executive summary

3. As detailed in ‘Paper 1 – Overview of the Final Racing Industry Reforms’ the Government noted its commitment to revitalising the racing industry and signalled it would use the Messara Report as a blueprint to do this. The overall aims of the Messara Report are to deliver a racing industry that is financially sustainable, internationally recognised and competitive, and delivers results for New Zealanders and the New Zealand economy.

4. To support the aim of achieving financial sustainability, recommendation 8 of the Messara Report sought approval for the TAB NZ to introduce new wagering and gambling products. The Messara Report envisaged this would help achieve greater levels of revenue and profits for the racing industry while also going some way to countering the potential lost revenue that goes to offshore gambling operators.

5. The Ministerial Advisory Committee for Racing (MAC), which was established to develop a plan to operationalise the Messara Report and to deliver better governance and economic outcomes, endorsed recommendation 8 and identified other products for consideration. Currently, a change is required to primary legislation to enable new wagering products not provided for in the Racing Act 2003 (the Racing Act). The MAC recommended an approval mechanism to support a more streamlined process for introducing new products (both wagering and broader gambling products).

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1 Note that TAB NZ is referenced throughout this paper as it is the operational arm of the Racing Industry Transition Agency (RITA), responsible for the delivery of wagering products.

2 ‘Wagering products’ for the purposes of this paper refer only to products that are related to racing and sports betting. ‘Gambling products’ encompasses all gambling products, including wagering products.
6. This paper sets out proposals relating to recommendation 8 of the Messara Report, which balance the racing industry’s need for new revenue streams with the Government’s responsibility to prevent and minimise harm from gambling. To achieve this, the Minister for Racing is proposing to:

6.1 strengthen the focus in the Racing Act on preventing and minimising harm;
6.2 introduce an approval mechanism to enable consideration of new gambling products; and
6.3 keep the current regulatory settings that apply for products currently offered under the Racing Act.

7. This paper also provides advice on existing issues relating to intellectual property (IP) rights of racing products and the potential for these rights to be clarified through Bill No. 2.

8. The proposals set out in this paper will enable new gambling products to be introduced to increase revenue for the racing industry in a sustainable way, while strengthening the industry’s focus on preventing and minimising harm. Where appropriate, options have been provided for consideration.

9. An online gambling review by the Minister of Internal Affairs is currently underway. This review is considering potential options for how New Zealand addresses the rise of online gambling. Where the proposals interact with the online gambling review, this is noted.

Background

The racing industry is in a serious state of decline...

10. In the domestic racing industry, the current level of prize money is low and returns to owners are significantly lower than in other jurisdictions. Foal crops are declining, which inhibits future race field sizes, leading to less wagering and less revenue for the racing industry. Industry infrastructure is in a poor state. Without a significant increase in revenue and profits, the racing industry will continue to decline.

...the legitimacy of TAB’s domestic monopoly on racing and sport betting is being eroded ...

11. TAB NZ has a domestic monopoly on race and sport betting in New Zealand. The Gambling Act 2003 (the Gambling Act) regulates all other gambling activity. TAB NZ’s operation is part of a New Zealand gambling system that is coming under increasing strain as a result of digital and technological development that is seeing New Zealanders spend increasing amounts of money with offshore gambling operators.

12. The racing industry is heavily reliant on revenue raised from racing and sports betting in New Zealand. Current regulatory settings relating to wagering products constrain TAB NZ’s ability to compete with these offshore gambling operators and the benefits of TAB NZ’s domestic racing and sports betting monopoly are being eroded. The introduction of offshore charges through the Racing Reform Act 2019 provides for more balance between New Zealand providers and offshore gambling providers but only partially addresses the unfair playing field.

3 The purposes of the Gambling Act include: controlling the growth of gambling; authorising some gambling and prohibiting the rest; and preventing and minimising harm from gambling, including problem gambling.
13. New Zealand consumers access a broad range of products through offshore gambling operators. Online gambling products are becoming increasingly complex and innovative in their design and there is significant growth in the global online gambling market. The amount of money spent by New Zealanders on offshore gambling is also growing. Industry estimates suggest that in the last 18 months New Zealanders spent approximately $381 million with offshore gambling providers.

