

Departmental Disclosure Statement

Racing Industry Bill

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

It identifies:

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

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

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

4 December 2019.

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Part One: General Policy Statement

In April 2018, the Minister for Racing commissioned an expert, Mr John Messara, to assess the state of the New Zealand racing industry. The *Review of the New Zealand Racing Industry* confirmed that the industry was in decline and that, without intervention, it was at risk of suffering irreparable damage.

This intervention began with the Racing Reform Act 2019, the first phase of a stepped change to the industry. The Racing Reform Act amended the Racing Act 2003 and the Gaming Duties Act 1971 to bring into effect a period of transition and various measures to increase the financial sustainability of the industry.

To realise the full benefits of these reforms, further legislative change is required. This Bill finalises the post-transition governance structure of the racing industry, creates a legislative framework to enable property to better benefit the racing industry, and enables new ways of seeking approval for betting products.

Given the extent of the reforms, the Bill creates a new Racing Industry Act that amalgamates the existing provisions from the Racing Act 2003, with policy decisions agreed by Cabinet in November 2019. The new Act will have a refreshed purpose that includes a focus on minimising harm from gambling and will provide a high-level overview of the industry that recognises the industry's pivot to a more commercial orientation.

Governance of racing industry

The Bill provides the post-transitional governance structure of the racing industry, with the creation of TAB NZ as the sole betting provider for racing and sports. The Bill empowers the 3 racing codes (Thoroughbred Racing New Zealand Incorporated, Harness Racing New Zealand Incorporated and New Zealand Greyhound Racing Association Incorporated) to effectively govern their respective industries and networks of clubs and venues, as it devolves the high-level racing functions, held by the Racing Industry Transition Agency and the New Zealand Racing Board previously, to the codes. These changes are intended to provide the industry with independence from the Government. However, the Bill includes the ability for the Minister for Racing to intervene if required.

The Bill establishes the Racing Integrity Board (RIB) as an entity independent from the racing codes that is responsible for all integrity functions and oversees a compliance arm and an adjudicative arm that operate independently of each other. The functions and powers of the RIB recognise that a sound integrity system and strong animal welfare protocols are fundamental to the sustainability of racing and betting, and the wider community's support for the industry.

Property of racing clubs

The Bill introduces a suite of changes that will resolve historic property issues that have contributed to the decline of the industry. Two property objectives are introduced to guide decision making: the value of racing property should be retained in the industry, and the value of racing property should be used for maximum industry benefit. Two statutory provisions are introduced to support negotiations between clubs and codes on the utilisation of surplus venues. The Bill also introduces, as a backstop, a statutory decision-making process for the Minister for Racing to recommend an Order in Council to transfer property to the code. Provision is made for payments to the club and community, where these are warranted.

Betting

The Bill introduces an approval mechanism to enable consideration of new racing and sports betting products, which to date has required legislative change. This change will support opportunities to increase revenue for the racing industry and support its financial sustainability. The Bill will allow TAB NZ to seek agreement from an independent body to new betting rules, requiring that harm minimisation is prioritised in any application for a new betting rule.

The Bill introduces a focus on preventing and minimising gambling harm in the purpose statement of the Bill, to recognise the risks associated with new betting products. The Bill also provides TAB NZ with exclusive rights to the racing industry's intellectual property used in racing betting and broadcast products in the Australian and New Zealand market.

Other matters

The Bill clarifies that racing rules made under the Bill are contractual and are not secondary legislation. It also amends the definition of working dogs set out in section 2 of the Dog Control Act 1996, to clarify that a dog registered with New Zealand Greyhound Racing Association Incorporated and kept solely or principally for racing is a working dog for the purposes of that Act. This change addresses a recommendation of the *Report to New Zealand Racing Board on Welfare Issues Affecting Greyhound Racing in New Zealand*, by the Hon Rodney Hansen CNZM QC, to incentivise the use of dog registration as an animal traceability mechanism.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
Review of the New Zealand Racing Industry, John Messara, July 2018 (https://www.dia.govt.nz/vwluResources/Racing-Report-August-2018/\$file/Review-of-the-NZ-Racing-Industry-Report.pdf) Offshore Racing & Sports Betting Working Group Final Report (https://www.beehive.govt.nz/sites/default/files/Working%20Group%20-%20Final%20Report%20October%202015.pdf) Interim Report on the Review of the New Zealand Racing Industry – the Messara Report, Ministerial Advisory Committee, February 2019 (https://www.dia.govt.nz/diawebsite.nsf/Files/Racing-Review/\$file/Interim-Report-of-MAC-on-the-Review-of-the-New-Zealand-Racing-Industry.pdf)	

