Review of Racing: Paper 2 - Policy decisions on transitional governance to drive change

Proposal

1. This paper seeks policy decisions in relation to the transitional governance of the racing industry, for inclusion in the drafting of Racing Amendment Bill No. 1 (Bill No.1).

2. This Cabinet paper is one of three Cabinet papers that will collectively provide the Government’s first legislative response to the recommendations of the Review of the New Zealand Racing Industry (the Messara Report). The other Cabinet papers are “Review of Racing: Paper 1 – Overview of the New Zealand Racing Industry and identified issues”¹ and “Review of Racing: Paper 3 – Proposals for immediately increasing revenue for the racing industry”.

Executive summary

3. This paper addresses the governance needed to drive change in the racing industry during the transitional period between the status quo and the proposed future state, as recommended in the Messara Report. Getting the right transitional governance arrangements in place is an essential precondition for successfully revitalising the New Zealand racing industry.

4. It is appropriate that policy decisions for the transitional arrangements are considered independently from the details of the future state to be included in Racing Amendment Bill No. 2 (Bill No. 2). Those later details are under development by the racing Ministerial Advisory Committee (MAC) and will be refined further by the proposed transitional entity and officials advice for inclusion in Bill No. 2.

5. The Minister for Racing has submitted a bid through Budget 2019 to make a Crown contribution to the cost of the transition agency, and in particular the cost of change management.

6. Both change management and Business-As-Usual (BAU) functions must be delivered during the transition to the future state. To do this it is proposed that the New Zealand Racing Board (NZRB) is reconstituted as the Racing Industry Transitional Agency (RITA), with changed membership and an amended legislative mandate encompassing both change management and BAU functions and powers. Other options, including the creation of a standalone transitional agency, have been considered and discounted. The discarded options are identified in the Regulatory Impact Assessment that accompanies “Paper 1 – Overview of the New Zealand Racing Industry and identified issues”.

7. It is proposed that the organisational form, governance and accountability arrangements for RITA be:

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¹ The Regulatory Impact Assessment and the Interim Report of the Racing Ministerial Advisory Committee are attached to the overview paper, as Appendices E and B respectively.
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7.1 a body corporate established under the Racing Act 2003 (the Act), the same organisational form as the NZRB currently;

7.2 a Board of up to 7 members appointed by the Minister for Racing; and

7.3 close accountability to the Minister for Racing through measures including ministerial input and guidance to the development of its strategy and initiatives and an ability for the Minister for Racing to require frequent progress updates.

8. It is proposed that subject to the passage of Bill No. 1 the transition commences on 1 July 2019; with the future transition to the final industry structure to take place in 2020 at a time determined by Bill No. 2.

Background

The Messara Report recommends stronger governance of the racing industry

9. Due to concerns about the state of the racing industry, in April 2018, the Minister for Racing commissioned Mr John Messara, an Australian thoroughbred expert, to conduct an independent, high-level assessment of the state of the New Zealand racing industry. Mr Messara was asked to provide recommendations on future directions for the industry which were set out in the Messara Report.

10. As noted in “Paper 1 – Overview of the New Zealand Racing Industry and identified issues”, the Messara Report notes that the racing industry has declined over time, and that, without intervention, the industry is now at risk of suffering irreparable damage. The Messara Report provides a package of 17 key recommendations to create a framework that will improve the effectiveness of industry decision making; increase prize money and incentives to invest in the industry; and supply the capital necessary to upgrade tracks and facilities.

11. The key Messara Report recommendation relevant to this paper is recommendation 1: Change the governance structure, so the NZRB becomes Wagering NZ (WNZ) with racing responsibilities devolving to the individual Codes. This will sharpen the commercial focus of TAB operations and improve the decision-making and accountability of the Codes.

12. The Messara Report asserts that benefits will accrue from enabling WNZ to focus on its betting function, without the distraction of also being responsible for the administration of racing. Along with the other changes proposed this will support the viability of the racing industry. Preparing for this change is the key task to be completed in the transitional period.