14. New Zealand does not benefit from money being spent by New Zealanders gambling offshore as it does from its domestic operators. These offshore gambling operators do not have to adhere to the regulatory requirements and restrictions that New Zealand operators do, and do not contribute to preventing and minimising gambling harm to New Zealanders that may be caused by their products. For instance, TAB NZ must pay domestic taxes and contribute towards the Problem Gambling Levy.

15. Alongside returning money to the racing industry and sporting organisations, TAB NZ has harm prevention and minimisation measures mandated through the Racing Act, the Gambling Act and associated regulations. Examples of these measures include: training staff in prevention and harm minimisation procedures; retail exclusion programmes; transaction monitoring; and new harm prevention and minimisation initiatives funded through the progressive repeal of the betting levy.

The Messara Report’s recommendations for new wagering products seek to support TAB NZ to compete with offshore gambling providers

16. Specifically, the Messara Report recommended seeking approval for the TAB NZ to:

16.1 conduct in-the-run race betting;

16.2 conduct betting on sports where there is no agreement with a National Sporting Organisation (NSO);

16.3 conduct virtual racing games; and

16.4 remove legal restrictions in section 33(3) of the Gambling Act 2003 that prevent TAB NZ from acquiring class 4 gaming venue licences.

17. The Messara Report noted that implementing all these sub-recommendations would support greater levels of revenue and profits to the racing industry. It also noted it would go some way to address the potential lost revenue which goes through offshore gambling operators that offer a wider range of wagering and gambling products, rather than being returned to racing codes and sporting organisations. The Racing Reform Act 2019 implemented 16.2 above.

18. This approach was endorsed by the MAC, which also recommended an approval mechanism be enshrined in the Racing Act. This approval mechanism would enable new rules to be considered against a set of criteria that allow for new products without having to change primary legislation each time a new product is introduced. The approval mechanism itself would be in primary legislation. The MAC also identified other new products for consideration, including:

18.1 a betting exchange;

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5 However, the racing industry will begin to see some benefit once offshore charges are introduced.
18.2 spread betting;  
18.3 novelty betting and betting on fantasy leagues; and  
18.4 betting on esports.  

19. Currently esports does not have an NSO. However, due to the Racing Reform Act 2019 which enables TAB NZ to conduct betting on sports where there is no agreement with an NSO, esports can be offered subject to support from Sport New Zealand.  

20. Proposals to introduce new wagering products are not new. The Racing Amendment Bill 2017 (the 2017 Bill) sought approval to introduce new wagering products to address the issue of New Zealanders betting on racing and sports with offshore gambling providers. The 2017 Bill’s provisions for new wagering products received support from the majority of those that submitted through the Select Committee process. The 2017 Bill was withdrawn last year to allow consideration of broader reform of the racing industry as recommended by the Messara Report.  

An online gambling review is underway to consider the growth of online gambling ...  

21. As noted earlier, there is concern about the impact that online gambling operators are having on New Zealand gambling operators and the potential forgone benefit to New Zealanders. The Government is undertaking work on online gambling to understand what New Zealand’s future online gambling settings should be [CAB-18-MIN-0442.01 refers]. As part of this review, the Department of Internal Affairs (the Department) is gathering better data on gambling behaviour.  

22. The public discussion document Online Gambling in New Zealand was released on 31 July and closed on 30 September 2019. It presented four potential options to address online gambling (this does not exclude consideration of other options). These options were:  
22.1 Lotto and TAB NZ offer existing gambling products (status quo);  
22.2 extending the gambling products Lotto and TAB NZ may offer;  
22.3 licensing of domestic operators; and  
22.4 licensing of domestic and/or offshore operators.  

23. Following analysis of submissions and the development of policy advice, the Minister of Internal Affairs is expecting to bring proposals to Cabinet in 2020, with a Gambling Amendment Bill likely to be introduced mid-2020.  

...and it is timely to consider the scope of TAB NZ  

24. Although TAB NZ originated in the racing industry, its scope was extended to sports betting in 1996. It is timely to consider whether its scope should now be extended to other betting forms. This is currently being deliberated as part of the online gambling review.  