Relevant international treaties

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

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Racing Industry Reforms Bill No. 2 – Regulatory Impact Assessment Classification of racing greyhounds as working dogs under the Dog Control Act 1996 (https://www.dia.govt.nz/Resource-material-Regulatory-Impact-Statements-Index#zero)	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
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2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>The potential costs and benefits of the policy in this Bill are summarised in the Racing Industry Reforms Bill No. 2 Regulatory Impact Assessment at pages 9-11, and further detail is provided at pages 46-48 and 53/54 (governance arrangements), 82-84 (racing industry property), and 108/109 (new wagering products).</p> <p>There is potential for club owned racing venues, and any encumbrances on those venues, to be transferred by Order in Council to racing codes without compensation (see Option 2: Legislative provisions to support commercial negotiations on pages 65-67, 75-77 and 80). Clubs that own such venues (and those which agree to transfer through a negotiated process) would bear the cost of the asset loss, although these assets would not have been retained if the club was wound up. Any trusts applying to the surplus venue will also be extinguished on the transfer date which is contrary to property rights and may result in a loss of wealth. Trusts are not recorded on property titles. Until the surplus venues are identified it is not possible to ascertain the existence or nature of any such claims.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The policy decisions to be given effect in the Bill were canvassed and were not considered to have any impact on New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

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

The principles of the Treaty of Waitangi were considered during the policy development process and development of the Bill. No issues were identified in relation to the Treaty of Waitangi.
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There may be particular interests for Māori in the work that TAB NZ carries out. For example, when seeking to introduce a new product, the legislation will require TAB NZ to demonstrate how it has worked with stakeholders. Since Māori are overrepresented in gambling harm statistics, it is expected that TAB NZ will consult with Māori stakeholders when considering whether to seek approval for new products.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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The Department understands the Ministry of Justice (MOJ) provided advice to the Attorney-General on 21 November 2019. If the Attorney-General agrees to waive legal privilege, the advice will be able to be accessed at https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/
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Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>The current offence and penalty provisions in section 35 (consequences of breaching rule made under section 34) are not replaced in the Bill.</p> <p>Current sections 36 – 41 (racing judicial system), 68(1) and (2)(c) and Schedule 3 are retained at clause 4 of Schedule 1 until the new racing integrity system commences (clauses 33 - 41) by Order in Council. A Racing Integrity Board will be established (see clause 33) which includes an adjudicative function (see clause 35(1)(h)-(j)). The Board must ensure its functions relating to compliance and adjudication are performed independently of each other (see clause 35(2)). Clause 41 notes that provisions related to judicial committees and appeals tribunals are provided in Schedule 2 (which relate to representation at hearings held on race days, appeals against placings and stakes and privileges and immunities). Further details related to the conduct and administration of the racing integrity system, including judicial committees and appeals tribunals, will be determined by regulations provided at clause 123(1)(c).</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>During the policy development phase, MOJ expressed concerns regarding the separation of powers between the compliance and adjudicative arm of the proposed Racing Integrity Board. In its view this is most simply achieved through placing these functions in separate organisations.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Public consultation was carried out on the Messara Report's recommendations and approximately 1700 submissions were received.</p> <p>The Ministerial Advisory Committee for Racing (MAC) was established with relevant industry experts to undertake a detailed analysis on operational aspects of the Messara Report's recommendations. The MAC, which is now the Board of the RITA, has been consulted throughout the policy development process and has provided feedback. RITA has also engaged with key stakeholders including code bodies.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
RITA was consulted on the draft Bill, to consider the workability of the provisions for the racing industry.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	YES
<p>Clause 25 provides for the Minister for Racing to approve by Order in Council a proposal prepared by a racing code relating to the transfer of a surplus venue (owned by a racing club) to the code, with or without modification. Such a transfer proposal may provide that the racing club is to transfer the surplus venue to the racing code without receiving in return any, or an equivalent, asset (clause 27(3)).</p> <p>The purpose of this provision is to support revitalisation of the racing industry and contribute to achieving the objectives of the industry as a whole by ensuring the value of racing property is retained in the industry and used for maximum industry benefit. The provisions are considered necessary to meet the objectives.</p> <p>Adverse effects are mitigated by constraining the ability of the Minister to approve an Order in Council to situations where no agreement has been reached in negotiations or the club has refused to enter negotiations (clause 25(1)). The transfer proposal must state whether, in the code's view, any payment to the club/s or person in recognition of a community interest because of the transfer is warranted (clause 25(4)(c)). The Minister must appoint a suitably qualified reviewer (clause 26(2)) who must invite submissions (clause 26(3)) and must advise the Minister on whether payments should be made to the club and/or person in recognition of a community interest (clause 26(4)). There are several other matters the Minister must have regard to before recommending an Order in Council (clause 26) and the Minister may refuse to make a recommendation for an Order in Council if the Minister considers it appropriate in the circumstances for the parties to resume negotiations for the transfer of surplus property by agreement (clause 26(6)).</p>	