Submissions generally support the changes proposed in the Messara Report

13. 115 submissions were received on Messara Report recommendation 1. Of these submissions 46 supported outright the new governance structure, and a further 56 submissions appeared to provide qualified support. Five opposed the recommendation. Their concerns related to some of the functions proposed to be devolved to the racing codes (the codes).
The Ministerial Advisory Committee for racing (MAC) supports the broad proposals in the Messara Report

14. The MAC is very supportive of the broad proposals in the Messara Report. The MAC strongly supports the separation of the NZRB’s racing and betting functions, and the creation of WNZ\(^2\) to focus on the betting activities.

15. The MAC supports the proposals in this paper and the inclusion in Bill No. 1 of a transitional period with specific governance arrangements as a mechanism to implement the changes recommended in the Messara Report.

A transitional entity is proposed to manage the transition to the new arrangements

16. The Minister for Racing has publicly announced his intention to use a transitional agency to manage the change necessary to create the future state for the racing industry envisaged in the Messara Report.

17. At its meeting on 5 November 2018 Cabinet noted that decisions would be sought in March 2019, including on the establishment of a transitional agency to drive changes agreed by Cabinet [CAB-18-MIN-0551 refers]. At this meeting Cabinet was provided with the draft terms of reference for the racing MAC which stated that the MAC is being created as a precursor to a Racing Industry Transitional Authority being established in legislation (subject to future Government decisions on the recommendations of the Messara Report).

18. The nature of the challenges in the transitional period require a bespoke approach to change management, delivered through an organisation whose Board members have skills and experiences that are different from both the current NZRB Board and the proposed future WNZ Board.

Legislative change is required to establish a transitional entity and to assign functions

19. Bill No. 1 will be required to make transitional changes, including to the NZRB and to affect any necessary transfers of functions currently set in the Act. To maximise flexibility, Bill No. 1 should also provide for the details of some transitional matters to be specified in regulation.

20. The transitional arrangements will support the seamless and effective transition of the racing industry from the status quo to the future state recommended by the Messara Report. The transition will involve the reconstitution of the NZRB as a transitional entity. At the end of the transitional period these functions will be transferred to WNZ and the racing codes.

21. The urgent need for reform of the racing industry drives the legislative priority for Bill No. 1. It is essential that the transitional provisions are enacted promptly to initiate the recovery process for the racing industry.

\(^2\) The MAC considers that this new entity should be named TAB NZ, based on the substantial brand name recognition in New Zealand of the TAB brand. Pending a formal decision on naming, this paper uses the Messara report terminology “Wagering New Zealand” (WNZ).
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A Racing Industry Transitional Agency (RITA) is proposed

22. The Minister for Racing proposes that the NZRB be reconstituted with a new Board (bringing required new skills) and a refreshed legislative mandate to become RITA. RITA will have responsibility for both managing the BAU functions of the former NZRB and management of change to the future state.

23. RITA would therefore have the same organisational form as the NZRB, a body corporate established by legislation. This organisational form is appropriate because it:
   23.1 will enable the Minister for Racing to provide significant input and guidance to RITA (this is appropriate during the transitional period); and
   23.2 can be implemented in a straightforward way through Bill No. 1, without requiring the costly establishment of a new entity and the complex process of transferring assets, functions and powers to it.

24. The proposed responsibility for change and BAU functions currently and through the transition to the future state is shown in figure 1.

![Figure 1: NZRB reconstituted as RITA to manage change and BAU](image)

25. During the transitional period the BAU functions of RITA would be prepared for devolution, as recommended by the Messara Report, so that in the future state:
   25.1 betting and related activity can be delivered by WNZ;
   25.2 racing and integrity functions can be delivered by racing codes and potentially Racing New Zealand (RNZ); and

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3 Other discounted transition options are canvassed in the Regulatory Impact Assessment. These include: a new RITA manages change while a Transitional Racing Board (TRB) is reconstituted from the NZRB to manage BAU; the existing NZRB manages change and BAU; and the NZRB is reconstituted as a TRB to manage BAU while the Department of Internal Affairs manages change.