The racing industry needs additional revenue streams to be sustainable  

25. The Messara Report recognised that the racing industry needs additional revenue to enable its revitalisation, recommending new products to achieve this. This needs to be done in a sustainable way that balances the racing industry’s need for new revenue with the Government’s responsibility to prevent and minimise gambling harm.
26. TAB NZ sits at a complex intersection of regulatory requirements and market realities. Alongside the Lotteries Commission, it is part of what is effectively New Zealand's statutory gambling duopoly for lotto and wagering products. Any consideration of new wagering and gambling products needs to be cognisant of the context in which gambling is regulated in New Zealand while also addressing the ‘bleeding’ of revenue to offshore gambling operators.

27. The proposals recognise that any new wagering and gambling product comes with risks and benefits. To address this, the combination of approaches proposed ensure due diligence is completed before new products can be considered for approval and that there is a more explicit requirement for TAB NZ to prevent and minimise harm from gambling.

**Strengthening the Racing Act’s focus to prevent and minimise harm**

28. The Racing Act’s purpose focuses on facilitating and promoting racing and sports betting and maximising profits to benefit New Zealand racing. The Racing Act, unlike the Gambling Act, does not explicitly recognise the inherent risk of harm from gambling products. Any option that leads to TAB NZ expanding its product offering over time will necessarily have the potential to increase gambling harm.

29. The Minister for Racing considers that the current purpose and objectives of the Racing Act are not fit for purpose if TAB NZ is enabled to expand the range of wagering or gambling products it offers. A balance needs to be maintained between the Racing Act’s focus on revenue generation and preventing, identifying and addressing harm from gambling for New Zealanders.

30. To achieve this, the Minister for Racing proposes that the Racing Act’s purpose is updated to include a focus on preventing and minimising gambling harm. This will align with one of the purposes of the Gambling Act, to ‘prevent and minimise harm from gambling, including problem gambling’. This approach recognises that new wagering and gambling products need to be accompanied by a stronger emphasis on preventing and minimising harm and a requirement that TAB NZ take steps to address this.

31. This change aligns well with the additional funding that TAB NZ is required to commit to prevent and minimise harm from the funds made available from the progressive repeal of the totalisator duty (also known as the betting levy) through the Racing Reform Act 2019 [CAB-19-MIN-0168 refers]. TAB NZ is already using this funding to support industry initiatives focused on the prevention and reduction of gambling harm.

**There is a difference between wagering products and broader gambling products.**

32. There were several changes to new and existing products proposed in the Messara Report, and subsequently, in the final report by the MAC. These products broadly fit into two main categories, as set out in Table 1 below, which are:

32.1 wagering (racing or sport betting) products (regulated by the Racing Act); and

32.2 broader gambling products (which would normally be regulated by the Gambling Act).

33. In general terms, the difference between a wagering product and a gambling product is that a punter is able to draw on available information to make an informed wager, while a gambling product is based on the luck of the draw.
### Table 1: List of potential new wagering products and changes