Charges in the nature of a tax

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

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

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

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>Clause 27(14)(a) provides that nothing authorised by clause 25 (transfer of surplus venues by Order in Council) places the racing club or any other person in breach of contract or confidence or otherwise makes them liable of a civil wrong.</p> <p>The existing protection against liability for members of the Racing Industry Transition Agency and its committees are transferred to TAB NZ (see clause 6 of Schedule 3).</p> <p>The existing provision providing privileges and immunities for witnesses and counsel appearing before judicial committees or appeals tribunals and protection against liability for members of the Judicial Control Authority, judicial committee, or appeals tribunals is retained. This is because the Bill retains these entities and the provisions related to them during the transitional period before establishment of the Racing Integrity Board. The Bill provides a regulation making power at clause 123(1)(c) to enable the detail related to operation of the Racing Integrity Board, including judicial committees and appeals tribunals, to be determined. Privileges and immunities for witnesses and counsel appearing before a judicial committee or an appeals tribunal are contained in clause 3 of Schedule 2.</p>	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>Please see above under question 4.1 regarding some new decision-making powers that will impact on the rights of racing clubs. In addition, clause 17 restricts clubs' ability to make decisions regarding racing venues without approval from a code.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill carries over the existing regulation making powers and other disallowable instruments from the Racing Act 2003.</p> <p>Clause 123 amends the existing regulation making powers in section 68A by removing the ability to make regulations prescribing matters to support exercise of the Racing Industry Transition Agency's functions and powers during the transitional period and to extend the end date of the transitional period. It also includes new regulation making powers:</p> <ul style="list-style-type: none"> • setting the terms and conditions of any commercial agreement to be entered into by TAB NZ and a racing code • prescribing the process, criteria or both regarding the transfer of surplus venues • providing for further matters relating to the conduct and administration of the racing integrity system • prescribing the independent body that may approve other racing or sports betting. <p>The following other new regulation making powers are included:</p> <ul style="list-style-type: none"> • clause 14(1) – imposing a levy on any 1 or more racing codes relating to the appointment of a Commissioner • clause 38(2) – prescribing the amount or method for determining the amount of funding that must be provided by TAB NZ to the Racing Integrity Board (if this is unable to be agreed). <p>The following order in council powers are also included:</p> <ul style="list-style-type: none"> • clause 2(2) – commencement of clauses relating to the Racing Integrity Board • clause 5(3) – amending the definition of recognised industry organisations • clause 17(3) – date on which the restriction on racing clubs obtaining written approval from codes for certain transactions involving racing venues ends • clause 25 – transfer of surplus venues. 	

Any other unusual provisions or features

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