4 Other discounted organisational form options for RITA are canvassed in the Regulatory Impact Assessment. These options include a Crown entity and a non-statutory entity.

5 A provision for residual functions will be considered in the development of Bill No. 2 to provide for the eventuality that when the Messara Report future state commences a function is not ready for devolution to the racing codes, or the codes are not ready to receive it. Residual functions would be temporary and may not be required.

6 Messara proposed the formation of Racing New Zealand, as a consultative forum to allow the codes to discuss and agree on matters of mutual concern.
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25.3 any residual functions that are not able to be transferred immediately following the commencement of Bill No. 2 will be determined on a case by case basis, but may initially remain with RITA until they can be transferred and RITA is fully disestablished.

26. During the transition phase, RITA would undertake all the functions in paragraph 28. As part of the unbundling of its functions, RITA would have the option of setting up the assets and personnel associated with specific functions into an operational division, or subsidiary companies, to better facilitate transfer into the eventual WNZ structure, or to the racing codes and RNZ. If necessary, Bill No. 1 will clarify that RITA has the power to do this.

Objectives for RITA

27. RITA’s approach to transition should achieve the following objectives:
   27.1 drives successful transition to the future state, while managing risks;
   27.2 maintains continuity of BAU racing, betting, gaming and broadcasting functions and maintenance of capability in the management of the racing industry;
   27.3 supports industry sustainability by leading appropriate strategic initiatives to drive revenue growth, including:
      27.3.1 continued assessment as to whether betting should be outsourced; and
      27.3.2 development of, and preparation for, the implementation of offshore betting charges;
   27.4 helps position industry governance and management to pursue more effective decision-making in the future state;
   27.5 develops a fit-for-purpose organisational structure for WNZ, tailored for its function as a betting, gaming and broadcasting operator;
   27.6 minimises transitional costs for industry and government; and
   27.7 provides for temporary management of residual functions, if necessary, after the formation of WNZ and the devolution of the intended functions to codes, RNZ and others.

Transitional functions for RITA

28. The transitional functions which RITA will need to deliver include:
   28.1 management of industry change, comprising:
      28.1.1 development of a fit-for-purpose organisational structure for WNZ and determining the appropriate operational settings, assets and personnel for the successful establishment of WNZ;
      28.1.2 considering transitional issues, such as setting the composition and qualifications for directors of regulatory bodies and ensuring these requirements are implemented;
      28.1.3 the unbundling of the NZRB functions, potentially into one or more subsidiaries, to prepare them for devolution to racing codes;
      28.1.4 managing the transfer of regulatory functions to racing codes; and
28.2 management of BAU racing, betting, broadcasting, and gaming, initiatives to drive revenue growth (see para 27.3), industry development, management oversight and funding of judicial and integrity services, animal welfare, research and training; and

28.3 the provision of advice to the Minister for Racing on any matters related to the successful implementation of the Messara Report future state.

Governance of RITA

29. The RITA Board will govern both the BAU functions of the former NZRB and the management of change necessary for the successful transition to the new arrangements proposed by the Messara Report. To enable the appointment of a refreshed Board for RITA, Bill No. 1 will end the terms of serving NZRB Board members when RITA is established.

30. A Board of up to 7 members is proposed for RITA, with the majority having skills related to change and the remainder with skills related to BAU. To carry out these roles effectively, the members of RITA should collectively have competencies that include governance and:

30.1 industry expertise to effectively manage racing functions;
30.2 knowledge and experience of sport at a national level;
30.3 commercial and/or legal expertise to manage devolution of assets, functions and responsibilities; and
30.4 change management expertise to oversee the transition process.