**Key:** Racing Act related products  |  Broader gambling products

<table>
<thead>
<tr>
<th>Potential new products or changes to existing products</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Potential new products proposed by the Messara Report</td>
<td></td>
</tr>
<tr>
<td><strong>Change in class 4 that removes the current cap in place through section 33(3) of the Gambling Act</strong></td>
<td>In 2015, section 33(3) was inserted so that the New Zealand Racing Board (now RITA) could not acquire additional existing class 4 licences if another society holds, or has held, a licence at the venue in question. The amendment imposed no restrictions on RITA's ability to establish new venues or to place machines in TAB NZ venues.</td>
</tr>
<tr>
<td><strong>No National Sporting Organisations (NSO) agreement needed on international sporting fixtures</strong></td>
<td>Would remove the current requirement for TAB NZ to have an agreement in place with an NSO for any sports betting that takes place on overseas sporting fixtures.</td>
</tr>
<tr>
<td><strong>In-the-run race betting</strong></td>
<td>Section 52(3) of the Racing Act has a requirement that betting must close before the race starts meaning in-the-run race betting is prohibited.</td>
</tr>
<tr>
<td><strong>Virtual Online Racing</strong></td>
<td>A virtual race is a computer simulation of a race. It is a fixed-odds system in which the outcome is determined based on random numbers generated by a programme, akin to a 'pokie' machine.</td>
</tr>
<tr>
<td>Additional potential new products proposed by the MAC</td>
<td></td>
</tr>
<tr>
<td><strong>Introduction of betting exchange</strong></td>
<td>A betting exchange allow users to both 'back' and 'lay' an outcome - so bettors can set odds for an event, or back odds set by other users on the exchange. TAB NZ would earn revenue through charging commission.</td>
</tr>
<tr>
<td><strong>Spread betting products</strong></td>
<td>Spread betting is a form of betting in which the bettor wins or loses money according to the margin by which the value of an outcome varies from the spread of expected values quoted by the bookmaker.</td>
</tr>
<tr>
<td><strong>Betting on esports (gaming)</strong></td>
<td>Esports is a form of competition using video games and takes the form of organized, multi-player video game competitions.</td>
</tr>
<tr>
<td><strong>Betting on fantasy leagues</strong></td>
<td>Fantasy sport is a type of online game where participants assemble imaginary or virtual teams of real players of a professional sport. These teams compete, and have results generated, from the statistical performance of those players in actual games.</td>
</tr>
<tr>
<td><strong>Novelty betting</strong></td>
<td>A bet on an outcome that is not sport- or racing-related e.g. the winner of a presidential election.</td>
</tr>
</tbody>
</table>

34. Note that betting on esports (gaming) can be introduced now under the Racing Act. To do so would require a secondary instrument such as a new set of betting rules to be made by RITA. This type of product would not be subject to the proposed new approval mechanism as it has been enabled through the Racing Reform Act 2019.

35. The categorisation of products as ‘wagering’ or ‘gambling’ products is an important distinction, because the products set out in Table 1 above (with the exception of esports), if introduced, would require changes to both the Racing and Gambling Acts.
Options for expanding the range of products that TAB NZ can offer

36. Two options were considered for expanding the range of products that TAB NZ can offer to support it to be more financially sustainable. The first was to enable all proposed wagering and gambling products. The second was to maintain the Racing Act’s scope to wagering products only.

37. Both of these options assume the introduction of an approval mechanism to provide for decision-making on whether individual products can be introduced or not.

38. The MAC and RITA both supported the option that all proposed wagering and gambling products be adopted through widening the scope of the Racing Act. They considered this option would best support increased revenue by allowing TAB NZ to offer new products and compete with offshore online gambling operators.

39. However, this approach would pre-empt the outcome of the online gambling review. In doing so, it would also be inequitable to other New Zealand gambling providers as it would favour TAB NZ and its beneficiaries, by enabling it to introduce new products that are currently prohibited under the Gambling Act. This would also create regulatory inconsistency between the Racing and Gambling Acts.

40. The Department recommended that the Racing Act continue to maintain its current focus on wagering products only (that is, only products that are related to racing and sports betting). This approach is preferred as it does not pre-empt the outcomes of the online gambling review.

41. This approach retains a separation between wagering products and broader gambling products and avoids creating a disparity between the Racing and Gambling Acts that would be both confusing and inequitable. This is because one of the purposes of the Gambling Act is to authorise some gambling but prohibit the rest. Enabling the Racing Act to offer a wider range of products than catered for in the Gambling Act would put the two pieces of legislation at odds.

42. Any consideration of broader gambling products, such as virtual online racing games, would continue to be considered under the Gambling Act and is part of what is currently being considered in the online gambling review. This approach would mean decisions on whether TAB NZ can deliver broader gambling products will take place after decisions for Bill No. 2 have already been made.

In-the-run race betting prohibition retained

43. The Minister for Racing recommends retaining the status quo for in-the-run race betting. As a result, no changes will be made to section 52 (3) of the Racing Act.

NSO agreement on international sporting fixtures

44. In the Messara Report it was recommended that TAB NZ should be able to freely offer betting on overseas betting events without needing to obtain any agreement from the relevant NSO. However, the Minister for Racing considers that both parties should be able to come to an agreement without legislative change and proposes retaining the status quo.

Introducing an approval mechanism to enable new products

45. Currently, the products TAB NZ can provide are enabled through the Racing Act, with the specific rules for its betting products set out in its ‘Betting Rules’ document. If TAB NZ wants to introduce new products, this requires a change to the Racing Act.
46. In its final report, the MAC recommended drafting legislation that would provide a mechanism to approve TAB NZ to operate new bet types. The Minister for Racing supports having an approval mechanism in the Racing Act, to enable consideration of rules for new wagering products, provided that a set of criteria are met and the Minister for Racing, in consultation with the Minister of Internal Affairs, approves.

47. This approach would support TAB NZ to be more agile in a rapidly changing market while also ensuring a rigorous, transparent process is in place to determine whether new wagering products can be introduced, without the need for making changes to primary legislation every time. There is precedent for this approach, with an approval mechanism already in place under section 243 of the Gambling Act for Lotteries Commission game rules. Making this change places TAB NZ on equal footing with the Lotteries Commission with respect to introducing new products.

48. In considering the process for approval of new wagering and gambling products, the Minister for Racing has considered the views of MAC and RITA, as well as advice from the Department.

**Proposed components of an approval mechanism**

49. The Lotteries Commission’s governing provisions in section 243 of the Gambling Act were used as a starting point for considering the necessary components of an approval process for TAB NZ to bring in new products. Any application for a new rule would require the following information to be provided:

49.1 likely revenue and the beneficiaries of revenue;

49.2 likely gambling harm and how risks will be managed;\(^6\)

49.3 age restrictions and how these will be monitored/enforced;

49.4 a plan on how the integrity of the product will be maintained;

49.5 what mechanisms are in place to safeguard online products;\(^8\) and

49.6 the stakeholders who have been consulted.

50. This approach builds on the approval mechanism in the Gambling Act but sets out more rigorous requirements to be met. The introduction of an approval mechanism would not guarantee TAB NZ could bring in new wagering products. Rather, it provides a mechanism that enables consideration of new rules by the appropriate body as discussed further below.

51. Once Cabinet has agreed to introduce an approval mechanism and identified the decision-maker (see below), the Department will provide advice on how the approval mechanism will be operationalised for the Minister for Racing to approve. This will include the development of a framework for decision-making, based on the criteria above.

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6 Note that this excludes NSO agreement requirements and the class 4 gaming machine restriction under section 33(3) of the Gambling Act.

7 For example: age restrictions; preventing and minimising harm from gambling, including problem gambling; and policies for problem gamblers, including exclusion orders and other tools.

8 For example: age verification; mandatory and individual spending limits; player self-exclusion; opening and closing hours; email communications restricted to players aged 18-plus.
Options for decision-making

52. There are two options considered appropriate for an approval mechanism to authorise new wagering and gambling rules that enable new products, as set out in Table 2 below. Option 1 has Ministers as the decision-making body and Option 2 has an independent decision-making body.

53. The Minister for Racing considers that for either Option 1 or Option 2, the consultative process followed would be similar to the approach currently taken by the Lotteries Commission. The Department supports the approval mechanism outlined in Option 1 for greater levels of Ministerial consultation and scrutiny.

54. In the process that the Lotteries Commission follows, there is significant consultation with the Department and the Ministry of Health. Although it is not an explicit requirement for the Lotteries Commission, it is an expectation and the basis on which the Minister for Internal Affairs makes decisions. That is, the Minister’s decision is informed by advice from the Department, in consultation with the Ministry of Health, on all proposals put forward by the Lotteries Commission. This consultation is important to consider advice on gambling harm minimisation and prevention from the department responsible for the integrated problem gambling strategy in section 317 of the Gambling Act.

55. It is anticipated that any rule changes that allow new wagering products to be approved through the proposed approval mechanism would be able to take effect from the date of notification in the Gazette.