31. It is important that the members of the RITA have a strong primary duty to act in the best interest of the racing industry as a whole and the achievement of the transition objectives. Accordingly, it is not intended to create specific code representative positions on the RITA Board and the Chair will not be independent (as currently with the NZRB). This is a change from the current requirements for appointment to the NZRB Board, where the chairs of each racing code (or their delegates) are appointed.

32. The Minister for Racing will provide a paper to the Appointments and Honours (APH) Committee as soon as possible on the proposed membership and Chair of RITA, to enable governance arrangements to be in place for the intended establishment date of 1 July 2019. The MAC was created as a precursor to the establishment of RITA. The Minister for Racing is looking for continuity between the work of the MAC and RITA.

33. The appointments will address the need for the membership of RITA to include a national level sport perspective, either through the appointment of MAC members who have both racing and sport experience, or the appointment of a specific person with a sport background. The Minister for Sport and Recreation will be consulted regarding this.

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7 While it is proposed that the NZRB is reconstituted as RITA, the TAB would likely continue to trade under its existing brand name.
The RITA Board should be closely accountable to the Minister for Racing

34. Close accountability of the Board of RITA to the Minister for Racing can be achieved through measures that provide for significant ministerial input and guidance to the development of RITA’s strategy and initiatives.

35. In addition to the current NZRB’s annual planning and reporting requirements, it is proposed that the Minister for Racing should be able to require RITA to provide more frequent progress updates, to ensure that the transition is proceeding according to plan. The actual frequency would be determined by the Minister for Racing according to the circumstances, considering RITA’s performance, and balancing compliance costs to the entity with the Minister’s information needs. Provision is proposed for the use of accountability levers as may be determined by the Minister for Racing, including:

35.1 Ministerial appointment of Board members;  
35.2 Ministerial Letters of Expectation;  
35.3 approval of a Statement of Intent;  
35.4 approval of RITA’s business plan and/or transition plan;  
35.5 the ability for the Minister for Racing to require the provision of more frequent progress updates, to ensure that the transition is proceeding according to plans; and  
35.6 the entity making periodic progress updates to the racing industry.

Transition timing

36. It is proposed that the transition period and RITA will commence on 1 July 2019. The transition requires determination of the dates at which RITA will commence its functions and then at the end of the transition, the newly formed WNZ will commence its betting, broadcasting and gaming activities. Officials will liaise with the racing industry on this and undertake further assessment of the dates at which WNZ, the racing codes, and RNZ will be ready to take up any new functions assigned to them. The transition to the final industry structure will take place in 2020 at a time determined by Bill No. 2.

Consultation

37. The Department of Internal Affairs (the Department) consulted publicly on the Messara Report’s recommendations during September and October 2018. Submissions were received from a range of stakeholders. A broad range of views were expressed but, in general, stakeholders from the racing and sport sectors supported the recommendations. More information about the consultation is provided in the Regulatory Impact Assessment.

38. The MAC has been consulted throughout the policy development process. The MAC has also worked with the racing industry to help inform its interim report.

39. The Department has also consulted with the Treasury, State Services Commission (SSC) and Inland Revenue Department.

8 Members will serve at the pleasure of the Minister for Racing.
40. The SSC supports the proposal to reconstitute the NZRB to undertake both BAU functions and transitional functions.

**Financial implications**

41. It is in the Government’s interests to revitalise the racing industry. This will lead to increased employment, exports and a general increase in the industry’s already significant contribution to the New Zealand economy.

42. Cabinet has previously noted that, subject to future government decisions, transitional agency funding would be sought as part of Budget 2019 [CAB-18-MIN-0551 ref]. The Minister for Racing is seeking funding through Budget 2019 of $3.5 million for 2019/20 to enable the Crown to invest in this industry revitalisation by contributing funding to critical transitional change management functions that may not otherwise occur, or occur in the desired form.