Table 2: Description of Option 1 and Option 2

<table>
<thead>
<tr>
<th>Option 1: Ministers approve new rules</th>
<th>Option 2: An independent body approves new rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rules that come under the Racing Act will require approval by the Minister for Racing in consultation with the Minister of Internal Affairs and the Minister of Sport and Recreation when appropriate.</td>
<td>Rules will be approved by an independent body. For example, by the existing Gambling Commission (this would require modifications such as increasing their scope, functions and powers).</td>
</tr>
</tbody>
</table>

TAB NZ can implement the new wagering products once authorised under the rules.

Option 1: Ministers approve new rules

56. Option 1 would require any new rules to be approved by the Minister for Racing, in consultation with the Minister of Internal Affairs (as the lead Minister for gambling regulation) and, where appropriate, the Minister of Sport and Recreation. This approach is consistent with the Gambling Act’s section 243, which requires approval from the Minister of Internal Affairs for new lotto rules.

57. This approach provides for direct involvement of the Minister responsible for the relevant legislation. It also provides for consultation to occur with other Ministers and their agencies, with an interest in the area covered by the rules. This approach could be replicated in the Gambling Act, if changes result from the online gambling review mean that an approval mechanism would be required.

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9 The Gambling Commission is an independent statutory decision-making body. The Commission considers casino licensing applications and hears appeals on licensing and enforcement decisions made by the Secretary of Internal Affairs in relation to gaming machines and other non-casino gambling activities. It also shares with the Department the approval of gambling products for casinos.
58. The Ministerial approval approach will draw on the Gambling and Racing policy expertise within the Department of Internal Affairs alongside the Ministry of Health’s expertise on gambling and harm minimisation to provide advice on proposed new betting rules to enable new products.

**Option 2: An independent body approves new rules**

59. The independent body would approve new rules that enable new products under the Racing Act. This could involve the establishment of a new independent body to approve new wagering rules, although this is likely to have a high cost. Alternatively, consideration could be given to adding additional functions to an existing body such as the Gambling Commission, although this would involve an increase to the scope, function and powers of the Gambling Commission.

60. The benefits of using the Gambling Commission are that its Commissioners have knowledge of the gambling sector and a range of experience in law, business and consultancy. Additionally, it would eliminate any political uncertainty regarding the approval process by placing it under an independent body. However, there is a risk that this doesn’t fit well with its other roles which includes decisions on casino licences, advising on the setting of the problem gambling levy and hearing appeals related to the class 4 gaming machine sector.

**The same settings will be retained for existing products**

61. It is not intended that the current products being delivered by TAB NZ under the current Racing Act should be subject to additional requirements as a result of the proposed changes to the Racing Act set out in this paper. To ensure that this is not the case, the Minister for Racing proposes the Act provide for a list of the existing suite of wagering products currently offered by TAB NZ which is published on TAB NZ’s website. As new products are approved, these will be added to the published list.

62. This has the effect that any wagering product that was not introduced prior to the commencement of Bill No. 2 will need to comply with the new measures in place. However, if TAB NZ wishes to make minor changes to existing products, it will retain the ability to use its existing Gazette mechanism.

63. The Racing Reform Bill 2019 made a change that enables TAB NZ to conduct betting on sports where there is no agreement with an NSO. As a result, TAB NZ is able to offer betting on new sports without an NSO, without requiring any additional approval.

**Class 4 gaming machines**

64. The Gambling Act currently prevents TAB NZ from acquiring existing class 4 venues to host its machines (under section 33(3)). This change was made in 2015 to preserve class 4 funding for community rather than for increasing proportions to be channelled back to the racing sector.

65. The Messara Report recommended the removal of section 33(3) to enable it to increase the racing industry’s income from class 4 gambling. The MAC, in its final report, was supportive of this approach. RITA similarly recommends that section 33(3) is removed.
66. The Department, Ministry of Health and Sport NZ recommend that no changes are made to section 33(3), noting that there are other proposals for new revenue for TAB NZ, which do not have a direct impact on the amount available to be distributed to charitable organisations and community groups. The Minister for Racing recommends that no changes are made to class 4 settings.

**Intellectual Property**

67. RITA (and NZRB before it) have the view that TAB NZ holds exclusive rights to the racing industry’s IP used in betting and broadcast products, as a result of rights being assigned to it through the process of issuing betting licenses. However, the codes do not agree with this position and believe that each code should be the ultimate decision-maker about the code’s IP. Resolving the issue of IP rights was identified as an important component of understanding whether TAB NZ’s commercial activities could be outsourced or not.

68. RITA has proposed that TAB NZ needs to have exclusive IP rights for racing products for both New Zealand and Australia in order to gain benefits of scale and maximise the overall returns to the racing industry. This can be done through confirming this in the Racing Act. The codes have noted their disagreement with RITA’s position, and the Department considered that the same outcome being sought could be achieved through commercial agreements. However, RITA considers having exclusive rights of IP for both New Zealand and Australia best enables it to optimise the value of its betting products.

69. By having exclusive rights to the use of IP, RITA considers it has been able to secure greater economic benefits for the industry by selling bundled rights, such as a significant agreement with Tabcorp in Australia. RITA considers these benefits may not continue under a dis-aggregated model where the components are split up and negotiated separately. The Minister for Racing supports RITA’s position and proposes that legislation is updated to give TAB NZ exclusive IP rights for racing products for both New Zealand and Australia. This will reflect TAB NZ’s status as the statutory monopoly for racing and sport betting in New Zealand and puts it in a strong position to negotiate a good deal for the benefit of the racing industry.

**Regulatory framework is fit for purpose**

70. The Department considers that if the proposals for Bill No. 2 as set out in the suite of policy briefings are adopted, including that TAB NZ will remain as a statutory body, it is not necessary to strengthen the regulatory oversight role in the Racing Act.

**Consultation**

71. The Department consulted publicly on the recommendations of the Messara Report during September and October 2018. Further information about the consultation process is provided in the Regulatory Impact Assessment.

RITA

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10 Betting licences are issued by RITA to the racing clubs to whom racing dates have been allocated.
72. RITA considered that the scope of the Racing Act needs to be broadened to include definitions outside “racing” and “sports” betting to best meet the outcome that the Messara Report was aiming to achieve. It did not consider that this would contradict the Gambling Act, using the example of novelty betting as not falling within the scope of any definition of any other Class of gambling.

73. RITA also recommended an adapted, more enabling version of section 243 (Operation of New Zealand Lotteries) of the Gambling Act, which would apply to TAB NZ, be introduced.

Ministry of Health

74. The Ministry of Health is supportive of the Department’s recommendation to retain status quo for class 4 gaming machines. It supports the introduction of the approval mechanism. It considered the process should specify consultation with the Ministry of Health as the department responsible for the integrated problem gambling strategy, for any newly proposed products. The Ministry considered that several of the proposed products could significantly change the risk profile for gambling harm, but a transparent approvals process that would enable gambling harm impacts to be considered represents a good balance.

Sport New Zealand

75. Sport NZ is supportive of the Department’s recommendation to retain status quo for class 4 gaming machines. Regarding esport, the most likely approach will be for Sport NZ to form a relationship with esport NZ as the national body. This process is well advanced, and if agreed, will allow TAB NZ to form an agreement with esport NZ.

Financial implications

76. Budget sensitive

Human rights, Gender and Disability rights

78. There are no human rights, gender or disability implications issues associated with this paper.

Legislative implications


80. The current Racing Act binds the Crown. The proposed changes set out in this paper, and to be part of the Racing Amendment Bill No. 2 2019 will also bind the Crown.
BUDGET SENSITIVE

Impact analysis

81. A Regulatory Impact Assessment has been completed and is attached as an appendix to ‘Paper 1 - Overview of the Final Industry Reforms’. The Department has assessed that the Regulatory Impact Assessment partially meets requirements.

Publicity

82. There is a great degree of interest from the racing industry, sporting organisations and community organisations that benefit from class 4 distributions in the proposals outlined in this paper. Following Cabinet decisions, an announcement will be made about the proposed contents of Bill No. 2.