43. There is an expectation in the racing industry that the Crown will contribute financially to the cost of the change process. The racing industry currently meets the costs of the BAU racing, betting, gaming, broadcasting, integrity, animal welfare and other industry related functions. This will continue through the transition and into the future state. These BAU costs will also form the bulk of RITA’s operating costs.

44. While the Crown’s contribution to the cost of transitional change management is subject to the Budget process, the reconstitution of RITA from the NZRB is not. Therefore, the proposal to issue drafting instructions to the Parliamentary Counsel Office to give effect to the policy proposals in this paper is not contingent on the Budget process.

**Legislative implications**

45. Advice tendered by Ministers of the Crown and officials

46. The proposals in this paper require amendments to the Racing Act, as well as the introduction of regulations. To maximise flexibility, Bill No. 1 will provide for the details of some transitional matters to be specified in regulation.

47. The current Racing Act 2003 binds the Crown. The proposed changes in the Racing Amendment Bill No.1 and No.2 will also bind the Crown.

**Impact analysis**

48. A Regulatory Impact Assessment has been completed and is attached to the “Review of Racing: Paper 1 – Overview of the New Zealand Racing Industry and identified issues”, as Appendix E. The Department of Internal Affairs has assessed that the Regulatory Impact Assessment partially meets the requirements.

**Human Rights**

49. There are no human rights issues associated with this paper.

**Gender implications**

50. There are no gender implications associated with this paper.
Disability perspective

51. There are no disability implications associated with this paper.

Publicity

52. An announcement covering the reconstitution of the NZRB as RITA and the transitional period will follow the Cabinet decisions.

Proactive Release

53. 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

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

Background

1. note that on 5 November 2018 Cabinet noted the Messara report and agreed initial steps to respond to it including [CAB-18-MIN-0551 refers]:
   1.1 the establishment of a Ministerial Advisory Committee;
   1.2 additional policy capacity to consider and analyse the Messara Report’s recommendations;
   1.3 that public submissions had been obtained on the Messara Report recommendations and
   1.4 that a further report to Cabinet would be made in March 2019 seeking decisions on legislative changes and the establishment of a transitional agency to drive changes agreed by Cabinet;

2. note that on 5 November 2018 Cabinet noted that, subject to future government decisions on the recommendations of the Messara Report, the funding for a transitional agency will be sought as part of Budget 2019 [CAB-18-MIN-0551 refers];

A Racing Industry Transitional Agency (RITA) is proposed

3. note that a transitional agency is needed to undertake change management and Business-As-Usual (BAU) functions to drive the transition of the racing industry to its future state and that the Racing Amendment Bill No. 1 which is on the legislative programme provides a vehicle for the creation of a transitional agency;

4. agree that a transitional agency created by reconstituting the New Zealand Racing Board (NZRB) as a Racing Industry Transitional Agency (RITA) with the organisational form of a body corporate established under the Racing Act (2003) with statutory authority to perform BAU and change management functions;
Objectives for RITA

5. agree that, the objectives for RITA be that it:

5.1 drives successful transition to the future state, while managing risks;
5.2 maintains continuity of BAU racing, betting, gaming and broadcasting functions and maintenance of capability in the management of the racing industry;
5.3 supports industry sustainability by leading appropriate strategic initiatives to drive revenue growth, including:
   5.3.1 continued assessment as to whether betting should be outsourced; and
   5.3.2 development of, and preparation for, the implementation of offshore betting charges;
5.4 helps position industry governance and management to pursue more effective decision-making in the future state;
5.5 develops a fit-for-purpose organisational structure for Wagering New Zealand (WNZ), tailored for its function as a racing, betting, gaming and broadcasting operator and that this will necessarily be different from the existing NZRB structure;
5.6 minimises transitional costs for industry and government; and
5.7 provides for temporary management of residual functions, if necessary, after the formation of WNZ and the devolution of the intended functions to codes, Racing New Zealand and others;