Proactive release

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

Recommendations

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

1. note that the New Zealand racing industry needs to be able to increase its revenue to ensure it is financially sustainable into the future and that the Messara Report made several recommendations to improve the financial position of the racing industry, which included getting approval to deliver new wagering and gambling products;

2. note that a review of how New Zealand regulates online gambling is underway and, dependent on the outcomes of this review, this has the potential to enable TAB NZ to deliver a wider range of broader gambling products;

Strengthening the Racing Act’s focus on harm prevention and minimisation

3. note that any proposal that enables TAB NZ to expand its product offering overtime will have the potential to increase harm from gambling and that a balance needs to be maintained between the Racing Act’s focus on revenue generation and identifying and addressing harm from gambling for New Zealanders;

4. agree that the Racing Act’s purpose is updated to ‘prevent and minimise harm from gambling, including problem gambling’;

Maintain the Racing Act’s current scope of wagering products only

5. note that the products recommended for introduction by the Messara Report and MAC consist of wagering (racing and sport betting) products regulated by the Racing Act and broader gambling products (which are normally regulated by the Gambling Act);

6. agree that the Racing Act will continue to enable wagering (racing and sports betting) products only;

7. note that consideration of broader gambling products, such as virtual online racing games, are being considered as part of the online gambling review;
BUDGET SENSITIVE

Introduce an approval mechanism to enable new wagering and, if applicable, gambling rules

8. **agree** to introduce an approval mechanism to the Racing Act which provides a process to comprehensively consider new products being proposed for introduction;

9. **note** there is precedent for this approach, with a similar mechanism already in place in the Gambling Act for Lotteries Commission rules under section 243;

Authorising authority for approval mechanism

10. **EITHER [supported by the Department]**

10.1 **agree** to Option 1 which requires an approval by the Minister for Racing for new game rules under the Racing Act, in consultation with the Minister of Internal Affairs and, where appropriate, the Minister of Sports and Recreation;

10.2 **agree** to Option 2 which requires an independent body to approve new game rules under the Racing Act. This could possibly be an existing independent body such as the Gambling Commission, although this would involve an increase to its scope, function and powers;

11. **agree** that any application for a new rule would require the following information to be provided:

11.1 likely revenue and the beneficiaries of revenue;

11.2 likely gambling harm and how risks will be managed;

11.3 age restrictions and how these will be monitored/enforced;

11.4 a plan on how the integrity of the product will be maintained;

11.5 what mechanisms are in place to safeguard online products; and

11.6 the stakeholders who have been consulted;

12. **agree** to delegate decisions regarding the operationalisation of the approval mechanism and authorising authority to the Minister for Racing;

Retaining existing settings for existing products

13. **note** that products which TAB NZ currently offers will not be subject to new requirements as a result of proposed changes to the Racing Act 2003 and that if TAB NZ wishes to make minor changes to existing products, it will retain the ability to use its existing Gazette mechanism;

14. **agree** that the Racing Act provide for a list of the existing suite of wagering products currently offered by TAB NZ to be published on TAB NZ’s website. As new products are approved, these will be added to the published list;

15. **note** that TAB NZ can bring in esports as a result of changes made in the Racing Reform Act 2019;

Class 4 gaming machines
16. note that the Messara Report recommended the removal of section 33(3) of the Gambling Act to enable TAB NZ to increase its income from class 4 gambling (electronic gaming machines/pokies) and that this was supported by the MAC and RITA;

17. note that the status quo will be retained (i.e. no change to restriction on TAB NZ’s ability to increase its share of the class 4 gambling market);

Intellectual Property

18. agree to amend the Racing Act 2003 to provide TAB NZ exclusive rights to intellectual property in the Australian and New Zealand market;

Impact analysis

19. note that a Regulatory Impact Assessment has been completed and is attached as Appendix B to the 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

20. invite the Minister for Racing to issue drafting instructions to the Parliamentary Counsel Office that give effect to the above policy proposals;

21. note that the Minister for Racing has sought delegation in ‘Paper 1 - Overview of the Final Racing Industry Reforms’ to take any remaining policy decisions necessary to enable final drafting of Bill No. 2; and

22. 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