Transitional functions for RITA

6. agree that the functions and powers of the RITA include the following:

6.1 management of industry change, including:
   6.1.1 development of a fit-for-purpose organisational structure for WNZ and determining the appropriate operational settings, assets and personnel for the successful establishment of WNZ;
   6.1.2 consideration of transitional issues, such as setting the composition and qualifications for directors of regulatory bodies and ensuring these requirements are implemented;
   6.1.3 the unbundling of the NZRB functions, potentially into a subsidiary, to prepare them for devolution to racing codes; and
   6.1.4 managing the transfer of regulatory functions to racing codes;
6.2 management of BAU betting, broadcasting, gaming, racing, initiatives to drive revenue growth (see recommendation 5.3), racing industry development, management oversight and funding of judicial and integrity services, animal welfare, and research and training; and
6.3 the provision of advice to the Minister for Racing on any matters related to the successful implementation of the Messara Report future state;
Governance of RITA

7. agree that the governance provisions for RITA be:
   7.1 a Board of up to 7 members;
   7.2 that Board members have a strong primary duty to act in the best interest of the Board and the achievement of its goals;
   7.3 the Board members are to be appointed by the Minister for Racing for the duration of the transitional period, but subject to reappointment for a finite period if required to manage any residual matters;
   7.4 that candidates for appointment to the RITA Board will be required to collectively meet specific skills and experience criteria, including governance and:
      7.4.1 industry expertise to effectively manage racing functions;
      7.4.2 knowledge and experience of sport at a national level;
      7.4.3 commercial and/or legal expertise to manage devolution of assets, functions and responsibilities; and
      7.4.4 change management expertise to oversee the transition process;

8. note that Bill No. 1 will provide that the terms of serving NZRB Board members end when RITA is created;

9. note that appointments to the RITA Board will be made consistent with the State Services Commission’s Board Appointment and Induction Guidelines;

10. note that the Minister for Racing will consult the Minister for Sport and Recreation to ensure that the board of RITA includes a national level sport perspective;

11. note that the Minister for Racing will submit a paper to the Cabinet Appointments and Honours Committee on the proposed membership of RITA in time to enable governance arrangements to be in place for the intended establishment date of 1 July 2019;

The RITA Board should be closely accountable to the Minister for Racing

12. agree that the accountability provisions for RITA enable close accountability to the Minister for Racing through measures which at the Minister for Racing’s discretion may include, as required:
   12.1 significant ministerial input and guidance to the development of RITA’s strategy and initiatives;
   12.2 Ministerial appointment of Board members;
   12.3 Ministerial Letters of Expectation;
   12.4 approval of a Statement of Intent;
   12.5 approval of RITA’s business plan and transition plan;
   12.6 the current NZRB’s annual planning and reporting requirements;
   12.7 the ability for the Minister for Racing to require the provision of more frequent progress updates, to ensure that the transition is proceeding according to plan; and
   12.8 RITA making periodic progress updates to the racing industry;
Financial implications

13. note that the racing industry will continue to meet its costs in the delivery of the BAU racing, betting, gaming, broadcasting, integrity, animal welfare and other industry related functions, including increases in these resulting from the change process;

14. note that the Minister for Racing has submitted a bid through Budget 2019 to fund a transitional agency to undertake transitional change management; and

Legislative implications

15. note that to maximise flexibility, Racing Amendment Bill No. 1 will provide for the details of some transitional matters to be specified in regulations;

16. invite the Minister for Racing to issue drafting instructions to the Parliamentary Counsel Office that give effect to the above policy proposals in recommendations 3 to 12;

17. agree that the Bill should make any consequential amendments necessary to other legislation, including the Gambling Act 2003;

18. agree that the Minister for Racing be authorised to make further decisions relating to the technical design of the draft legislation; and

Proactive Release

19. 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